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VETERANS' BENEFITS IMPROVEMENT ACT OF 2008

SEPTEMBER 9, 2008.—Ordered to be printed

Mr. AKAKA, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

together with

SUPPLEMENTAL VIEWS

[To accompany S. 3023]

The Committee on Veterans' Affairs (the Committee), to which was referred the bill (S. 3023), to amend title 38, United States Code, to require the Secretary of Veterans Affairs to prescribe regulations relating to the notice to be provided claimants with the Department of Veterans' Affairs regarding the substantiation of claims, having considered the same, unanimously reports favorably thereon with an amendment, and an amendment to the title, and recommends that the bill, as amended, do pass.

INTRODUCTION

On May 15, 2008, Committee Chairman Daniel K. Akaka introduced S. 3023, the proposed "Veterans' Notice Clarification Act of 2008." S. 3023 would amend title 38, United States Code, to improve notices provided to veterans applying for disability compensation, and for other purposes. The bill was referred to the Committee.

Earlier on January 4, 2007, Senator Thune introduced S. 161, the proposed "Veterans' Disability Compensation Automatic COLA Act." Later, Senators Snowe and Tester were added as cosponsors. S. 161 would require that, whenever there is an increase in benefit amounts payable under title II (Federal Old-Age, Survivors, and Disability Insurance Benefits) of the Social Security Act, the Secretary of Veterans Affairs shall increase by the same percentage

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the amounts payable as veterans' disability compensation and dependency and indemnity compensation for surviving spouses and children.

On June 27, 2007, Senator Brown introduced S. 1718, the proposed "Veterans Education Tuition Support Act," with Senator Salazar as an original cosponsor. Later, Senators Baucus, Boxer, Casey, Domenici, Klobuchar, McCaskill, Menendez, Mikulski, Murray, Sessions, Stabenow, Tester, and Webb were added as cosponsors. S. 1718 would amend the Servicemembers Civil Relief Act (SCRA) to provide protections for servicemembers who are called to active duty while enrolled in institutions of higher education.

On September 25, 2007, Chairman Akaka introduced S. 2090 by request of the United States Court of Appeals for Veterans Claims (CAVC or the Court). S. 2090 would enhance privacy protection and alleviate security concerns regarding the records of the Court.

On September 25, 2007, Chairman Akaka introduced S. 2091 by request of CAVC. S. 2091 would increase the number of judges on the Court from seven to nine.

On December 13, 2007, Senator Kennedy introduced S. 2471, the proposed "USERRA Enforcement Improvement Act of 2007," with Chairman Akaka and Senator Obama as original cosponsors. Later, Senator Clinton was added as a cosponsor. S. 2471 would amend the current Uniformed Services Employment and Reemployment Rights Act (USERRA) complaint process and modify and expand the reporting requirements with respect to enforcement of USERRA.

On January 23, 2008, Senator Hutchison introduced S. 2550, the proposed "Combat Veterans Debt Elimination Act of 2008," with Senators Cornyn and Johnson as original cosponsors. Later, Ranking Minority Member Burr and Senators Alexander, Allard, Bayh, Brown, Brownback, Byrd, Cochran, Conrad, Domenici, Ensign, Isakson, McConnell, Murray, Roberts, Sessions, Sununu, and Wicker were added as cosponsors. S. 2550 would prohibit the Secretary of Veterans Affairs from collecting debts owed to the United States by certain members of the Armed Forces or veterans who die as a result of an injury incurred or aggravated on active duty in a war or a combat zone after September 11, 2001.

On February 28, 2008, Ranking Minority Member Burr introduced S. 2674, the proposed "America's Wounded Warriors Act." Later, Senators Cochran, Domenici, and Isakson were added as cosponsors. Title II of S. 2674 would direct the Department of Veterans Affairs (VA or the Department) to conduct a series of studies on reforming the disability compensation system and then submit to Congress a proposal for a new compensation and transition payment rate structure.

On March 10, 2008, Chairman Akaka introduced S. 2737, the proposed "Veterans' Rating Schedule Review Act." S. 2737 would authorize CAVC to review whether, and the extent to which, the rating schedule for veterans' disabilities complies with statutory requirements applicable to entitlement to veterans' disability compensation for service-connected disability or death.

On March 13, 2008, Chairman Akaka introduced S. 2768, with Ranking Minority Member Burr, and Senators Baucus, Boxer, Brown, Clinton, Durbin, Kerry, Murray, Obama, Reid, Rockefeller, and Sanders as original cosponsors. Later, Senators Cantwell,

Isakson, Schumer, and Smith were added as cosponsors. S. 2768 would provide a temporary increase, during the period beginning on the date of enactment of this Act and ending on December 31, 2011, in the maximum veterans' loan guaranty amount for housing loans guaranteed by VA.

On April 17, 2008, Chairman Akaka introduced S. 2889, the proposed "Veterans Health Care Act of 2008," by request of VA. Section 7 of S. 2889 would make permanent VA's authority to obtain income information from the Internal Revenue Service and the Social Security Administration.

On April 30, 2008, Senator Vitter introduced S. 2946, with Senator Brownback as an original cosponsor. S. 2946 would allow a stillborn child to be an insurable dependent under Servicemembers' Group Life Insurance (SGLI).

On May 1, 2008, Senator Baucus introduced S. 2951, with Senators Lugar and Tester as original cosponsors. S. 2951 would require reports on VA's progress in addressing causes for variances in compensation payments to veterans for service-connected disabilities.

On May 1, 2008, Chairman Akaka introduced S. 2961. S. 2961 would enhance the refinancing of home loans by veterans.

On May 1, 2008, Senator Boxer introduced S. 2965, with Senator Lieberman as an original cosponsor. S. 2965 would require a report from VA on the inclusion of severe and acute Post Traumatic Stress Disorder among the conditions covered by traumatic injury protection under SGLI.

On May 6, 2008, Senator Casey introduced S. 2981, the proposed "Disabled Veterans Home Ownership Preservation Act of 2008," with Senator Isakson as an original cosponsor. S. 2981 would amend SCRA to provide a one-year period of protection against mortgage foreclosures for certain disabled or severely injured servicemembers, and for other purposes.

On May 6, 2008, Chairman Akaka introduced S. 2984, the proposed "Veterans' Benefits Enhancement Act of 2008," by request of VA. S. 2984 would eliminate the reporting requirement for prior training; modify the waiting period before the affirmation of enrollment in a correspondence course; eliminate the change-of-program application; eliminate the wage earning requirement for self-employment on-job training; authorize memorial headstones and markers for deceased remarried surviving spouses of veterans; make permanent VA's authority to contract for medical disability examinations; make modifications to SGLI; permit VA to provide Temporary Residence Assistance Grants to certain servicemembers; and designate a VA Office of Small Business Programs.

On May 7, 2008, the Committee held a hearing on benefits legislation at which testimony was offered by: Mr. Keith Pedigo, Associate Deputy Under Secretary for Policy and Program Management, Department of Veterans Affairs; Mr. Carl Blake, National Legislative Director, Paralyzed Veterans of America; Mr. Richard Paul Cohen, Executive Director, National Organization of Veterans' Advocates; Mr. Eric A. Hilleman, Deputy Director of the National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Ray Kelley, Legislative Director, AMVETS; Mr. Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Joseph Violante, National

Legislative Director, Disabled American Veterans; Mr. Rick Weidman, Governmental Affairs Director, Vietnam Veterans of America; Mr. Herman Gerald Starnes, U.S. Merchant Marine with service in World War II; and Mr. Charles Dana Gibson, U.S. Merchant Marine with service in World War II and maritime historian.

On May 8, 2008, Chairman Akaka introduced S. 3000, the proposed "Native American Veterans Access Act of 2008," with Senator Inouye as an original cosponsor. S. 3000 would allow tribal governments to apply for veterans' program grants that are currently limited to States and certain U.S. Territories.

On June 5, 2008, Senator Snowe introduced S. 3087, the proposed "Helping Our Veterans to Keep Their Homes Act of 2008." S. 3087 would extend VA's authority to guaranty adjustable rate mortgages and hybrid adjustable rate mortgages.

COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on June 26, 2008, to consider, among other legislation, an amended version of S. 3023, consisting of provisions from S. 3023, as introduced, and from the legislation noted above. The Committee voted unanimously to report favorably S. 3023, as amended, to the Senate.

SUMMARY OF S. 3023 AS REPORTED

S. 3023, as reported (the Committee bill), consists of six titles, summarized below.

TITLE I—COMPENSATION AND PENSION MATTERS

Section 101 would require VA to promulgate regulations specifying the content of notices to be provided to claimants for original claims, reopened claims and claims for an increase in benefits. This would apply to notices sent on or after the date the regulations are effective.

Section 102 would authorize the United States Court of Appeals for the Federal Circuit to review VA actions relating to the adoption or revision of the VA disability rating schedule in the same manner as other actions of the Secretary of Veterans Affairs are reviewed.

Section 103 would provide an automatic annual increase in rates of disability compensation and dependency and indemnity compensation.

Section 104 would make a technical correction to the National Defense Authorization Act for Fiscal Year 2008.

Section 105 would require a report describing VA's progress in addressing the causes for any unacceptable variances in compensation payments to veterans for service-connected disabilities.

Section 106 would require a report on studies regarding compensation of veterans for loss of earning capacity, quality of life, and long-term transition payments to veterans undergoing rehabilitation for service-connected disabilities.

TITLE II—HOUSING MATTERS

Section 201 would temporarily increase the maximum loan guaranty amount for certain housing loans guaranteed by VA.

Section 202 would permit regular loans in excess of $144,000 to be refinanced with a loan guaranteed by VA and decrease the equity requirement for veterans who refinance to a loan backed by VA.

Section 203 would provide a four-year extension of two demonstration projects of adjustable rate mortgages.

Section 204 would make members of the Armed Forces with certain service-connected disabilities eligible for specially adapted housing benefits and assistance.

Section 205 would require a report on the impact of housing foreclosures on veterans and the adequacy of protection against foreclosure in existing law.

TITLE III—LABOR AND EDUCATION MATTERS

SUBTITLE A—LABOR AND EMPLOYMENT MATTERS

Section 301 would waive the 24-month limitation on a program of independent living services and assistance for veterans with a severe disability incurred in the Post-9/11 Global Operations period.

Section 302 would reform the USERRA complaint process.

Section 303 would modify and expand the reporting requirements with respect to enforcement of USERRA.

Section 304 would require USERRA training for the executive branch human resources personnel.

Section 305 would require a report on efforts to address the employment needs of Native American veterans living on tribal lands.

Section 306 would require a report on measures that could be taken by VA to assist and encourage veterans in completing vocational rehabilitation.

SUBTITLE B—EDUCATION MATTERS

Section 311 would provide relief for students who discontinue education because of military service.

Section 312 would extend the period of eligibility for Survivors' and Dependents' Educational Assistance of certain spouses of individuals with service-connected disabilities total and permanent in nature.

Section 313 would repeal the requirement that an educational institution providing non-accredited courses notify VA of the credit granted for prior training of certain individuals.

Section 314 would decrease the waiting period before affirmation of enrollment in a correspondence course may be finalized for purposes of receiving educational assistance from VA.

Section 315 would repeal the requirement that an individual notify VA when the individual changes educational programs but remains enrolled at the same educational institution.

Section 316 would exempt on-the-job training programs from the requirement to provide participants with wages if the training program is offered in connection with the purchase of a franchise.

SUBTITLE C—OTHER MATTERS

Section 321 would rename VA's Office of Small and Disadvantaged Business Utilization as the VA Office of Small Business Programs.

TITLE IV—COURT MATTERS

Section 401 would increase the number of active judges on the Court.

Section 402 would provide for the protection of privacy and security concerns in Court records.

Section 403 would modify the rules governing service and payment of retired judges performing recall service for the Court.

Section 404 would require the Court to submit annual reports to Congress on its workload.

TITLE V—INSURANCE MATTERS

Section 501 would require a report on the inclusion of severe and acute Post Traumatic Stress Disorder among the conditions covered by traumatic injury protection coverage under SGLI.

Section 502 would provide for the treatment of stillborn children as insurable dependents under SGLI.

Section 503 would extend SGLI coverage to certain members of the Individual Ready Reserve. It would terminate coverage under SGLI for a servicemember's dependent 120 days after the servicemember separates from service. It would authorize VA to set SGLI premiums for Ready Reservists' spouses based on the age of the spouse. It would create a forfeiture of insurance under the Veterans' Group Life Insurance (VGLI) program for actions such as mutiny or treason.

TITLE VI—OTHER MATTERS

Section 601 would create the authority for suspension or termination of claims of the United States against individuals who died while serving on active duty in the Armed Forces.

Section 602 would provide memorial headstones and markers for deceased remarried surviving spouses of veterans.

Section 603 would provide a three-year extension of authority for VA to carry out income verification using records from the Internal Revenue Service (IRS) and Social Security Administration (SSA).

Section 604 would extend the authority for VA to fund contract medical disability examinations.

BACKGROUND AND DISCUSSION

TITLE I—COMPENSATION AND PENSION MATTERS

Sec. 101. Regulations on contents of notice to be provided claimants with the Department of Veterans Affairs regarding substantiation of claims.

Section 101 of the Committee bill, which is derived from S. 3023 as introduced, would require VA to promulgate regulations relating to the notice provided to claimants seeking VA benefits.

Background. VA's system for adjudicating claims for service-connected disability benefits is intended to be a claimant-friendly and non-adversarial process. Under chapter 51 of title 38, VA has a duty to assist claimants in gathering the necessary information and evidence to fully develop their claims.

A series of CAVC rulings in the 1990s narrowly interpreted the duty to assist concept, culminating in *Morton* v. *West*, 12 Vet. App. 477 (1999), which held that VA had no authority to assist. claim-

ants absent verification that the claim was well-grounded. The CVAC found that VA was precluded from assisting a claimant "in any way unless that claimant had first established that his or her claim was well-grounded." *PVA* v. *Secretary*, 345 F.3d 1334, 1338 (Fed. Cir. 2003). As a result of the *Morton* decision, VA ceased providing any assistance to claimants who did not have a "well-grounded claim" except for the verification of military service and obtaining service medical records.

Congress disagreed with the Court's interpretation of VA's duty to assist and, in 2000, in Public Law 106–475, the Veterans Claims Assistance Act of 2000 (VCAA), clarified and expanded VA's duty to assist claimants. The VCAA reinstated VA's traditional practice of assisting veterans at the beginning of the claims process.

Prior to the enactment of the VCAA, section 5103 of title 38 provided that, if a claimant's application for benefits was incomplete, VA was required to notify the claimant of the evidence necessary to complete the application. Under the changes made by the VCAA, VA is required to inform the claimant of what information and medical or lay evidence is needed to substantiate the claim. The notice must also stipulate what evidence and information is to be obtained by the claimant and what evidence is VA's responsibility. VA is also required to notify the claimant when it is unable to obtain the relevant records.

Since the enactment of the VCAA, various actions, including decisions of the Court and VA's responses to some of those decisions, have led to notices that are not meeting the goal of providing claimants with sufficient, clear information on which they can then act. Instead of simple, straightforward notices that can be easily read and understood by claimants, VA is now routinely providing long, frequently convoluted, overly legalistic notices that do not meet the objective of the VCAA. It is clear to the Committee that there is abundant evidence supporting the need to change the current situation and strong support for doing so.

For example, the Committee notes that there have been cases subsequent to the enactment of VCAA, such as *Dingess* v. *Nicholson*, 19 Vet. App. 473 (2006), in which the Court has interpreted the notice requirement to include information concerning so-called "downstream" issues, such as the rating schedule and effective date, before a determination of service-connection is made, a result not contemplated by the original law. In other cases, such as *Vazquez-Flores* v. *Peake*, 22 Vet. App. 37 (2008), it appears that VA has misinterpreted the intent of the Court by suggesting that a preadjudication of claims would be required prior to sending a VCAA notice. In VA's motion to stay its original decision, the Court stated, "the Secretary need only identify the assigned DC [diagnostic code] and cross-referenced DCs, review them for specific criteria for which the generic notice is insufficient, and add general notice of the evidence needed to satisfy that criteria." *Vazquez-Flores* v. *Peake*, 22 Vet. App. 91 (2008).

In recent oversight visits to 19 different VA regional offices, a Democratic Committee staff member reviewed 298 individual claim files and found that VCAA letters sent to claimants provide little practical assistance to those veterans. In many of the claims examined, information that would have been helpful in substantiating the claim was missing. However, the files did not indicate that VA

had requested the missing information. For example, a veteran filing an original claim, would indicate "See SMRs [Service Medical Records]" rather than providing dates of disability and treatment locations. In a number of files reviewed, the evidence showed that service medical records were missing or incomplete. In cases involving combat, time and location information may be needed in order for VA to determine if the relaxed evidentiary requirements of section 1154 of title 38 should be applied, but review of the files found that such information was neither provided nor requested. The Committee believes that time and location information should be requested in those cases where it is needed for VA to provide effective assistance in locating relevant government records.

With respect to reopened claims or claims for an increase, the VCAA letters are also legalistic and confusing. In over 50 percent of the claims reviewed at regional offices, VA staff agreed that errors involving service-connection or the rating assigned were committed. Where service-connection was an issue, VCAA letters involving reopened claims generally did not inform veterans of the element of the claim for which evidence would be needed to reopen the claim. For example, a VCAA letter to a veteran with a current disability would not state that the evidence needed to reopen the claim was evidence of the relationship between the current disability and military service. As a result, a veteran would submit considerable evidence concerning the extent of the disability but would fail to submit needed evidence of the relationship, or nexus, between the disability and military service.

In testimony before the Committee, on July 9, 2008, Kerry Baker, Associate National Legislative Director of the Disabled American Veterans noted that "the language of section 5103(a) has led to such a procedural quagmire that it is not fulfilling its intended benefit to VA claimants." During the same hearing, William "Bo" Rollins, Director of Field Services for the Paralyzed Veterans of America stated "Congress should consider amending the [VCAA] law to direct VA to fill in the contours of an adequate VCAA notice letter."

The Veterans' Disability Benefits Commission (VDBC), in its final report, expressed concerns about VA's efforts to comply with the VCAA, based on its site visits and general study of VA claims adjudication. The VDBC reported receiving numerous complaints that the notice letters they were receiving were too long and overburdened with legal language. The VDBC recognized that the notices are not clear or succinct:

> VA should consider amending Veterans Claims Assistance Act letters by including all claim-specific information to be shown on the first page and all other legal requirements would be reflected, either on a separate form or on subsequent pages. In particular, VA should use plain language in stating how the claimant can request an early decision in his or her case.

IBM Global Business Services, with which VA contracted in the Fall of 2007 to conduct an analysis of VA's business processes for adjudicating disability claims and prescribe a short-term action plan and long-term strategic plan for improving the quality and efficiency of the process, also found the current VCAA letter to be

"long and complex, containing a great deal of legal language that can be confusing to veterans when trying to understand the process for completing their disability claim." It recommended that the current VCAA letter be revised to be shorter and more transparent to veterans. According to IBM, "[c]omplex legal language which is required to be in the letter should be translated into layman's terms, or else placed in supplemental pages to the letter, while the main body of the letter is clear and succinct."

It is clear to the Committee that additional Congressional guidance and a requirement for the promulgation of regulations will aid VA in providing easy-to-read notices that will comply with due process and VA's duty to assist under the VCAA.

Committee Bill. Section 101 of the Committee bill would amend subsection (a) of section 5103 of title 38 to add a new paragraph that would require VA to promulgate regulations specifying the content of VCAA notices provided to claimants. The regulations required by the Committee bill would require that the notice specify for each type of claim for benefits the general information and evidence required to substantiate the claim. For example, if a claim involved benefits and services based upon need, the notice would advise that information concerning income and assets must be submitted. In a claim based upon disability, the notice would reference the need for evidence of disability, including signs or symptoms of a disabling condition. The regulations should also specify different content of the notices depending on the type of claim concerned, whether it be an original claim, a claim for reopening, or a claim for increase in benefits.

The Committee emphasizes that VCAA notices are required only in cases in which additional information or evidence is needed to substantiate the claim. If the information and evidence needed to substantiate the claim is submitted with the application or contained in the claims file, no VCAA notice is required. For example, claims for education, health care, housing, vocational rehabilitation, and burial benefits might contain sufficient information and evidence to substantiate the claim without the necessity of a VCAA notice.

With respect to original claims, the Committee believes that the regulations relating to notice for original claims should specify that the information and evidence referenced in the VCAA notice should be relevant to the basic elements of the claim for benefits or services sought: (1) evidence of current disability or symptoms of disability; (2) evidence relating to a disability, symptoms of disability, one or more incidents or events in service giving rise to or aggravating a disability; and (3) the relationship between the current disability and military service.

The Committee expects that the regulations will require that VCAA notices include a request for clarification of missing or ambiguous information contained in a request for benefits where it may be necessary or helpful to identify evidence that may substantiate the claim. In cases concerning service-connection, such requests might include approximate dates and locations of treatment and if applicable, approximate dates and locations related to combat experiences associated with claimed disabilities.

The Committee is concerned that requiring VA to include in notices relating to original claims information concerning "down-

stream elements," such as the rating schedule and effective date, before a determination of service-connection is made, may be misleading and confusing to veterans. Such information may lead a veteran into believing that service-connection has been conceded and the issue on which evidence must be submitted relates to the rating or effective date.

During oversight visits to 19 different VA regional offices, a Democratic Committee staff member has identified some claims for which VA has no duty to assist, because there was no reasonable possibility that such assistance would result in substantiating a claim. These claims included claims for environmental exposure without any indication that any disability is related to the alleged exposure. The regulations may provide that notice in such cases may indicate that no development will be undertaken, unless the veteran indicates a disability that is related to the claimed exposure. Other examples of cases in which the notice may indicate that VA assistance cannot help include claims involving conditions, such as high cholesterol, with no related disability alleged, and male pattern baldness, which is not considered a disability under VA regulations. In such instances, the regulations may provide that the notification will indicate that the claims will not be developed because there is no reasonable possibility that such assistance would result in substantiating the claim.

With respect to claims to reopen a previously denied claim, the Committee believes that different VCAA notice considerations should apply. In recent oversight visits by a Democratic Committee staff member, it was noted that a number of veterans' claims were denied because of a lack of nexus between a claimed disability and military service but with no indication that a medical opinion was acquired, as required by section 5103A of title 38. This error is frequently identified by the Board of Veterans' Appeals in remands of appealed cases. In other cases, the veteran may have filed an ambiguous, potential, or inferred claim that was not clarified before the claim was decided. The Democratic Committee staff member also identified a number of cases in which a veteran seeking to reopen a previously denied claim for service-connection submitted substantial and often duplicative documentation concerning a current disability, apparently unaware that the basis for the denial was a lack of evidence linking the disability to military service.

The Committee does not expect that the regulations would require a full pre-adjudication file review prior to issuing a VCAA letter involving a reopened claim. However, the regulations should require the notice in such cases to appropriately reference the prior decision with respect to what element of the claim requires new and material evidence to reopen the claim and what type of evidence is required. In this regard, the Committee notes the opinion of the Court in *Kent* v. *Nicholson*, 20 Vet. App. 1, 9 (2006), in which the Court indicated that "VA must notify a claimant of the evidence and information that is necessary to reopen the claim and VA must notify the claimant of the evidence and information that is necessary to establish his entitlement to the underlying claim for the benefit sought by the claimant." The Committee expects regulations concerning reopened claims to comply with the *Kent* standard.

The Committee notes that given the large amount of documentation often contained in claims files, it is not practical, feasible, or

efficient to require that every document in an existing claims file be reviewed before a VCAA letter is issued. By focusing the regulation on the decision sought to be reopened with reference to the evidence considered in that decision, the Committee believes that VCAA and *Kent* compliance would be achieved.

The Committee recognizes that review of the most recent prior decision might also result in a finding of "clear and unmistakable error" (CUE). During Committee oversight visits by a Democratic staff member, some claims were identified with CUE in the original rating decision. For example, several rating decisions for service-connection of asthma acknowledged that the veteran required daily inhalation bronchodilator therapy but rated such a claim at 10 percent rather than 30 percent which the same decision recognized as the correct rating for such a disability. In most of the claims where CUE was found, the veteran had not appealed an erroneous decision and, in a few cases, had attempted to reopen the decision rather than appeal. Such errors were promptly corrected by the regional office during the oversight visits. A review by VA of the decision sought to be reopened in preparation for the VCAA notice should identify clear examples of CUE, leading to a revised decision which would moot the request for reopening.

With respect to claims for an increase in the degree of service-connected disability, the Committee expects that the regulation will require VA to review the most recent rating decision concerning the disability for which an increased rating is claimed and, in the words of the Court in *Vazquez-Flores* v. *Peake*, 22 Vet. App. 91, 93 (2008) make "a common-sense assessment whether the criteria for a higher rating under the assigned or a cross-referenced DC [diagnostic code] includes criteria 'that would not be satisfied by the claimant demonstrating a noticeable worsening or increase in severity of the disability * * *'."

The Committee notes that the best evidence upon which to evaluate a claim for an increased rating is a complete and thorough medical examination that should provide sufficient evidence for VA rating staff to determine which rating code is appropriate to the findings and diagnosis made by the examiner. Unless the medical evidence submitted by the veteran requesting an increased rating or the other VA records demonstrate that such an increase is warranted, the Committee believes that the VCAA notice involving a claim for an increase should indicate that a VA medical examination will be ordered. The regulation should also require that the veteran be informed as to the general information and medical or lay evidence needed to establish a claim for extra-schedular consideration.

The Committee believes that, by notifying the veteran that an examination would be scheduled to evaluate the current disability involved in the claim for an increase and the criteria for establishing extra-schedular consideration, the duty to notify would be met. VA would need to comply with the *Vazquez-Flores* requirement for additional diagnostic codes or other criteria only when a "common-sense assessment", such as the identification of cross-referenced codes, is indicated. In cases where a common-sense assessment requires information concerning additional diagnostic code criteria, the regulations may provide that such criteria be included as an appendix rather than in the body of the VCAA letter.

VCAA letters concerning claims for increased ratings should be based upon the rating code that was assigned in the most recent prior decision and any other cross-referenced rating codes that might provide a basis for an increase in benefits. However, the Committee does not expect that such a requirement should be interpreted to require notice and diagnostic codes for all potential disabilities involving a particular body system or part.

Under the amendment proposed in the Committee bill, VA would be specifically authorized to issue additional or alternative regulations in order to tailor the VCAA notice to the specific elements of the claim for the particular type of benefits or services sought. In cases in which more than one type of claim is filed in the same document, VA would have the flexibility to issue separate VCAA notices on the different types of claims or to provide the information relevant to each type of claim in the same VCAA notice. The Committee intends that, in determining whether to require separate or combined notices, VA will take into account the intent of Congress to promote simple and easy-to-understand VCAA notices.

The amendment proposed in the Committee bill would also require that the regulations contain information concerning the time within which the information and evidence to be provided by the claimant must be submitted in order for benefits to be paid or services rendered under the claim.

This provision is intended to simplify the notices by reducing the amount of extraneous information provided and clarifying the responsibilities of the claimant to provide relevant information and evidence. The regulations required by section 101 would apply to all notices issued on or after the date the regulations are made effective.

The Committee is aware that VA has taken action to revise the VCAA letter. VA Deputy Under Secretary for Benefits, Michael Walcoff, testified at a February 14, 2008, hearing of the House Committee on Veterans' Affairs that the "current VCAA letters are lengthy and contain complex legal language that many claimants find difficult to understand." At that time, Mr. Walcoff reported that the Veterans Benefits Administration was working closely with VA's Office of the General Counsel to revise and simplify the letters. VA Acting Under Secretary for Benefits, Rear Admiral Patrick Dunne, testified at the Committee's July 9, 2008, hearing that four new VCAA letter templates had been drafted for specific types of claims. Admiral Dunne projected that the revised letters would be available for use by regional offices by November 2008.

The Committee recognizes that VA does not require statutory authority to make the proposed changes to its notices and welcomes the expected introduction of these revised notices in November 2008. However, the Committee believes that, given the history of judicial interpretations of the notice requirement, a statutory basis for the revised VCAA notice regulations should be enacted.

