

BLUE WATER NAVY VIETNAM VETERANS ACT OF 2019

MAY 10, 2019.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 299]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 299) to amend title 38, United States Code, to clarify presumptions relating to the exposure of certain veterans who served in the vicinity of the Republic of Vietnam, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Blue Water Navy Vietnam Veterans Act of 2019”.

SEC. 2. CLARIFICATION OF PRESUMPTIONS OF EXPOSURE FOR VETERANS WHO SERVED IN VICINITY OF REPUBLIC OF VIETNAM.

(a) IN GENERAL.—Chapter 11 of title 38, United States Code, is amended by inserting after section 1116 the following new section:

“§ 1116A. Presumptions of service connection for veterans who served offshore of the Republic of Vietnam

“(a) SERVICE CONNECTION.—For the purposes of section 1110 of this title, and subject to section 1113 of this title, a disease covered by section 1116 of this title becoming manifest as specified in that section in a veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

“(b) EXPOSURE.—A veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

“(c) EFFECTIVE DATE OF AWARD.—(1) Except as provided by paragraph (2), the effective date of an award under this section shall be determined in accordance with section 5110 of this title.

“(2)(A) Notwithstanding subsection (g) of section 5110 of this title, the Secretary shall determine the effective date of an award based on a claim under this section for an individual described in subparagraph (B) by treating the date on which the individual filed the prior claim specified in clause (i) of such subparagraph as the date on which the individual filed the claim so awarded under this section.

“(B) An individual described in this subparagraph is a veteran, or a survivor of a veteran, who meets the following criteria:

“(i) The veteran or survivor submitted a claim for disability compensation on or after September 25, 1985, and before January 1, 2020, for a disease covered by this section, and the claim was denied by reason of the claim not establishing that the disease was incurred or aggravated by the service of the veteran.

“(ii) The veteran or survivor submits a claim for disability compensation on or after January 1, 2020, for the same condition covered by the prior claim under clause (i), and the claim is approved pursuant to this section.

“(d) DETERMINATION OF OFFSHORE.—Notwithstanding any other provision of law, for purposes of this section, the Secretary shall treat a location as being offshore of Vietnam if the location is not more than 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia and intersecting the following points:

“Points Geographic Names	Latitude North	Longitude East
At Hon Nhan Island, Tho Chu Archipelago Kien Giang Province	9°15.0’	103°27.0’
At Hon Da Island southeast of Hon Khoai Island Minh Hai Province	8°22.8’	104°52.4’
At Tai Lon Islet, Con Dao Islet in Con Dao-Vung Toa Special Sector	8°37.8’	106°37.5’
At Bong Lai Islet, Con Dao Islet	8°38.9’	106°40.3’
At Bay Canh Islet, Con Dao Islet	8°39.7’	106°42.1’
At Hon Hai Islet (Phu Qui group of islands) Thuan Hai Province	9°58.0’	109°5.0’

“Points Geographic Names	Latitude North	Longitude East
At Hon Doi Islet, Thuan Hai Province	12°39.0’	109°28.0’
At Dai Lanh point, Phu Khanh Province	12°53.8’	109°27.2’
At Ong Can Islet, Phu Khanh Province	13°54.0’	109°21.0’
At Ly Son Islet, Nghia Binh Province	15°23.1’	109° 9.0’
At Con Co Island, Binh Tri Thien Province	17°10.0’	107°20.6’

“(e) HERBICIDE AGENT.—In this section, the term ‘herbicide agent’ has the meaning given that term in section 1116(a)(3) of this title.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1116 the following new item:

“1116A. Presumptions of service connection for veterans who served offshore of the Republic of Vietnam.”

(c) IMPLEMENTATION.—

(1) GUIDANCE.—Notwithstanding section 501 of such title, the Secretary of Veterans Affairs may issue guidance to implement section 1116A of title 38, United States Code, as added by subsection (a), before prescribing new regulations under such section.

(2) UPDATES.—(A) Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit a report to the Committees on Veterans’ Affairs of the House of Representatives and the Senate regarding the plans of the Secretary—

- (i) to conduct outreach under subsection (d); and
- (ii) to respond to inquiries from veterans regarding claims for disability compensation under section 1116A of title 38, United States Code, as added by subsection (a) of this section.

(B) On a quarterly basis during the period beginning on the date of the enactment of this Act and ending on the date on which regulations are prescribed to carry out such section 1116A, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate updates on the status of such regulations.

(3) PENDING CASES.—

(A) AUTHORITY TO STAY.—The Secretary may stay a claim described in subparagraph (B) until the date on which the Secretary commences the implementation of such section 1116A.

(B) CLAIMS DESCRIBED.—A claim described in this subparagraph is a claim for disability compensation—

- (i) relating to the service and diseases covered by such section 1116A; and
- (ii) that is pending at the Veterans Benefits Administration or the Board of Veterans’ Appeals on or after the date of the enactment of this Act and before the date on which the Secretary commences the implementation of such section 1116A.

(d) OUTREACH.—

(1) REQUIREMENT.—The Secretary of Veterans Affairs shall conduct outreach to inform veterans described in paragraph (2) of the ability to submit a claim for disability compensation under section 1116A of title 38, United States Code, as added by subsection (a). Such outreach shall include the following:

(A) The Secretary shall publish on the website of the Department a notice that a veterans described in paragraph (2) may submit or resubmit a claim for disability compensation under such section 1116A.

(B) The Secretary shall notify in writing the veteran service organization community of the ability of veterans described in paragraph (2) to submit or resubmit claims for disability compensation under such section 1116A.

(2) VETERAN DESCRIBED.—A veteran described in this paragraph is a veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975.

(e) REPORTS.—Not later than January 1, 2021, and annually thereafter for two years, the Secretary of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report regarding claims for disability compensation under section 1116A of title 38, United States

Code, as added by subsection (a). Each report shall include, with respect to the calendar year preceding the report, disaggregated by the regional offices of the Department of Veterans Affairs, the following:

- (1) The number of claims filed under such section.
- (2) The number of such claims granted.
- (3) The number of such claims denied.

(f) HEALTH CARE.—Section 1710(e)(4) of title 38, United States Code, is amended by inserting “(including offshore of such Republic as described in section 1116A(d) of this title)” after “served on active duty in the Republic of Vietnam”.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2020.

SEC. 3. PRESUMPTION OF HERBICIDE EXPOSURE FOR CERTAIN VETERANS WHO SERVED IN KOREA.

(a) IN GENERAL.—Chapter 11 of title 38, United States Code, is amended by inserting after section 1116A, as added by section 2, the following new section:

“§ 1116B. Presumption of herbicide exposure for certain veterans who served in Korea

“(a) PRESUMPTION OF SERVICE-CONNECTION.—(1) For the purposes of section 1110 of this title, and subject to section 1113 of this title, a disease specified in subsection (b) that becomes manifest as specified in that subsection in a veteran described in paragraph (2) shall be considered to have been incurred or aggravated in the line of duty in the active military, naval, or air service, notwithstanding that there is no record of evidence of such disease during the period of such service.

“(2) A veteran described in this paragraph is a veteran who, during active military, naval, or air service, served in or near the Korean Demilitarized Zone (DMZ), during the period beginning on September 1, 1967, and ending on August 31, 1971.

“(b) DISEASES.—A disease specified in this subsection is—

“(1) a disease specified in paragraph (2) of subsection (a) of section 1116 of this title that becomes manifest as specified in that paragraph; or

“(2) any additional disease that—

“(A) the Secretary determines in regulations warrants a presumption of service-connection by reason of having positive association with exposure to an herbicide agent; and

“(B) becomes manifest within any period prescribed in such regulations.

“(c) HERBICIDE AGENT.—For purposes of this section, the term ‘herbicide agent’ has the meaning given such term in section 1821(d) of this title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1116A, as added by section 2, the following new item:

“1116B. Presumption of herbicide exposure for certain veterans who served in Korea.”.

(c) IMPLEMENTATION.—

(1) GUIDANCE.—Notwithstanding section 501 of such title, the Secretary of Veterans Affairs may issue guidance to implement section 1116B of title 38, United States Code, as added by subsection (a), before prescribing new regulations under such section.

(2) UPDATES.—(A) Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit a report to the Committees on Veterans’ Affairs of the House of Representatives and the Senate regarding the plans of the Secretary to respond to inquiries from veterans regarding claims for disability compensation under section 1116B of title 38, United States Code, as added by subsection (a) of this section.

(B) On a quarterly basis during the period beginning on the date of the enactment of this Act and ending on the date on which regulations are prescribed to carry out such section 1116B, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate updates on the status of such regulations.

(3) PENDING CASES.—

(A) AUTHORITY TO STAY.—The Secretary may stay a claim described in subparagraph (B) until the date on which the Secretary commences the implementation of section 1116B of title 38, United States Code, as added by subsection (a).

(B) CLAIMS DESCRIBED.—A claim described in this subparagraph is a claim for disability compensation—

(i) relating to the service and diseases covered by such section 1116B; and

(ii) that is pending at the Veterans Benefits Administration or the Board of Veterans’ Appeals on or after the date of the enactment of this

Act and before the date on which the Secretary commences the implementation of such section 1116B.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2020.

SEC. 4. BENEFITS FOR CHILDREN OF CERTAIN THAILAND SERVICE VETERANS BORN WITH SPINA BIFIDA.

(a) IN GENERAL.—Subchapter III of chapter 18 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 1822. Benefits for children of certain Thailand service veterans born with spina bifida

“(a) BENEFITS AUTHORIZED.—The Secretary may provide to any child of a veteran of covered service in Thailand who is suffering from spina bifida the health care, vocational training and rehabilitation, and monetary allowance required to be paid to a child of a Vietnam veteran who is suffering from spina bifida under subchapter I of this chapter as if such child of a veteran of covered service in Thailand were a child of a Vietnam veteran who is suffering from spina bifida under such subchapter.

“(b) SPINA BIFIDA CONDITIONS COVERED.—This section applies with respect to all forms and manifestations of spina bifida, except spina bifida occulta.

“(c) VETERAN OF COVERED SERVICE IN THAILAND.—For purposes of this section, a veteran of covered service in Thailand is any individual, without regard to the characterization of that individual’s service, who—

“(1) served in the active military, naval, or air service in Thailand, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on January 9, 1962, and ending on May 7, 1975; and

“(2) is determined by the Secretary, in consultation with the Secretary of Defense, to have been exposed to a herbicide agent during such service in Thailand.

“(d) HERBICIDE AGENT.—For purposes of this section, the term ‘herbicide agent’ means a chemical in a herbicide used in support of United States and allied military operations in Thailand, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on January 9, 1962, and ending on May 7, 1975.”.

(b) CONFORMING AMENDMENT TO DEFINITION OF “CHILD”.—Section 1831(1) of such title is amended—

(1) in subparagraph (B)—

(A) by striking “subchapter III of this chapter” and inserting “section 1821 of this title”; and

(B) in clause (i), by striking “section 1821 of this title” and inserting “that section”; and

(2) by adding at the end the following new subparagraph:

“(C) For purposes of section 1822 of this title, an individual, regardless of age or marital status, who—

“(i) is the natural child of a veteran of covered service in Thailand (as determined for purposes of that section); and

“(ii) was conceived after the date on which that veteran first entered service described in subsection (c) of that section.”.

(c) CLERICAL AMENDMENTS.—

(1) SUBCHAPTER HEADING.—The heading for subchapter III of chapter 18 of such title is amended by inserting “AND THAILAND” after “KOREA”.

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 18 of such title is amended—

(A) by striking the item relating to subchapter III and inserting the following new item:

“SUBCHAPTER III—CHILDREN OF CERTAIN KOREA AND THAILAND SERVICE VETERANS BORN WITH SPINA BIFIDA”;

and

(B) by inserting after the item relating to section 1821 the following new item:

“1822. Benefits for children of certain Thailand service veterans born with spina bifida.”.

(d) IMPLEMENTATION.—

(1) GUIDANCE.—Notwithstanding section 501 of such title, the Secretary of Veterans Affairs may issue guidance to implement section 1822 of title 38, United States Code, as added by subsection (a), before prescribing new regulations under such section.

(2) UPDATES.—(A) Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit a report to the Committees on Veterans’

Affairs of the House of Representatives and the Senate regarding the plans of the Secretary to respond to inquiries from veterans regarding claims for disability compensation under section 1822 of title 38, United States Code, as added by subsection (a) of this section.

(B) On a quarterly basis during the period beginning on the date of the enactment of this Act and ending on the date on which regulations are prescribed to carry out such section 1822, the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate updates on the status of such regulations.

(3) PENDING CASES.—

(A) AUTHORITY TO STAY.—The Secretary may stay a claim described in subparagraph (B) until the date on which the Secretary commences the implementation of section 1822 of title 38, United States Code, as added by subsection (a).

(B) CLAIMS DESCRIBED.—A claim described in this subparagraph is a claim for benefits—

(i) relating to the spina bifida and service covered by such section 1822; and

(ii) that is pending at the Veterans Benefits Administration or the Board of Veterans' Appeals on or after the date of the enactment of this Act and before the date on which the Secretary commences the implementation of such section 1822.

(e) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report identifying—

(1) the military installations of the United States located in Thailand during the period beginning on January 9, 1962, and ending on May 7, 1975, at which an herbicide agent (as defined in section 1822 of title 38, United States Code, as added by subsection (a)) was actively used; and

(2) the period of such use.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2020.

SEC. 5. UPDATED REPORT ON CERTAIN GULF WAR ILLNESS STUDY.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate an updated report on the findings, as of the date of the updated report, of the Follow-up Study of a National Cohort of Gulf War and Gulf Era Veterans under the epidemiology program of the Department of Veterans Affairs.

SEC. 6. LOANS GUARANTEED UNDER HOME LOAN PROGRAM OF DEPARTMENT OF VETERANS AFFAIRS.

(a) ADJUSTMENT OF LOAN LIMIT.—

(1) IN GENERAL.—Section 3703(a)(1) of title 38, United States Code, is amended—

(A) in subparagraph (A)—

(i) in clause (i)(IV), by striking “the lesser of the maximum guaranty amount (as defined in subparagraph (C)) or”;

(ii) in clause (ii), by striking “subparagraph (B) of this paragraph” and inserting “subparagraph (B) or (C)”;

(B) in subparagraph (B)—

(i) by striking “The maximum” and inserting “With respect to loans described in subclauses (I), (II), or (III) of subparagraph (A)(i), the maximum”; and

(ii) by striking “or in the case” and all that follows through “subparagraph (C).”; and

(C) by striking subparagraph (C) and inserting the following new subparagraph (C):

“(C)(i) With respect to loans described in subclause (IV) of subparagraph (A)(i) made to a veteran not covered by clause (ii), the maximum amount of guaranty entitlement available to the veteran shall be 25 percent of the loan.

“(ii) With respect to loans described in subclause (IV) of subparagraph (A)(i) made to a covered veteran, the maximum amount of guaranty entitlement available to the veteran shall be 25 percent of the Freddie Mac conforming loan limit, reduced by the amount of entitlement previously used by the veteran under this chapter and not restored as a result of the exclusion in section 3702(b) of this title.

“(iii) In this subparagraph:

“(I) The term ‘covered veteran’ means a veteran who has previously used entitlement under this chapter and for whom the full amount of entitlement so used has not been restored as a result of the exclusion in section 3702(b) of this title.