The Committee notes that the regulations required by section 101 of the Committee bill would have prospective effect and does not intend that the required changes would be applied retroactively.

Sec. 102. Judicial review of adoption and revision by the Secretary of Veterans Affairs of the schedule of ratings for disabilities of veterans.

Section 102 of the Committee bill, which is derived from S. 2737, would make actions of the Secretary of Veterans Affairs relating to the adoption or revision of VA's rating schedule for disabilities subject to the same type of review as that applied to other actions of the Secretary.

Background. Until 1988, veterans were generally precluded from obtaining judicial review of decisions made by the then-Veterans Administration. Public Law 100–687, the Veterans' Judicial Review Act, removed that bar by authorizing judicial review of VA decisions in a newly established court, now known as the United States Court of Appeals for Veterans Claims. That law also provided for jurisdiction in the United States Court of Appeals for the Federal Circuit for challenges to certain actions of the Secretary of Veterans Affairs covered by the Administrative Procedure Act. However, that law specifically precluded review of actions relating to the adoption or revision of the schedule of ratings for disabilities adopted under section 1155 of title 38, United States Code. As a result of that prohibition, a regulation found in the rating schedule that is alleged to violate a statutory provision could be insulated from judicial review.

A number of recent reports, including the Institute of Medicine's report "A 21st Century System for Evaluating Veterans for Disability Benefits" and the final report of the Veterans' Disability Benefits Commission "Honoring the Call to Duty: Veterans' Disability Benefits in the 21st Century," have noted the need to update obsolete sections of VA's rating schedule. Without a change to current law, any changes to the rating schedule regulations would be shielded from judicial review.

S. 2737, the legislation from which section 102 of the Committee bill is derived, would have provided for judicial review of the rating schedule by CAVC. Such review would have been available in order to determine if such regulations were in compliance with provisions in chapter 11 of title 38, the chapter relating to disability compensation.

During the Committee's May 7, 2008, hearing which focused on pending legislation, including S. 2737, the VA witness, Keith Pedigo, Associate Deputy Under Secretary for Policy and Program Management of the Veterans Benefits Administration, expressed concerns that the bill "would essentially expose the rating schedule to judicial review" in every case involving service-connection of a disability or a claim for an increased rating and, as such, could increase litigation in CAVC and result in piecemeal review of the rating schedule.

At that same hearing, several veterans service organizations and the National Organization of Veterans' Advocates testified in support of the bill.

Committee Bill. Section 102 of the Committee bill would amend section 502 of title 38, relating to judicial review of rules and regulations by striking out "(other than an action relating to the adoption or revision of the schedule of ratings for disabilities adopted under section 1155 of this title)," thereby providing for review of actions of the Secretary of Veterans Affairs relating to adoption or

revision of the rating schedule by the United States Court of Appeals for the Federal Circuit in the same way as other VA actions are reviewed.

The Committee believes that this approach will avoid the concern about the piecemeal approach raised in VA's testimony and should prevent multiple and possibly conflicting interpretations of the rating schedule in various cases.

The Committee notes that the level and type of review proposed in the Committee bill for the review of the rating schedule would be circumscribed by a number of limitations. For example, under the Rules of the United States Court of Appeals for the Federal Circuit, an action seeking review of a rule or regulation must be filed within 60 days of the effective date of the rule or regulation.

Furthermore, under the standards set forth by the Supreme Court of the United States in *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984), courts must give deference to the Secretary's interpretation of a statute "if the statute is silent or ambiguous with respect to the specific issue." If Congress explicitly left a gap in the statute for VA to fill, then the Secretary's interpretation is controlling unless "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at 843–844. If Congress implicitly delegated authority to VA to fill the gap, the Secretary's interpretation will be upheld if it is a reasonable interpretation of the statute. *Id.* at 844.

During consideration of this issue, a concern was raised that, under the proposed change allowing for judicial review of actions by the Secretary relating to the adoption or revision of VA's rating schedule, it was possible that challenges might be taken in response to a denial by VA of a request for rulemaking under subsection (e) of section 553 of title 5. While it is correct that such a challenge is available under current law and might be brought in the future, no cases have been identified in which such a challenge has been brought with reference to VA rulemaking since judicial review was instituted in 1988. This lack of such actions may be explained by the daunting burden facing a petitioner in such a case.

The Supreme Court of the United States only recently addressed the reviewability of an agency decision to deny a petition for rulemaking in *Massachusetts* v. *EPA*, 549 U.S. 497 (2007). In that case, the Supreme Court found that a refusal "to promulgate rules are * * * susceptible to judicial review, though such review is 'extremely limited' and 'highly deferential.'" The Supreme Court cited two decisions of the United States Court of Appeals for the District of Columbia Circuit in its decision, *American Horse Protection Association, Inc.* v. *Lyng*, 812 F.2d 1 (D.C. Cir. 1987), and *National Customs Brokers & Forwarders Ass'n* v. *United States*, 883 F.2d 93 (D.C. Cir. 1989). In *National Customs Brokers,* 883 F. 2d at 103, the circuit court noted that "[i]t is only in the rarest and most compelling of circumstances that [the circuit court] has acted to overturn an agency judgment not to institute rulemaking." In concluding that the agency had not acted improperly in refusing to promulgate rules suggested by the petitioners, the court found that this was "not such a rare case" because the issues were "economic in nature" and entailed "policy determinations on which agency rulemaking discretion is respected." *Id.* Thus, the Committee believes that the general authority that would be provided by this

section would likely afford veterans relief under only very limited circumstances in a matter involving a denial on VA's part to engage in rulemaking.

Finally, the Committee notes that as a result of removing the prohibition on review of actions of the Secretary relating to adoption or revision of the rating schedule in current law, the United States Court of Appeals for the Federal Circuit would be authorized to review agency records that underlie challenges to rules and regulations in the same manner as is currently applied to other VA regulations. The Committee expects VA's rulemaking procedures and fact-finding to be sufficiently robust to permit meaningful review of actions relating to the adoption and revision of the rating schedule.

Sec. 103. Automatic annual increase in rates of disability compensation and dependency and indemnity compensation.

Section 103 of the Committee bill, which is derived from S. 161, would require that whenever there is an increase in benefit amounts payable under title II of the Social Security Act, VA would automatically increase the rates of disability compensation and dependency and indemnity compensation, among other rates, by the same percentage and effective on the same date.

Background. The service-connected disability compensation program under chapter 11 of title 38, United States Code, provides monthly cash benefits to veterans who have disabilities incurred or aggravated during active service in the Armed Forces. The amount of compensation paid depends on the nature and severity of a veteran's disability or combination of disabilities and the extent to which the disability impairs earning capacity. Certain veterans with more severe disabilities are also eligible to receive additional compensation on behalf of the veteran's spouse, children, and dependent parents.

Under chapter 13 of title 38, VA pays dependency and indemnity compensation (DIC) to the survivors of servicemembers or veterans who died on or after January 1, 1957, from a disease or injury incurred or aggravated during military service. Survivors eligible for DIC include surviving spouses, unmarried children under the age of 18, children age 18 or older who are permanently incapable of self-support, children between the ages of 18 and 22 who are enrolled in school, and certain needy parents.

Section 415(i) of title 42, provides for an automatic annual cost-of-living adjustment (COLA) for benefits payable under title II of the Social Security Act based on the annual increase in consumer prices. Title II Social Security benefits are indexed to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), which is published on a monthly basis by the Bureau of Labor Statistics. The annual COLA increase is equivalent to the increase in the CPI–W from the most recent period between the third quarter of one calendar year to the third quarter of the next.

Currently, under section 5312 of title 38, there are several VA benefits which receive automatic increases tied to the annual adjustments in title II Social Security benefits. These include pension benefits for indigent, wartime veterans who are permanently and totally disabled due to a non-service-connected condition, or over the age of 65, as well as their surviving spouses and children, and

DIC benefits for the parents of a deceased veteran who are living below a certain income threshold.

However, the majority of disability compensation and DIC benefits paid by VA are not indexed to the CPI–W and do not increase automatically when title II Social Security benefits are increased. Instead, Congress regularly enacts a cost-of-living adjustment on an annual basis to ensure that inflation does not erode the purchasing power of VA benefits. Although Congress in recent years has consistently enacted legislation on time so as to provide benefit recipients with a COLA increase beginning December 1 of each year, veterans service organizations and VA now support making the COLA automatic, rather than relying on annual legislation.

Committee Bill. Section 103 of the Committee bill would amend section 5312 of title 38, so as to add a new subsection (d)(1), which would require VA to increase the amounts of certain VA benefits by the same percentage and effective on the same date as adjustments made to title II Social Security benefits pursuant to section 415(i) of title 42. Proposed new subsection (d)(2) would specify the VA benefits which would be covered by the mandated COLA increase. The benefits covered would be:

1. Basic compensation rates for veterans with service-connected disabilities and the rates payable for certain severe disabilities;
2. The allowance for spouses, children, and dependent parents paid to service-connected disabled veterans rated 30 percent or more disabled;
3. The annual clothing allowance paid to veterans whose compensable disability requires the use of a prosthetic or orthopedic appliance, including a wheelchair, that tends to tear or wear out clothing or which requires the use of a medication prescribed by a physician for a service-connected skin condition if the medication causes irreparable damage to the veteran's outergarments; and
4. Dependency and indemnity compensation paid to:
   (a) surviving spouses of veterans whose deaths were service- connected;
   (b) surviving spouses for dependent children below the age of 18;
   (c) surviving spouses who are so disabled that they need aid and attendance or are permanently housebound;
   (d) surviving spouses covered under section 1318 of title 38; and
   (e) the children of veterans whose deaths were service-connected if no surviving spouse is entitled to DIC, the child is age 18 through 22 and attending an approved educational institution, or the child is age 18 or over and became permanently incapable of self-support prior to reaching age 18.

The proposed new subsection (d)(3) would require VA to publish any increases under this new authority in the Federal Register.

The effective date of section 103 of the Committee bill would be December 1, 2009.

Sec. 104. Conforming amendment relating to non-deductibility from veterans' disability compensation of disability severance pay for disabilities incurred by members of the Armed Forces in combat zones.

Section 104 of the Committee bill would make a technical correction to eliminate the requirement that severance pay for a disability incurred in a combat zone be deducted from disability compensation from VA.

Background. Section 1212 of title 10, United States Code, stipulates the amount of severance pay available to members of the Armed Forces who separate due to a disability incurred in the line of duty. Section 1646 of the Wounded Warrior Act, title XVI of Public Law 110–181, amended section 1212 to adjust the computation of the amount of such severance pay and to eliminate the requirement that severance pay received by servicemembers for a disability incurred in a combat zone be deducted from VA compensation.

Section 1161 of title 38, United States Code, stipulates that the deduction of disability severance pay from disability compensation shall be made at a monthly rate not in excess of the rate of compensation to which the individual would be entitled based on the individual's disability rating. Section 1161 makes reference to subsection 1212(c) of title 10. However, Public Law 110–181 did not include a conforming amendment to keep section 1161 consistent with the changes made to section 1212.

Committee Bill. Section 104 of the Committee bill would make a conforming amendment, so that section 1161 of title 38 will be consistent with section 1212 of title 10. Section 1646 of the Wounded Warrior Act would be amended by redesignating subsection (c) as subsection (d) and inserting a new subsection (c). The new subsection (c) would amend section 1161 of title 38 by striking "as required by section 1212(c) of title 10" and inserting "to the extent required by section 1212(d) of title 10". The new subsection (c) would take effect on January 28, 2008, as if it had been included in the Wounded Warrior Act. As a result, the amended section 1161 of title 38 would reflect the change to section 1212 of title 10 eliminating the requirement that severance pay for a disability incurred in a combat zone be deducted from disability compensation from VA.

Sec. 105. Report on progress of the Secretary of Veterans Affairs in addressing causes for variances in compensation payments for veterans for service-connected disabilities.

Section 105 of the Committee bill, which is derived from S. 2951, would require VA to submit a report to Congress describing its progress in addressing the causes for any unacceptable variances in compensation payments to veterans.

Background. In 2004, the Chicago Sun-Times ran a series of articles highlighting evidence of low disability compensation payments for Illinois veterans compared to veterans from other states. In response to Congressional requests, VA's Office of the Inspector General (OIG) conducted an investigation into the differences in average monthly disability compensation payments awarded by the various VA regional offices across the country. OIG concluded that the factors influencing the variations were complex and intertwined,

and included differences in claims processing practices, disability examinations, timeliness pressures, staffing levels, and rater experience and training. OIG also concluded that certain conditions such as Post Traumatic Stress Disorder, are inherently prone to subjective rating decisions, leading to inconsistency in the decisions. OIG recommended that VA further pursue the matter by conducting a scientifically sound study of the major factors affecting variances for compensation payments.

VA contracted with the Institute for Defense Analyses (IDA) to perform the recommended study. IDA made its findings public in July 2007. IDA identified several main causes for the variations across states and regional offices. IDA made six recommendations to VA aimed at aspects of the adjudication process it believed were most likely to affect the consistency of claims determinations: standardize initial and on-going training for rating specialists; standardize the hospital evaluation reporting process; increase oversight and review of rating decisions; consider consolidating all or selected parts of the rating process to one location; develop and implement metrics to monitor consistency in adjudication results; and improve and expand data capture and retention.

Then-VA Deputy Under Secretary for Benefits, Ronald R. Aument, testified before the House Veterans' Affairs Subcommittee on Oversight and Investigations on October 16, 2007, regarding VA's efforts to address the IDA recommendations on improving the quality and consistency of the claims process. Mr. Aument stated that VA concurred with the IDA findings and had various initiatives underway to support the IDA recommendations.

Committee Bill. Section 105 of the Committee bill would require VA to submit a report to the Committees on Veterans' Affairs of the Senate and the House of Representatives describing its progress in addressing the causes of unacceptable variances in compensation payments to veterans for service-connected disabilities. The report would be due to the Committees not later than one year after the date of enactment of this section.

The OIG and IDA reports explored the variances among various regional offices, identifying many of the factors that heavily impact the subjective policies, processes, and training methods of individual regional offices. The report called for in this section of the Committee bill would require VA to report to Congress on how it is mitigating the impact of these variables to ensure that the process is as fair and consistent as possible, regardless of where the claim is adjudicated.

The Committee bill would require the report to include three specific elements: (1) a description of the Veterans Benefits Administration's efforts to coordinate with the Veterans Health Administration (VHA) to improve the quality of disability examinations performed by VHA and contract clinicians, including the use of standardized templates; (2) an assessment of the current personnel requirements at each regional office for each type of claims adjudication position; and (3) a description of the differences, if any, in current patterns of submittal rates for claims from various segments of the veterans population, including veterans from rural and highly rural areas, minority veterans, veterans who served in the National Guard or Reserve, and military retirees.

Sec. 106. Report on studies regarding compensation of veterans for loss of earning capacity and quality of life and on long-term transition payments to veterans undergoing rehabilitation for service-connected disabilities.

Section 106 of the Committee bill, which is derived from S. 2674, would require VA to provide Congress with a report regarding the results of a study examining the appropriate compensation to be provided to veterans for loss of earning capacity and loss of quality of life caused by service-connected disabilities and another study examining long-term transition payments to veterans undergoing rehabilitation for service-connected disabilities.

Background. In July 2007, the President's Commission on Care for America's Returning Wounded Warriors recommended that Congress "restructure VA disability payments to include * * * 'transition payments.'" Those payments would be equal to three months of base pay for veterans with disabilities who are not participating in further rehabilitation and would entail "longer-term payments to cover family living expenses, if they are participating in further rehabilitation or education and training programs." The Commission further recommended that "VA should commission a six-month study to determine the appropriate level and duration of longer-term transition payments." In addition, the Commission recommended that "VA should move swiftly to update (and thereafter keep current) its disability rating schedule to reflect current injuries and modern concepts of the impact of disability on quality of life."

In February 2008, VA entered into a contract to conduct two studies on those issues. One study will examine the appropriate level of disability compensation to be paid to veterans to compensate for loss of earning capacity and loss of quality of life as a result of service-related disabilities. The other study will examine the feasibility and appropriate level of long-term transition payments to veterans who are separated from the Armed Forces due to a disability while those veterans are undergoing a program of rehabilitation. The studies were due to be completed in August 2008.

Committee Bill. Section 106 of the Committee bill would require VA to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report including a comprehensive description of the findings and recommendations of those studies; a description of the actions proposed to be taken by VA in light of those findings and recommendations, including a description of any proposed modifications to the VA disability rating schedule or to other regulations or policies; a schedule for the commencement and completion of any actions proposed to be taken; and a description of any legislative action required in order to authorize, facilitate, or enhance any of the proposed actions. That report would be due no later than 210 days after the date of enactment of the Committee bill.

TITLE II—HOUSING MATTERS

Sec. 201. Temporary increase in maximum loan guaranty amount for certain housing loans guaranteed by the Secretary of Veterans Affairs.

Section 201 of the Committee bill, which is derived from S. 2768, would temporarily increase the maximum loan amount guaranteed by VA under the VA home loan guaranty program.

Background. The Servicemen's Readjustment Act of 1944, commonly known as the GI Bill of Rights, was signed into law as Public Law 78–346 by President Franklin D. Roosevelt on June 22, 1944, and, among other things, provided veterans with federally guaranteed home loans with no down payment. As World War II was ending, this landmark legislation made the dream of home ownership a reality for millions of returning veterans. They were able to build new homes and otherwise begin new lives with the assistance of the federal government.

This guaranty may exempt homeowners from having to make a down payment or secure private mortgage insurance, depending on the size of the loan and the amount of the VA guaranty. In general, eligibility is extended to veterans who served on active duty for a minimum of 90 days during wartime or 181 continuous days during peacetime, and have a discharge other than dishonorable. Members of the Guard and Reserve who have never been called to active duty must serve a total of six years in order to be eligible for the benefit. Certain surviving spouses are also eligible for the housing guaranty.

Public Law 108–454 increased VA's maximum guaranty amount to 25 percent of the Freddie Mac conforming loan limit determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a single family residence, as adjusted for the year involved.

The Economic Stimulus Act of 2008 (Stimulus Act), Public Law 110–185, temporarily reset the maximum limits on home loans that the Federal Housing Administration (FHA) may insure and that Fannie Mae and Freddie Mac may purchase on the secondary market to 125 percent of metropolitan-area median home prices, but did so without reference to the VA home loan program. This had the effect of raising the Fannie Mae, Freddie Mac, and FHA limits to nearly $730,000, in the highest cost areas, while leaving the then-VA limit of $417,000 in place.

On July 30, 2008, the Housing and Economic Recovery Act of 2008 was signed into law as Public Law 110–289. That law provided a temporary increase in the maximum guaranty amount for VA loans originated from July 30, 2008 through December 31, 2008 to the same level as provided in the Stimulus Act.

Committee Bill. Section 201 of the Committee bill, in a free-standing provision, would apply the temporary increase in the maximum guaranty amount until December 31, 2011. This would enable more veterans to utilize their VA benefit to purchase more costly homes.

Sec. 202. Enhancement of refinancing of home loans by veterans.

Section 202 of the Committee bill, which is derived from S. 2961, would increase the maximum guaranty limit for refinance loans

and increase the percentage of an existing loan that VA will refinance under the VA home loan program.

Background. Under section 3703(a)(1)(A)(i)(IV) of title 38, United States Code, the maximum VA home loan guaranty limit for most loans in excess of $144,000 is equal to 25 percent of the Freddie Mac conforming loan limit for a single family home. Public Law 110–289 set this value at approximately $182,437 through the end of 2008. This means lenders making loans up to $729,750 will receive at least a 25 percent guaranty, which is typically required to place the loan on the secondary market. Under current law, this does not include regular refinance loans.

Section 3703(a)(1)(B) of title 38 limits to $36,000 the guaranty that can be used for a regular refinance loan. This restriction means a regular refinance over $144,000 will result in a lender not receiving 25 percent backing from VA. In this situation, the lender is less likely to make the loan to the veteran. This situation essentially precludes a veteran from being able to refinance his or her existing FHA or conventional loan into a VA guaranteed loan if the loan is greater than $144,000.

Under section 3710(b)(8) of title 38, VA is also precluded from refinancing a loan if the homeowner does not have at least ten percent equity in his or her home.

Committee Bill. Subsection 202(a) of the Committee bill would raise the guaranty on VA refinance loans to the same level as conventional loans, which is 25 percent of the Freddie Mac conforming loan limit for a single family home.

Subsection 202(b) would decrease equity requirements from 90 percent to 95 percent for refinancing from an FHA loan or conventional loan to a VA-guaranteed loan. This will allow more veterans to use their VA benefit to refinance their mortgages. Many veterans do not have ten percent equity and thus are precluded from refinancing to a VA-guaranteed home loan.

Given the anticipated number of non-VA-guaranteed adjustable mortgages that are approaching the reset time when payments are likely to increase, the Committee believes that it is prudent to facilitate veterans refinancing to VA-guaranteed loans. In light of today's housing and home loan crises, additional refinancing options will help some veterans to bridge financial gaps and allow them to stay in their homes and escape possible foreclosures. These provisions would allow more qualified veterans to refinance their home loans under the VA program.

Sec. 203. Four-year extension of demonstration projects on adjustable rate mortgages.

Section 203 of the Committee bill, which is derived from S. 3087, would extend VA's authority to guaranty adjustable rate mortgages and hybrid adjustable rate mortgages.

Background. Current law, section 3707(a) of title 38, United States Code, authorizes VA, through fiscal year 2008, to guaranty adjustable rate mortgages (ARMs). ARMs are loans with interest rates that change. Lenders generally charge lower initial interest rates for ARMs than for fixed-rate mortgages. An ARM allows a borrower to receive a lower initial interest rate for assuming the risk that the interest rate could go up. Public Law 102–547, the Veterans Home Loan Program Amendments of 1992, initially au-

thorized a three-year test of a VA-guaranteed ARM program modeled after the Federal Housing Administration's ARM program. Section 404 of Public Law 108–454 authorized an extension of the VA program through fiscal year 2008.

Section 3707A(a) of title 38 authorizes VA, through fiscal year 2008, to guarantee so-called "hybrid" adjustable rate mortgages (hybrid ARMs). Hybrid ARMs are loans that carry a fixed rate of interest for an initial period followed by annual interest rate adjustments thereafter. Section 303 of Public Law 107–330 first authorized this demonstration project. Section 405 of Public Law 108–454 authorized an extension through fiscal year 2008.

Since the inception of VA's authority to guaranty ARMs and hybrid ARMs, VA has guaranteed over 230,000 ARMs and hybrid ARMs, 9 percent of VA's home loan guaranty activity.

Committee Bill. Subsection 203(a) of the Committee bill would amend section 3707(a) of title 38 so as to extend VA's ARM program through fiscal year 2012. Subsection 203(b) of the Committee bill would amend section 3707A(a) of title 38 so as to extend VA's demonstration project on hybrid ARMs through fiscal year 2012.

The Committee recognizes that these programs have proven to be an important part of VA's home loan guaranty program and expects to continue to make these loan options available to those eligible for a VA-guaranteed loan.

Sec. 204. Eligibility for specially adapted housing benefits and assistance for members of the Armed Forces with service-connected disabilities.

Section 204 of the Committee bill, which is derived from S. 2984, would authorize VA to provide specially adapted housing assistance under chapter 21 of title 38, United States Code, to active duty servicemembers with severe disabilities incurred or aggravated in the line of duty in the active military, naval, or air service.

Background. Section 2101 of title 38 permits VA to assist veterans who have certain permanent and total service-connected disabilities acquire housing with special features or adapt their existing residences with special features. These special features are those that are deemed appropriate by VA to assist the veteran in living independently with the qualifying service-connected disability. Under current law, veterans with certain severe service-connected disabilities are eligible to receive grants of up to either $10,000 or $50,000, depending on the nature of the disability.

Section 2101 includes authority to grant these benefits to members of the Armed Forces serving on active duty who are similarly disabled as the result of an injury incurred or disease aggravated in the line of duty in the active military, naval, or air service. Eligibility of members of the Armed Forces is subject to the same criteria and conditions as the eligibility of veterans.

However, other sections of chapter 21 of title 38 do not contain language that explicitly makes these provisions applicable to members of the Armed Forces. Most notably, section 2102A, which provides certain assistance to veterans residing temporarily in housing owned by a family member, is not currently available to members of the Armed Forces.

Committee Bill. Section 204 of the Committee bill would eliminate this disparity by providing, in a free-standing provision, ex-

plicit authority to VA to provide all specially adapted housing benefits under chapter 21 of title 38 to eligible members of the Armed Forces on active duty.

Sec. 205. Report on impact of mortgage foreclosures on veterans.

Section 205 of the Committee bill, which is derived from S. 2981, would require VA to provide Congress with a report on the impact of the recent mortgage foreclosure crisis on veterans.

Background. The recent troubles in the subprime mortgage industry have led to rising foreclosure rates across the country. The most recent data from RealtyTrac, the largest national database of foreclosures and bank-owned properties, shows that there were 252,363 foreclosures filings on U.S. properties in June 2008, a 53 percent increase over the number of filings in June 2007. That amounts to a foreclosure filing on one of every 501 U.S. households during the month of June 2008. According to data from the Mortgage Bankers Association, the rate of foreclosure starts and the percent of loans in the process of foreclosure were at their highest recorded levels since 1979 during the first quarter of 2008.

The increase in foreclosures is also a matter of concern for veterans, particularly those who have recently separated from the military after deployments in Operation Enduring Freedom and Operation Iraqi Freedom. The Congressional Joint Economic Committee announced on June 12, 2008, that research conducted by Committee staff in cooperation with RealtyTrac found significantly higher foreclosure rates in the areas surrounding the 24 military bases with the highest personnel populations.

Committee Bill. Section 205 of the Committee bill would require that VA investigate and report on the impact of the mortgage foreclosure crisis on veterans and the adequacy of existing mechanisms available to help veterans. Section 205 would require the report to include four specific elements: (1) a general assessment of the income of veterans who have recently separated from the Armed Forces; (2) an assessment of the effects of the length of the disability adjudication process on the capacity of veterans to maintain adequate or suitable housing; (3) a description of the extent to which the provisions of Servicemembers Civil Relief Act (SCRA) currently protect veterans from mortgage foreclosure; and (4) a description and assessment of the adequacy of the VA home loan guaranty program in preventing foreclosure for recently separated veterans. The report would be due to the Committees on Veterans' Affairs of the Senate and the House of Representatives no later than December 31, 2009.

TITLE III—LABOR AND EDUCATION MATTERS

SUBTITLE A—LABOR AND EMPLOYMENT MATTERS

Sec. 301. Waiver of 24-month limitation on program of independent living services and assistance for veterans with a severe disability incurred in the Post-9/11 Global Operations period.

Section 301 of the Committee bill would expand VA's authority to waive the 24-month limit on independent living services that may be provided to veterans of the Post-9/11 Global Operations period.

Background. Under current law, VA may provide services to certain veterans with severe service-connected disabilities to help them achieve maximum independence in daily living. The general rule is that no more than 24-months of these services may be provided to a veteran. However, under section 3105(d) of title 38, United States Code, the period may be extended if "the Secretary determines that a longer period is necessary and likely to result in a substantial increase in a veteran's level of independence in daily living."

Committee Bill. Section 301 of the Committee bill would amend section 3105(d) of title 38 so as to allow VA, without having to make such a determination, to extend the 24-month cap on independent living services for any veteran who served on active duty during the Post-9/11 Global Operations period and incurred or aggravated a severe disability during that service. In the view of the Committee, this additional flexibility will help ensure that VA is able to provide the appropriate services to veterans with severe disabilities, such as traumatic brain injury (TBI), that may have lengthy, complex, and unpredictable recovery periods.

Sec. 302. Reform of USERRA complaint process.

Section 302 of the Committee bill, which is derived from S. 2471, would create deadlines for the Department of Labor, the Attorney General, and the Office of Special Counsel to provide assistance to servicemembers who believe that their rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 have been violated.