“(II) The term ‘Freddie Mac conforming loan limit’ means the limit determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a single-family residence, as adjusted for the year involved.”

(2) LOANS TO NATIVE AMERICAN VETERANS.—Section 3762(c) of such title is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(3) CONFORMING AMENDMENT.—Section 3710(d)(4) of such title is amended by striking “section 3703(a)(1)(B) of this title” and inserting “subparagraph (B) or (C) of section 3703(a)(1) of this title”.

(b) ADJUSTMENT OF LOAN FEES.—Section 3729(b)(2) of title 38, United States Code, is amended by striking the loan fee table and inserting the following:

“Type of loan	Active duty veteran	Reservist	Other obligor
(A)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2004, and before January 1, 2020)	2.15	2.40	NA
(A)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after January 1, 2020, and before January 1, 2022)	2.30	2.30	NA
(A)(iii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after January 1, 2022, and before October 1, 2029)	2.15	2.15	NA
(A)(iv) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2029)	1.40	1.40	NA
(B)(i) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2004, and before January 1, 2020)	3.30	3.30	NA
(B)(ii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after January 1, 2020, and before January 1, 2022)	3.60	3.60	NA
(B)(iii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after January 1, 2022, and before October 1, 2029)	3.30	3.30	NA
(B)(iv) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2029)	1.25	1.25	NA

“Type of loan	Active duty veteran	Reservist	Other obligor
(C)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed before January 1, 2020)	1.50	1.75	NA
(C)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after January 1, 2020, and before January 1, 2022)	1.65	1.65	NA
(C)(iii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after January 1, 2022, and before October 1, 2029)	1.50	1.50	NA
(C)(iv) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after October 1, 2029)	0.75	0.75	NA
(D)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed before January 1, 2020)	1.25	1.50	NA
(D)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after January 1, 2020, and before January 1, 2022)	1.40	1.40	NA
(D)(iii) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after January 1, 2022, and before October 1, 2029)	1.25	1.25	NA
(D)(iv) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after October 1, 2029)	0.50	0.50	NA
(E) Interest rate reduction refinancing loan	0.50	0.50	NA
(F) Direct loan under section 3711	1.00	1.00	NA
(G) Manufactured home loan under section 3712 (other than an interest rate reduction refinancing loan)	1.00	1.00	NA
(H) Loan to Native American veteran under section 3762 (other than an interest rate reduction refinancing loan)	1.25	1.25	NA
(I) Loan assumption under section 3714	0.50	0.50	0.50
(J) Loan under section 3733(a)	2.25	2.25	2.25”.

(c) WAIVER OF FEES FOR PURPLE HEART RECIPIENTS.—Section 3729(c)(1) of such title is amended—

(1) by striking “or from a surviving spouse” and inserting “, from a surviving spouse”; and

(2) by inserting before the period at the end the following: “, or from a member of the Armed Forces who is serving on active duty and who provides, on or before the date of loan closing, evidence of having been awarded the Purple Heart”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to a loan guaranteed under section 3710 of title 38, United States Code, on or after January 1, 2020.

(e) GUIDANCE.—Notwithstanding section 501 of title 38, United States Code, the Secretary of Veterans Affairs may issue guidance to implement this section before prescribing new regulations under sections 3703, 3729, and 3762 of such title, as amended by this section.

SEC. 7. INFORMATION GATHERING FOR DEPARTMENT OF VETERANS AFFAIRS HOME LOAN APPRAISALS.

(a) IN GENERAL.—Section 3731(b) of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(3) The Secretary shall permit an appraiser on a list developed and maintained under subsection (a)(3) to make an appraisal for the purposes of this chapter based solely on information gathered by a person with whom the appraiser has entered into an agreement for such services.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to an appraisal under section 3731 of such title, on or after January 1, 2020.

(c) GUIDANCE.—Notwithstanding section 501 of such title, the Secretary of Veterans Affairs may issue guidance to implement this section before prescribing new regulations under sections 3731 of such title, as amended by subsection (a).

PURPOSE AND SUMMARY

H.R. 299, as amended, would, effective January 1, 2020, extend the presumption of exposure for purposes of entitlement to service connection for diseases associated with exposure to herbicide agents, such as Agent Orange to Blue Water Navy (BWN) Vietnam veterans.¹ Additionally, H.R. 299, as amended, would extend the presumption of exposure to certain herbicide agents to veterans who served in or near the Korean Demilitarized Zone (DMZ) during the period beginning on September 1, 1967, and ending on August 31, 1971.

Consequently, these veterans may be eligible for veterans' benefits, such as compensation and healthcare, if they develop a disease linked to herbicide exposure. H.R. 299, as amended, would require the Secretary of the Department of Veterans Affairs (Secretary) to conduct outreach to inform these veterans and veterans service organizations of the ability to submit a claim for disability compensation if they develop certain diseases.

H.R. 299, as amended, would extend eligibility for U.S. Department of Veterans Affairs (VA) benefits to certain children with spina bifida (other than spina bifida occulta) who were born to veterans who served in Thailand between January 9, 1962, and May 7, 1975, and were determined by the Secretary to have been exposed to an herbicide agent.

H.R. 299, as amended, also requires the Secretary to submit a report to the Committees on Veterans' Affairs of the House of Representatives and the Senate regarding the use of herbicide agents in Thailand during the Vietnam era. Further, VA is required to submit reports to the Committees on Veterans' Affairs of the House of Representatives and the Senate on claims filed by BWN veterans for disability compensation under this Act, including the numbers of claims granted and denied. The bill, as amended, would also require the Secretary to submit an update to the Committees regarding the Follow-up Study of the National Cohort of Gulf War and Gulf Era Veterans, which examines the health of veterans who served in the Gulf War elsewhere during the same period.

H.R. 299, as amended, would also make improvements to VA's Home Loan Guaranty program to ensure that veterans can use their home loan benefit in high-cost areas, and receive appraisals in a timely and cost-efficient manner.

Representative Mark Takano of California introduced H.R. 299 on January 8, 2019.

BACKGROUND AND NEED FOR LEGISLATION

Toxic exposures

The Agent Orange Act of 1991 (P.L. 102–4) established the presumption of service connection for certain diseases associated with exposure to herbicide agents for veterans who served in the Republic of Vietnam between January 9, 1962, and May 7, 1975. This

¹BWN veterans are defined as veterans who served offshore of the Republic of Vietnam (defined below) between the dates of January 9, 1962, and May 7, 1975.

presumption simplifies the disability claim process for veterans who develop conditions linked with exposure to toxic herbicide agents due to the difficulty of proving actual exposure to herbicide agents, particularly when exposure occurred decades earlier. Additionally, this policy reduces the expense and time for VA to gather evidence of service connection on a case-by-case basis and streamlines the adjudication process.

VA's current guidelines do not acknowledge that BWN veterans may have been exposed to Agent Orange during the Vietnam era. Instead, VA limits the presumption of herbicide exposure to veterans who actually set foot on land in the Republic of Vietnam or served in the country's inland waterways. H.R. 299, as amended, would remedy this inequity by extending the presumption of exposure for service connection for herbicide related diseases² to BWN veterans who served in the offshore waters of Vietnam between January 9, 1962, and May 7, 1975.

This bill is necessary because many veterans' advocates contend that BWN veterans likely experienced exposure to herbicide agents during the Vietnam era and are now experiencing significant health problems as a result. For example, it is possible that toxic substances sprayed in Vietnam to defoliate the mainland subsequently entered rivers and streams that then ran into the seas surrounding Vietnam.³ U.S. Naval ships used water drawn from the sea to make potable water, which BWN veterans used for drinking, bathing, and cooking. Because BWN veterans may have been exposed to toxic herbicide agents, advocates argue it is unfair that veterans who served on land are eligible for presumptive VA benefits, while those who served off the coast of Vietnam are not, even if they develop the same diseases.

In response to concerns raised by veterans' advocates, in 2011 the Institute of Medicine (IOM) attempted to determine whether BWN veterans experience a comparable range of exposure to herbicide agents as those on the ground in Vietnam. However, the IOM concluded that given the passage of time and lack of sampling data collected during the conflict, there is not enough information to conclusively determine whether Blue Water Navy personnel came into contact to defoliants during their service. IOM also determined that it is unlikely that such data will be available in the future. As a result, VA has decided that the lack of scientific evidence prevents the Department from extending the presumption to BWN veterans.⁴

Tragically, many veterans who served off the coast of the Republic of Vietnam are now experiencing health problems that are associated with herbicide exposure. However, since BWN veterans do not receive an automatic presumption of herbicide exposure based on the areas where they served, these veterans must provide evidence of actual exposure to herbicide agents to successfully file a

²VA currently acknowledges that the following conditions are linked with exposure to herbicides used during the Vietnam era: AL Amyloidosis, Chloracne, Type II Diabetes Mellitus, Hodgkin's Disease, Ischemic Heart Disease, Chronic B-cell Leukemias, Multiple Myeloma, Non-Hodgkin's Lymphoma, Parkinson's Disease, Early-onset Peripheral Neuropathy, Porphyria Cutanea Tarda, Prostate Cancer, Respiratory Cancers, Soft-tissue Sarcoma. Accordingly, if a Vietnam veteran who served on land in Vietnam or on inland waterways develops one of these conditions, VA automatically presumes the condition is service connected.

³Institute of Medicine Committee on Blue Water Navy Vietnam Veterans and Agent Orange Exposure, *Blue Water Navy Vietnam Veterans and Agent Orange Exposure* (2011).

⁴V.A. Gen. Couns. Op. 27-97 (July 23, 1997).

claim for VA benefits for their herbicide related conditions. It is very difficult, if not impossible, for BWN veterans to gather such evidence because their service records may be missing or incomplete—if contemporaneous records documenting exposure were even created in the first place. As a result, VA often denies claims for benefits filed by BWN veterans.

Additionally, on January 29, 2019, the Federal Circuit decided *Procopio v. Wilkie*⁵, holding that the “Republic of Vietnam” unambiguously includes its 12 nautical mile territorial sea. As a result, the Court concluded that all BWN veterans serving in the 12 nautical mile territorial sea were considered Vietnam veterans for purposes of VA benefits, and were therefore eligible to receive the presumption of herbicide exposure. The Court’s decision did not, however, define the term “territorial sea.” As a result, this bill is necessary to codify the Court’s decision and mitigate concerns that VA may narrowly interpret the decision, thereby excluding some BWN veterans.⁶ To ensure that VA construes this bill to extend the presumption to all applicable BWN veterans who may have been exposed to herbicide agents, the Committee intends that VA’s definition of the Republic of Vietnam for this purpose be broad and comprehensive.

For purposes of this bill, a BWN veteran is one who served in the offshore waters of Vietnam. As defined by Section 2, offshore waters include a 12 nautical mile radius extending off a baseline designated by a series of geographic points. The bill intends to capture all servicemembers who were present between the shoreline and the farthest reaches of the 12 nautical mile radius during the relevant timeframe.

The bill does not specify the evidentiary proof required to establish presence within the offshore waters during the relevant time frame. Thus, the Secretary may propose guidance and regulations relating to the necessary evidence to establish qualifying service. The difficulty an individual may experience establishing specific whereabouts during a period of war is well-known⁷ and deference to lay evidence may be warranted in some situations. However, lay evidence generally does not supersede objective evidence of location in the offshore waters, such as deck logs. Any forthcoming rules or guidance should be consistent with the existing rules regarding evidentiary proof. VA should assist a veteran, to the extent possible, with developing evidence necessary to substantiate his or her claim.

This bill contemplates coverage of all vessels that served on or below the offshore waters of Vietnam. Though the majority of qualifying servicemembers served aboard ships, there may also be instances of submarines present within the offshore waters, and these vessels are also contemplated under this Act. However, an aircraft that passed in the airspace above the offshore waters

⁵*Procopio v. Wilkie*, 913 F.3d 1371 (Fed. Cir. 2019).

⁶Liermann, Shane, Assistant National Legislative Director of the Disabled American Veterans, Statement to the House of Representatives Committee on Veterans’ Affairs Subcommittee on Disability Benefits and Memorial Affairs Hearing on May 1, 2019.

⁷Fuentes, Carlos, Director of the National Legislative Service for the Veterans of Foreign Wars, Statement to the House of Representatives Committee on Veterans’ Affairs Subcommittee on Disability Benefits and Memorial Affairs Hearing on May 1, 2019 (stating, “I was in Afghanistan in 2009 and I could never be able to present to you any evidence of where I was at and exactly what I was exposed to . . . and I can’t even fathom how hard that is for our Vietnam veter[erans].”).

would not have drawn water from the sea and therefore is not considered present within the offshore waters for purposes of this legislation.

The bill, as amended, provides a presumption of herbicide agent exposure for all BWN veterans except in instances where there is affirmative evidence to establish that the veteran was not exposed to any such agent during service. Under existing law, the presumption of herbicide exposure may be rebutted when there is affirmative evidence to the contrary or evidence that the disease is due to another cause.⁸

Additionally, because BWN veterans have generally been unable to successfully apply for benefits for conditions that may have been caused by service in Vietnam due to the lack of a presumption of exposure, Section 2 of H.R. 299, as amended, would provide retroactive benefits for veterans who were denied benefits between September 1, 1985, and January 1, 2020, if the individual veteran or survivor beneficiary of a deceased veteran re-files a claim for benefits. This provision is consistent with special effective date rules given to Vietnam veterans who served on land or on inland waterways under *Nehmer v. United States Department of Veterans Affairs*, to the extent that decision contemplated retroactive awards for benefits. This ensures parity for BWN veterans and their survivors.⁹ However, unlike *Nehmer*, H.R. 299, as amended, does not require VA to automatically re-adjudicate previously denied BWN claims. Under this bill, a BWN veteran, or beneficiary, is required to submit a new claim for disability compensation on or after January 1, 2020, for the same condition that was previously denied, to be eligible for retroactive benefits. However, a BWN veteran is not limited in seeking benefits for any disease added to the Secretary's list of herbicide related diseases at a date after enactment of this legislation. Nothing in this bill intends to limit the rights of *Nehmer* class members who seek relief for benefits under the *Nehmer* Consent Decree.

To ensure that veterans whose claims were previously denied are aware of their rights under this Act, H.R. 299, as amended, requires the Secretary to conduct outreach to inform BWN veterans of the ability to submit or resubmit a claim for benefits related to herbicide agent exposure. The Secretary is also directed to share that information with the veteran service organization community to allow these representative organizations to provide up to date information to their veteran members. The VSO community includes the service organizations with the most members and other such stakeholders as the Secretary considers appropriate to notify of the change in law. Furthermore, the bill would mandate that VA submit a report to the Committees on Veterans' Affairs of the House of Representatives and the Senate on the new claims filed under

⁸ See also 38 U.S.C. § 1113(a).

⁹ Under *Nehmer*, for any new conditions or diseases VA recognized as linked to exposure to herbicides between September 25, 1985, and September 30, 2015, VA was required to automatically readjudicate any previously denied claims of Vietnam veterans and their survivors for those conditions or diseases. Moreover, if the veteran was awarded benefits, VA was required to establish that the effective date of the claim was the date the first claim was received. See 38 C.F.R. § 3.816(c)(2)–(3). See also: *Nehmer v. United States Veterans Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989) (*Nehmer I*); *Nehmer v. United States Veterans Administration*, 32 F. Supp. 2d 1175 (N.D. Cal. 1999) (*Nehmer II*); *Nehmer v. Veterans Administration of the Government of the United States*, 284 F.3d 1158 (9th Cir. 2002) (*Nehmer III*).

the special effective date rules by BWN veterans, on January 1, 2021, and annually thereafter for two years.