Background. USERRA, chapter 43 of title 38, United States Code, provides reemployment and employment rights to servicemembers, veterans, and those who seek to join a uniformed service. USERRA encourages Americans to serve in the Armed Forces and reduces the disruption that servicemembers face when returning to the civilian workforce. Because the National Guard and Reserves have become an essential part of the military's operational force, it is imperative that employers comply with USERRA and that the statute be rigorously enforced by the federal government. If individuals lack confidence that their USERRA rights will be respected or enforced, they will be far less likely to join or continue to serve in the Armed Forces, especially in the Reserve forces.

Individuals can privately enforce their rights under USERRA by filing a complaint in federal or state court, or, in the case of a complaint against a federal employer, by submitting a complaint to the Merit Systems Protection Board (MSPB). In addition, individuals can request assistance from the federal government by filing a complaint with the Department of Labor's Veterans' Employment and Training Service (DOL VETS), which investigates and attempts to resolve complaints, and, if requested, will refer complaints for litigation. DOL VETS refers complaints against federal agencies to the Office of Special Counsel (OSC) and complaints against private sector employers and state and local governments to the Attorney General. The Special Counsel or Attorney General may represent individuals before the MSPB or in federal court, respectively.

Although the sample size was small and the margin of error high, the Department of Defense's 2006 Status of Forces Survey of Reserve Component Members does suggest that some service-

members are increasingly dissatisfied with federal enforcement of USERRA and, in particular, the length of time it takes for USERRA claims to be investigated and resolved or referred for litigation. From 2004 to 2006, the percentage of Reserve Component members who responded that they were dissatisfied with how their complaints were handled by DOL VETS increased from 27 to 44 percent. During the same period, the percentage of those who said that the government's response to their complaints was not prompt rose from 32 to 38 percent.

The Government Accountability Office (GAO) has also found significant delays in the handling of USERRA complaints. In its July 2007 report, "Military Personnel, Improved Quality Controls Needed over Servicemembers' Employment Rights Claims at DOL," GAO found that in the six cases when DOL VETS could not resolve complaints of federal employees, who then sought referrals for litigation, an average of eight months was required for DOL VETS to both investigate and refer those complaints to OSC. Id. at 23. In addition, GAO estimated that the average processing time of all USERRA complaints received by DOL VETS ranged from 53 to 86 days, and concluded that the reporting on the number and percentage of claims it closes within 90, 120, and 365 days, was not reliable. In one case, DOL VETS did not refer the case for litigation until seven years after a complaint was filed.

Committee Bill. Section 302 of the Committee bill would amend a number of sections in chapter 43 of title 38 so as to expedite federal enforcement of USERRA by imposing deadlines on action by DOL VETS, OSC, and the Attorney General to complete the tasks assigned to them under the statute:

- Within 5 days of receiving a USERRA complaint, DOL VETS would be required to notify a complainant in writing about his or her rights to receive governmental assistance, including the right to request a referral and the relevant deadlines that the federal agencies must meet.
- Within 90 days of receiving the complaint, DOL VETS would be required to complete its assistance and investigation and notify the complainant of the results and his or her rights, including the right to request a referral and the deadlines federal agencies must meet.
- Within 48 days after receiving a request for a referral, DOL would be required to refer a complaint to the OSC or the Attorney General.
- Within 60 days of receiving a referral, OSC or the Attorney General would be required to determine whether to provide legal representation to the complainant and notify the complainant of that decision in writing.

These deadlines are not intended to adversely affect or diminish any of the rights of an individual to enforce his or her rights under USERRA or the ability of the government to enforce the rights of the servicemember. Nor are the deadlines intended to constitute or create any type of defense that an employer could raise in a judicial or administrative proceeding, or to deprive the MSPB, a federal court, or a state court of jurisdiction over a complaint or action filed under USERRA. Moreover, if the Secretary, the Attorney General, or the Special Counsel is unable to complete a specific task

by the relevant deadline, the agency may complete the task within a time period agreed to by the complainant and the agency.

Subsection 302(f) of the Committee bill would clarify that the original intent of Congress was that USERRA would not be subject to a federal or state statute of limitations period and specifically states that there is no time limit for a person to file a complaint with the Secretary of Labor, or for a person or the United States to submit a complaint before the MSPB or to file an action in federal or state court. The application of a federal statute of limitation period under USERRA is inconsistent with the intent of Congress and contrary to the Department of Labor's longstanding "position that no Federal statute of limitations applied to actions under USERRA." U.S. Department of Labor, "Uniformed Services Employment and Reemployment Rights Act of 1994; Final Rules," 70 Fed. Reg. 75246, 75287 (Dec. 19, 2005). This section of the Committee bill would implement the Department of Labor's recommendation that Congress "consider amending USERRA to clarify that no statute of limitations may apply to USERRA." U.S. Department of Labor, 2006 Fiscal Year Annual Report to Congress, at 7 (Feb. 2008) (stating that a least one federal court has applied the four-year residual statute of limitations period in 28 U.S.C. § 1658 to proceedings under USERRA, and citing *Rogers* v. *City of San Antonio*, 2003 WL 1566502, *7 (W.D. Tex.), *reversed on other grounds,* 392 F.3d 758 (5th Cir. 2004)).

Sec. 303. Modification and expansion of reporting requirements with respect to enforcement of USERRA.

Section 303 of the Committee bill, which is derived from S. 2471, would expand the reporting requirements regarding the federal government's enforcement of USERRA and change the date that the Department of Labor's annual USERRA report is due from February 1 to July 1.

Background. Under current law, the Secretary of Labor must file an annual report to Congress that includes the number of cases reviewed by DOL VETS and the Department of Defense Employer Support of the Guard and Reserve (DoD ESGR), the number of cases referred to OSC and the Attorney General, and the number of complaints filed by the Attorney General.

In February 2007, GAO published a report, "Military Personnel: Additional Actions Needed to Improve Oversight of Reserve Employment Issues." GAO found that "[t]he four agencies * * * responsible for addressing and tracking USERRA claims cannot systematically record and track disability-related employment complaints," in particular because "they do not record disability-related complaints using consistent and compatible categories to allow information analysis and reporting." GAO concluded that the failure to consistently track disability-related complaints may result in underreporting of the number of disability-related USERRA complaints, and that the Department of Defense (DOD) "may not be completely aware of the effect that disabilities incurred by reservists while on active duty have on their reemployment, and what additional assistance may be needed to help transition this population back into the workforce." Moreover, GAO found that this lack of consistency was indicative of a more general problem that USERRA complaints "could not be uniformly categorized in order

to reveal trends on the kinds of problems that returning reservists experience because the four USERRA agencies responsible for addressing complaints use different complaint categories to characterize these issues."

Committee Bill. Section 303 of the Committee bill would amend section 4332 of title 38, United States Code, to expand the federal government's reporting requirements with regard to enforcement of USERRA.

Section 4332 requires the Department of Labor to report the number of complaints the Attorney General files in federal courts, but does not require reporting of the number of cases OSC initiates before the MSPB. Section 303 would eliminate this difference by requiring reporting on the number of cases OSC initiates before the MSPB.

Section 303 of the Committee bill would also require reports of the number of individuals whose cases are reviewed by both DOD ESGR and the DOL VETS so that the agencies responsible for enforcing USERRA can understand how frequently aggrieved servicemembers seek assistance from both DOD ESGR and DOL VETS and what types of cases are more likely to require assistance from both agencies. The Department of Labor would be required to report the number of cases handled by DOD ESGR, DOL VETS, OSC, and the Attorney General that involve a disability-related issue and the number of cases that involve a person with a service-connected disability. In addition, section 303 would require the Department of Labor to ensure that all of the information collection and reporting of USERRA cases is done in a uniform and consistent manner.

Finally, section 303 would require the Department of Labor, OSC, and the Attorney General to issue quarterly reports on their compliance with the new deadlines that would be set by section 302 of the Committee bill, and it would require the Comptroller General to issue a report within two years assessing the reliability of the information in the three agencies' quarterly reports and the extent to which the three agencies are meeting those deadlines.

Sec. 304. Training for executive branch human resources personnel on employment and reemployment rights of members of the uniformed services.

Section 304 of the Committee bill would require human resources personnel employed by Federal executive agencies to receive training regarding USERRA.

Background. USERRA, which is codified in chapter 43 of title 38, United States Code, protects the public and private sector civilian job rights and benefits of veterans and members of the Armed Forces, including National Guard and Reserve members. USERRA also prohibits employer discrimination due to military obligations and provides reemployment rights to returning servicemembers.

In October 2007, the Committee conducted an oversight hearing regarding USERRA. According to testimony provided at that hearing, when Federal executive agencies violate USERRA, it is often due to a lack of knowledge or understanding about the law. In fact, The Honorable Charles Ciccolella, Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, testified that "about half the [USERRA] cases that we do in the Federal

government is where the Federal hiring manager just doesn't understand the law or the [Office of Personnel Management] regulations that spell out how to implement the law."

Committee Bill. Section 304 of the Committee bill would amend chapter 43 of title 38 to add a new section 4335, which would require the head of each Federal executive agency to provide training for human resources personnel on the rights, benefits, and obligations of members of the Armed Forces under USERRA and the administration of USERRA by Federal executive agencies. It would require that the training be developed and provided in consultation with the Office of Personnel Management. The training would be provided as often as specified by the Director of the Office of Personnel Management in order to ensure that the human resources personnel are kept fully and currently informed about USERRA.

Sec. 305. Report on the employment needs of Native American veterans living on tribal lands.

Section 305 of the Committee bill, which is derived from S. 3000, would require the Department of Labor, in consultation with the Departments of Veterans Affairs and the Interior, to submit a report assessing the employment needs of Native American (American Indian, Alaska Native, Native Hawaiian, and other Pacific Islander) veterans living on tribal lands, including Indian reservations, Alaska Native villages, and Hawaiian Home Lands.

Background. According to a 2006 VA report entitled "American Indian and Alaska Native Veterans: Lasting Contributions", which relied on data from the 2000 Census, the unemployment rate among American Indian and Alaska Native veterans was approaching twice the unemployment rate among all veterans. For those Native American veterans who return to their native communities, their employment status may be much worse. According to the 2003 American Indian Population and Labor Force Report published by the Bureau of Indian Affairs, on-reservation or near-reservation unemployment was 49 percent. While these statistics indicate a clear employment problem for Native American veterans, especially those residing in Native American communities, the Committee is in need of more information to determine the appropriate steps that need to be taken to address the problem. Additionally, the Committee seeks to learn how existing employment resources for veterans can be leveraged in Native American communities to assist Native American veterans.

Committee Bill. Section 305 of the Committee bill would require the Secretary of Labor, in consultation with the Secretaries of Veterans Affairs and the Interior, to provide a report on the employment needs of Native Americans, including a review of current and prior government-to-government relationships between tribal organizations, as defined in section 3765 of title 38, which the Committee expects would include a discussion of the current and projected activities within DOL VETS. The report would also be required to include recommendations for improving employment and job training opportunities for Native American veterans on tribal land, especially through the utilization of resources for veterans. The report would be due to the Committees on Veterans' Affairs of the Senate and House of Representatives no later than December 1, 2009.

Sec. 306. Report on measures to assist and encourage veterans in completing vocational rehabilitation.

Section 306 of the Committee bill, which is derived from S. 2674, would require VA to conduct a study on factors that may prevent veterans with service-connected disabilities from completing their vocational rehabilitation plans and measures that could be taken to assist and encourage veterans in completing vocational rehabilitation.

Background. In its July 2007 report, the President's Commission on Care for America's Returning Wounded Warriors found that, "of the 65,000 who apply for [VA's Vocational Rehabilitation and Employment program] each year, at most 10,000 of all ages complete the employment track in the program each year." The Commission also found that "the effectiveness of various vocational rehabilitation programs is not well established, and the VA should undertake an effort to determine which have the greatest long-term success." In addition, the Commission recommended that "VA should develop financial incentives that would encourage completion" of vocational rehabilitation.

Committee Bill. Section 306 of the Committee bill would require VA to conduct a study that would identify the various factors that may prevent or preclude veterans from successfully completing their vocational rehabilitation plans. It would also require identification of actions that the Secretary may take to address such factors.

In conducting the study, VA would be required to examine the measures utilized in other disability systems in the United States and in other countries to encourage successful completion of vocational rehabilitation; any relevant studies or survey data; the extent to which disability compensation may be used as an incentive to encourage veterans to undergo and complete their vocational rehabilitation programs; the report of the Veterans' Disability Benefits Commission; the report of the President's Commission on Care for America's Returning Wounded Warriors; and any other matters that VA considers appropriate. In addition, VA would address the extent to which bonus payments or other incentives may be used to encourage veterans to complete their vocational rehabilitation plans or otherwise achieve their vocational rehabilitation objectives. VA would be required to consult with veterans and military service organizations and any other organizations or individuals as VA deems appropriate and would be authorized to employ consultants.

Finally, not later than 270 days after beginning the study, VA would be required to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report including the findings of the study and any recommendations on actions that should be taken in light of the study.

SUBTITLE B—EDUCATION MATTERS

Sec. 311. Relief for students who discontinue education because of military service.

Section 311 of the Committee bill, which is derived from S. 1718, would amend title VII of the Servicemembers Civil Relief Act (50 U.S.C. App. 591 et seq.), to provide protections for servicemembers

who are called to active-duty service while enrolled in institutions of higher education.

Background. Under the law as it was at the time the Committee met to mark up the Committee bill, there was no uniform financial protection for servicemembers who are called to active duty and are required to discontinue a program of education prior to the completion of the academic semester or quarter for which they are enrolled. Colleges and universities were not required to make reasonable accommodations for students who are called to active duty in the Armed Forces, such as tuition reimbursement and requirements for reenrollment. Members of the Armed Forces who return from deployment overseas and attempt to reenroll in a program of education could be overwhelmed with bureaucracy. In addition, the six-percent interest rate cap on all debts of members of the Armed Forces called to active duty guaranteed by the Servicemembers Civil Relief Act had been interpreted by the Secretary of Education not to apply to Federal student loans.

Since the time of the Committee's meeting on June 26, 2008, the Higher Education Opportunity Act was signed on August 14, 2008, and became Public Law 110–315. This new Public Law contains provisions addressing some of the same concerns intended to be addressed by the Committee bill, including reasonable accommodations and the cap on interest rates for Federal student loans. Any future action on the Committee bill will reflect the changes made by Public Law 110–315.

Committee Bill. Section 311 of the Committee bill would require institutions of higher education to refund tuition and fees paid by a servicemember for courses not completed due to performance of military obligations. It would also provide that the interest rate for Federal student loans would be held at no more than six percent during such obligations.

This would assist members of the Armed Forces who return from a deployment to make the transition from military service to civilian life and who wish to re-enter programs of education they were forced to discontinue because of such deployment. It would further provide the service member an opportunity to reenroll at the institution with the same educational and academic status that the service member had when the program was discontinued because of the military service. It would also provide parity with other loan obligations that can are reduced during periods of service.

Some colleges and universities have wide ranging policies currently in place to minimize the academic impact of leaving for active duty service, including suspending the requirement that they reapply for admission and waiving changes to degree requirements. The Committee does not intend that policies and procedures currently in place at colleges and universities would be superseded by the requirements of these new protections.

Sec. 312. Modification of period of eligibility for Survivors' and Dependents' Educational Assistance of certain spouses of individuals with service-connected disabilities total and permanent in nature.

Section 312 of the Committee bill would extend the period within which the spouses of certain severely disabled veterans must use education benefits from VA.

Background. Under the Survivors' and Dependents' Educational Assistance (DEA) program, VA provides up to 45 months of education benefits to certain children or spouses of military personnel. For instance, the spouse of a veteran or servicemember may be eligible for these benefits if the veteran died, or is permanently and totally disabled, as the result of a service-connected disability or if the veteran died from any cause while a permanent and total service-connected disability was in existence.

The spouse generally must use these education benefits within ten years after the date on which the veteran dies or is found to be permanently and totally disabled. However, if the servicemember died while on active duty, the spouse may use the education benefits during the twenty-year period after the servicemember's death. That extended period was meant to recognize the struggles of a surviving spouse in the years following the loss of the servicemember. As this Committee explained: "For spouses with children, especially young children, using DEA benefits within the [ten-year] period may be difficult * * * A host of factors may preclude the use of DEA benefits during the ten-year period following a servicemember's death, such as an extended grieving process, job demands, or simply the lack of an immediate need for education or training." S. Rep. 108–352, at 10 (2004).

In recent years, it has become clear that the families of those who are severely wounded in service may also face significant challenges in the years following the injuries. For example, the July 2007 report of the President's Commission on Care for America's Returning Wounded Warriors contained these findings regarding the family members of servicemembers who survive devastating injuries, such as TBI: "The Commission has repeatedly heard about dedicated family members whose financial, family, and professional sacrifices allowed them to participate in their loved one's TBI care. Some patients with severe TBI may need family members or others to provide care for an extended period."

Committee Bill. Section 312 of the Committee bill would extend from ten years to twenty years the time within which the spouses of certain severely injured veterans have to use their DEA benefits. Specifically, the twenty-year period would be available to a spouse of a veteran who becomes permanently and totally disabled within three years after discharge from service, if the spouse remains married to the injured veteran. In the view of the Committee, this extension is necessary to recognize that the extensive time and effort spent caring for a severely injured veteran may preclude a spouse from using DEA benefits during the existing ten-year period.

Sec. 313. Repeal of requirement for report to the Secretary of Veterans Affairs on prior training.

Section 313 of the Committee bill, which is derived from S. 2984, would eliminate the current requirement that educational institutions providing non-accredited courses report to VA any credit that was granted by that institution for an eligible person's prior training.

Background. Under current law, State approving agencies approve, for VA education benefits purposes, the application of educational institutions providing non-accredited courses if the institu-

tion and its courses meet certain criteria. Among these is the requirement that the institution maintain a written record of the previous education and training of the eligible person and what credit for that training has been given the individual. The institution must notify both VA and the eligible person regarding the amount of credit the school grants for previous training.

Committee Bill. Section 313 of the Committee bill would amend section 3676(c)(4) of title 38, United States Code, to eliminate the notification requirement as it pertains to VA. VA will maintain oversight, just as it does with accredited courses. VA will review records during compliance visits to assure the institution is evaluating and appropriately reducing program requirements because of credit given for prior training.

Removing the reporting requirement would shorten claims processing time because VA would not have to review each claim for the presence of such notice and, if submitted, have to check with the school and student to assure the requirement has been met. It would also permit more cases to be processed through VA's Electronic Certification Automated Processing (ECAP) program. The ECAP system cannot process claims where proper credit reporting is at issue because those cases require manual development and review by a veteran's claims examiner. The more claims VA can process through the ECAP system, the more timely VA beneficiaries will receive their benefits.

Following up with schools for the written notification burdens the school certifying official and student, as well as VA. Often, the school certifying official, who is responsible for reporting a veteran's enrollment, is not the individual who evaluates credit. The certifying official has no control over how long it takes the school to accomplish the review and granting of prior credit.

Further, several of VA's stakeholders, including the National Association of Veterans' Program Administrators, have recommended that VA review school records to determine granting of prior credit during compliance visits rather than require the school to submit written reports. Eliminating this requirement would streamline the administration of educational assistance benefits, and improve the delivery of benefits to veterans, reservists, and other eligible individuals.

Sec. 314. Modification of waiting period before affirmation of enrollment in a correspondence course.

Section 314 of the Committee bill, which is derived from S. 2984, would reduce from ten to five days the waiting period required prior to the student's affirmation of an enrollment agreement with an educational institution to pursue a program of education exclusively by correspondence.

Background. Under current law, an enrollment agreement signed by a veteran, spouse, or surviving spouse will not be effective unless he or she, after ten days from the date of signing the agreement, submits a written and signed statement to VA affirming the enrollment agreement. In the event the individual at any time notifies the institution of his or her intention not to affirm the agreement, the institution, without imposing any penalty or charging any fee, shall promptly make a refund of all amounts paid.

Committee Bill. Section 314 of the Committee bill would amend section 3686(b) of title 38, United States Code, to reduce the required waiting period from ten to five days. The statutory ten-day period is twice the requirement of the Distance Education and Training Council (DETC) accrediting body standard, which states that institutions will allow a full refund of all tuition expenses paid if a student cancels within five days after enrolling in a course. Reducing the affirmation waiting period to five days would make the statute consistent with the DETC standard and eliminate confusion. It would also permit eligible individuals to begin their programs sooner. Should they decide at any time not to affirm the enrollment agreement, the eligible individuals would still be entitled to a refund of all amounts paid. Finally, this proposal would allow VA to strengthen its partnership with the National Association of State Approving Agencies which has had this issue high on its list of legislative priorities.

Sec. 315. Change of programs of education at the same educational institution.

Section 315 of the bill, which is derived from S. 2984, would eliminate the requirement that an individual must file an application with VA when changing programs of study while enrolled at the same school.

Background. Under current law, a student who desires to initiate a program of education must submit an application to VA in the form prescribed by the Department. If the student decides a different program is more advantageous to his or her needs, that individual may change his or her program of study once. However, additional changes require VA to determine that the change is suitable to the individual's interests and abilities. It is rare for VA to deny a change of program, especially if the student is continuing in an approved program at the same school.

Committee Bill. Section 315 of the Committee bill, would amend section 3691(d) of title 38, United States Code, to eliminate the student application requirement. Under the new procedure, VA would accept the new program enrollment based on the certification of such enrollment from the school without requiring an additional certification from the student. VA would still have oversight of program changes by reviewing school records during compliance visits and would apply only if the individual remains enrolled at the same school. This new procedure should allow VA to increase the number of claims processed using the ECAP program without manual review by a veterans claims examiner—resulting in more timely awards and less of a information collection burden.

Sec. 316. Repeal of certification requirement with respect to applications for approval of self-employment on-job training.

Section 316 of the Committee bill, which is derived from S. 2984, would eliminate the requirement that wages be earned by veterans pursuing self-employment on-job training (OJT) authorized under section 301 of Public Law 108–183.

Background. Section 301 of Public Law 108–183 expanded the chapter 30 Montgomery GI Bill program by authorizing educational assistance benefits for full-time OJT of less than six months needed for obtaining licensure to engage in a self-employment occupation

or required for ownership and operation of a franchise. Under current law, all provisions of title 38, United States Code, that apply to VA's other OJT programs (except the requirement that a training program has to be for at least six months) apply to franchise-ownership OJT, including the requirement that the trainee earn wages that are increased on an incremental basis.

Committee Bill. Section 316 of the Committee bill would amend section 3677(b) of title 38, United States Code, to exempt self-employment OJT from the wage-earning requirement. Through contact with the International Franchise Association, VA has determined that OJT for new franchise owners does not involve the payment of wages. Thus, if franchise OJT programs are not exempted from the current title 38 wage requirements, no franchise-ownership OJT program could be approved for VA benefits.

SUBTITLE C—OTHER MATTERS

Sec. 321. Designation of the Office of Small Business Programs of the Department of Veterans Affairs.

Section 321 of the Committee bill, which is derived from S. 2984, would designate VA's office established to support contracting with small businesses as the Office of Small Business Programs.

Background. Section 15(k) of the Small Business Act, codified at section 644(k) of title 15, United States Code, established, in each federal agency having procurement powers, including VA, an office to support contracting with small businesses to be known as the "Office of Small and Disadvantaged Business Utilization."

Committee Bill. Section 321 of the Committee bill would designate the office established under section 15(k) of the Small Business Act as the Office of Small Business Programs of the Department of Veterans Affairs. The head of the office would be designated as the Director of Small Business Programs.

Designating the office as the Office of Small Business Programs would more clearly represent that office's span of authority. The name would not reflect any change in emphasis or support for disadvantaged small businesses, but rather would clarify that the Office of Small Business Programs has the full range of authority over many other small business programs. The new title would capture the overarching nature of the program, which encompasses the small disadvantaged business, the service-disabled veteran-owned small business, the veteran-owned small business, the qualified historically underutilized business zone small business, the women-owned small business, and the very small business programs.

TITLE IV—COURT MATTERS

Sec. 401. Increase in number of active judges on the United States Court of Appeals for Veterans Claims.

Section 401 of the Committee bill, which is derived from S. 2091, would increase the number of active judges on the United States Court of Appeals for Veterans Claims from seven to nine.

Background. Under current law, section 7253(a) of title 38, the court is limited to seven active judges.

Over recent years, the Court has experienced a dramatic increase in cases filed. For example, in Fiscal Year (FY) 2004 the Court received 2,234 new cases, in FY 2005 that number grew to 3,466, in

FY 2006 it was 3,729, and in FY 2007 new appeals filed totaled 4,644. This trend has continued into FY 2008. According to the Court's most recent quarterly report, covering April 1, 2008 to June 30, 2008, the Court received 1,019 cases.

As these statistics and the Court's annual report depict, that increase amounts roughly to a jump from less than 200 cases filed per month to well over 300 cases filed per month. Likewise, the number of cases decided has grown from 1,780 in FY 2004, to an all-time high of 4,877 in FY 2007.

In considering what should be the number of active judges for CAVC, the Committee believes it is appropriate to consider the Judicial Conference's process for recommending additional judgeships for other federal courts. While CAVC is a federal Article I court, and thus not a member of the Judicial Conference, the Court has adopted many of the practices and processes of the Judicial Conference and the Administrative Office of the United States Courts.

The Judicial Conference, in making recommendations to Congress on authorization of judgeships, uses a combination of objective and discretionary criteria. The Conference relies on past trends and current data, and does not consider projected future caseloads because they do not utilize predictors of future filings. It initially reviews the case statistics of a particular court to determine whether the amount of work justifies adding judicial resources and, if so, whether that addition should be permanent or temporary. The Conference uses a formula that assigns varying weight to different types of cases at the trial level, and considers a reasonable caseload of 430 weighted cases per district court judge; it uses 500 weighted filings per three-judge appellate panel as a reasonable workload.

CAVC is an unusual appellate tribunal in that it sits both in panels in some instances, like most other appellate bodies, and also has authority to decide appeals by a single judge. Based on the Judicial Conference's model for district court caseload of 430 filings per judgeship, CAVC's current caseload justifies at least nine judges without even considering that many of the appeals filed will be considered by a panel of judges. Under the Conference's appellate formula of 500 filings per three-judge panel, which equates to a potential requirement for each judge to write a decision in 167 cases, seven full-time judges responsible for over 4,000 appeals per year, or, 571 per judge, greatly exceeds the normal appellate caseload. Thus, the recent trends demonstrate that the Court's workload is large and increasing and supports authorizing more judgeships.

In addition to looking at the Judicial Conference process, the Committee believes that it is important to recognize that CAVC also has a special responsibility as the only national court that reviews veterans' benefits decisions. The impacts of that mandate are significant and they must be studied and weighed when considering the appropriate size of the Court.

Although the Judicial Conference does not consider future projected caseloads when assessing the need for additional judgeships, it does consider the specific nature of a particular court in carrying out its evaluations. With respect to CAVC, there are bellwethers as to the caseload growth trend that cannot be ignored. The Nation is at war and there is no doubt that the number of veterans who are likely to seek benefits will rise as a result. There is great inter-

est within VA in expediting administrative adjudications of the hundreds of thousands of claims that are filed with VA each year, and Congress has increased substantially the resources for VA and the Board of Veterans' Appeals (BVA or the Board) to accelerate administrative determinations. The Board has established a goal of deciding 43,000 cases or more each year, and VA has testified to the growing complexity of the claims filed and the rising number of issues contained within each claim. Because every veteran has an absolute right to appeal an adverse decision of the Board, there is significant pool of potential cases that may reach the Court.

Unlike the Federal District Courts, CAVC does not have a pool of hundreds of senior judges to draw from at will. In the next eight years, it appears likely that only one judge will join the ranks of the retired recall-eligible judges. Conversely, it is certainly possible during that same period that one or more of the six current retired judges may become unavailable for recall service. The Committee believes that it would be irresponsible not to consider these factors in any assessment of the judgeship needs of CAVC.