In 2000, the Institute of Medicine (IOM) determined there may be a link between exposure to chemicals used in Vietnam and spina bifida in offspring.¹⁰ Thus, Congress provides benefits to children of some Vietnam era veterans who may have been harmed by the use of herbicide agents, such as those who served in Vietnam or along the Korean DMZ.¹¹ However, even though VA recognizes that some veterans who were stationed along the perimeter of military installations in Thailand (between January 9, 1962, and May 7, 1975), may have come into contact with herbicide agents, the Department does not provide benefits to these veterans' biological children who were born with spina bifida. Section 4 of H.R. 299, as amended, would extend benefits to these children if VA determines that the veteran was exposed to a recognized herbicide agent during service. To be eligible for benefits, the child suffering from spina bifida must be the natural child of the exposed veteran and conceived after the parent's exposure.

Additionally, although Congress authorized benefits for certain children of veterans who served in or near the Korean DMZ between September 1, 1967, and August 31, 1971, VA's regulations limit the presumption of exposure for veterans who served in or near the Korean DMZ beginning April 1, 1968.¹² As a result of VA's regulation, a veteran who was stationed along the Korean DMZ between September 1, 1967, and March 31, 1968, is not automatically eligible for benefits if the veteran develops a condition linked to toxic chemical exposure. However, that same veteran's child who was conceived after the veteran's service in Korea and was born with spina bifida, may be eligible for benefits based on possible exposure to herbicide agents. Section 3 of H.R. 299, as amended, would resolve this inconsistency between the law and VA's regulation by expanding the presumption to include veterans who served in or near the Korean DMZ between September 1, 1967, and April 1, 1968.

Like Section 2, Section 3 does not limit a Korean DMZ veteran or family member from seeking compensation for diseases recognized by the Secretary as related to herbicide exposure in the future. If, at a date following enactment of H.R. 299, as amended, the Secretary determines via regulation that additional diseases are related to herbicide exposure, any veteran or beneficiary identified by Section 3 may seek benefits for that disease based on the veteran's qualifying service in the Korean DMZ.

Sections 2, 3 and 4 of the bill also include provisions allowing VA to issue guidance regarding the implementation of BWN, Korean DMZ and Thailand benefits as described in H.R. 299, as amended. This allows the Secretary to begin awarding benefits permitted under these sections prior to the completion of the rulemaking process. The ability to award immediate benefits during the interim period between passage of H.R. 299, as amended, and promulgation of relevant regulations reflects the urgency of need for veterans and family members afflicted by herbicide related diseases. However, the guidance provisions are not intended to replace

¹⁰ Institute of Medicine, Veterans and Agent Orange Update 2000 (2001).

¹¹ P.L. 108-183, 38 U.S.C. 1802, et. seq.

¹² 38 C.F.R. §3.307.

the need for formal regulations. Thus, the Secretary is also required to provide quarterly updates on the status of the regulations.

H.R. 299, as amended, would also address concerns of veterans who were stationed at U.S. bases in Thailand between January 9, 1962, and May 7, 1975, but are excluded from the current presumption. Section 4 of H.R. 299, as amended, would require the VA Secretary, in consultation with the Secretary of Defense, to submit a report within 180 days to the Committees on Veterans' Affairs of the House of Representatives and the Senate identifying the U.S. military installations located in Thailand where an herbicide agent was actively used and identify the period of such use.

Moreover, H.R. 299, as amended, would require the Secretary to submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate an update on the findings of VA's Follow-up Study of a National Cohort of Gulf War and Gulf Era Veterans. This study examines the health status of veterans who served in the Gulf War in 1990 and 1991 and the health of veterans who served in other areas during the same period.

VA's Home Loan Program

First authorized by the Servicemember's Readjustment Act of 1944, the VA Home Loan Guaranty program helps hundreds of thousands of servicemembers and veterans purchase their part of the American dream each year. In FY 2018, the VA Loan Guaranty Service guaranteed 610,513 loans at a cost of over \$166 billion.¹³ Section 3703 of title 38, U.S.C., sets the limit for the purchase price of a home loan that VA can guarantee. VA's maximum loan guaranty amount is calculated as a percentage of the Freddie Mac conforming loan limitation determined by the Federal Home Loan Mortgage Corporation Act¹⁴ which varies by location and zip code. Since in most cases VA's guaranty must be at least 25 percent of the loan, this means that VA's maximum loan guaranty amount is effectively capped at the Freddie Mac limit. For many veterans who are seeking to purchase a home in high cost areas, the Freddie Mac limit is too low for VA's zero-down payment loan program. This either forces the veteran not to use the VA program, or pay the loan principal down.¹⁵

To address this issue and make the home loan benefit available to all veterans and servicemembers that qualify, Section 6 of this bill would amend section 3703 of title 38, U.S.C., to eliminate the maximum loan guaranty amount under the VA home loan program by eliminating the Freddie Mac limit for VA home loans and would make the maximum guaranty amount 25 percent of the loan amount.¹⁶ The Committee is confident VA's current strict under-

¹³ Fiscal Year 2019 Budget Submission, U.S. Department of Veterans Affairs, Volume 3, "Benefits and Burial Programs and Departmental Administration, page 222.

¹⁴ Section 1454(a)(2) of title 12, U.S.C.

¹⁵ Murray, Patrick, Deputy Director of the National Legislative Service for the Veterans of Foreign Wars, Written Statement to the House of Representatives Committee on Veterans' Affairs Subcommittee on Economic Opportunity Hearing on April 9, 2019 ("The price of real estate has significantly increased in recent years, but the amount VA is able to guarantee has not. Veterans in high cost-of-living areas are now forced to contribute costly upfront down payments to guarantee their home loans with VA. This barrier prohibits veterans from achieving their dreams of becoming homeowners.")

¹⁶ Kamin, John, Credentialing and Education Policy Associate for The American Legion, Written Statement to the House of Representatives Committee on Veterans' Affairs Subcommittee on Economic Opportunity Hearing on April 9, 2019 ("For example, a veteran purchasing a 1-

writing standards and low foreclosure rates will ensure that veterans still have the required credit and income to qualify for the loan, and that this change will not result in a significant increased amount of foreclosures.¹⁷

Section 3729 of title 38, U.S.C., requires certain users of VA's loan guaranty benefit to pay a funding fee. The amount of the funding fee varies based on an individual's active duty or reserve status, the amount of down payment brought forward, and the date of loan origination. The rates of funding fees (expressed as a percentage of the loan) have remained the same since 2004. The costs of the funding fee can be rolled into the life of the loan and can be waived if the servicemember has a service-connected disability. These fees reduce the subsidy cost associated with VA's guaranty of mortgage loans and have typically been viewed as a reasonable cost to the benefit gained by having VA guarantee a mortgage loan. This section would adjust the home loan fee for mortgages closed on or after January 1, 2020, through September 30, 2029, when the rates would be lowered to current rates. The proposed rates are listed below:

Down payment and Use	Current Rates	Proposed Rates From 1/1/2020, through 1/1/2022	Change in Percent
No Money Down, 1st Use	2.15%	2.30%	0.15%
5% or more, 1st Use	1.50%	1.65%	0.15%
10% or more, 1st Use	1.25%	1.40%	0.15%
Subsequent Use	3.30%	3.60%	0.30%

For loans that close on or after January 1, 2022, the current loan funding fee rates would be in effect until September 30, 2029. The Committee believes that these modest increases would have minimal impact on the home loan market and would not seriously limit a veteran or a servicemember's ability to use their home loan benefit.

The section would also eliminate the current .25 percent premium that members of the National Guard and Reserve pay on top of current funding fees rates. The Committee believes this change would provide equity between the benefit provided to these servicemembers with veterans and active duty servicemembers. This section would also make servicemembers on active duty who have been awarded a Purple Heart exempt from the funding fee. These servicemembers are currently required to pay the funding fee, which the Committee believes disincentivizes them from using their home loan benefit. In most cases, the servicemember could separate from active duty and then file for disability compensation (presumably for the injury that led to the Purple Heart award). Because a service connected veteran is exempt from the funding fee, the discharged servicemember would receive the waiver. However, an active duty servicemember who has not yet been discharged, but has already received the Purple Heart, would not currently receive the waiver. H.R. 299, as amended, changes that. The Committee believes this change is important to help these servicemembers use their earned home loan benefit.

million-dollar home would have 25% (\$181,631.25) of the maximum guaranteed amount of \$726,525 backed by the government.”)

¹⁷ *Id.* (“Data suggests more expensive VA home loans have a smaller default rate.”)

Section 3731 of title 38, U.S.C., authorizes requirements and processes for the use of appraisals for VA-guaranteed home loans. Section 7 of H.R. 299, as amended, would amend section 3731(b) of title 38, U.S.C., to clarify that a VA may permit a VA-approved appraiser to make an appraisal based on information collected from a third party or what is known as a desktop appraisal. This change would increase efficiency and timeliness in VA home loan appraisals, which would make it easier for veterans to use their home loan benefit.

HEARINGS

On May 1, 2019, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on various bills introduced during the 116th Congress, including a draft amendment in the nature of a substitute to H.R. 299.

The following witnesses testified:

The Honorable Mark Takano, U.S. House of Representatives, 41st Congressional District of California; The Honorable David P. Roe, U.S. House of Representatives, 1st Congressional District of Tennessee; The Honorable Conor Lamb, U.S. House of Representatives, 17th Congressional District of Pennsylvania; The Honorable Greg Steube, U.S. House of Representatives, 17th District of Florida; The Honorable Julia Brownley, U.S. House of Representatives, 26th Congressional District of Florida; Mr. Matthew Sullivan, Deputy Under Secretary for Finance and Planning, National Cemetery Administration; accompanied by Mr. Kevin Friel, Deputy Director for Pension and Fiduciary, Veterans Benefits Administration; Dr. Patricia Hastings, Deputy Chief Consultant, Post Deployment Health Service, Veterans Health; Mr. Derrick Curtis, Director, Software Testing & 508, Enterprise Portfolio Management Division, Office of Information Technology; Ms. Melanie Brunson, Government Relations Officer, Blinded Veterans Association; Mr. Karl R. Horst, Major General, U.S. Army (Ret), President and Chief Executive Officer, Congressional Medal of Honor Foundation; Ms. Allison Adelle Hedge Coke, Distinguished Professor of Creative Writing, University of California, Riverside; Mr. Carlos Fuentes, Director, National Legislative Service, Veterans of Foreign Wars; Mr. Rick Weidman, Executive Director, Policy and Government Affairs, Vietnam Veterans of America; Mr. Chanin Nuntavong, Veterans Affairs and Rehabilitation Division Director, The American Legion; Mr. Shane L. Liermann, Assistant National Legislative Director, Disabled American Veterans; Dr. David A. Butler, Director, Office of Military and Veterans Health, Health and Medicine Division, The National Academies of Sciences, Engineering, and Medicine; Accompanied by Dr. Ourania Kosti, Senior Program Officer, Principal Investigator, Radiation Effects Research Foundation. The National Academies of Sciences, Engineering, and Medicine.

Statements for the record were submitted by:

The Honorable Doug LaMalfa, U.S. House of Representatives, First Congressional District of California; Mr. John Wells, Executive Director, The Military-Veterans Advocacy; Mr. Keith Kiefer, National Commander, National Association

of Atomic Veterans; Mr. Robert Celestial, SGT, U.S. Army Retired (D.A.V.), Veteran who participated in Enewetak Cleanup; Mr. Ken Brownell, Veteran who participated in Enewetak Cleanup; The American Federation of Government Employees, AFL-CIO.

On April 9, 2019, the Subcommittee on Economic Opportunity held a legislative hearing on several bills pending before the Subcommittee including a draft bill which incorporated portions of section six and seven of H.R. 299, as amended.

The following witnesses testified:

Ms. Margarita Devlin, Principal Deputy Under Secretary for Benefits, Veterans Benefits Administration of the U.S. Department of Veterans Affairs; Ms. Ashlynn Haycock, Senior Coordinator of Education Support at the Tragedy Assistance Program for Survivors; Mr. Patrick Murray, Deputy Director of National Legislative Service at The Veterans of Foreign Wars; Mr. John Kamin, Credentialing and Education Policy Association of National Veterans Employment and Education Division at The American Legion; Ms. Rebecca Burgess, Program Manager of Citizen Project at American Enterprise Institute.

Statements for the record were submitted by:

Mr. Jeremy M. Villanueva, Associate National Legislative Director at Disabled American Veterans; American Federation of Government Employees, AFL-CIO.

SUBCOMMITTEE CONSIDERATION

H.R. 299 was not considered before the Subcommittee.

COMMITTEE CONSIDERATION

On May 8, 2019, the Full Committee met in an open markup session, a quorum being present, and ordered H.R. 299, as amended, favorably reported to the House of Representatives by voice vote. During consideration of the bill, the following amendments were considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Representative Mark Takano of California, the Chairman of the full committee, that would allow VA to issue guidance regarding the implementation of benefits for Korean DMZ veterans and certain children of Thailand veterans, and make adjustments to home loan fees.

An amendment to the amendment in the nature of a substitute offered by Representative David P. Roe of Tennessee, the Ranking Member of the full committee, that would make improvements to VA's Home Loan Guaranty program to ensure that veterans can use their home loan benefit in high-cost areas and clarify the rules for active duty servicemembers who receive a Purple Heart award are exempt from home loan fees.

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RAY KELLEY
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U.S. House of Representatives

COMMITTEE ON VETERANS' AFFAIRS

ONE HUNDRED SIXTEENTH CONGRESS

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<http://veterans.house.gov>

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JOHN TOWERS
 REPUBLICAN STAFF DIRECTOR

April 1, 2019

The Honorable Robert Wilkie
 Secretary
 Department of Veterans Affairs
 810 Vermont Avenue, N.W.
 Washington, D.C. 20420

Dear Secretary Wilkie:

Thank you for your commitment while testifying before the Senate Veterans' Affairs Committee on March 26, 2019, to not recommend an appeal of the U.S. Court of Appeals for the Federal Circuit's decision in *Procopio v. Wilkie*. As you know, Blue Water Navy Veterans have waited decades to receive benefits for diseases related to herbicide exposure during their service in the Republic of Vietnam. The Blue Water Navy Vietnam Veterans Act, H.R. 299, enjoys broad bipartisan support as we collectively work to compensate these veterans. I applaud this step by VA toward recognizing Blue Water Navy Veterans as eligible for the same benefits as their fellow Vietnam veterans.

On February 27, 2019, you testified before the House Veterans' Affairs Committee. At that hearing, I asked whether you intended to extend Priority Group 6 VA healthcare benefits to Blue Water Navy Veterans. You replied that you assumed so but would consult your attorneys and provide me with a complete answer. In light of your recommendation against appeal of *Procopio*, I am following up on a response to my question.

To reiterate, *Procopio v. Wilkie* determined that a servicemember present within the 12 nautical mile territorial sea of the Republic of Vietnam between January 9, 1962, and May 7, 1975, is entitled to a presumption of herbicide exposure for purposes of VA disability benefits. Do you intend to treat this class of veterans as equally eligible for Priority Group 6 VA healthcare benefits based on service within the Republic of Vietnam?