In response to the increasing caseload, the Court has examined its operational efficiency and taken steps to maximize the use of its available resources. To this end, retired recall-eligible judges have been convened to provide substantial service to the Court, the Court's Central Legal Staff has been trained in and has developed an enhanced alternative dispute resolution program, and the Court's Rules of Practice and Procedure have been amended to require pre-briefing settlement conferences and to streamline the process of preparing the appellate record. Additionally, the Court is in the process of implementing an electronic case filing system, and is considering summary disposition for some appeals. While these steps help in managing the growing numbers of appeals, they are not sufficient.

Committee Bill. The Committee bill would amend section 7253(a) so as to increase the number of active judges on CAVC from seven to nine.

Sec. 402. Protection of privacy and security concerns in court records.

Section 402 of the Committee bill, which is derived from S. 2090, would protect privacy and security concerns in records of CAVC.

Background. Current law, section 7268(a) of title 38, United States Code, provides that "all decisions of the Court of Appeals for Veterans Claims and all briefs, motions, documents, and exhibits received by the Court * * * shall be public records open to the inspection of the public." Section 7268(b)(1) provides that "[t]he Court may make any provision which is necessary to prevent the disclosure of confidential information, including a provision that any such document or information be placed under seal to be opened only as directed by the Court."

The Court has developed a process to seal, on its own, cases involving the conditions identified in section 7332(a)(1) of title 38, relating to confidentiality of certain VA medical records. Moreover, motions by appellants to seal case records for good cause are routinely granted. Even where case records remain unsealed, public access to those records presently is limited to on-site review in the reading room of the Court's Public Office. However, with the

Court's implementation of the e-filing of records, the present logistical limitation on access to unsealed records will not exist.

E-filing potentially makes sensitive material in court records widely accessible. These records generally include appellants' Social Security information and medical records. As other federal courts implement e-filing, they too are attempting to achieve the balance between maintaining court records public while providing parties with protection from internet data mining and identity theft. The need to reach a balance is urgent.

Committee Bill. The Committee bill would amend section 7268 of title 38, so as to require the Court to prescribe rules, in accordance with section 7264(a) of title 38, to protect privacy and security concerns relating to the filing of documents, and the public availability of such documents, that are retained by CAVC or filed electronically. The Committee bill would require that the rules prescribed by the Court be consistent, to the extent practicable, with rules that address privacy and security issues throughout the Federal courts.

Sec. 403. Recall of retired judges of the United States Court of Appeals for Veterans Claims.

Section 403 of the Committee bill would eliminate the current restrictions on how many days per year a retired judge of CAVC may voluntarily serve in recall status; would modify the retirement pay structure for CAVC judges appointed on or after the date of enactment; and would exempt retired judges from involuntary recall once they have served an aggregate of five years of recall service.

Background. Under current law, retiring CAVC judges make an election whether to be recall-eligible. If a judge chooses to be recall-eligible, the Chief Judge has the authority to involuntarily recall that judge for up to 90 days per calendar year or, with the consent of the judge, to recall the judge for up to 180 days per calendar year. A recall-eligible retired judge receives annual pay equal to the annual salary of an active judge (pay-of-the-office) and that salary level is not impacted by how much recall service is performed during a year.

Committee Bill. Section 403 of the Committee bill would modify the authorities for the recall of retired judges and the retirement pay structure. First, this section would repeal the 180-day limit on how many days per calendar year a recall-eligible retired judge may voluntarily serve in recall status. In addition, for judges appointed on or after the date of enactment, it would create a three-tiered retirement pay structure. Specifically, pay-of-the-office would be reserved for judges who are actively serving, either as a judge of the Court or as a retired judge serving in recall status. When not serving in recall status, a recall-eligible retired judge would receive the rate of pay applicable to that judge as of the date the judge retired, as increased by periodic cost-of-living adjustments. A retired judge who is not recall-eligible would receive the rate of pay applicable to that judge at the time of retirement. Finally, section 403 would exempt current and future recall-eligible retired judges from involuntary recall once they have served an aggregate of five years of recall service.

By removing the cap on voluntary recall service and exempting recall-eligible judges from involuntary recall once they have served

a cumulative total of five years of recall service, the Committee intends to provide both the authority and an incentive for recall-eligible judges to serve longer or more frequent periods of recall service. By reserving pay-of-the-office for those retired judges actually performing recall service, there will be an incentive for retired judges to continue offering their expertise in a time of need.

Sec. 404. Annual reports on workload of the United States Court of Appeals for Veterans Claims.

Section 404 of the Committee bill would establish an annual reporting requirement for CAVC. The Court would be required to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report summarizing the workload of the Court.

Background. The Court's workload has increased dramatically in recent years. Between FY 1998 and FY 2004, approximately 200 cases were filed monthly with the Court. In FY 2005, that number began to increase, reaching an average of 387 cases per month in FY 2007. The FY 2007 total of 4,644 cases exceeded the Court's previous single year high by approximately 900 cases. This dramatic increase has raised concerns that CAVC may not have the resources it needs to keep pace with its workload. However, there is currently a dearth of specific information on the unique characteristics of the Court's workload.

Committee Bill. Section 404 of the Committee bill would require CAVC to report to Congress annually on various details of its workload. The information required to be in the report would include the number of appeals, petitions, and applications for fees under the Equal Access to Justice Act (EAJA) filed with the Court. It would also include the total number of dispositions by the Court as a whole, by the Clerk of the Court, by a single judge, by multi-judge panels, and by the full Court and the number of each type of disposition by the Court, including settlement, affirmation, remand, vacation, dismissal, reversal, grant, and denial. In addition, the required information would include the median time from filing an appeal to disposition by the Court as a whole, by the Clerk of the Court, by a single judge, or by multiple judges; the median time from the filing of a petition to disposition by the Court; the median time from filing an EAJA application to disposition by the Court; and the median time from completion of the briefing requirements by the parties to disposition by the Court. The report would also include the number of oral arguments held by the Court; the number of cases appealed to the United States Court of Appeals for the Federal Circuit; the number and status of appeals, petitions, and EAJA applications pending at the end of the fiscal year; the number of cases pending for more than 18 months at the end of the fiscal year; and a summary of any service performed by recalled retired judges during the fiscal year.

In the view of the Committee, this information would be helpful in monitoring whether the Court has sufficient resources to provide claimants with timely and appropriate service.

TITLE V—INSURANCE MATTERS

Sec. 501. Report on inclusion of severe and acute Post Traumatic Stress Disorder among conditions covered by traumatic injury protection coverage under Servicemembers' Group Life Insurance.

Section 501 of the Committee bill, which is derived from S. 2965, would require VA, in consultation with the Department of Defense, to submit a report to Congress assessing the feasibility of and advisability of including severe and acute Post Traumatic Stress Disorder (PTSD) among the conditions covered by traumatic injury protection coverage under Servicemembers' Group Life Insurance (SGLI).

Background. Section 1032 of Public Law 109–13, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 established traumatic injury protection coverage under the SGLI program. Traumatic Servicemembers' Group Life Insurance (TSGLI) provides coverage against qualifying losses incurred as a result of a traumatic injury event. In the event of a loss, VA will pay between $25,000 and $100,000 depending on the severity of the qualifying loss. A key factor in analyzing the severity of a particular traumatic injury is the impact it has on the length of hospitalization and rehabilitation for the injured servicemember.

At present, active duty and reserve component servicemembers with any amount of SGLI coverage are automatically covered under TSGLI. A premium (currently $1 monthly) is collected from covered members to meet peacetime program expenses; DOD is required to fund TSGLI program costs associated with the extra hazards of military service.

TSGLI was designed to provide severely injured servicemembers who suffer a loss as a direct result of a traumatic injury with short-term monetary assistance to lessen the economic burden on them and their families, who often incur financial hardships when they relocate to be with the member during long and difficult treatment and rehabilitation periods. Section 1980A(b)(1) of title 38, United States Code, lists some qualifying losses for which injured servicemembers are covered under TSGLI, including, among others, complete loss of vision, complete loss of hearing, amputation of a hand or foot and the inability to carry out the activities of daily living resulting from injury to the brain. PTSD is not currently among the conditions classified as qualifying losses. However, recent research on the severity of the problem suggests the concept should be studied.

In April 2008, the RAND Corporation released a study on post-deployment PTSD, major depression and traumatic brain injury entitled: "Invisible Wounds of War." Based on the results of a telephone survey of 1,965 previously deployed individuals, the study estimated that approximately 300,000 of the 1.64 million servicemembers who have returned from Iraq and Afghanistan suffer from symptoms of PTSD or major depression. These findings suggest a widespread problem, which, in its most severe and acute manifestations, can have a significant impact on readjustment and earning capacity. RAND estimated that the cost of an invisible wound in terms of lost productivity, treatment, and other impacts over the

two-year period immediately following deployment ranges from $5,904 to $25,757 per person. RAND noted that this estimate does not include potential costs associated with homelessness, domestic violence, family strain, and substance abuse.

Committee Bill. Section 501 of the Committee bill would require VA, in consultation with DOD, to submit a report to House and Senate Committees on Veterans' Affairs and Committees on Armed Services assessing the feasibility and advisability of including severe and acute PTSD among the conditions covered by TSGLI. The report would be due to the Committees not later than 180 days after enactment of this bill.

The Committee bill would require VA to specifically consider certain factors in preparation of the assessment: the advisability of providing TSGLI coverage to individuals who suffer from PTSD as a result of military service in a combat zone which renders them unable to carry out the daily activities of living; the unique circumstances of military service in a combat zone; any financial strain incurred by family members of those suffering from severe and acute PTSD; the recovery time, and any particular difficulties of the recovery process, associated with severe and acute PTSD; and other matters as VA considers appropriate.

Sec. 502. Treatment of stillborn children as insurable dependents under Servicemembers' Group Life Insurance.

Section 502 of the Committee bill, which is derived from S. 2946, would allow a stillborn child to be an insurable dependent under SGLI.

Background. In 2001, section 4 of the "Veterans' Survivor Benefits Improvements Act of 2001", Public Law 107–14, established a program of family insurance coverage under SGLI through which an SGLI-insured member's insurable dependents, defined as the member's spouse and children, could also be insured. A member's spouse may be insured in an amount up to $100,000. Coverage of a member's children is automatic and is in the amount of $10,000 for each child. Under current law, stillborn children are not eligible for coverage as insurable dependents under SGLI.

A lawsuit, *Warnock* v. *Office of Servicemembers' Group Life Insurance*, No. 1:03-cv-1329-DFH, 2004 U.S. Dist. LEXIS 8533 (S.D. Ind. April 28, 2004), raised the issue as to whether a member's stillborn child is covered as an insurable dependent under SGLI. The plaintiff argued that the stillbirth of his child at 38 weeks gestational age should be covered under SGLI. The Court dismissed the lawsuit for failure to state a claim upon which relief could be granted, ruling that applicable statutes and the SGLI policy do not extend life insurance coverage to stillborn infants. In its ruling, the Court noted that "Congress could write the statute, or an insurer could write a policy, to cover future stillbirths."

In 2005, the Senate passed S. 1235, the "Veterans' Housing Opportunity and Benefits Improvement Act of 2006." That legislation included a provision, section 102, which would have included stillborn children as insurable dependents under SGLI. This provision was subsequently dropped in negotiations between the House and the Senate.

Committee Bill. Section 502 of the Committee bill would amend section 1965(10) of title 38, United States Code, so as to cover a

servicemembers "stillborn child" as an insurable dependent under the SGLI program. The Committee does not expect the term "stillborn child" to cover the deaths of children at any gestational age or under every circumstance. Rather, the Committee expects VA to issue regulations that would define the term in a manner consistent with the 1992 recommended reporting requirements of the Model State Vital Statistics Act and Regulations as drafted by the Centers for Disease Control and Prevention's National Center for Health Statistics. The Model Act recommends a state reporting requirement of fetal deaths involving fetuses weighing 350 grams or more, if the weight is unknown, or 20 or more completed weeks of gestation, calculated from the date last normal menstrual began to the date of delivery.

Sec. 503. Other enhancements of Servicemembers' Group Life Insurance coverage.

Section 503 of the Committee bill, which is derived from S. 2984, makes changes to and clarifies the SGLI and Veterans' Group Life Insurance programs.

Background. SGLI is a VA-supervised life insurance program that provides group coverage for members on active duty in the uniformed services (Army, Navy, Air Force, Marine Corps, and Coast Guard), members of the Commissioned Corps of the United States Public Health Service and the National Oceanic and Atmospheric Administration, Reserve and National Guard members, Reserve Officer Training Corps members engaged in authorized training, service academy cadets and midshipmen, Ready Reserve and Retired Reserve members, and Individual Ready Reserve members who are subject to involuntary recall to active duty service. VA purchases a group policy on behalf of participating members from a commercial provider. Since the inception of the SGLI program in 1965, The Prudential Insurance Company of America has been the provider. VA's FY 2009 budget submission projects that 2,342,000 individuals will be covered under SGLI in FY 2009.

Full coverage under SGLI is provided automatically at the maximum coverage amount when an individual begins covered service. Partial coverage at prorated premium rates is available for Reserve and National Guard members for active and inactive duty training periods. To be covered in an amount less than the maximum, or to decline coverage altogether, a member must make a written election to that effect. Coverage amounts may be reduced in multiples of $10,000. A member may also name, at any time, one or more beneficiaries of his or her choice. Decisions concerning coverage amounts and designation of beneficiaries are made at the sole discretion of members insured under SGLI.

The "Veterans' Insurance Act of 1974", Public Law 93–289, established a new program of post-separation insurance known as Veterans Group Life Insurance (VGLI). Like SGLI, VGLI is supervised by VA but administered by Prudential. VGLI provides for the post-service conversion of SGLI to a renewable term policy of insurance. Persons eligible for full-time coverage include former servicemembers who were insured full-time under SGLI and who were released from active duty or the Reserves, Ready Reservists who have part-time SGLI coverage and who incur certain disabilities during periods of active or inactive duty training, and members of

the Individual Ready Reserve and Inactive National Guard. Like SGLI, VGLI is issued in multiples of $10,000 up to the maximum coverage amount, but in no case can VGLI coverage exceed the amount of SGLI coverage a member had in force at the time of separation from active duty service or the Reserves.

Committee Bill. Section 503 of the Committee bill would correct the disparity in eligibility for SGLI coverage for Ready Reservists and members the Individual Ready Reserve; correct an inequity in termination dates of SGLI coverage between dependents and separating servicemembers; clarify VA's authority to set SGLI premiums for spouses of Ready Reservists to make it consistent with current VA practice; and make consistent VA's forfeiture provisions.

Subsection 503(a) would extend full-time and family SGLI coverage to Individual Ready Reservists (IRRs), those individuals referred to in section 1965(5)(C) of title 38, United States Code. This group of individuals volunteer for assignment to a mobilization category in the Individual Ready Reserve, as defined in section 12304(i)(1) of title 10. The "Veterans' Survivor Benefits Improvement Act of 2001," Public Law 107–14, provided SGLI coverage for Ready Reservists, referred to in section 1965(5)(B), but not to IRRs. The Committee believes IRRs should be afforded comparable coverage given that many of them have been called up to serve in Operation Enduring Freedom and Operation Iraqi Freedom.

Subsection 503(b) would provide that a dependent's SGLI coverage would terminate 120 days after the date of the member's separation or release from service, rather than 120 days after the member's SGLI terminates. Under current law, section 1968(a)(1)(A) of title 38, provides for a 120-day period after separation from active duty service or the Reserves for a member to receive premium-free SGLI coverage and elect to convert the coverage to VGLI. However, under section 1968(a)(5)(B)(ii) a dependent retains coverage for 120 days after that, for a total of 240 days after the member's separation from service, twice the period of coverage for most policyholders. This provision would correct the inequity between members and dependents.

Subsection 503(c) would clarify that VA has the authority to set premiums for SGLI coverage for the spouses of Ready Reservists based on the spouse's age. This provision would correct an inconsistency between section 1969(g)(1)(A) of title 38, which does not require identical premiums for coverage of active duty members' spouses, and section 1969(g)(1)(B), which may be read to imply that identical premiums for coverage of Ready Reservists' spouses are required.

Subsection 503(d) would clarify that any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces or refuses to wear the uniform of the Armed Forces, forfeits all rights to VGLI. Under section 1973 of title 38, forfeiture of SGLI is required, but not VGLI. The inconsistency between these two insurance programs was highlighted when it was discovered that former Federal Bureau of Investigation Agent Robert Hannsen, who was charged, and later plead guilty, to committing espionage by providing highly classified national security information to Russia and the former Soviet Union, was a VGLI policyholder. Under section 503(d) of the

Committee bill, Hannsen's VGLI would remain in force and be payable upon his death, however offenses occurring after passage of this provision would result in forfeiture.

TITLE VI—OTHER MATTERS

Sec. 601. Authority for suspension or termination of claims of the United States against individuals who died while serving on active duty in the Armed Forces.

Section 601 of the Committee bill, which is derived from S. 2550, would authorize VA to suspend or terminate the collection of debts owed to it by individuals who die while serving on active duty in the Armed Forces.

Background. In January 2008, VA disclosed that, in an attempt to collect debts owed to VA, the Department had contacted the estates of twenty-two servicemembers who died while serving in either Operation Enduring Freedom or Operation Iraqi Freedom. Under the relevant law in effect at that time, section 5302 of title 38, any veteran or active duty servicemember indebted to VA due to the overpayment or erroneous payment of benefits was able to apply for a waiver from VA so as to remove the obligation to pay the debt. However, under that law, VA was required to notify the beneficiary, or his or her estate if the beneficiary was deceased, when an outstanding debt arose and to provide information on the right to apply for a waiver. This left VA in the position of having to compound the grief of bereaved families by burdening them with a debt waiver process, despite the fact that the circumstances would likely warrant a waiver.

In an attempt to address this situation, S. 2550 was introduced and testimony was taken on the bill at the Committee's May 7, 2008, legislative hearing. Subsequent to that hearing but before the Committee met to act on pending legislation, a provision derived from that bill was reported by the Senate Appropriations Committee and included in the Supplemental Appropriations Act, 2008, Public Law 110–252.

The provision in the appropriations measure added a new section 5302A to title 38, which prohibits VA from collecting all or any part of a debt owed to VA by a servicemember or veteran who dies as the result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001. The Secretary is required to determine that termination of collection is in the best interest of the United States

This new provision provides relief only to the families of certain indebted servicemembers who die while serving on active duty. By its terms, new section 5302A only exempts the estates of individuals who die as the result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities from the burden of filing an application for waiver of the debt.

The Committee believes this new provision is too narrowly constructed to provide adequate relief to all individuals and families who should be protected from unnecessary efforts by VA to collect a debt. Because it is limited solely to indebted individuals who die

as the result of injuries incurred while serving in combat with a hostile force, it does not include individuals who die in training exercises or while otherwise preparing to serve in a combat zone. This new provision gives VA no discretion to consider exceptional cases that fall outside of its limited parameters. In certain cases, waiver of VA debts before notification of the estate may be in the best interest of VA but the new provision does not accord the Department the legal authority to avoid the notification and waiver application process.

Committee Bill. Section 601 of the Committee bill would amend section 3711 of title 31, United States Code, so as to grant VA discretionary authority to suspend or terminate the collection of debts owed to it by individuals who die while serving on active duty in the Armed Forces. The authority to suspend collection would cover all individuals who die while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy.

Section 3711 of title 31 provides overall guidance with respect to requirements for collection and compromise by each executive, judicial or legislative agency of claims owed to the United States Government. Public Law 104–106, the National Defense Authorization Act for Fiscal Year 1996, amended section 3711 so as to exempt the Secretary of Defense from that section's requirements relating to the initiation and pursuit of collection action with respect to the estates of indebted servicemembers who die while serving on active duty. Public Law 104–201, the National Defense Authorization Act for Fiscal Year 1997, granted the same authority to the Secretary of Transportation—now the Secretary of Homeland Security—with respect to individuals who die while serving on active duty as a member of the Coast Guard. The Committee bill would put VA on equal footing with these two Departments, allowing VA to forgive debts owed to the Department by individuals who die while serving on active duty when the Secretary determines it is appropriate under the circumstances.

The Committee bill also includes a freestanding provision that would permit VA to provide an equitable refund to any estate from which it collected a debt that it otherwise would have waived had this provision been in effect at the time. VA would have the discretion to determine in which cases, if any, the use of this authority would be appropriate.

Sec. 602. Memorial headstones and markers for deceased remarried surviving spouses of veterans.

Section 602 of the Committee bill, which is derived from S. 2984, would eliminate the disparity that exists between eligibility for burial and eligibility for a memorial headstone or marker for deceased remarried surviving spouses of veterans whose remains are unavailable.

Background. Section 2306(b)(4)(B) of title 38, United States Code, authorizes VA to furnish an appropriate memorial headstone or marker to commemorate eligible individuals whose remains are unavailable. Individuals currently eligible for memorial headstones or markers include a veteran's surviving spouse, which is defined to include "an unremarried surviving spouse whose subsequent re-

marriage was terminated by death or divorce." Thus, a surviving spouse who remarried after the veteran's death is not eligible for a memorial headstone or marker unless the remarriage was terminated by death or divorce before the surviving spouse died. However, a surviving spouse who remarried after the veteran's death is eligible for burial in a VA national cemetery without regard to whether any subsequent remarriage ended.

Committee Bill. Section 602 of the Committee bill would eliminate the disparity between eligibility for burial and eligibility for a memorial headstone or marker. It would extend eligibility for memorial headstones or markers to a deceased veteran's remarried surviving spouse, without regard to whether any subsequent remarriage ended.

Sec. 603. Three-year extension of authority to carry out income verification.

Section 603 of the Committee bill would extend for three years, until September 30, 2011, VA's authority to obtain information from the Internal Revenue Service (IRS) or the Social Security Administration (SSA) for income verification purposes for needs-based benefits.

Background. Under current law, certain benefits programs administered by VA, including pensions for wartime veterans and compensation for Individual Unemployability are available only to beneficiaries whose annual income is below a certain level. VA must have access to verifiable income information in order to ensure that those receiving benefits under its income-based programs are not earning a greater annual income than the law permits.

Section 6103(l)(7)(D)(viii) of title 26, United States Code, authorizes the release of certain income information by the IRS or the SSA to VA for the purposes of verifying the incomes of applicants for VA needs-based benefits. Section 5317(g) of title 38, United States Code, provides VA with temporary authority to obtain and use this information. Under current law, this authority expires on September 30, 2008.

Committee Bill. Section 603 of the Committee bill would amend subsection 5317(g) of title 38 to extend VA's authority to obtain income information from the IRS or the SSA until September 30, 2011.

Sec. 604. Three-year extension of temporary authority for the performance of medical disability examinations by contract physicians.

Section 604 of the Committee bill, which is derived from S. 2984, would extend VA's temporary authority to contract for medical disability examinations using appropriated funds for three years, until December 31, 2012.

Background. In order to determine the type and severity of disabilities of veterans filing for VA compensation or pension benefits, VA often requires thorough medical disability examinations. Because these examinations form the basis of disability ratings, their accurate and timely completion is essential. In recent years, the demand for medical disability examinations has increased beyond the number of requests that the current in-house system was designed to accommodate. This rise in demand is due to an increase in the

complexity of disability claims, an increase in the number of disabilities claimed by veterans, and changes in eligibility requirements for disability benefits.

In 1996, in Public Law 104–275, the Veterans' Benefits Improvements Act of 1996, VA was authorized to carry out a pilot program of contract disability examinations through ten VA regional offices using amounts available for payment of compensation and pensions. During the initial pilot program, one contractor—QTC Management, Inc.—performed all contract examinations at the ten selected regional offices. The pilot was deemed a success, with general satisfaction reported from all stakeholders. According to the VA Claims Processing Task Force's 2001 report to the Secretary of Veterans Affairs, "[t]he quality of QTC Management examinations has been reported to exceed a 99 percent adequacy rate, and the Task Force found high approval from Regional Office employees. Reported medical examination timeliness was within contract compliance with positive feedback in customer service surveys."

In 2003, in Public Law 108–183, the Veterans Benefits Act of 2003, VA was temporarily authorized to contract for disability examinations using appropriated funds. This authority expires on December 31, 2009. High demand for compensation and pension examinations continues and VA reports continued satisfaction with the contracted exams, so the Committee views extension of the program to be warranted.

Committee Bill. Section 604 of the Committee bill would extend VA's authority, through December 31, 2012, to use appropriated funds for the purpose of contracting with non-VA providers to conduct disability examinations. The examinations would be conducted pursuant to contracts entered into and administered by the Under Secretary for Benefits. The Committee notes that the authority to contract for disability examinations through the regional offices, using amounts available for payment of compensation and pension, is an ongoing authority with no time limitation.

COMMITTEE BILL COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the CBO, estimates that enactment of the Committee bill would, relative to current law, increase discretionary spending by $9 million in 2009 and by $169 million over the 2009–2013 period, assuming appropriation of the necessary amounts. The Committee bill would decrease direct spending by $7 million in 2009, and by $29 million over the 2009–2013. According to CBO, S. 3023 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by placing new requirements on state governments, including public institutions of higher education that operate as lenders of student loans. CBO estimates that the aggregate costs of the mandate would be well below the threshold established in UMRA.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

CONGRESSIONAL BUDGET OFFICE
Washington, DC, July 23, 2008.

Hon. DANIEL K. AKAKA
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3023, the Veterans' Benefits Improvement Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure

S. 3023—Veterans' Benefits Improvement Act of 2008

Summary: S. 3023 would affect several veterans' programs, including housing, pension, burial, life insurance, and readjustment benefits. CBO estimates that implementing this legislation would incur discretionary costs of $9 million in 2009 and $169 million over the 2009–2013 period, assuming appropriation of the necessary amounts.

The bill also contains provisions that would both increase and decrease direct spending for veterans benefits. On balance, CBO estimates that enacting S. 3023 would decrease direct spending by $7 million in 2009, $29 million over the 2009–2013 period, and $18 million over the 2009–2018 period. Enacting the bill would have no effect on federal revenues.

S. 3023 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by placing new requirements on state governments, including public institutions of higher education that operate as lenders of student loans. CBO estimates that the aggregate costs of the mandate would be well below the threshold established in UMRA ($68 million in 2008, adjusted annually for inflation).

Public institutions of higher education also would incur costs to implement a provision in the bill that would require those institutions, as participants in federal student loan programs, to refund tuition and fees to servicemembers if they must leave school because of military service commitments. However, those costs, estimated to total at least $40 million in 2008, would result from conditions of a voluntary federal program, not intergovernmental mandates.

Section 311 of S. 3023 contains private-sector mandates as defined in UMRA. CBO estimates that the annual cost of those mandates would not exceed the threshold established in UMRA ($136 million for private-sector mandates in 2008, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 3023 is summarized in Table 1. The costs of this legislation fall mostly within budget function 700 (veterans benefits and services).

Table 1.—Estimated Budgetary Impact of S. 3023, Veterans' Benefits Improvement Act of 2008

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	9	39	51	53	17	169
Estimated Outlays	9	39	51	53	17	169
CHANGES IN DIRECT SPENDING [a]						
Estimated Budget Authority	−7	−10	−13	1	−1	−29
Estimated Outlays	−7	−10	−13	1	−1	−29

Note: Components may not sum to totals because of rounding.
[a] In addition to the direct spending effects shown here, enacting S. 3023 would affect direct spending after 2013 (see Table 3). The estimated net reduction in direct spending sums to $18 million over the 2009–2018 period.

Basis of estimate: For this estimate, CBO assumes the legislation will be enacted near the beginning of fiscal year 2009, that the estimated authorization amounts will be appropriated near the start of each fiscal year, and that outlays will follow historical spending patterns for existing or similar programs.

Spending subject to appropriation

S. 3023 contains several provisions that would increase spending subject to appropriation. CBO estimates that implementing the bill would result in discretionary outlays of $9 million in 2009 and $169 million over the 2009–2013 period, subject to appropriation of the necessary amounts (see Table 2).