The Honorable Robert Wilkie
April 1, 2019
Page 2

Please provide a response to this request by April 12, 2019. If you have questions or require additional information, please contact Julie Turner, Counsel for the Subcommittee on Disability Assistance and Memorial Affairs, at 202-225-6603 or julie.turner@mail.house.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Elaine Luria". The signature is fluid and cursive, with a large initial "E" and "L".

Elaine Luria
Chair
Subcommittee on Disability Assistance and Memorial
Affairs
Committee on Veterans' Affairs



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

May 6, 2019

The Honorable Elaine Luria
Madam Chair
Subcommittee on Disability Assistance
Memorial Affairs
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Madam Chair:

Thank you for your April 1, 2019, letter to the Department of Veterans Affairs (VA) regarding VA health care eligibility for Blue Water Navy Veterans considering the recent court decision in *Procopio v. Wilkie*. I appreciate the opportunity to respond.

Paragraphs (1)(A) and (4)(A) of 38 United States Code (U.S.C.) § 1710(e) provide health care eligibility for Veterans "(i) who served on active duty in the Republic of Vietnam during the period beginning on January 9, 1962 and ending on May 7, 1975 and (ii) who the Secretary finds may have been exposed during such service to dioxin or was exposed during such service to a toxic substance found in a herbicide or defoliant used for military purposes during such period." Such Veterans are eligible for hospital care and medical services under 38 U.S.C. § 1710(a)(2)(F) subject to the limitations in 38 U.S.C. § 710(e)(2)(A). As indicated in Veterans Health Administration (VHA) Directive 1601A.02, *Eligibility Determination* (November 21, 2018), VHA has generally followed the definition of the "Republic of Vietnam" used by the Veterans Benefits Administration (VBA), and it is likely that VHA would continue to follow VBA's definition if it changes as a result of *Procopio v. Wilkie*.

Additionally, if the decision of the U.S. Court of Appeals for the Federal Circuit in *Procopio v. Wilkie* stands, all Veterans who served within the territorial seas of Vietnam will be eligible for the same presumption of exposure to herbicides as those who served on the ground for purposes of eligibility for disability compensation under 38 U.S.C. § 1116. Veterans with a VBA disability rating may qualify for placement in a higher priority group for purposes of VHA health care eligibility.

Should you have any questions, please have a member of your staff contact Ms. Joanna Glaze, Congressional Relations Officer, at (202) 461-6439 or by email at Joanna.Glaze@va.gov. A similar letter was sent to Congressman Bost.

Sincerely,

A handwritten signature in black ink that reads "Robert L. Wilkie".

Robert L. Wilkie

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 299, as amended, reported to the House. A motion by Ranking Member David P. Roe of Tennessee to report H.R. 299, as amended, favorably to the House of Representatives was adopted by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE
COMMITTEE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to establish a presumption of service connection for diseases associated with exposure to certain herbicide agents to Blue Water Navy veterans who served offshore of the Republic of Vietnam and to some veterans who served in or near the Korean DMZ between September 1, 1967, and August 31, 1971; to expand eligibility for benefits to certain children of Vietnam era veterans who served in Thailand; to submit reports to the Committees on Veterans' Affairs of the House of Representatives and the Senate regarding claims for compensation under this act, the use of herbicide agents in Thailand between January 9, 1962, and May 7, 1975, and Gulf War Illness; and, to improve veterans' and servicemembers' access to their home loan benefits.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY,
AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 299, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 299, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 299, as amended.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 299, as amended, is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 299, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 299, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1. Short title

Section 1 states H.R. 299, as amended, may be cited as the "Blue Water Navy Vietnam Veterans Act of 2019."

Sec. 2. Clarification of presumptions of exposure for veterans who served in vicinity of Republic of Vietnam

Section 2 would:

(a) Extend the presumption of exposure to herbicides for purposes of entitlement to service connection for certain diseases linked to exposure to herbicides to BWN veterans who served offshore of the Republic of Vietnam between January 9, 1962, and May 7, 1975. Veterans who filed a claim for VA benefits for diseases and conditions VA recognizes as associated with exposure to herbicides for benefits under this Act between September 25, 1985,

and January 1, 2020, but were denied benefits, may file a new claim. The effective date for the claim would be the date the veteran filed the first claim. This section would also define the term “herbicide agent.”

(b) Make a clerical amendment.

(c) Allows the Secretary to issue guidance to implement this section prior to prescribing new regulations, subject to a reporting requirement regarding the status of those regulations.

(d) Require the Secretary to conduct outreach to veterans who served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, and who filed a claim for benefits between September 25, 1985, and January 1, 2020, of the ability to submit a new claim.

(e) Require VA to submit reports to the Committees on Veterans’ Affairs of the House of Representatives and the Senate on claims for disability compensation under this section.

(f) Amend section 1710(e)(4) to establish eligibility for hospital care, medical services, and nursing home care to certain veterans who served offshore of the Republic of Vietnam.

(g) Establish the effective date of this section as January 1, 2020.

Sec. 3. Presumption of herbicide exposure for certain veterans who served in Korea

Section 3 would:

(a) Extend the presumption of herbicide exposure for purposes of entitlement to service connection for certain diseases to veterans who served in or near the Korean DMZ between September 1, 1967, and August 31, 1971. This section would also define the terms “diseases” and “herbicide agent”

(b) Make a clerical amendment.

(c) Allows the Secretary to issue guidance to implement this section prior to prescribing new regulations, subject to a reporting requirement regarding the status of those regulations.

(d) Establish the effective date of this section as January 1, 2020.

Sec. 4. Benefits for children of certain Thailand service veterans born with spina bifida

Section 4 would:

(a) Extend eligibility for health care, vocational training and rehabilitation, and monetary allowance to a child who was born with spina bifida, if at least one biological parent of such child was a veteran who served in Thailand between January 9, 1962, and May 7, 1975, and the Secretary determined that at least one of the parents may have been exposed to an herbicide agent during such service in Thailand.

(b) Make conforming amendments.

(c) Make clerical amendments.

(d) Allows the Secretary to issue guidance to implement this section prior to prescribing new regulations, subject to a reporting requirement regarding the status of those regulations.

(e) Require, not later than 180 days after the date of enactment of this Act, VA, in consultation with DOD, to submit a report to the Committees on Veterans’ Affairs of the House of Representatives and the Senate identifying the military installations located

in Thailand between January 9, 1962, and May 7, 1975, at which an herbicide agent was actively used and the period of such use.

(f) Establish the effective date of this section as January 1, 2020.

Sec. 5. Report on certain Gulf War illness study

Section 5 would require, not later than 180 days after the date of enactment of this Act, VA to submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report on the Follow-up Study of a National Cohort of Gulf War and Gulf Era Veterans under VA's epidemiology program.

Sec. 6. Loans guaranteed under home loan program of Department of Veterans Affairs

Section 6 would:

(a) Amend section 3703(a) of title 38, U.S.C., to eliminate the limitation of use of the VA home loan program to the Freddie Mac Conforming loan limit as set forth by section 1454(a)(2) of title 12, U.S.C.

(b) Amend section 3729(b)(2) of title 38, U.S.C., to provide temporary increases to home loan funding rates through January 1, 2022. This section would also eliminate the additional .25 percent funding fee in place for members of the National Guard and Reserve.

(c) Provide waivers of home loan fees for active duty servicemembers who were awarded the Purple Heart.

(d) Establish the effective date of this section as January 1, 2020.

(e) Authorize, notwithstanding section 501 of title 38, U.S.C., VA to issue guidance for implementing this section in advance of regulations.

Sec. 7. Information gathering for Department of Veterans Affairs home loan appraisals

Section 7 would:

(a) Amend section 3731(b) of title 38, U.S.C., to authorize VA to permit a VA approved appraiser to complete an appraisal for a VA-backed loan based solely on information gathered by a third party.