Table 2.—Estimated Changes to Discretionary Spending Under S. 3023, Veterans' Benefits Improvement Act of 2008

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Extension of Authority for Medical Exams by Contract Physicians						
Estimated Authorization Level	0	35	47	49	13	144
Estimated Outlays	0	35	47	49	13	144
Human Resources Training						
Estimated Authorization Level	5	2	2	2	2	13
Estimated Outlays	5	2	2	2	2	13
Active Judges on the Court of Appeals for Veterans Claims						
Estimated Authorization Level	2	2	2	2	2	10
Estimated Outlays	2	2	2	2	2	10
Reports						
Estimated Authorization Level	2	*	*	*	*	2
Estimated Outlays	2	*	*	*	*	2
Total Changes						
Estimated Authorization Level	9	39	51	53	17	169
Estimated Outlays	9	39	51	53	17	169

Note: * = less than $500,000.

Extension of Authority for Medical Exams by Contract Physicians. Section 604 would extend the temporary authority for the performance of medical examinations by contract physicians through December 31, 2012. Under current law, that authority expires on December 31, 2009. Although that authority has been in existence for several years, the Department of Veterans Affairs (VA) first used

it in 2008. Based on information from VA, CBO estimates that, in 2009, VA will use the current authority to have about 37,000 exams completed by contract physicians at a cost of about $900 per exam. CBO further estimates that if the authority is extended beyond 2009, VA would use contract physicians for about 47,000 exams a year. Taking inflation into account, CBO estimates that implementing section 604 would cost $144 million over the 2010–2013 period.

Human Resources Training. Section 304 would require every federal agency to provide training to human resources personnel on the employment and reemployment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) of federal employees who leave their positions to undertake military service. The training would be developed and provided in consultation with the Office of Personnel Management (OPM). Using information provided by OPM and the Department of Labor (DOL), CBO estimates that there are over 20,000 human resources professionals in the federal government. USERRA training, although currently available, is not required. CBO expects that most of the training would be Internet-based, with some individual conferences in large agencies or cities. Based on those assumptions and using information provided by OPM, DOL, and various human resource professionals, CBO estimates that implementing mandatory training for federal employees would cost $5 million in 2009 and $2 million annually in subsequent years.

Active Judges on the Court of Appeals for Veterans Claims (CAVC). Section 401 would increase the number of active judges on the CAVC from seven to nine. According to the CAVC, in 2007, the average annual cost for a judge's chamber—which includes salaries of the judges and their staff, infrastructure, and incidentals—was about $1 million. Therefore, CBO estimates that implementing section 401 would cost $10 million over the 2009–2013 period.

Reports. S. 3023 would require VA to complete a series of reports and studies for the Congress on varying topics and issues. Those issues include: VA's progress in addressing geographic variance in veterans' disability payments; the appropriate levels of disability compensation for service-connected disabilities and of long-term transition payments for veterans undergoing vocational rehabilitation; the effect of mortgage foreclosures on veterans; the employment needs of Native American veterans living on tribal lands; ways to assist and encourage veterans to complete vocational rehabilitation; and the feasibility of including acute and severe Post Traumatic Stress Disorder under the traumatic injury protection insurance covered by Servicemembers Group Life Insurance (SGLI) program. Based on information from VA, CBO estimates that completing those reports would cost about $2 million over the 2009–2013 period.

Direct Spending

S. 3023 contains provisions that would both increase and decrease direct spending. CBO estimates that, on net, enacting S. 3023 would decrease direct spending by $7 million in 2009, by $29 million over the 2009–2013 period, and by $18 million over the 2009–2018 period (see Table 3).

Table 3.—Estimated Changes to Direct Spending Under S. 3023, Veterans' Benefits Improvement Act of 2008

	By fiscal year, outlays in millions of dollars [a]—											
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009–2013	2009–2018
CHANGES IN DIRECT SPENDING [b]												
Extension of Income Verification	−2	−4	−6	−5	−6	−6	−5	−5	−5	−5	−24	−50
Guarantees of Mortgage Refinancing Loans	*	*	*	3	3	3	3	5	4	5	6	26
Guarantees of Adjustable-Rate Mortgages	−4	−4	−4	−1	0	0	0	1	0	1	−13	−11
Temporary Increase in the Maximum Loan Guarantee	−1	−3	−4	2	0	1	0	1	0	1	−6	−3
Educational Assistance for Spouses of Severely Disabled Veterans	0	1	1	2	2	2	2	1	1	1	6	13
Certification Requirement for Self-Employment On-the-Job Training	*	*	*	*	*	1	1	1	1	1	2	7
Total Changes	−7	−10	13	1	−1	1	1	4	1	4	−29	−18

Note: * = less than $500,000.
[a] Annual changes in budget authority would be equal to the estimated changes in outlays.
[b] Components may not sum to totals because of rounding.

Extension of Income Verification. Section 603 would extend authorities in current law that allow VA to acquire information on income reported to the Internal Revenue Service (IRS) to verify income reported by recipients of VA pension benefits. The authorization allowing the IRS to provide income information to VA was made permanent by Public Law 110–245, but the authorization allowing VA to acquire the information is scheduled to expire on September 30, 2008. Section 603 would extend VA's authority to acquire IRS data through September 30, 2011. According to VA, the department saved, on average, approximately $5 million each year in new pension benefit payments by verifying veterans' incomes over the 2001–2007 period using the IRS data.

In 2007, the President signed into law Public Law 110–157, which includes a provision allowing VA to use the National Directory of New Hires (NDNH) database as an alternate source of income-verification data. That authority is set to expire on September 30, 2011. The NDNH database, though using more up-to-date information, does not include a large segment of the workforce that might self-report work income. The IRS data reflect information on self-reported income.

If VA were to use both systems over the three-year period from 2009 through 2011, CBO estimates that the incremental savings from utilizing the IRS data for income verification would be about $2 million in new savings each year. Those savings would compound in subsequent years (rising to about $4 million in year two, and so on), with cost-of-living and mortality adjustments, until 2011 when savings would decline after the authority to use IRS data expires. CBO estimates that section 603 would reduce direct spending by $50 million over the 2009–2018 period.

Guarantees of Mortgage Refinancing Loans. Section 202 would authorize VA to provide the same maximum loan guarantee for veterans refinancing a non-VA loan as is provided for loans that are guaranteed by VA. Under current law, VA can provide a guarantee

of only $36,000 for refinancing non-VA loans compared with a guarantee of $104,250 for refinancing VA loans. The section also would decrease the equity requirement for such refinancing loans from 10 percent of the loan amount to 5 percent.

Based on information from VA, CBO estimates that those changes would result in an additional 1,000 loans in 2009, increasing to an additional 2,000 loans a year in 2012 and subsequent years. CBO and VA estimate that the VA loan guarantees currently have a negative subsidy rate reflecting relatively low default rates and the collection of up-front fees. However, certain loan fees will be reduced (under current law) on October 11, 2011, resulting in a positive subsidy rate after that date. Because most of the additional loans would occur after the loan fees are reduced, the additional loans would increase direct spending by $26 million over the 2009–2018 period, CBO estimates.

Guarantees of Adjustable-Rate Mortgages. Section 203 would extend, through 2012, VA's authority to guarantee adjustable-rate mortgages and hybrid adjustable rate-mortgages. Adjustable-rate mortgages have interest rates that may change annually. Hybrid adjustable-rate mortgages have a fixed interest rate for an initial period of a few years, after which the rate may be adjusted annually. The authority to provide guarantees for such loans expires at the end of fiscal year 2008.

Based on data from VA, CBO estimates that extending that authority would result in an additional 1,400 loans a year. Because the VA loan guarantee program has a negative subsidy rate during the period covered by the authority in section 203, those additional loans would increase receipts by $13 million over the 2009–2012 period. CBO expects that some of those additional loans would become delinquent and go to foreclosure. When a guaranteed loan goes into foreclosure, VA often acquires the property and issues a new direct loan (called a vendee loan) when the property is sold. VA sells most vendee loans on the secondary-mortgage market and guarantees their timely repayment. Those vendee loans carry a positive subsidy, reflecting their potential defaults. Thus, the increased receipts for the new VA guarantees of adjustable-rate mortgages would be slightly offset by an additional $2 million in subsidy costs related to vendee loans. In total, extending the authority to guarantee adjustable-rate mortgages would reduce direct spending by $11 million over the 2008–2018 period.

Temporary Increase in the Maximum Loan Guarantee. VA can provide lenders a guarantee of up to 25 percent of the value of home-acquisition loans made to veterans. Under current law, the maximum loan amount for which VA can provide a 25 percent guarantee is the Freddie Mac conforming loan limit of $417,000. Section 201 would increase the maximum amount of the loan for which a veteran could receive a 25 percent loan guarantee to 125 percent of the area median home price, not to exceed 175 percent of the current Freddie Mac limit, or $729,750. The authority to increase the guarantee would expire on December 31, 2011.

Based on nationwide mortgage data and information from the VA, CBO estimates that a total of 4,700 additional guaranteed loans would be made for an average loan amount of 10 percent more than the amount of the current maximum guarantee. CBO and VA estimate that the VA loan guarantees currently have a

negative subsidy rate of about 0.4 percent. Because of that negative subsidy rate, CBO estimates that the added loans and higher loan amounts would increase receipts by $8 million during fiscal years 2009 through 2011. However, certain loan fees will be reduced on October 1, 2011, resulting in higher subsidy rates. The additional loan guarantees that CBO estimates would occur in the final quarter before the authority expires would thus increase subsidy outlays by $2 million.

CBO expects that some of those additional loans would become delinquent and go to foreclosure. As noted above, when a guaranteed loan goes into foreclosure, VA often acquires the property and issues a vendee loan when the property is sold. CBO estimates that the subsidy cost for those vendee loans in subsequent years would total $3 million over the 2014–2018 period.

Taking into account the initial savings estimated for new loan guarantees and the expected costs for vendee loans, CBO estimates that this provision would reduce direct spending by $6 million over the 2009–2013 period and by $3 million over the 2009–2018 period.

Educational Assistance for Spouses of Severely Disabled Veterans. Section 312 would allow spouses of veterans who are permanently and totally disabled to use education assistance over a 20-year period. Under current law, eligible spouses have a 10-year window in which to use their benefits.

CBO estimates that nearly 6,000 spouses would be eligible for the extended entitlement period during some or all of the next 10 years. The Department of Defense reports that more than 9,000 veterans have separated from the armed forces with a permanent, total disability over the last 20 years. Of those 9,000 veterans, about 65 percent have spouses or children. CBO anticipates that more than 2,000 spouses will be eligible for the benefit each year and that 10 percent would use the benefit annually. CBO expects that the approximately 200 users each year would receive an average benefit that would equal $5,200 in 2009 and would grow by an annual cost-of-living increase thereafter. Therefore, CBO estimates that, over the 2009–2018 period, enacting section 312 would increase direct spending by $13 million.

Certification Requirement for Self-Employment On-the-Job Training. Under section 316, veterans participating in on-the-job training for self-employment or operation of a franchise would no longer be required to provide VA certification that they are being paid for the training and that the training will lead to employment. Because self-employment and franchise training are typically unpaid, veterans pursuing those goals who are otherwise eligible to receive payments for training are effectively excluded due to the existing requirement that they certify that they are being paid for the training.

CBO estimates that most of the veterans receiving on-the-job training benefits under section 316 would be franchise owners. The International Franchise Association runs a well-publicized program that enables veterans to purchase franchises at discounted rates. Based on information from the association and other national franchise information, CBO estimates that under section 316 about 400 veterans annually would purchase franchises and qualify for on-the-job training benefits during their training period. For a typical training period of five weeks, veterans would receive around

$1,600. In total, CBO estimates that enacting section 316 would increase direct spending by $7 million over the 2009–2018 period.

Automatic Cost-of-Living Adjustment (COLA). Section 103 would provide a permanent annual cost-of-living adjustment to the amounts paid to veterans for disability compensation and to their survivors for dependency and indemnity compensation. The COLA would equal the cost-of-living adjustment payable to Social Security recipients. The increase would take effect on December 1 of each year, and the results of the adjustment would be rounded to the next lower dollar.

The COLA that would be authorized by this bill is assumed in CBO's baseline, pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act, and savings from rounding it down were achieved by the Balanced Budget Act of 1997 (Public Law 105–33) and extended to 2013 by the Veterans Benefits Act of 2003 (Public Law 108–183). Because the COLA is assumed in CBO's baseline, this provision would have no budgetary effect relative to that baseline. CBO estimates that the COLA for 2010, which would take effect in the second quarter of fiscal year 2010, would equal $1.2 billion. The full-year cost of that increase would equal $1.6 billion. Similar increases are estimated in subsequent years.

Other provisions. The following provisions would have an insignificant impact on federal direct spending:

- Section 204 would allow severely disabled members of the armed forces to receive certain housing grants from VA before they leave the service. CBO expects this provision would affect very few individuals and, in most cases, would serve only to accelerate the benefit by several months.
- Section 301 would extend the 24-month limitation on receiving Independent Living assistance for severely disabled veterans of the war on terrorism. The Independent Living program provides services to maximize independence in daily living for veterans who are too severely disabled to pursue employment. Based on current program usage rates from VA, CBO estimates that fewer than 20 veterans will use more than 24 months of Independent Living services.
- Section 602 would grant eligibility for VA-provided memorial headstones to certain deceased surviving spouses of veterans. Based on information from VA, CBO expects that there would be very few requests for VA-memorial headstones from the survivors of those surviving spouses.

Estimated Impact on State, Local, and Tribal Governments

Intergovernmental Mandates. Currently, fewer than 20 public institutions of higher education make or originate Federal Stafford Loans to graduate students under the Federal Family Education Loan program. S. 3023 would prohibit those institutions from applying an annual interest rate higher than 6 percent on student loans made to servicemembers during their period of military service. The duty to comply with the interest rate cap would be an intergovernmental mandate as defined in UMRA. Because Graduate Stafford Loans (both subsidized and unsubsidized) currently have a fixed interest rate of 6.8 percent through 2013 and because the provision would apply to a small number of individuals attend-

ing fewer than 20 public institutions of higher education, CBO estimates that the mandate costs to governmental entities, in the form of lost interest revenue due to the cap, would be small and would not exceed the threshold in UMRA ($68 million in 2008, adjusted annually for inflation).

Other Impacts. Public institutions of higher education that participate in federal financial aid programs also would be required to extend educational benefits to servicemembers because of their military service. However, those requirements would not be intergovernmental mandates as defined in UMRA, but rather conditions of participating in a voluntary federal program.

Public institutions of higher education would be required to refund tuition and fees paid by servicemembers who had to leave school because of military service commitments. In addition, those institutions would be required to provide servicemembers who discontinued an educational program because of military service an opportunity to reenroll with the same educational and academic status held prior to their military service. Information from state and higher education officials indicate that public institutions of higher education in approximately half the states already extend similar benefits to servicemembers either because of state law or institutional policies. Public institutions that do not extend these benefits would be required to do so because of their participation in federal financial aid programs. CBO estimates that those institutions would incur costs of at least $40 million in 2008. Costs could be higher because enrollment data for all servicemembers attending public institutions of higher education, including active-duty members, were not available for this analysis. The CBO estimate includes only costs associated with members in the reserves who might discontinue their education because of military service.

Estimated Impact on the Private Sector

The bill contains private-sector mandates as defined in UMRA. Section 311 would require institutions of higher education to refund tuition and fees paid by students called to military service, for the portion of the education program for which such servicemembers did not receive academic credit. Section 311 also would limit the interest rate on student loans to 6 percent per year for servicemembers during their period of military service.

CBO expects that the number of servicemembers called to military service while enrolled at an institution of higher education would be small. Based on estimates of total student loan debt for servicemembers entering the military, CBO also expects that the annual costs to lenders resulting from a reduction in the maximum allowable interest rate for those loans also would be small. Thus, CBO estimates that the total cost of the mandates would be below the annual threshold established in UMRA ($136 million for private-sector mandates in 2008, adjusted annually for inflation).

Previous CBO estimates: On July 17, 2008, CBO transmitted a cost estimate for S. 2617, the Veterans' Compensation Cost-of-Living Adjustment Act of 2008, as ordered reported by the Senate Committee on Veterans' Affairs on June 26, 2008. On May 12, 2008, CBO transmitted a cost estimate for H.R. 5826, also titled the Veterans' Compensation Cost-of-Living Adjustment Act of 2008, as ordered reported by the House Committee on Veterans' Affairs

on April 30, 2008. Section 103 of S. 3023 is similar to both S. 2617 and H.R. 5826. However, section 103 would automatically increase benefit levels for disability compensation and dependency and indemnity compensation each year by the same COLA that Social Security recipients would receive. S. 2617 and H.R. 5826 would only make the adjustment for 2009. Because the COLA is assumed in CBO's baseline, those proposals would have no budgetary effect relative to that baseline.

Estimate prepared by: Federal Costs: Federal Courts, Benefits—Dwayne M. Wright (226-2840), Housing—DavidNewman (226-2840), Education and Vocational Rehabilitation—Camille Woodland (226-2840), Government Training—Matthew Pickford (226-2860); Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum (225-3220); Impact on the Private Sector: Daniel Frisk (226-2900).

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact that would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any regulation of individuals or businesses or result in any impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its June 26, 2008, meeting. The Committee, by voice vote, ordered S. 3023 reported favorably to the Senate, subject to amendment.

On that date, the Committee considered two amendments offered by Senator Burr regarding the recall of retired judges and an annual reporting requirement on the workload of the United States Court of Appeal for Veterans Claims. The amendments were accepted by voice vote.

The Committee then considered an amendment offered by Senator Burr regarding a contingent increase in the number of judges on the United States Court of Appeals for Veterans Claims. The amendment was defeated by a 7 to 7 vote.

Yeas	Senator	Nays
	Mr. Rockefeller	X
	Ms. Murray	X
	Mr. Obama	
	Mr. Sanders	X
	Mr. Brown	X
	Mr. Webb	X
	Mr. Tester	X
X	Mr. Burr	
X (by proxy)	Mr. Specter	

Yeas	Senator	Nays
X	Mr. Craig	
X	Mr. Isakson	
X (by proxy)	Mr. Graham	
X (by proxy)	Ms. Hutchison	
X	Mr. Wicker	
	Mr. Chairman	X
7	TALLY	7

The Committee then considered an amendment offered by Senator Burr regarding temporary expansion in the number of judges on the United States Court of Appeals for Veterans Claims. The amendment was defeated by a 7 to 7 vote.

Yeas	Senator	Nays
	Mr. Rockefeller	X
	Ms. Murray	X
	Mr. Obama	
	Mr. Sanders	X
	Mr. Brown	X
	Mr. Webb	X (by proxy)
	Mr. Tester	X
X	Mr. Burr	
X (by proxy)	Mr. Specter	
X	Mr. Craig	
X	Mr. Isakson	
X (by proxy)	Mr. Graham	
X (by proxy)	Ms. Hutchison	
X	Mr. Wicker	
	Mr. Chairman	X
7	TALLY	7

The Committee then considered an amendment offered by Senator Burr regarding the retirement rules applicable to any judge appointed to fill one of the additional judicial positions on the United States Court of Appeals for Veterans Claims proposed by section 401 of the Committee bill. The amendment was defeated by a 7 to 7 vote.

Yeas	Senator	Nays
	Mr. Rockefeller	X
	Ms. Murray	X
	Mr. Obama	
	Mr. Sanders	X
	Mr. Brown	X
	Mr. Webb	X
	Mr. Tester	X
X	Mr. Burr	
X (by proxy)	Mr. Specter	
X	Mr. Craig	
X	Mr. Isakson	
X	Mr. Graham	
X (by proxy)	Ms. Hutchison	
X	Mr. Wicker	
	Mr. Chairman	X
7	TALLY	7

AGENCY REPORT

On May 7, 2008, Keith Pedigo, Associate Deputy Under Secretary for Policy and Program Management of the Department of Veterans Affairs, appeared before the Committee and submitted testimony of the Department's views of the bills. Excerpts from this statement are reprinted below:

STATEMENT OF KEITH PEDIGO, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and members of the Committee, good morning. I am pleased to be here today to provide the Department of Veterans Affairs' (VA) views on pending benefits legislation. I will not be able to address a few of the bills on today's agenda because VA received them in insufficient time to coordinate the Administration's position and cost estimates, but we will provide that information in writing for the record.

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S. 1718

S. 1718, the "Veterans Education Tuition Support Act," would amend the Servicemembers Civil Relief Act to provide servicemembers reimbursement of tuition for programs of education interrupted by military service, deferment of student loans, and reduced interest rates for servicemembers during periods of military service. Because that Act is implemented by DOD, we defer to that department regarding the merits of S. 1718.

S. 2090

S. 2090 would require the U.S. Court of Appeals for Veterans Claims (Veterans Court) to adopt rules to protect the privacy and security of documents retained by, or electronically filed with, the court. It would require the rules to be consistent with other Federal courts' rules and to take into consideration the best practices in Federal and state courts to protect private information.

This bill would extend the Veterans Court's existing authority and anticipates the upcoming conversion from paper filing to electronic filing. The court's current Rules of Practice and Procedure provide several tools to safeguard sensitive information. For example, Rule 11 (c)(2) permits the Veterans Court, on its own initiative or on motion of a party, to "take appropriate action to prevent disclosure of confidential information." Rule 48 permits the Veterans Court to seal the Record on Appeal in appropriate cases. Rule 6 provides: "Because the Court records are public records, parties will refrain from putting the appellant's or petitioner's VA claims file number on motions, briefs, and responses (but not the Notice of Appeal (see Rule 3(c)(1))); use of the Court's docket number is sufficient identification. In addition, parties should redact the appellant's or petitioner's VA claims file number from documents submitted to the Court in connection with motions, briefs, and responses." This rule prevents the public from easily accessing a veteran's Social Security number. VA supports efforts to protect Social Security numbers.

The Secretary supports enactment of S. 2090 because the importance of safeguarding sensitive information in a veteran's files cannot be overemphasized. The proposal is logical given the impending conversion from paper filing to electronic filing, particularly in this distressing era of internet data mining and identity theft.

S. 2091

S. 2091 would expand the number of active judges sitting on the Veterans Court from seven to nine. We have witnessed the progress that the Veterans Court has made in reducing its inventory of cases through temporary recall of retired judges. Under the current system, we believe the Court can effectively manage its projected caseload within the funds requested in the FY 2009 President's Budget.

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S. 2471

S. 2471, the "USERRA Enforcement Improvement Act of 2007," would make several changes to the enforcement of the Uniformed Services Employment and Reemployment Rights Act. Because that Act is implemented by the Department of Labor, we defer to that department regarding the merits of S. 2471.

S. 2550

S. 2550, as proposed to be amended, the "Combat Veterans Debt Elimination Act of 2008," would authorize VA to refrain from collecting all or part of a debt owed to the United States under any program administered by VA (other than a housing or small business program under chapter 37 of title 38, United States Code) by a service member or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001, if the Secretary determines that termination of collection is in the best interest of the United States.

In response to the Committee Chairman's request, we provided VA's views on this bill, as introduced, in a letter dated February 13, 2008. In that letter, we raised certain concerns and suggested revisions. The bill, as proposed to be amended, appears to address VA's concerns. Accordingly, VA supports S. 2550, as proposed to be amended.

We estimate that enactment of this bill would result in additional benefits cost of $5,000 for FY 2009, and a 10-year cost of $50,000. In determining the costs, VA used the amount of debt of 21 fallen service members. In relative terms, the total amount of accumulated debt over almost 4 years of collecting the information is so small, and the pattern of that accumulation so sporadic, that we would have little expectation of a material increase in the amount of benefit indebtedness.

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S. 2674

S. 2674, the "America's Wounded Warriors Act," would implement the recommendation of the President's Commission on Care for America's Returning Wounded Warriors ("Dole-Shalala Commission") to "Completely Restructure the Disability and Compensation Systems."

VA defers to DOD with regard to title I of S. 2674, which would amend chapter 61 of title 10, United States Code, to create an alternative disability retirement system for certain servicemembers.

Title II would completely restructure the VA disability compensation program. Section 201 would require VA to conduct a study to determine the amount of compensation to be paid for each rating of disability assignable to veterans for service-connected disabilities. It would require VA to ensure that its determinations reflect current concepts of medicine and disability and take into account loss of quality of life and average loss of earning capacity resulting from specific injuries. In conducting the study, VA could take into account the findings, determinations, and results of any completed or on-going study or report that is applicable. Section 201 also would require VA to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report that would include VA's findings under the required study, as well as VA's findings with respect to matters covered by the study arising from the report of the Veterans' Disability Benefits Commission (VDBC) and the reports of such other independent advisory commissions that have studied the same matters. The report would be due to the Committees not later than 270 days after commencement of the required study.

Section 202 of the bill would require VA to conduct a study to determine the appropriate amounts and duration of transition payments to veterans who are participating in a rehabilitation program under chapter 31 or chapter 17 of title 38, United States Code. In conducting the study, VA could take into account the findings, determinations, and results of any completed or on-going study or report that is applicable. Section 202 also would require VA to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report that would include VA's findings under the required study, as well as VA's findings with respect to matters covered by the study arising from the report of the VDBC and the reports of such other independent advisory commissions that have studied the same matters. The report would be due to the Committees not later than 270 days after commencement of the required study.

These two sections are similar to section 201 of the Administration's proposal to implement the report of the Dole-Shalala Commission. VA supports efforts to improve procedures for disability retirement of service members, to enhance authorities for the rating and compensation of service-connected disabilities, and to develop procedures to encourage completion of vocational rehabilitation plans under chapter 31. However, we do not believe that enactment of these sections is necessary in light of actions already undertaken by VA to study the same matters as these sections would require. In February 2008, VA entered into a contract with

Economic Systems, Inc., of Falls Church, Virginia, to study the appropriate levels of compensation necessary to compensate veterans for loss of earning capacity and loss of quality of life caused by service-related disabilities and the nature and feasibility of making long-term transition payments to veterans separated from the Armed Forces due to disability while such individuals are undergoing rehabilitation under chapter 31 or chapter 17. These studies are expected to be completed by August of this year. We will provide the Committees with copies of these studies.

Section 203 of S. 2674 would require VA to conduct a study to identify factors that may preclude veterans from completing their vocational rehabilitation plans and actions VA may take to assist and encourage veterans in overcoming such factors. The study would examine: (1) measures used in other disability systems to encourage completion of vocational rehabilitation plans; (2) any survey data available to VA that relate to matters covered by the study; (3) the results of the studies required by sections 201 and 202 of this bill; (4) the report of the VDBC; and (5) the report of the Dole-Shalala Commission. The study would also consider the extent to which bonus payments or other incentives may be used to encourage completion of vocational rehabilitation plans under chapter 31 and such other matters VA considers appropriate. Not later than 270 days after commencement of the study, VA would be required to submit to the Committees on Veterans' Affairs a report including the findings of the study and any appropriate recommendations and proposals for legislative or administrative action needed to implement the recommendations.

There is no similar provision in the Administration's proposal. However, the Administration's proposal would authorize the payment of bonuses as an incentive to completing a vocational rehabilitation program. Thus, S. 2674 would further the same objective as the Administration's proposal. In addition, we believe that the study conducted by Economic Systems, Inc., which is already in progress, is consistent with the intent of this section.

Section 204 of the bill would require VA, not later than one year after the later of the dates of the reports required by sections 201(f) and 202(e)1 of the bill, to submit to Congress a proposal including a statement of purpose of the disability compensation and transition payments that would be required pursuant to enactment of section 207 of the bill, a statement of the amounts of compensation for service-connected disability that would be required pursuant to enactment of that section, and a statement of the amounts and duration of transition benefits to be payable pursuant to enactment of section 207 of this bill to veterans participating in a rehabilitation program under chapter 31 or chapter 17 of title 38. The rates, amounts, and duration of these benefits would be exempt from judicial review. We do not support enactment of this section; we prefer the Administration's proposal.

The new compensation system would apply to veterans who have a disability rated as service connected under chapter 11 of title 38, United States Code on the effective date of the new chapter 12 compensation system, and who file a claim with respect to such disability or another disability on or after that date, as well as to veterans who do not have a disability rated as service connected under

chapter 11 of title 38, United States Code on the effective date of the new chapter 12 compensation system, and who file a claim with respect to disability on or after that date. The disability rating for claims filed under chapter 12 would have to take into account all service-connected disabilities. The new chapter 12 compensation system would become effective, if at all, at most 85 days after VA submitted to Congress its proposal as to amounts of compensation and amounts and duration of transition benefits that are payable under the system. An award or increase of compensation with regard to a compensation claim filed during the 3-year period beginning on the effective date of implementation of the new VA compensation system could be retroactive for 3 years from the date of application or administrative determination of entitlement, whichever is earlier.

The new VA compensation system would also include transition payments to cover living expenses for disabled veterans and their families, consisting of either 3 months of base pay if the veterans are returning to their community following retirement and not participating in further rehabilitation or longer-term payments to cover family living expenses if they are participating in further rehabilitation under chapter 31 or chapter 17. VA would also have authority to make transition payments to eligible veterans who are retired or separated under the alternate DOD system.

Section 208 of S. 2674 would also add a new chapter 14 to title 38, United States Code, which would permit a veteran retired under the new DOD system and entitled to compensation under new chapter 12 to elect a 6.5-percent reduction in the entire amount of compensation to provide a supplemental survivor benefit for a surviving spouse or child(ren). A survivor would be entitled to 55 percent of the veteran's total compensation payable at the time of the veteran's death. Also under section 208, if a veteran elects to provide a survivor benefit to the veteran's child(ren) rather than spouse, VA would have to notify the veteran's spouse of the veteran's election.

VA has the following concerns regarding title II of S. 2674.

Currently, 2.7 million veterans are in receipt of VA disability compensation under chapter 11 of title 38, United States Code. By simply filing a compensation claim when or after chapter 12 goes into effect, all of these veterans would become eligible for compensation under chapter 12, and all of their service-connected disabilities would have to be rerated under the rating schedule applicable to chapter 12. Our initial review of new chapter 12 indicates that benefits under the new VA compensation system would be far more favorable than benefits under current chapter 11. As a result, VA could be overwhelmed with claims by veterans seeking to have their service-connected disabilities compensated under new chapter 12.

VA would be required to submit to Congress its proposals regarding amounts of disability compensation and the amounts and duration of transition benefits not later than one year after submitting the later of its reports on compensation and transition benefits. VA would have 270 days from commencement of each study to report to Congressional committees on the study results. VA would have to wait for completion of the compensation study before drafting a

rating schedule. As a result, VA would have approximately 15 months to draft a rating schedule compensating for loss of earnings and quality of life, propose it through notice-and-comment rulemaking, consider comments received, and issue a final rule. This is insufficient time considering the scope and complexity of the rating schedule.

The requirement that the Secretary of Veterans Affairs propose the amounts of disability compensation and the amounts and duration of transition benefits is insufficiently prescriptive for VA to formulate a proposal that will achieve the statutory objectives. The bill should provide more specific guidance in this regard. The legislature must give specific guidance to executive agencies when authorizing them to establish entitlement programs administratively. In addition, if S. 2674 were enacted and later challenged on constitutional grounds, the provision purporting to exempt the rates, amounts, and duration of these benefits from judicial review may be unavailing because Federal courts generally will interpret statutory provisions to avoid the serious constitutional questions that would arise if a statute were construed to deny any judicial forum for a colorable constitutional claim.

Although it would require VA to study actions VA could take to help and encourage veterans to overcome impediments to completing their vocational rehabilitation plans, S. 2674 would not authorize an achievement bonus payable upon completion of certain milestones of a chapter 31 vocational rehabilitation program. We believe that such payments are necessary to serve as incentives to encourage veterans to remain in the VA vocational rehabilitation program and complete their vocational rehabilitation objectives.

S. 2674 would authorize a survivor benefit that would be based upon a percentage of a veteran's compensation for loss of quality of life as well as earnings loss. Compensation for the effect of a disability on the veteran's quality of life would be similar to damages for pain and suffering awarded to an injured person in a tort lawsuit. Compensation for a veteran's survivors under title 38, United States Code, on the other hand, is intended to replace the economic loss to the veteran's survivors resulting from the veteran's death. It would therefore be inconsistent to calculate survivors benefits under new chapter 14 based in part upon the compensation paid to a veteran for pain and suffering rather than based upon the loss to the veterans' survivors caused by loss of the veteran's earning capacity.

S. 2674 does not authorize VA to provide services to family members of eligible veterans as necessary to facilitate the family members' assistance in treatment, rehabilitation, or long-term care of the veteran, i.e., education concerning the veteran's injuries and expected progress and caregiver training, counseling, and psychological services. Because the Administration's proposed bill does authorize such services, we favor that bill over S. 2674.

All in all, we prefer the Administration's proposal to S. 2674.

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S. 2737

S. 2737, the "Veterans' Rating Schedule Review Act," would give the Veterans Court jurisdiction to review whether, and the extent to which, the VA Schedule for Rating Disabilities (rating schedule) complies with "applicable requirements of chapter 11" of title 38, United States Code.

VA opposes S. 2737 for the following reasons. First, extending the Veterans Court's jurisdiction to include review of the rating schedule for compliance with applicable statutes would likely increase litigation, over both the validity of rating schedule provisions and the scope of the jurisdictional extension itself. Every claim in which VA grants service connection involves consideration of some portion of the schedule for purposes of rating the service-connected disability, as does every claim for an increased rating. S. 2737 would essentially expose the rating schedule to judicial review in every such claim appealed to the Veterans Court. Any case in which the court feels that a rating-schedule provision prevents a veteran from receiving the full amount of compensation to which the court considers the veteran entitled could be viewed as posing a reviewable conflict between the rating schedule and some statute in chapter 11. If S. 2737 were enacted, the number of appeals to the Veterans Court could skyrocket, an increase in case load the Veterans Court could ill afford. According to the Veterans Court's annual reports, the court's caseload has doubled since 1998. Adding the increase of appeals resulting from the jurisdictional extension to the already growing case load could delay final resolution of all appeals before that court.

A change in the court's jurisdiction would itself stimulate litigation. Undoubtedly, claimants' counsel would test the limits of the court's jurisdiction, giving rise to protracted litigation of uncertain outcome. The courts are still grappling with the parameters of the Veterans Claims Assistance Act of 2000 notice provisions some 8 years after the passage of that statute. Besides burdening the courts, S. 2737 would require additional VA resources to handle the increase in litigation resulting from judicial review of whether the rating schedule complies with chapter 11 requirements.

Second, S. 2737 would permit piecemeal review of individual rating classifications, which are matters particularly within VA's expertise. Establishing the criteria for rating disabilities and the rates of compensation payable under those criteria depends on gathering and analysis of medical facts, matters of technical and medical judgment, including judgment about what disabilities and levels of disability should be included in the schedule. The prevention of piecemeal review was Congress's rationale in originally proscribing review of the rating schedule in the Veterans' Judicial Review Act. Congress intended that no court should substitute its judgment for the Secretary's as to what rating a particular type of disability should be assigned.

Third, S. 2737 would create a jurisdictional inconsistency. The bill would permit the Veterans Court to decide whether the VA rating schedule is consistent with statutes in chapter 11, but the United States Court of Appeals for the Federal Circuit (Federal Circuit) would remain without jurisdiction under 38 U.S.C. § 502 to

review an action of the Secretary relating to the adoption or revision of the rating schedule. Nonetheless, the Federal Circuit would have jurisdiction under 38 U.S.C. § 7292(a) to review a Veterans Court interpretation of statute or regulation. Thus, the Federal Circuit would be barred from reviewing the content of the rating schedule on direct review but could review a Veterans Court decision on whether the rating schedule complies with chapter 11 requirements, which would likely require review of the content of the rating schedule.

Finally, under current case law, the Veterans Court is not totally without authority to review the rating schedule. The Federal Circuit has held that 38 U.S.C. § 7252(b) bars judicial review of the content of the rating schedule and the Secretary's actions in adopting or revising the content. However, the Federal Circuit has also held that the courts, including the Veterans Court, have jurisdiction to review the correct interpretation of rating-criteria content, the Secretary's actions in adopting or revising the criteria for compliance with the Administrative Procedure Act, and constitutional challenges to the rating schedule.

We cannot estimate the costs that would result from enactment of S. 2737.

S. 2768

S. 2768 would temporarily increase the maximum loan guaranty amount for certain housing loans guaranteed by VA. Currently, the maximum guaranty amount is 25 percent of the Freddie Mac conforming loan limitation, for a single family home, as adjusted annually. This means that the current VA maximum guaranty is $104,250 on a no-downpayment loan of $417,000. In high-cost areas, defined by Freddie Mac as Alaska, Guam, Hawaii, and the Virgin Islands, the maximum guaranty amount is $156,375 on a no-downpayment loan of $625,500.

S. 2768 would provide VA similar authorizations related to loan limitations such as those established by the recently enacted Economic Stimulus Act, Public Law 110–185. Specifically, it would increase the maximum guaranty amount to be equal to 25 percent of the higher of: (1) the Freddie Mac conforming loan limit; or (2) 125 percent of the area median price for a single-family residence, not to exceed 175 percent of the conforming loan limit. The higher guaranty amounts would be authorized through calendar year 2011. An increase in the maximum loan limit generally translates to more purchasing power for veterans. VA supports the increase in loan guarantee limits through December 31, 2008, consistent with the Economic Stimulus Act's other loan provisions. However, we need additional analysis to determine how the change in limit would affect our loan program beyond that date.

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S. 2889, SECTION 7

S. 2889, the "Veterans Health Care Act of 2008," contains legislative proposals that the Administration recently submitted to Congress as part of the annual budget submission.

Section 7 would make permanent VA's authority to verify the eligibility of recipients of, or applicants for, VA need-based benefits and services using income data from the Internal Revenue Service and the Social Security Administration. The existing authority has been instrumental in correcting amounts of benefits payments and determining health care eligibility, co-payment status, and enrollment priority assignment; however, this authority expires on September 30, 2008. Expiration of this authority would interrupt the income verification process.

VA estimates that enactment of section 7 would result in net discretionary savings of $8.2 million in FY 2009 and $270 million over 10 years.

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Unnumbered Housing Refinance Legislation

S. xxxx would increase the maximum guaranty amount for certain refinance loans, sometimes referred to as "regular" refinances, and would reduce the existing equity requirement for such loans from 10 percent to 5 percent. In general, a regular refinance loan is one in which a veteran refinances a loan not already guaranteed by VA. The law currently limits VA's guaranty to $36,000 on regular refinance loans and limits the loan-to-value ratio (LTV) to 90 percent of the value of the security. This means that the maximum loan amount a veteran effectively may borrow with a VA guarantee is $144,000 and that a veteran who has no equity in his or her home may obtain a regular VA refinance loan for only 90 percent of the home's appraised value.

The change proposed by S. xxxx would increase the maximum guaranty amount on regular refinances by tying such amount to the Freddie Mac Conforming Loan Limit. This means that a veteran who meets VA's underwriting criteria could obtain a guaranty of as much as $104,250 on a loan of $417,000. Furthermore, S. xxxx would change the existing LTV requirement for regular refinance loans by increasing the limit from 90 percent to 95 percent of the home's appraised value.

Unnumbered Foreclosure Relief Legislation

S. XXXX, the "Preventing Unnecessary Foreclosure for Servicemembers Act of 2008," would amend the Servicemembers Civil Relief Act to protect against mortgage foreclosures for certain disabled or severely injured servicemembers. Because that Act would be implemented by DOD, we defer to that department regarding the merits of this proposal.

Unnumbered Benefits Enhancement Legislation

Mr. Chairman, thank you for introducing S. xxxx, the "Veterans' Benefits Enhancement Act of 2008," on behalf of VA. Titles I and II of this bill would expand and enhance veterans' benefits, as noted below.

TITLE I—EDUCATION BENEFITS

Section 101 of S. xxxx would eliminate the requirement that educational institutions providing non-accredited courses must report

to VA any credit that was granted by that institution for an eligible person's prior training.

Under current law, State approving agencies approve, for VA education benefits purposes, the application of educational institutions providing nonaccredited courses if the institution and its courses meet certain criteria. Among these is the requirement that the institution maintain a written record of the previous education and training of the eligible person and what credit for that training has been given the individual. The institution must notify both VA and the eligible person regarding the amount of credit the school grants for previous training.

VA proposes to eliminate that notification requirement as it pertains to VA. VA will still have oversight, just as it does with accredited courses. VA will review records during compliance visits to assure the institution is evaluating and appropriately reducing program requirements because of credit given for prior training.

Removing the reporting requirement would shorten claims processing time because VA would not have to review each claim for the presence of such notice and, if not submitted, have to check with the school and student to assure the requirement has been met. It would also permit more cases to be processed through VA's Electronic Certification Automated Processing (ECAP) program. The ECAP system cannot process claims where proper credit reporting is at issue because those cases require manual development and review by a veteran's claims examiner. The more claims VA can process through the ECAP system, the more timely VA beneficiaries will receive their benefits.

Following up with schools for the written notification burdens the school certifying official and student, as well as VA. Often the school certifying official, who is responsible for reporting a veteran's enrollment, is not the individual who evaluates credit. The certifying official has no control over how long it takes the school to accomplish the review and granting of prior credit.

Further, several of VA's stakeholders, including the National Association of Veterans' Program Administrators, have recommended that VA review school records to determine granting of prior credit during compliance visits rather than require the school to submit written reports. Eliminating this requirement would streamline the administration of educational assistance benefits and improve the delivery of benefits to veterans, reservists, and other eligible individuals.

There would be no costs associated with enactment of this section.

Section 102 of this bill would reduce from 10 days to 5 days the current waiting period required prior to the student's affirmation of an enrollment agreement with an educational institution to pursue a program of education exclusively by correspondence.

Under current law, an enrollment agreement signed by a veteran, spouse, or surviving spouse is not effective unless he or she, after 10 days from the date of signing the agreement, submits a written and signed statement to VA affirming the enrollment agreement. If the veteran, spouse, or surviving spouse at any time notifies the institution of his or her intention not to affirm the

agreement, the institution, without imposing any penalty or charging any fee, promptly refunds all amounts paid.

The statutory 10-day period is twice the requirement of the Distance Education and Training Council (DETC) accrediting body standard, which states that institutions will allow a full refund of all tuition expenses paid if a student cancels within 5 days after enrolling in a course. Reducing the affirmation waiting period to 5 days would make the statute consistent with the DETC standard and eliminate confusion. It would also permit eligible individuals to begin their programs sooner. Should they decide at any time not to affirm the enrollment agreement, the eligible individuals would still be entitled to a refund of all amounts paid.

Finally, this proposal would allow VA to strengthen its partnership with the National Association of State Approving Agencies, which has had this issue high on its list of legislative priorities. There would be no costs associated with enactment of this section. Section 103 of the bill would eliminate the requirement that an individual must file an application with VA when that individual remains enrolled at the same school but changes his or her program of study.

Under current law, a student who desires to initiate a program of education must submit an application to VA in the form prescribed by VA. If the student decides a different program is more advantageous to his or her needs, that individual may change his or her program of study once. However, additional changes require VA to determine that the change is suitable to the individual's interests and abilities. It is rare for VA to deny a change of program, especially if the student is continuing in an approved program at the same school.

Under this provision, VA would accept the new program enrollment based on the certification of such enrollment from the school without requiring additional certification from the student. VA would still have oversight of program changes by reviewing school records when VA conducts its compliance visits. Again, this requirement would be eliminated for program changes only when the student remains enrolled at the same school.

Section 103 also would allow VA to increase the number of claims processed using the ECAP program without manual review by a veterans claims examiner. Thus, since VA could award benefits based only on the school's certification, without having to wait for additional certification from the student, VA could award benefits more timely and with less of a public information collection burden.

There would be no costs associated with enactment of this section.

Section 104 of the bill would eliminate the requirement that wages be earned by veterans pursuing self-employment on-job training authorized under section 301 of Public Law 108–183. That section expanded the chapter 30 Montgomery GI Bill program by authorizing educational assistance benefits for full-time on-job training (OJT) of less than 6 months needed for obtaining licensure to engage in a self-employment occupation or required for ownership and operation of a franchise.

Currently, all the provisions of title 38, United States Code, that apply to VA's other OJT programs (except the requirement that a training program has to be for least 6 months) apply to franchise-ownership OJT, including the requirement that the trainee earn wages that are increased incrementally. Through contact with the International Franchise Association, VA has determined that OJT for new franchise owners does not involve the payment of wages. Thus, if franchise OJT programs are not exempted from the current title 38 wage requirements, no franchise-ownership OJT program will ever be approved for VA benefits.

VA has determined that no direct costs would result from enactment of this proposal. The estimated costs for implementing the section 301 authority have been included in the budget base each year since its enactment.

TITLE II—OTHER BENEFITS MATTERS

Section 201(a) of the bill would explicitly authorize VA to stay temporarily its adjudication of a claim pending before either a VA regional office (or other agency of original jurisdiction) or the Board of Veterans' Appeals (Board) when the stay is necessary to preserve the integrity of a program administered under title 38, United States Code.

It is widely accepted that courts and administrative adjudicative agencies generally have the authority to manage their case loads and to stay cases as necessary for proper management. VA has historically used such authority sparingly to avoid waste and delay and to ensure consistency on important issues of law, usually when VA has appealed a controlling adverse decision by the U.S. Court of Appeals for Veterans Claims (Veterans Court). However, the Veterans Court recently curtailed this authority in *Ramsey* v. *Nicholson*, 20 Vet. App. 16, (2006), and *Ribaudo* v. *Nicholson*, 20 Vet. App. 552 (2007) (en banc), effectively assuming supervisory control of VA's adjudication docket.

In Ramsey, the Veterans Court held that VA could not stay cases while it appealed the Veterans Court's decision in *Smith* v. *Nicholson*, 19 Vet. App. 63 (2005), which required VA to pay benefits in a manner VA believed to be unauthorized by law and which VA had appealed to the Federal Circuit. *Ramsey* would have required VA to pay those benefits, irrespective of VA's position on appeal, if VA had not prevailed in its Federal Circuit appeal soon after *Ramsey* was issued. Had VA's appeal not been resolved so quickly, VA would have been required to grant claims pursuant to *Ramsey* while the Federal Circuit reviewed the appeal, and many veterans would have received benefits to which they were not entitled under the law.

Similarly, in *Ribaudo*, the Veterans Court held that VA could not stay cases while it appealed *Haas* v. *Nicholson*, 20 Vet. App. 257 (2006). *Haas* is a significant decision, with broad and costly implications, in which the Veterans Court ordered VA to presume that veterans who served exclusively on ships off the shores of Vietnam were nevertheless exposed to defoliants (including Agent Orange) that were sprayed only over land. In *Ribaudo*, the Veterans Court granted VA's request for a stay of cases, but only after holding that VA's own authority did not allow it to effect such a stay, thereby

placing under the control of the Veterans Court VA's entire docket of claims affected by *Haas*, claims over which the Veterans Court does not yet have direct jurisdiction.

Section 201(a) would also require VA to issue regulations describing the factors it will consider in determining whether and to what extent such stays are warranted and would permit claimants to seek review of a stay in the Federal Circuit. Because the Federal Circuit has exclusive jurisdiction over appeals from the Veterans Court, it is in the best position to determine whether a case should be stayed pending such an appeal.

Under section 201(c), these new provisions would apply to benefit claims received by VA on or after the date of enactment and to claims received by VA before that date but not finally adjudicated by VA as of that date.

Section 202(a) of the bill would clarify that the Board has the authority to decide cases out of docket-number order when a case has been stayed or when there is sufficient evidence to decide a claim but a claim with an earlier docket number is not ready for decision.

Current law requires that "each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket." Section 202(a) would clarify that compliance with that requirement does not require the Board to refrain from deciding a case unaffected by a stay simply because that case has a higher docket number than a stayed case. Expressly authorizing the Board to decide cases out of docket order, when a later case is ready for decision sooner than an earlier case, would reflect current Board practice of allowing later cases that are ready for decision to proceed while earlier cases are still being developed. The Veterans Court's *Ribaudo* decision rested in part on its interpretation of current law, and the express recognition of the Board's practice will clarify that that statute does not relieve VA of its duty to decide administrative appeals quickly and efficiently.

Under section 202(b), this provision would apply to benefit claims received by VA on or after the date of enactment and to claims received by VA before that date but not finally adjudicated by VA as of that date.

The provisions in sections 201 and 202, governing staying of claims and management of the Board's docket, would save the benefit costs and administrative expenses associated with granting benefits under court precedents that are later overturned on appeal. The amount of savings cannot be predicted, because it would depend upon the nature of the court decisions at issue, the extent to which those decisions compel payments or other expenses, and the number of claimants affected. However, VA has estimated that the Veterans Court's decision in *Haas* will result in approximately $22.9 million in administrative costs and approximately $2.1 billion in benefit costs in the initial year of implementation.

Section 203 of the bill would eliminate the disparity between eligibility for burial and eligibility for a memorial headstone or marker. It would extend eligibility for memorial headstones or markers to a veteran's deceased remarried surviving spouse whose remains are unavailable for burial, without regard to whether any subse-

quent remarriage ended, and would ensure that the burial needs of veterans and their survivors are more adequately met.

Current law authorizes VA to furnish an appropriate memorial headstone or marker to commemorate eligible individuals whose remains are unavailable. Individuals currently eligible for such memorial headstones or markers include a veteran's surviving spouse, which includes "an unremarried surviving spouse whose subsequent remarriage was terminated by death or divorce." Thus, a surviving spouse who remarried after the veteran's death is not eligible for a memorial headstone or marker unless the remarriage was terminated by death or divorce before the surviving spouse died. However, a surviving spouse who remarried after the veteran's death is eligible for burial in a VA national cemetery without regard to whether any subsequent remarriage ended.

Enactment of this provision would result in only nominal benefit costs.

Section 204 of this bill would make permanent the authority given by section 704 of Public Law 108–183 that allows VA to contract for medical disability examinations using appropriated funds other than funds available for compensation and pension. Currently, that authority will expire on December 31, 2009.

This change would provide VA with flexibility needed to effectively utilize supplemental and other appropriated funds in responding to unanticipated needs and emergencies. The demand for medical disability examinations has increased beyond the limited number of requests that the current system was designed to accommodate. The rise in demand is largely due to an increase in the complexity of disability claims, an increase in the number of disabilities claimed by veterans, and changes in eligibility requirements for disability benefits. The permanent authority to provide examinations to veterans through non-VA medical providers would continue this important resource for VA in providing high-quality patient care and improving benefit delivery.

We estimate that enactment of section 204 would have no significant financial impact.

Section 205(a) of the bill would extend full-time and family Servicemembers' Group Life Insurance (SGLI) coverage to Individual Ready Reservists (IRRs), individuals referred to in 38 U.S.C. § 1965(5)(C). It would correct an oversight in the Veterans' Survivor Benefits Improvements Act of 2001, which provided such coverage for Ready Reservists, referred to in section 1965(5)(B), but not for IRRs. IRRs should be provided comparable coverage because many of them have been called up to serve in Operation Enduring Freedom or Operation Iraqi Freedom.

Section 205(b) would provide that a dependent's SGLI coverage would terminate 120 days after the date of the member's separation or release from service, rather than 120 days after the member's SGLI terminates, as currently provided. Under current law, a member retains SGLI coverage for 120 days after separation or release from service, but a dependent retains coverage for 120 days after that, for a total of 240 days after the member's separation from service, twice the period of coverage for most insureds. This provision would correct that inequity.

Section 205(c) would clarify that VA has the authority to set premiums for SGLI coverage for the spouses of Ready Reservists based on the spouse's age. This provision would correct an inconsistency between 38 U.S.C. § 1969(g)(1)(A), which does not require identical premiums for coverage of active duty members' spouses, and section 1969(g)(1)(B), which may be read to imply that identical premiums for coverage of Ready Reservists' spouses are required. This change would make the law consistent with VA practice.

Section 205(d) would clarify that any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces or refuses to wear the uniform of the Armed Forces, forfeits all rights to Veterans' Group Life Insurance (VGLI), as well as SGLI. This provision would be consistent with public policy and would eliminate a distinction between SGLI and VGLI insureds that has no rational basis.

There would be no costs associated with enactment of this section.

Section 206 of the bill would authorize the Secretary to provide Specially Adapted Housing (SAH) grants to active duty servicemembers who reside temporarily with a family member. Public Law 109–233 authorized the Secretary to provide such assistance to veterans by adding a new section 2102A to title 38, United States Code. However, the new section did not expressly include active duty servicemembers, nor did it amend section 2101(c), the section that provides eligibility to active duty servicemembers for other SAH grants.

This amendment also would ensure that, absent express language to the contrary, active duty servicemembers would be covered by future SAH benefit program amendments. Due to the structure of chapter 21, active duty servicemembers on occasion have been overlooked, inadvertently, in the course of amending the SAH program. For instance, a renumbering of SAH provisions in Public Law 108–454 inadvertently omitted the provision that created SAH eligibility for active duty servicemembers. Similarly, Public Law 109–233, failed to include authority for VA to assist active duty servicemembers temporarily residing with family members. This proposal would correct the latter oversight and, by amending section 2101(c) more broadly, would make the inclusion of otherwise eligible active duty servicemembers the rule, rather than the exception.

There would be no costs associated with enactment of this section.

Section 207 of the bill would designate the VA office established to support contracting with small businesses, which was required by section 15(k) of the Small Business Act (15 U.S.C. § 644(k)), as the Office of Small Business Programs, to more clearly represent that office's scope of authority. The name would not reflect any change in emphasis or support for disadvantaged small businesses, but rather would clarify that the Office of Small Business Programs has the full range of authority over many other small business programs. The new title would capture the overarching nature of the program, which encompasses the small disadvantaged business, the service-disabled veteran-owned small business, the vet-

eran-owned small business, the qualified historically underutilized business zone small business, the women-owned small business, and the very small business programs.

There would be no costs associated with enactment of this section.

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VA does not have comments on the other bills included on the agenda for today's hearing because it did not receive them in time to develop and clear views and estimate costs.

This concludes my statement, Mr. Chairman. I would be happy now to entertain any questions you or the other members of the Committee may have.

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THE SECRETARY OF VETERANS AFFAIRS.
Washington, DC, June 2, 2008.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to provide the Committee with the views of the Department of Veterans Affairs (VA) on five bills that were not covered in VA's statement at the Committee's May 7, 2008, hearing: S. 161, S. 2934, S. 2946, S. 2951, and S. 2965, 110th Cong. For the reasons explained below, we support S. 161 and do not support S. 2934, S. 2946, S. 2951, and S. 2965.

S. 161

S. 161, the "Veterans' Disability Compensation Automatic COLA Act," would provide for an automatic cost-of-living increase in the rates of disability compensation for veterans with service-connected disabilities and of dependency and indemnity compensation (DIC) for the survivors of veterans whose deaths are service related, whenever there is such an increase in Social Security benefits and by the same percentage as the percentage by which Social Security benefits are increased. VA benefits would increase on the date Social Security benefits are increased, which is December 1st of each year. The new statutory provision authorizing this automatic cost-of-living adjustment (COLA) would become effective on January 1st of the year following enactment of this bill.

VA supports enactment of S. 161. We believe this proposed automatic COLA would simplify the annual rate-increase assessment process for compensation and DIC in the same manner that the process for pension was simplified by indexing pension increases to Social Security COLAs. We believe the annual increases are necessary and appropriate to provide continuous protection of the affected benefits from the eroding effects of inflation. The worthy beneficiaries of these benefits deserve no less.

Because future COLA estimates are already included in the baseline President's budget, this legislation would not result in additional costs.

S. 2934

S. 2934 would require VA to pay states a $300 plot allowance for the burial in a state cemetery of the spouse, surviving spouse, minor child, and (in the Secretary's discretion) unmarried adult child of specified persons who are eligible for burial in a national cemetery. The measure would apply to individuals who die on or after the date of enactment.

VA does not support enactment of S. 2934. We believe current law provides an adequate plot allowance if family members are buried in the same plot as the veteran, which is usually the case in state cemeteries, whether or not the veteran dies first. An additional plot allowance for burial of a family member in the same plot as the veteran would be gratuitous. This bill would result in additional direct costs for which no offsets have been identified, and also additional administrative costs that must be considered in light of the competing demands for scarce VA resources in meeting veterans' burial needs.

We estimate that enactment of this bill would result in mandatory costs of $2.1 million for FY 2009, $12.1 million over the 5-year period from FY 2009 through FY 2013, and $28.6 million over the 10-year period from FY 2009 through FY 2018. It would result in administrative costs of $245,000 for the first year, $1.7 million over 5 years, and $4.6 million over 10 years.

S. 2946

S. 2946 would make a servicemember's natural stillborn child an insurable dependent for purposes of the Servicemembers' Group Life Insurance (SGLI) program. The term "stillborn natural child" would not include any fetus or child extracted for purposes of an abortion.

VA does not support enactment of S. 2946. Private insurers do not generally insure stillborn children. In fact, private insurance coverage for a child typically does not begin until the fourteenth day after a live birth.

The total cost to the SGLI program for adding stillborn coverage would be $4 million annually based on an estimate of 400 stillbirths per year with a benefit of $10,000 per stillbirth.

S.2951

S. 2951 would require the Secretary to report annually to Congressional veterans' affairs committees on VA's progress in addressing the causes of variances in veterans' compensation payments. The reports would have to include a description of the Veterans Benefits Administration's (VBA) efforts to coordinate with the Veterans Health Administration (VHA) to improve the quality of disability examinations, an assessment of VBA's current personnel requirements, and a description of any differences in the claim-submittal rates among various veteran populations, as well as a description and assessment of efforts undertaken to eliminate the differences.

VA does not support enactment of S. 2951 because it is unnecessary. Over the past few years, VBA has achieved major improvements in the delivery of benefits, including the quality and consist-

ency of benefit decisions. For instance, VBA has made all regional offices consistent in organizational structure and work process. VBA performs site surveys of regional offices to ensure compliance with procedures, with particular emphasis on current consistency issues. VBA has also deployed new training tools and centralized training programs that support accurate and consistent decision-making. In addition, VBA has established specialized processing centers to consolidate adjudication of certain types of claims to provide better and more consistent decisions.

VBA has established an aggressive and comprehensive program of quality assurance and oversight to increase the accuracy and consistency of benefit decisions. As part of its quality assurance program for disability evaluations, in FY 2008 VBA began regularly monitoring the most frequently rated diagnostic codes to assess the consistency of service-connection determinations and assignment of disability ratings across regional offices. These studies are used to identify where additional guidance and training are needed to improve consistency and accuracy, as well as to drive procedural or regulatory changes. VBA also plans to begin studying the consistency of decisions among raters late this summer.

VBA has developed jointly with VHA the Compensation and Pension Examination Project (CPEP) to improve the quality and consistency of compensation and pension examinations. CPEP is developing computerized templates to ensure that examinations are complete and to capture examination data.

Although we realize the importance of providing reports on VA's progress regarding variances in compensation payments, we believe that the measures VBA has taken sufficiently address the need for accuracy and consistency in veterans' compensation decisions and believe that VA's resources need to be directed, instead, to address the growing challenge of timely adjudicating veterans' claims. VA is committed to providing accurate, consistent, and timely adjudications for those who have so admirably served our Nation.

There are no mandatory costs associated with this bill because it does not affect entitlement to benefits. However, this legislation would require studies of patterns in claims adjudication and the development of an enhanced tracking mechanism to capture the required data. It would result in total administrative costs of $10 million.

S. 2965

S. 2965 would require VA, in consultation with the Department of Defense (DOD), to report to the Congressional veterans' affairs committees on the feasibility and advisability of including severe and acute Post Traumatic Stress Disorder (PTSD) among the conditions covered by traumatic injury protection coverage under SGLI. Section 1980A of title 38, U.S. Code, provides an automatic injury protection rider to SGLI for any SGLI insured who sustains a traumatic injury that results in certain losses (TSGLI).

VA does not support enactment of S. 2965. We do not believe that the TSGLI program is the appropriate vehicle for addressing the needs of veterans and servicemembers afflicted with PTSD, and we cannot foresee that undertaking the assessment required under this bill would affect that position.

The intent of Congress in establishing the TSGLI program was to provide rapid financial relief to traumatically injured servicemembers and their families during periods of recovery and rehabilitation. The program is designed to provide servicemembers the equivalent of accidental-dismemberment coverage available under civilian life-insurance plans. We are unaware of any equivalent private-sector life-insurance riders covering PTSD or other mental disorders. Further, the nature of PTSD, with periods of remission and reappearance, the range of its severity, and the variable time of its onset, make PTSD unsuitable for this kind of financial benefit. For these reasons, we believe that disability resulting from PTSD and other service-connected mental disorders, like other diseases, is most appropriately addressed by the existing disability-compensation program.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

JAMES B. PEAKE, M.D.

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THE SECRETARY OF VETERANS AFFAIRS.
Washington, DC, July 8, 2008.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to provide the Committee with the views of the Department of Veterans Affairs (VA) on S. 3023, 110th Cong., the "Veterans' Notice Clarification Act of 2008." VA supports S. 3023.

Section 5103(a) of title 38, U.S. Code, requires that, upon receipt of a complete or substantially complete application for veterans benefits, VA must notify a claimant of the information and evidence necessary to substantiate the claim and the respective obligations of VA and the claimant to obtain the requisite information and evidence. S. 3023 would amend 38 U.S.C. § 5103(a) to authorize the Secretary of Veterans Affairs to prescribe regulations regarding the content of the notice to be provided by VA. The bill would require the Secretary to prescribe regulations that specify: (1) the content of the notice based upon the type of claim filed, e.g., original claim, claim to reopen a previously disallowed claim, or a claim for increased benefits; (2) the general information and evidence required to substantiate the basic elements of such type of claim; and (3) the timing of the issuance of the notice. The bill would also authorize the Secretary to prescribe regulations providing additional or alternative contents for notice if appropriate to the benefit or services sought under the claim.

When VA promulgated 38 C.F.R. 3.159(b)(1) to implement current section 5103(a), VA interpreted the statute to require generic rather than specific notice after the initial claim for benefits has been filed. 66 Fed. Reg. 45,620, 45,622 (2001). In adopting this approach, VA explained that "[t]he statutory notice required by [sec-

tion 5103(a)] occurs at an early point in the claims process when * * * VA does not yet know what kinds of specific evidence to try to obtain on behalf of the claimant." Id. VA also declined a public commenter's suggestion to provide in the regulation that, "if VA receives evidence that is inadequate to substantiate the claim," VA would "contact the claimant and give him or her the opportunity to correct the inadequacy or bolster the evidence." Id. at 45,623. VA concluded that section 5103(a) does not require such ongoing and specific notification, that undertaking to provide such notice would be administratively unworkable and would cause undue delays in claim adjudications, and that the type of notice sought is properly provided at the point that VA adjudicates the claim. Id. The United States Court of Appeals for the Federal Circuit (Federal Circuit) held that VA's decision to provide generic rather than case-specific notice under section 3.159(b)(1) is consistent with the statute and is a "reasonable interpretation" of 38 U.S.C. § 5103(a) to which a court must defer. *Wilson* v. *Mansfield*, 506 F.3d 1055, 1059–60 (Fed. Cir. 2007); *Paralyzed Veterans of Am.* v. *Secretary of Veterans Affairs*, 345 F.3d 1334, 1337 (Fed. Cir. 2003).

Notwithstanding this direction from the Federal Circuit, the United States Court of Appeals for Veterans Claims (Veterans Court) continues to impose increasingly numerous and case-specific notice requirements under 38 U.S.C. § 5103(a) for each type of claim as to which a VA notice letter has come before it for review. E.g., *Palor* v. *Nicholson*, 21 Vet. App. 325 (2007) (claim from person who served in Philippine guerilla forces); *Hupp* v. *Nicholson*, 21 Vet. App. 342, 352–53 (2007) (claim for dependency and indemnity compensation); *Kent* v. *Nicholson*, 20 Vet. App. 1, 9–10 (2006) (claim to reopen); *Dingess* v. *Nicholson*, 19 Vet. App. 473, 488–89 (2006), *aff'd per curiam*, Nos. 2006–7247 & 2006–7312, 2007 WL 1686737 (Fed. Cir. June 5, 2007) (claim for service connection). Most recently, the Veterans Court held that, when VA receives a claim for an increased rating, if the diagnostic code (DC) in the VA rating schedule under which a claimant's disability is rated contains criteria necessary for entitlement to a higher disability rating that would not be satisfied by the claimant demonstrating a noticeable worsening or increase in severity of the disability and the effect that worsening has on the claimant's employment and daily life, VA must provide at least general notice of the requirements of the particular DC to the claimant. *Vazquez-Flores* v. *Peake*, 22 Vet. App. 37, 43 (2008), *motion for stay denied*, 22 Vet. App. 91 (2008), *motion for recon. denied*, 2008 WL 1990812 (Vet. App. May 9, 2008), *motion for en banc review denied*, 2008 WL 2132309 (Vet. App. May 21, 2008). The Veterans Court also held that section 5103(a) requires VA to provide notice of the criteria of any DC that is cross-referenced in the previously assigned DC. *Vazquez-Flores*, 22 Vet. App. at 93.

The pattern of imposing increasing specificity on VA's notices has several burdensome effects on the Department. First, it potentially requires remand of numerous previously-decided cases involving similar section 5103(a) notices, diverting adjudication resources from other pending claims. Each time the Veterans Court finds that a particular type of notice letter is inadequate, the erroneous notice that VA provided in all similar cases before the decision is

presumptively prejudicial to appellants, potentially requiring wide-scale remands and readjudications. See *Sanders* v. *Nicholson*, 487 F.3d 881 (Fed. Cir. 2007), and *Simmons* v. *Nicholson*, 487 F.3d 892 (Fed. Cir. 2007), *cert. granted*, 76 U.S.L.W. 3654 (U.S. June 16, 2008) (No. 07–1209). Second, enormous administrative burdens are incurred in reprogramming computers and revising VA's notices to comply with each Veterans Court decision interpreting section 5103(a). Third, requiring case-specific notice at the initial stages of a claim requires a substantially greater expenditure of time and resources in each case than VA's existing practice of providing generally-applicable notice based on the type of claim filed. Finally, the increased specificity required by the Veterans Court threatens to make VA's notice increasingly complex and difficult for claimants to read and understand, threatening the very purpose and utility of the notice.

S. 3023 would address these concerns. First, this legislation would incorporate the Federal Circuit's conclusion that VA must provide only generic notice under 38 U.S.C. § 5103(a), a holding which is consistent with the point in the claims process at which VA provides notice, i.e., immediately upon receipt of an application for veterans benefits, when VA does not yet know what kinds of specific evidence to try to obtain on behalf of the claimant. The bill would also reinforce VA's ability to fill gaps or address any ambiguities in 38 U.S.C. § 5103(a) via the promulgation of regulations to which a reviewing court would have to defer so long as the regulations are not arbitrary, capricious, or manifestly contrary to the statute. *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843–44 (1984). As a result, the legislation would eliminate the need for VA to continually revise its notice letters and to reissue notices to claimants and would allow VA to dedicate its resources to adjudicating the more than 800,000 claims filed annually. S. 3023 would also allow VA to make its notice more readily understandable and useful to claimants by providing generic notice of the evidence necessary to substantiate the type of claim filed.

There would be no costs associated with enactment of S. 3023.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

JAMES B. PEAKE, M.D.

* * * * * * *

SUPPLEMENTAL VIEWS OF SENATOR BURR

On June 26, 2008, the Senate Committee on Veterans' Affairs (hereinafter, "Committee") voted to favorably report S. 3023, as amended, the Veterans' Benefits Improvement Act of 2008 (hereinafter, "Committee bill"). This bill contains many valuable provisions, including an extension of the time within which spouses of seriously disabled veterans may use their education benefits from the Department of Veterans Affairs (hereinafter, "VA") and a requirement that human resources specialists in the Federal executive branch receive training on the Uniformed Services Employment and Reemployment Rights Act. I am pleased that these provisions and others were included in the Committee bill and, on the whole, believe this is a worthwhile piece of legislation.

These supplemental views are primarily meant to express my concerns about section 401 of the Committee bill, which would permanently expand the size of the United States Court of Appeals for Veterans Claims (hereinafter, "CAVC" or "Court") from seven to nine judges. At the outset, I want to be clear that I fully support providing the Court with the resources it needs to timely decide veterans' cases and that I sincerely appreciate the tremendous effort of the Court's judges and staff in recent years to increase productivity. However, I do not believe we have sufficient information at this time to determine whether the permanent addition of judges is the best way to help the Court deal with its caseload. In addition, I think the approach taken in the Committee bill would miss an important opportunity to strategically plan ahead to ensure that service to veterans will not be disrupted again in the future by multiple judicial retirements at the Court.

I. COURT'S WORKLOAD

By way of background, the CAVC provides judicial review of decisions rendered by VA's Board of Veterans' Appeals on claims for VA benefits and is authorized to have seven judges. In September 2007, the CAVC submitted a legislative proposal to the Committee, requesting an increase in authorized judges from seven to nine. The Court noted that the number of incoming cases at the Court reached a record high in fiscal year 2007 and that the Court's "per-judge average for incoming cases each year now ranks among the highest in the federal appellate system." In addition, the Court pointed to recent staffing increases at VA, which may increase the volume of cases being decided by the Board of Veterans' Appeals. The Court projected that its incoming caseload will "increase proportionally" if the volume of cases decided by the Board of Veterans' Appeals grows. In sum, the Court's primary reason for requesting more judges is based on the raw number of incoming cases expected now and in the future.

Although the level of incoming cases is certainly one indicator of the Court's resource needs, it does not answer the key question in assessing the need for more judgeships: What is the actual workload burden on the Court's existing judges? Indeed, not all cases that are filed at the Court will eventually reach a judge and not every case will require the same amount of judge-time to resolve. Some cases are resolved by the Clerk of the Court, such as when an appellant fails to pay the required filing fee. Other cases may be resolved through the efforts of the Court's Central Legal Staff, which conducts pre-briefing conferences with the parties. In addition, the complexity of cases that ultimately reach a judge may vary significantly, based on such factors as the arguments raised, the number of issues involved, and the size of the record. In my view, to determine the actual workload burden on the judges would require more information about how many cases the judges actually handle, the nature and complexity of the cases before the judges, and how much judge-time is required to handle various types of cases.

In fact, that type of analysis is used elsewhere in the Federal judiciary to help determine which courts may need additional judgeships. For example, the Judicial Conference of the United States uses a weighting system to gauge the workload burden on Federal district court judges. Cases that would consume a significant amount of judge-time are assigned larger weights than cases that generally would consume a small amount of judge-time. According to the Administrative Office of the U.S. Courts, this weighting system "predict[s] caseload burden more accurately than the raw number of filings." See, "Case Weights Help Federal Courts Assess Demands on Judges' Time," found at *http://www.uscourts.gov/newsroom/weights.htm* (last visited July 12, 2008). Similarly, the workload burden of Federal appellate court judges is gauged using an "adjusted" number of filings, which factors in the relative ease of certain cases and the percentage of cases that normally would require a merits decision from a judge.

At this point, we simply do not have sufficient data regarding the workload of the CAVC to conduct that type of weighting of the Court's caseload. We do not have historical data as to the percentage of cases decided by judges or about the time it takes to decide cases of various levels of complexity. Also, the information that we do have suggests that the raw volume of cases received at the Court is not a good indicator of the workload burden on judges. For example, in fiscal year 2007, the Court received 4,644 new cases and decided 4,877 cases. The seven active judges decided about 39 percent of those 4,877 cases, recalled retired judges decided about 6 percent, and the Clerk of the Court resolved 55 percent. This means that, even though the Court received over 660 cases per active judge, the seven judges decided about 270 cases each—less than half of the number that the Court received.

In view of this lack of data about the Court's workload, the Disabled American Veterans testified last year that, "[u]ntil this information is made available to Congress, it is * * * premature to expand the number of judges to nine." S. Hrg. 110–360, at 44 (2007). I agree that we need additional information about the Court's workload, about who is doing the work, and about where there are

bottlenecks. Then we could determine what measures—such as increasing the Court's Public Office, expanding the Central Legal Staff, authorizing magistrates, or adding judges—would be the most effective in helping the Court provide timely decisions to veterans. In sum, although I am committed to making sure the Court has adequate resources, my preference would be to follow a more deliberate, searching approach in assessing whether to expand the size of the Court.

II. Temporary vs. Permanent Increase

In addition to concerns about the lack of data on the Court's workload, it appears to me that we do not have sufficient information at this time to determine whether a permanent increase in the size of the Court is warranted. Over the years, the incoming caseload at the Court has varied significantly, ranging from less than 1,200 new cases to more than 4,600 new cases. Although the number of incoming cases reached a record high in fiscal year 2007, the Court is now on pace to receive about 700 fewer cases during fiscal year 2008. Also, it is worth mentioning that in 1996 the Court requested that Congress reduce the size of the Court from seven judges to five judges, reasoning that "[i]t does not appear that there will be any reasonably foreseeable surge in the number of appeals filed in the Court." S. Hrg. 104–722, at 178 (1996). Yet, the following year the Court experienced a 38 percent increase in incoming cases.

To me, this volatility in the Court's caseload would weigh in favor of a temporary, rather than permanent, increase in the size of the Court at this point. In fact, for other Federal courts, the Judicial Conference of the United States "recommends temporary judgeships in all situations where the caseload level justifying additional judgeships occurred only in the most recent years." H. Hrg. 108–30, at 18 (2003). In addition, the CAVC itself has recognized that it may not be necessary for the Court to have nine judges in future years. As the Chief Judge stated in the Court's September 2007 legislative proposal, "Congress could reexamine the need for nine judges when the 13-year terms of Judges Kasold and Hagel expire in 2016."

Perhaps more importantly, a temporary increase would provide Congress with an opportunity to monitor the Court's progress with additional judges and gather more information about the Court's workload before deciding whether a permanent expansion is the best way to make sure veterans receive timely decisions. To me, a temporary expansion of the Court would appear to be a more reasonable approach for this Committee given the information we have at this time.

III. Staggered Terms

As a final matter, I want to discuss another important issue facing the Court—the prospect of having multiple judicial vacancies when the current judges retire. By way of background, when the CAVC was created in 1988, the 15-year terms of the original judges were not staggered, which led to six judges retiring between 2000 and 2005. This left the Court without a full complement of judges

for much of that period, which, in turn, contributed to a disruption in service to veterans. In total, the Court received over 1,800 more cases than it decided from 2000 to 2005, and the number of cases pending at the Court grew from almost 2,300 in 1999 to over 4,600 in 2005.

Now, it is possible that this second generation of judges will also retire in a cluster. The terms of six judges will expire between 2016 and 2019, with four terms expiring in a two-week period in 2019. In fact, in the September 2007 legislative proposal, the Court pointed to this possibility of en masse retirements as another reason for expanding the Court. According to the Chief Judge, "[c]reating two new vacancies in FY 2008–09 would avoid a significant number of simultaneous vacancies followed by a period of time when a majority of the judges would be new and unseasoned at the same time."

However, the addition of judgeships would only help alleviate the impact of multiple retirements if the new judges serve beyond 2019. Yet, under current law, judges who have served at least 10 years may retire before the expiration of their 15-year term when their age plus years of service on the bench equals 80—a provision known as the "Rule of 80." That means a judge confirmed next year could potentially be eligible to retire in 2019—the same year that the terms of four existing judges will expire.

In summary, we would simply be repeating past mistakes if we add two more judges to the Court in the next year and allow them to retire under the Rule of 80. That is why I filed an amendment at the Committee markup to require that any judge confirmed to fill the two new judgeships must serve out the full balance of the 15-year term before retiring and receiving 100 percent of their salary—currently $169,000—for the rest of their lives. That would help ensure that the new judges will serve well beyond the retirement dates of the existing judges and hopefully ensure the Court consistently has the judicial resources necessary to provide timely service to our nation's veterans.

In my view, if Congress simply expands the size of the Court without addressing this ongoing problem of en masse retirements by planning ahead, our veterans will, unfortunately, pay the price with a disruption in service. I hope that, before Congress moves forward with any expansion in the size of the Court, measures will be taken to address this very real problem that is confronting veterans who are seeking justice from the Court.

IV. Committee Report

As a final matter, I find it necessary to express reservations about the methodologies used for some portions of this report. A Committee report serves as a key source of legislative history. It preserves the Committee's assessment of the laws and circumstances that exist today, how the Committee bill would change the law, and more importantly why the Committee has determined that changes are necessary. A Committee report will be relied upon for many years to come by legislators, judges, historians, and other practitioners seeking to gain insight into the actions and intentions of this Committee. That is why I believe it is our responsibility as a Committee to ensure that the information contained in each

Committee report is held to the highest standards of quality, reliability, and accuracy befitting this historical document.

Unfortunately, this Committee report—principally the material in the discussion of section 101—contains numerous conclusions that were reached by a single member of the Chairman's Committee staff after she reviewed claims files at several VA offices. Although I have no reason to doubt the intentions of the Chairman's staff, I would suggest that the views of a single staff member should not be included in this report until they have been verified.

For the Committee to determine whether this information is reliable, we would—at a minimum—need information about the methodology used in conducting these reviews, such as the standards used to determine whether errors were committed, the method used to choose the case files that were reviewed, and the reviewer's training in auditing. In the absence of that basic information, there is simply no means to gauge the accuracy or reliability of the opinions expressed in that section of the report.

This is not meant to suggest that oversight work performed by staff members is unimportant. To the contrary, it plays a key role in helping identify problems and trends that should be examined by the entire Committee. It may also reveal the need to engage independent entities—such as the Government Accountability Office or VA's Office of Inspector General—to thoroughly and rigorously review specific benefits or services provided by VA. Those entities conduct their studies in accordance with generally accepted government auditing standards, which helps ensure that their findings are objective, independent, fact-based, and nonpartisan.

That type of exacting standard should be expected of work that will be relied upon by Congressional Committees in performing their legislative functions. That caliber of work also provides the type of objective, factual, and verifiable information that is appropriate for a Committee report.

* * * * * * *

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

TITLE 31. MONEY AND FINANCE

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SUBTITLE III. FINANCIAL MANAGEMENT

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CHAPTER 37. CLAIMS

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Subchapter II. Claims of The United States Government

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SEC. 3711. COLLECTION AND COMPROMISE

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(f)(1) * * *

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(3) The Secretary of Veterans Affairs may suspend or terminate an action by the Secretary under subsection (a) to collect a claim against the estate of a person who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy if the Secretary determines that, under the circumstances applicable with respect to the deceased person, it is appropriate to do so.

(4) **[**(3)**]** * * *

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TITLE 38. VETERANS' BENEFITS

PART I. GENERAL PROVISIONS

CHAPTER 1. GENERAL

SEC. 101. DEFINITIONS

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(4)(A) The term "child" means (except for purposes of chapter 19 of this title (other than with respect to a child who is an insurable dependent under [section 1965(10)(B)] *subparagraph (B) or (C) of section 1965(10)* of such chapter) and section 8502(b) of this title) a person who is unmarried and—

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CHAPTER 5. AUTHORITY AND DUTIES OF THE SECRETARY

Subchapter I. General Authorities

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SEC. 502. JUDICIAL REVIEW OF RULES AND REGULATIONS

An action of the Secretary to which section 552(a)(1) or 553 of title 5 (or both) refers [(other than an action relating to the adoption or revision of the schedule of ratings for disabilities adopted under section 1155 of this title)] is subject to judicial review. Such review shall be in accordance with chapter 7 of title 5 and may be sought only in the United States Court of Appeals for the Federal Circuit. However, if such review is sought in connection with an appeal brought under the provisions of chapter 72 of this title, the provisions of that chapter shall apply rather than the provisions of chapter 7 of title 5.

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PART II. GENERAL BENEFITS

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CHAPTER 19. INSURANCE

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Subchapter III. Servicemembers' Group Life Insurance

SEC. 1965. DEFINITIONS

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(10) The term "insurable dependent", with respect to a member, means the following:

(A) The member's spouse.

(B) The member's child, as defined in the first sentence of section 101(4)(A) of this title.

(C) The member's stillborn child.

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SEC. 1967. PERSONS INSURED; AMOUNT

(a)(1) * * *

(A) * * *

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(C) In the case of any member of the Ready Reserve of a uniformed service who meets the qualifications set forth in

[section 1965(5)(B) of this title] *subparagraph (B) or (C) of section 1965(5) of this title*—

* * * * * * *

(5) * * *

(A) * * *

* * * * * * *

(C) The first day a member of the Ready Reserve meets the qualifications set forth in [section 1965(5)(B) of this title] *subparagraph (B) or (C) of section 1965(5) of this title*.

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SEC. 1968. DURATION AND TERMINATION OF COVERAGE; CONVERSION

(a) * * *

* * * * * * *

(5) With respect to an insurable dependent of the member, insurance under this subchapter shall cease—

(A) 120 days after the date of an election made in writing by the member to terminate the coverage; or

(B) on the earliest of—

(i) 120 days after the date of the member's death;

(ii) [120 days after] the date of termination of the insurance on the member's life under this subchapter; or

(iii) 120 days after the termination of the dependent's status as an insurable dependent of the member.

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SEC. 1969. DEDUCTIONS; PAYMENT; INVESTMENT; EXPENSES

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(g)(1)(A) * * *

(B) During any month in which a member is assigned to the Ready Reserve of a uniformed service under conditions which meet the qualifications set forth in [section 1965(5)(B) of this title] *subparagraph (B) or (C) of section 1965(5) of this title* and the spouse of the member is insured under a policy of insurance purchased by the Secretary under section 1966 of this title, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary [(which shall be the same for all such members)] as the share of the cost attributable to insuring the spouse of such member under this policy, less any costs traceable to the extra hazards of such duty in the uniformed services. Any amounts so contributed on behalf of any individual shall be collected by the Secretary concerned from such individual (by deduction from pay or otherwise) and shall be credited to the appropriation from which such contribution was made.

* * * * * * *

SEC. 1973. FORFEITURE

Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United States or refuses to wear the

uniform of such force, shall forfeit all rights to Servicemembers' Group Life Insurance [under this subchapter] *and Veterans' Group Life Insurance under this subchapter*. No such insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States.

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CHAPTER 23. BURIAL BENEFITS

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SEC. 2306. HEADSTONES, MARKERS, AND BURIAL RECEPTACLES

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(b)(1) * * *

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(4) For purposes of this subsection:

(A) The term "veteran" includes an individual who dies in the active military, naval, or air service.

(B) The term "surviving spouse" includes [an unremarried surviving spouse whose subsequent remarriage was terminated by death or divorce] *a surviving spouse who had a subsequent remarriage*.

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PART III. READJUSTMENT AND RELATED BENEFITS

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CHAPTER 31. TRAINING AND REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

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SEC. 3105. DURATION OF REHABILITATION PROGRAMS

* * * * * * *

(d) [Unless the Secretary determines that a longer period is necessary and likely to result in a substantial increase in a veteran's level of independence in daily living, the period of a program] *(1) Except as provided in paragraph (2), the period of a program* of independent living services and assistance for a veteran under this chapter (following a determination by the Secretary that such veteran's disability or disabilities are so severe that the achievement of a vocational goal currently is not reasonably feasible) may not exceed twenty-four months.

(2)(A) The period of a program of independent living services and assistance for a veteran under this chapter may exceed twenty-four months as follows:

(i) If the Secretary determines that a longer period is necessary and likely to result in a substantial increase in the veteran's level of independence in daily living.

(ii) If the veteran served on active duty during the Post-9/11 Global Operations period and has a severe disability (as deter-

mined by the Secretary for purposes of this clause) incurred or aggravated in such service.

(B) In this paragraph, the term "Post-9/11 Global Operations period" means the period of the Persian Gulf War beginning on September 11, 2001, and ending on the date thereafter prescribed by Presidential proclamation or by law.

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CHAPTER 35. SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

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Subchapter II. Eligibility and Entitlement

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SEC. 3512. PERIODS OF ELIGIBILITY

* * * * * * *

(b)(1)(A) Except as provided in [subparagraph (B) or (C)] *subparagraphs (B), (C), or (D)*, a person made eligible by subparagraph (B) or (D) of section 3501(a)(1) of this title or a person made eligible by the disability of a spouse under section 3501(a)(1)(E) of this title may be afforded educational assistance under this chapter during the 10-year period beginning on the date (as determined by the Secretary) the person becomes an eligible person within the meaning of section 3501(a)(1)(B), 3501(a)(1)(D)(i), 3501(a)(1)(D)(ii), or 3501(a)(1)(E) of this title. In the case of a surviving spouse made eligible by clause (ii) of section 3501(a)(1)(D) of this title, the 10-year period may not be reduced by any earlier period during which the person was eligible for educational assistance under this chapter as a spouse made eligible by clause (i) of that section.

* * * * * * *

(D) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph who is made eligible under section 3501(a)(1)(D)(i) of this title by reason of a service-connected disability that was determined to be a total disability permanent in nature not later than three years after discharge from service may be afforded educational assistance under this chapter during the 20-year period beginning on the date the disability was so determined to be a total disability permanent in nature, but only if the eligible person remains the spouse of the disabled person throughout the period.

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CHAPTER 36. ADMINISTRATION OF EDUCATIONAL BENEFITS

Subchapter I. State Approving Agencies

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SEC. 3676. APPROVAL OF NONACCREDITED COURSES

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(c) * * *

* * * * * * *

(4) The institution maintains a written record of the previous education and training of the eligible person and clearly indicates that appropriate credit has been given by the institution for previous education and training, with the training period shortened proportionately and the eligible person [and the Secretary] so notified.

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SEC. 3677. APPROVAL OF TRAINING ON THE JOB

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(b)(1) * * *

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(3) The requirement for certification under paragraph (1) shall not apply to training described in section 3452(e)(2) of this title.

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Subchapter II. Miscellaneous Provisions

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SEC. 3686. CORRESPONDENCE COURSES

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(b) The enrollment agreement shall fully disclose the obligation of both the institution and the veteran or spouse or surviving spouse and shall prominently display the provisions for affirmance, termination, refunds, and the conditions under which payment of the allowance is made by the Secretary to the veteran or spouse or surviving spouse. A copy of the enrollment agreement shall be furnished to each such veteran or spouse or surviving spouse at the time such veteran or spouse or surviving spouse signs such agreement. No such agreement shall be effective unless such veteran or spouse or surviving spouse shall, after the expiration of [ten] *five* days after the enrollment agreement is signed, have signed and submitted to the Secretary a written statement, with a signed copy to the institution, specifically affirming the enrollment agreement. In the event the veteran or spouse or surviving spouse at any time notifies the institution of such veteran's or spouse's intention not to affirm the agreement in accordance with the preceding sentence, the institution, without imposing any penalty or charging any fee shall promptly make a full refund of all amounts paid.

* * * * * * *

SEC. 3691. CHANGE OF PROGRAM

* * * * * * *

(d) *(1)* For the purposes of this section, the term "change of program of education" shall not be deemed to include a change by a veteran or eligible person from the pursuit of one program to the pursuit of another program if—

[(1)] *(A)* the veteran or eligible person has successfully completed the former program;

[(2)] *(B)* the program leads to a vocational, educational, or professional objective in the same general field as the former program;

[(3)] *(C)* the former program is a prerequisite to, or generally required for, pursuit of the subsequent program; [or]

[(4)] *(D)* in the case of a change from the pursuit of a subsequent program to the pursuit of a former program, the veteran or eligible person resumes pursuit of the former program without loss of credit or standing in the former program[.] *; or*

(E) the change from the program to another program is at the same educational institution and such educational institution determines that the new program is suitable to the aptitudes, interests, and abilities of the veteran or eligible person and certifies to the Secretary the enrollment of the veteran or eligible person in the new program.

(2) A veteran or eligible person undergoing a change from one program of education to another program of education as described in paragraph (1)(E) shall not be required to apply to the Secretary for approval of such change.

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CHAPTER 37. HOUSING AND SMALL BUSINESS LOANS

Subchapter I. General

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SEC. 3703. BASIC PROVISIONS RELATING TO LOAN GUARANTY AND INSURANCE

(a)(1)(A) * * *

(i)(I) * * *

* * * * * * *

(IV) in the case of any loan of more than $144,000 for a purpose specified in clause (1), (2), (3), *(5),* (6), or (8) of section 3710(a) of this title, the lesser of the maximum guaranty amount (as defined in subparagraph (C)) or 25 percent of the loan; or

* * * * * * *

SEC. 3707. ADJUSTABLE RATE MORTGAGES

(a) The Secretary shall carry out a demonstration project under this section [during fiscal years 1993 through 2008] *during the period beginning with the beginning of fiscal year 1993 and ending at the end of fiscal year 2012* for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the National Housing Act.

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SEC. 3707A. HYBRID ADJUSTABLE RATE MORTGAGES

(a) The Secretary shall carry out a demonstration project under this section during fiscal years 2004 [through 2008] *through 2012* for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the Na-

tional Housing Act in accordance with the provisions of this section with respect to hybrid adjustable rate mortgages described in subsection (b).

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Subchapter II. Loans

SEC. 3710. PURCHASE OR CONSTRUCTION OF HOMES

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(b) * * *

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(8) in the case of a loan to refinance a loan (other than a loan or installment sales contract described in clause (7) of this subsection or a loan made for a purpose specified in subsection (a)(8) of this section), the amount of the loan to be guaranteed or made does not exceed ⟦90 percent⟧ *95 percent* of the reasonable value of the dwelling or farm residence securing the loan, as determined pursuant to section 3731 of this title.

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CHAPTER 43. EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

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SUBCHAPTER III. PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION

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Sec.

4326. Conduct of investigation; subpoenas.

4327. Noncompliance of Federal officials with deadlines; inapplicability of statutes of limitations.

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SUBCHAPTER IV. MISCELLANEOUS PROVISIONS

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4334. Notice of rights and duties.

4335. Training for Federal executive agency human resources personnel on employment and reemployment rights and limitations.

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Subchapter III. Procedures for Assistance, Enforcement, and Investigation

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SEC. 4322. ENFORCEMENT OF EMPLOYMENT OR REEMPLOYMENT RIGHTS

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⟦(c) The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and when appropriate, to such claimant's employer.⟧

(c)(1) Not later than five days after the Secretary receives a complaint submitted by a person under subsection (a), the Secretary

shall notify such person in writing of his or her rights with respect to such complaint under this section and section 4323 or 4324, as the case may be.

(2) The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and when appropriate, to such claimant's employer.

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(e) If the efforts of the Secretary with respect to any complaint filed under subsection (a) do not resolve the complaint, the Secretary shall notify the person who submitted the complaint *in writing* of—

* * * * * * *

(f) Any action required by subsections (d) and (e) with respect to a complaint submitted by a person to the Secretary under subsection (a) shall be completed by the Secretary not later than 90 days after receipt of such complaint.

(g) ⟦(f)⟧ This subchapter does not apply to any action relating to benefits to be provided under the Thrift Savings Plan under title 5.

SEC. 4323. ENFORCEMENT OF RIGHTS WITH RESPECT TO A STATE OR PRIVATE EMPLOYER

(a) ACTION FOR RELIEF.—

(1) A person who receives from the Secretary a notification pursuant to section 4322(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. *Not later than 60 days after the Secretary receives such a request with respect to a complaint, the Secretary shall refer the complaint to the Attorney General.* If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for relief under this chapter for such person. In the case of such an action against a State (as an employer), the action shall be brought in the name of the United States as the plaintiff in the action.

(2) Not later than 60 days after the date the Attorney General receives a referral under paragraph (1), the Attorney General shall—

(A) make a decision whether to appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted; and

(B) notify such person in writing of such decision.

(3) ⟦(2)⟧ A person may commence an action for relief with respect to a complaint against a State (as an employer) or a private employer if the person—

* * * * * * *

⟦(i) INAPPLICABILITY OF STATE STATUTE OF LIMITATIONS.—No State statute of limitations shall apply to any proceeding under this chapter.⟧

(i) [(j)] DEFINITION.—In this section, the term "private employer" includes a political subdivision of a State.

SEC. 4324. ENFORCEMENT OF RIGHTS WITH RESPECT TO FEDERAL EXECUTIVE AGENCIES

(a)(1) A person who receives from the Secretary a notification pursuant to section 4322(e) may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. [The Secretary shall refer] *Not later than 60 days after the date the Secretary receives such a request, the Secretary shall refer* the complaint to the Office of Special Counsel established by section 1211 of title 5.

(2)(A) * * *

(B) [If the Special Counsel declines to initiate an action and represent a person before the Merit Systems Protection Board under subparagraph (A), the Special Counsel shall notify such person of that decision.] *Not later than 60 days after the date the Special Counsel receives a referral under paragraph (1), the Special Counsel shall—*

(i) make a decision whether to represent a person before the Merit Systems Protection Board under subparagraph (A); and

(ii) notify such person in writing of such decision.

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SEC. 4327. NONCOMPLIANCE OF FEDERAL OFFICIALS WITH DEADLINES; INAPPLICABILITY OF STATUTES OF LIMITATIONS

(a) EFFECT OF NONCOMPLIANCE OF FEDERAL OFFICIALS WITH DEADLINES.—(1) The inability of the Secretary, the Attorney General, or the Special Counsel to comply with a deadline applicable to such official under section 4322, 4323, or 4324 of this title—

(A) shall not affect the authority of the Attorney General or the Special Counsel to represent and file an action or submit a complaint on behalf of a person under section 4323 or 4324 of this title;

(B) shall not affect the right of a person—

(i) to commence an action under section 4323 of this title;

(ii) to submit a complaint under section 4324 of this title; or

(iii) to obtain any type of assistance or relief authorized by this chapter;

(C) shall not deprive a Federal court, the Merit Systems Protection Board, or a State court of jurisdiction over an action or complaint filed by the Attorney General, the Special Counsel, or a person under section 4323 or 4324 of this title; and

(D) shall not constitute a defense, including a statute of limitations period, that any employer (including a State, a private employer, or a Federal executive agency) or the Office of Personnel Management may raise in an action filed by the Attorney General, the Special Counsel, or a person under section 4323 or 4324 of this title.

(2) If the Secretary, the Attorney General, or the Special Counsel is unable to meet a deadline applicable to such official in section 4322(f), 4323(a)(1), 4323(a)(2), 4324(a)(1), or 4324(a)(2)(B) of this title, and the person agrees to an extension of time, the Secretary, the Attorney General, or the Special Counsel, as the case may be,

shall complete the required action within the additional period of time agreed to by the person.

(b) INAPPLICABILITY OF STATUTES OF LIMITATIONS.—If any person seeks to file a complaint or claim with the Secretary, the Merit Systems Protection Board, or a Federal or State court under this chapter alleging a violation of this chapter, there shall be no limit on the period for filing the complaint or claim.

Subchapter IV. Miscellaneous Provisions

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SEC. 4332. REPORTS

(a) ANNUAL REPORT BY SECRETARY.—The Secretary shall [The Secretary shall], after consultation with the Attorney General and the Special Counsel referred to in section 4324(a)(1) [and no later than February 1, 2005, and annually thereafter, transmit to the Congress, a report containing the following matters for the fiscal year ending before such February 1:] *, transmit to Congress not later than July 1 each year a report on matters for the fiscal year ending in the year before the year in which such report is transmitted as follows:*

(1) * * *

(2) * * *

(3) The number of cases referred to the Attorney General or the Special Counsel pursuant to section 4323 or 4324, respectively, during such fiscal year *and the number of actions initiated by the Office of Special Counsel before the Merit Systems Protection Board pursuant to section 4324 during such fiscal year*.

(4) * * *

(5) The number of cases reviewed by the Secretary and the Secretary of Defense through the National Committee for Employer Support of the Guard and Reserve of the Department of Defense that involve the same person.

(6) With respect to the cases reported on pursuant to paragraphs (1), (2), (3), (4), and (5)—

(A) the number of such cases that involve a disability-related issue; and

(B) the number of such cases that involve a person who has a service-connected disability.

(7) [(5)] The nature and status of each case reported on pursuant to paragraph (1), (2), (3), [or (4)] *(4), or (5)*.

(8) With respect to the cases reported on pursuant to paragraphs (1), (2), (3), (4), and (5) the number of such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System.

(9) [(6)] An indication of whether there are any apparent patterns of violation of the provisions of this chapter, together with an explanation thereof.

(10) [(7)] Recommendations for administrative or legislative action that the Secretary, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to en-

courage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment.

(b) QUARTERLY REPORTS.—

(1) QUARTERLY REPORT BY SECRETARY.—Not later than 30 days after the end of each fiscal quarter, the Secretary shall submit to Congress, the Secretary of Defense, the Attorney General, and the Special Counsel a report setting forth, for the previous full quarter, the following:

(A) The number of cases for which the Secretary did not meet the requirements of section 4322(f) of this title.

(B) The number of cases for which the Secretary received a request for a referral under paragraph (1) of section 4323(a) of this title but did not make such referral within the time period required by such paragraph.

(2) QUARTERLY REPORT BY ATTORNEY GENERAL.—Not later than 30 days after the end of each fiscal quarter, the Attorney General shall submit to Congress, the Secretary, the Secretary of Defense, and the Special Counsel a report setting forth, for the previous full quarter, the number of cases for which the Attorney General received a referral under paragraph (1) of section 4323(a) of this title but did not meet the requirements of paragraph (2) of section 4323(a) of this title for such referral.

(3) QUARTERLY REPORT BY SPECIAL COUNSEL.—Not later than 30 days after the end of each fiscal quarter, the Special Counsel shall submit to Congress, the Secretary, the Secretary of Defense, and the Attorney General a report setting forth, for the previous full quarter, the number of cases for which the Special Counsel received a referral under paragraph (1) of section 4324(a) of this title but did not meet the requirements of paragraph (2)(B) of section 4324(a) of this title for such referral.

(c) UNIFORM CATEGORIZATION OF DATA.—The Secretary shall coordinate with the Secretary of Defense, the Attorney General, and the Special Counsel to ensure that—

(1) the information in the reports required by this section is categorized in a uniform way; and

(2) the Secretary, the Secretary of Defense, the Attorney General, and the Special Counsel each have electronic access to the case files reviewed under this chapter by the Secretary, the Secretary of Defense, the Attorney General, and the Special Counsel with due regard for the provisions of section 552a of title 5.

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SEC. 4335. TRAINING FOR FEDERAL EXECUTIVE AGENCY HUMAN RESOURCES PERSONNEL ON EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS

(a) TRAINING REQUIRED.—The head of each Federal executive agency shall provide training for the human resources personnel of such agency on the following:

(1) The rights, benefits, and obligations of members of the uniformed services under this chapter.

(2) The application and administration of the requirements of this chapter by such agency with respect to such members.

(b) CONSULTATION.—The training provided under subsection (a) shall be developed and provided in consultation with the Director of the Office of Personnel Management.

(c) FREQUENCY.—The training under subsection (a) shall be provided with such frequency as the Director of the Office of Personnel Management shall specify in order to ensure that the human resources personnel of Federal executive agencies are kept fully and currently informed of the matters covered by the training.

(d) HUMAN RESOURCES PERSONNEL DEFINED.—In this section, the term "human resources personnel", in the case of a Federal executive agency, means any personnel of the agency who are authorized to recommend, take, or approve any personnel action that is subject to the requirements of this chapter with respect to employees of the agency.

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PART IV. GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 51. CLAIMS, EFFECTIVE DATES, AND PAYMENTS

Subchapter I. Claims

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SEC. 5103. NOTICE TO CLAIMANTS OF REQUIRED INFORMATION AND EVIDENCE

(a) REQUIRED INFORMATION AND EVIDENCE.—*(1)* Upon receipt of a complete or substantially complete application, the Secretary shall notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.

(2)(A) The Secretary shall prescribe in regulations requirements relating to the contents of notice to be provided under this subsection.

(B) The regulations required by this paragraph—

(i) shall specify different contents for notice depending on whether the claim concerned is an original claim, a claim for reopening a prior decision on a claim, or a claim for increase in benefits;

(ii) may provide additional or alternative contents for notice if appropriate to the benefit or services sought under the claim;

(iii) shall specify for each type of claim for benefits the general information and evidence required to substantiate the basic elements of such type of claim; and

(iv) shall specify the time period limitations required pursuant to subsection (b).

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CHAPTER 53. SPECIAL PROVISIONS RELATING TO BENEFITS

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SEC. 5312. ANNUAL ADJUSTMENT OF CERTAIN BENEFIT RATES

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(d)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in paragraph (2), as such amounts were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(2) The dollar amounts to be increased pursuant to paragraph (1) are the following:

(A) COMPENSATION.—Each of the dollar amounts in effect under section 1114 of this title.

(B) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under section 1115(1) of this title.

(C) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of this title.

(D) NEW DIC RATES.—Each of the dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of this title.

(E) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3) of this title.

(F) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.—The dollar amount in effect under section 1311(b) of this title.

(G) ADDITIONAL DIC FOR DISABILITY.—Each of the dollar amounts in effect under sections 1311(c) and 1311(d) of this title.

(H) DIC FOR DEPENDENT CHILDREN.—Each of the dollar amounts in effect under sections 1313(a) and 1314 of this title.

(3) Whenever there is an increase under paragraph (1) in amounts in effect for the payment of disability compensation and dependency and indemnity compensation, the Secretary shall publish such amounts, as increased pursuant to such paragraph, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) is published by reason of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

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SEC. 5317. USE OF INCOME INFORMATION FROM OTHER AGENCIES: NOTICE AND VERIFICATION

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(g) The authority of the Secretary to obtain information from the Secretary of the Treasury or the Commissioner of Social Security

under section 6103(1)(7)(D)(viii) of the Internal Revenue Code of 1986 expires on [September 30, 2008] *September 30, 2011.*

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PART V. BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 72. UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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SUBCHAPTER III. MISCELLANEOUS PROVISIONS

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Sec.

7287. Administration.

7288. Annual report.

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Subchapter I. Organization and Jurisdiction

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SEC. 7253. COMPOSITION

(a) COMPOSITION.—The Court of Appeals for Veterans Claims is composed of at least three and not more than [seven judges] *nine judges*, one of whom shall serve as chief judge in accordance with subsection (d).

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SEC. 7257. RECALL OF RETIRED JUDGES

(a)(1) A retired judge of the Court may be recalled for further service on the Court in accordance with this section. To be eligible to be recalled for such service, a retired judge must at the time of the judge's retirement provide to the chief judge of the Court (or, in the case of the chief judge, to the clerk of the Court) notice in writing that the retired judge is available for further service on the Court in accordance with this section and is willing to be recalled under this section. [Such a notice provided by a retired judge is irrevocable.] *Such a notice provided by a retired judge to whom section 7296(c)(1)(B) of this title applies is irrevocable.*

* * * * * * *

(b)(1) * * *

(2) A recall-eligible retired judge may not be recalled for more than 90 days (or the equivalent) during any calendar year without the judge's consent [or for more than a total of 180 days (or the equivalent) during any calendar year].

(3) If a recall-eligible retired judge is recalled by the chief judge in accordance with this section and (other than in the case of a judge who has previously during that calendar year served at least 90 days (or the equivalent) of recalled service on the court) declines (other than by reason of disability) to perform the service to which recalled, the chief judge shall remove that retired judge from the

status of a recall-eligible judge. *This paragraph shall not apply to a judge to whom section 7296(c)(1)(A) or 7296(c)(1)(B) of this title applies and who has, in the aggregate, served at least five years of recalled service on the Court under this section.*

* * * * * * *

[(d)(1) The pay of a recall-eligible retired judge who retired under section 7296 of this title is specified in subsection (c) of that section.

[(2) A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge's annuity under the applicable provisions of chapter 83 or 84 of title 5.**]**

(d)(1) The pay of a recall-eligible retired judge to whom section 7296(c)(1)(B) of this title applies is the pay specified in that section.

(2) A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 or to whom section 7296(c)(1)(A) of this title applies shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge's annuity under the applicable provisions of chapter 83 or 84 of title 5 or the judge's annuity under section 7296(c)(1)(A) of this title, whichever is applicable.

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Subchapter II. Procedure

SEC. 7268. AVAILABILITY OF PROCEEDINGS

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(c)(1) The Court shall prescribe rules, in accordance with section 7264(a) of this title, to protect privacy and security concerns relating to all filing of documents and the public availability under this subsection of documents retained by the Court or filed electronically with the Court.

(2) The rules prescribed under paragraph (1) shall be consistent to the extent practicable with rules addressing privacy and security issues throughout the Federal courts.

(3) The rules prescribed under paragraph (1) shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.

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Subchapter III. Miscellaneous Provisions

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SEC. 7288. ANNUAL REPORT

(a) IN GENERAL.—The chief judge of the Court shall submit to the appropriate committees of Congress each year a report summarizing the workload of the Court for the fiscal year ending during the preceding year.

(b) ELEMENTS.—Each report under subsection (a) shall include, with respect to the fiscal year covered by such report, the following information:

(1) The number of appeals filed with the Court.

(2) The number of petitions filed with the Court.

(3) The number of applications filed with the Court under section 2412 of title 28.

(4) The total number of dispositions by each of the following:

(A) The Court as a whole.

(B) The Clerk of the Court.

(C) A single judge of the Court.

(D) A multi-judge panel of the Court.

(E) The full Court.

(5) The number of each type of disposition by the Court, including settlement, affirmation, remand, vacation, dismissal, reversal, grant, and denial.

(6) The median time from filing an appeal to disposition by each of the following:

(A) The Court as a whole.

(B) The Clerk of the Court.

(C) A single judge of the Court.

(D) Multiple judges of the Court (including a multi-judge panel of the Court or the full Court).

(7) The median time from filing a petition to disposition by the Court.

(8) The median time from filing an application under section 2412 of title 28 to disposition by the Court.

(9) The median time from the completion of briefing requirements by the parties to disposition by the Court.

(10) The number of oral arguments before the Court.

(11) The number of cases appealed to the United States Court of Appeals for the Federal Circuit.

(12) The number and status of appeals and petitions pending with the Court and of applications described in paragraph (3) as of the end of such fiscal year.

(13) The number of cases pending with the Court more than 18 months as of the end of such fiscal year.

(14) A summary of any service performed for the Court by a recalled retired judge of the Court.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Committee on Veterans' Affairs of the Senate; and

(2) the Committee on Veterans' Affairs of the House of Representatives.

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Subchapter V. Retirement and Survivors Annuities

SEC. 7296. RETIREMENT OF JUDGES

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(c)**[**(1) An individual who retires under subsection (b) of this section and elects under subsection (d) of this section to receive retired pay under this subsection shall (except as provided in paragraph (2) of this subsection) receive retired pay as follows:

[(A) In the case of a judge who is a recall-eligible retired judge under section 7257 of this title or who was a recall-eligible retired judge under that section and was removed from recall status under subsection (b)(4) of that section by reason of disability, the retired pay of the judge shall be the pay of a judge of the court.

[(B) In the case of a judge who at the time of retirement did not provide notice under section 7257 of this title of availability for service in a recalled status, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.

[(C) In the case of a judge who was a recall-eligible retired judge under section 7257 of this title and was removed from recall status under subsection (b)(3) of that section, the retired pay of the judge shall be the pay of the judge at the time of the removal from recall status.]

(1)(A) A judge who is appointed on or after the date of the enactment of the Veterans' Benefits Improvement Act of 2008 and who retires under subsection (b) and elects under subsection (d) to receive retired pay under this subsection shall (except as provided in paragraph (2)) receive retired pay as follows:

(i) In the case of a judge who is a recall-eligible retired judge under section 7257 of this title, the retired pay of the judge shall (subject to section 7257(d)(2) of this title) be the rate of pay applicable to that judge at the time of retirement, as adjusted from time to time under subsection (f)(3).

(ii) In the case of a judge other than a recall-eligible retired judge, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.

(B) A judge who retired before the date of the enactment of the Veterans' Benefits Improvement Act of 2008 and elected under subsection (d) to receive retired pay under this subsection, or a judge who retires under subsection (b) and elects under subsection (d) to receive retired pay under this subsection, shall (except as provided in paragraph (2)) receive retired pay as follows:

(i) In the case of a judge who is a recall-eligible retired judge under section 7257 of this title or who was a recall-eligible retired judge under that section and was removed from recall status under subsection (b)(4) of that section by reason of disability, the retired pay of the judge shall be the pay of a judge of the court.

(ii) In the case of a judge who at the time of retirement did not provide notice under section 7257 of this title of availability for service in a recalled status, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.

(iii) In the case of a judge who was a recall-eligible retired judge under section 7257 of this title and was removed from recall status under subsection (b)(3) of that section, the retired pay of the judge shall be the pay of the judge at the time of the removal from recall status.

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(f)(1) * * *

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(3)(A) A cost-of-living adjustment provided by law in annuities payable under civil service retirement laws shall apply to retired pay under this section only in the case of retired pay computed under [paragraph (2) of subsection (c)] *paragraph (1)(A)(i) or (2) of subsection (c)*.

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TITLE 50. WAR AND NATIONAL DEFENSE

TITLE 50 APPENDIX—WAR AND NATIONAL DEFENSE

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Servicemembers Civil Relief Act

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TITLE VII. FURTHER RELIEF

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Sec.

596. Business or trade obligations

707. Tuition, reenrollment, and student loan relief for postsecondary students called to military service.

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Title VII. Further Relief

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SEC. 707. TUITION, REENROLLMENT, AND STUDENT LOAN RELIEF FOR POSTSECONDARY STUDENTS CALLED TO MILITARY SERVICE.

(a) TUITION AND REENROLLMENT.—In the case of a servicemember who because of military service discontinues a program of education at a covered institution of higher education that administers a Federal financial aid program, such institution of higher education shall—

(1) refund to such servicemember the tuition and fees paid by such servicemember from personal funds, or from a loan, for the portion of the program of education for which such servicemember did not receive academic credit because of such military service; and

(2) provide such servicemember an opportunity to reenroll in such program of education with the same educational and academic status such servicemember had when such servicemember discontinued such program of education because of such military service.

(b) INTEREST RATE LIMITATION ON STUDENT LOANS.—

(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, a student loan shall be considered an obligation or liability for the purposes of section 207.

(2) EXCEPTION.—Subsection (c) of section 207 shall not apply to a student loan.

(c) DEFINITIONS.—In this section:

(1) The term "covered institution of higher education" means a 2-year or 4-year institution of higher education as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) that participates in a loan program under title IV of that Act (20 U.S.C. 1070 et seq.).

(2) The term "Federal financial aid program" means a program providing loans made, insured, or guaranteed under part B, D, or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1077 et seq., 1087a et seq., 1087aa et seq.).

(3) The term "student loan" means any loan, whether Federal, State, or private, to assist an individual to attend an institution of higher education, including a loan made, insured, or guaranteed under part B, D, or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1077 et seq., 1087a et seq., 1087aa et seq.).

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WOUNDED WARRIOR ACT

(Public Law 110–181; 122 Stat. 472)

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TITLE XVI. WOUNDED WARRIOR MATTERS

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Subtitle D. Disability Matters

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SEC. 1646. ENHANCEMENT OF DISABILITY SEVERANCE PAY FOR MEMBERS OF THE ARMED FORCES.

(a) * * *

(b) * * *

(c) CONFORMING AMENDMENT.—Section 1161 of title 38, United States Code, is amended by striking "as required by section 1212(c) of title 10" and inserting "to the extent required by section 1212(d) of title 10".

(d) **[**(c)**]** * * *

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VETERANS BENEFITS ACT OF 2003

(Public Law 108–183; 117 Stat. 2651; 38 U.S.C. 5101 note)

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TITLE VII. OTHER MATTERS

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SEC. 704. TEMPORARY AUTHORITY FOR PERFORMANCE OF MEDICAL DISABILITIES EXAMINATIONS BY CONTRACT PHYSICIANS.

(a) * * *

(b) * * *

(c) EXPIRATION.—The authority in subsection (a) shall expire on [December 31, 2009] *December 31, 2012*. No examination may be carried out under the authority provided in that subsection after that date.

(d) * * *

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