(b) States that the amendments made by this section would go into effect on January 1, 2020.

(c) Authorize, notwithstanding section 501 of title 38, U.S.C., VA to issue guidance for implementing this section in advance of regulations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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,

and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART II—GENERAL BENEFITS

* * * * *

CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

* * * * *

SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

* * * * *

Sec.

1110. Basic entitlement.

* * * * *

1116A. *Presumptions of service connection for veterans who served offshore of the Republic of Vietnam.*

1116B. *Presumption of herbicide exposure for certain veterans who served in Korea.*

* * * * *

§ 1116A. Presumptions of service connection for veterans who served offshore of the Republic of Vietnam

(a) *SERVICE CONNECTION.*—For the purposes of section 1110 of this title, and subject to section 1113 of this title, a disease covered by section 1116 of this title becoming manifest as specified in that section in a veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

(b) *EXPOSURE.*—A veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

(c) *EFFECTIVE DATE OF AWARD.*—(1) Except as provided by paragraph (2), the effective date of an award under this section shall be determined in accordance with section 5110 of this title.

(2)(A) Notwithstanding subsection (g) of section 5110 of this title, the Secretary shall determine the effective date of an award based on a claim under this section for an individual described in subparagraph (B) by treating the date on which the individual filed the prior claim specified in clause (i) of such subparagraph as the date on which the individual filed the claim so awarded under this section.

(B) An individual described in this subparagraph is a veteran, or a survivor of a veteran, who meets the following criteria:

(i) The veteran or survivor submitted a claim for disability compensation on or after September 25, 1985, and before January 1, 2020, for a disease covered by this section, and the claim was denied by reason of the claim not establishing that the disease was incurred or aggravated by the service of the veteran.

(ii) The veteran or survivor submits a claim for disability compensation on or after January 1, 2020, for the same condition covered by the prior claim under clause (i), and the claim is approved pursuant to this section.

(d) DETERMINATION OF OFFSHORE.—Notwithstanding any other provision of law, for purposes of this section, the Secretary shall treat a location as being offshore of Vietnam if the location is not more than 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia and intersecting the following points:

Points Geographic Names	Latitude North	Longitude East
At Hon Nhan Island, Tho Chu Archipelago Kien Giang Province	9°15.0'	103°27.0'
At Hon Da Island southeast of Hon Khoai Island Minh Hai Province	8°22.8'	104°52.4'
At Tai Lon Islet, Con Dao Islet in Con Dao-Vung Toa Special Sector	8°37.8'	106°37.5'
At Bong Lai Islet, Con Dao Islet	8°38.9'	106°40.3'
At Bay Canh Islet, Con Dao Islet	8°39.7'	106°42.1'
At Hon Hai Islet (Phu Qui group of islands) Thuan Hai Province	9°58.0'	109°5.0'
At Hon Doi Islet, Thuan Hai Province	12°39.0'	109°28.0'
At Dai Lanh point, Phu Khanh Province	12°53.8'	109°27.2'
At Ong Can Islet, Phu Khanh Province	13°54.0'	109°21.0'
At Ly Son Islet, Nghia Binh Province	15°23.1'	109° 9.0'
At Con Co Island, Binh Tri Thien Province	17°10.0'	107°20.6'

(e) HERBICIDE AGENT.—In this section, the term “herbicide agent” has the meaning given that term in section 1116(a)(3) of this title.

§ 1116B. Presumption of herbicide exposure for certain veterans who served in Korea

(a) PRESUMPTION OF SERVICE-CONNECTION.—(1) For the purposes of section 1110 of this title, and subject to section 1113 of this title, a disease specified in subsection (b) that becomes manifest as specified in that subsection in a veteran described in paragraph (2) shall be considered to have been incurred or aggravated in the line of duty in the active military, naval, or air service, notwithstanding that there is no record of evidence of such disease during the period of such service.

(2) A veteran described in this paragraph is a veteran who, during active military, naval, or air service, served in or near the Korean Demilitarized Zone (DMZ), during the period beginning on September 1, 1967, and ending on August 31, 1971.

(b) DISEASES.—A disease specified in this subsection is—

(1) a disease specified in paragraph (2) of subsection (a) of section 1116 of this title that becomes manifest as specified in that paragraph; or

(2) any additional disease that—

(A) the Secretary determines in regulations warrants a presumption of service-connection by reason of having positive association with exposure to an herbicide agent; and

(B) becomes manifest within any period prescribed in such regulations.

(c) *HERBICIDE AGENT*.—For purposes of this section, the term “herbicide agent” has the meaning given such term in section 1821(d) of this title.

* * * * *

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

* * * * *

SUBCHAPTER II—HOSPITAL, NURSING HOME, OR DOMICILIARY CARE AND MEDICAL TREATMENT

§ 1710. Eligibility for hospital, nursing home, and domiciliary care

(a)(1) The Secretary (subject to paragraph (4)) shall furnish hospital care and medical services which the Secretary determines to be needed—

(A) to any veteran for a service-connected disability; and

(B) to any veteran who has a service-connected disability rated at 50 percent or more.

(2) The Secretary (subject to paragraph (4)) shall furnish hospital care and medical services, and may furnish nursing home care, which the Secretary determines to be needed to any veteran—

(A) who has a compensable service-connected disability rated less than 50 percent or, with respect to nursing home care during any period during which the provisions of section 1710A(a) of this title are in effect, a compensable service-connected disability rated less than 70 percent;

(B) whose discharge or release from active military, naval, or air service was for a disability that was incurred or aggravated in the line of duty;

(C) who is in receipt of, or who, but for a suspension pursuant to section 1151 of this title (or both a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such veteran’s continuing eligibility for such care is provided for in the judgment or settlement provided for in such section;

(D) who is a former prisoner of war, who was awarded the medal of honor under section 7271, 8291, or 9271 of title 10 or section 491 of title 14, or who was awarded the Purple Heart;

(E) who is a veteran of the Mexican border period or of World War I;

(F) who was exposed to a toxic substance, radiation, or other conditions, as provided in subsection (e); or

(G) who is unable to defray the expenses of necessary care as determined under section 1722(a) of this title.

(3) In the case of a veteran who is not described in paragraphs (1) and (2), the Secretary may, to the extent resources and facilities are available and subject to the provisions of subsections (f) and

(g), furnish hospital care, medical services, and nursing home care which the Secretary determines to be needed.

(4) The requirement in paragraphs (1) and (2) that the Secretary furnish hospital care and medical services, the requirement in section 1710A(a) of this title that the Secretary provide nursing home care, the requirement in section 1710B of this title that the Secretary provide a program of extended care services, and the requirement in section 1745 of this title to provide nursing home care and prescription medicines to veterans with service-connected disabilities in State homes shall be effective in any fiscal year only to the extent and in the amount provided in advance in appropriations Acts for such purposes.

(5) During any period during which the provisions of section 1710A(a) of this title are not in effect, the Secretary may furnish nursing home care which the Secretary determines is needed to any veteran described in paragraph (1), with the priority for such care on the same basis as if provided under that paragraph.

(b)(1) The Secretary may furnish to a veteran described in paragraph (2) of this subsection such domiciliary care as the Secretary determines is needed for the purpose of the furnishing of medical services to the veteran.

(2) This subsection applies in the case of the following veterans:

(A) Any veteran whose annual income (as determined under section 1503 of this title) does not exceed the maximum annual rate of pension that would be applicable to the veteran if the veteran were eligible for pension under section 1521(d) of this title.

(B) Any veteran who the Secretary determines has no adequate means of support.

(c) While any veteran is receiving hospital care or nursing home care in any Department facility, the Secretary may, within the limits of Department facilities, furnish medical services to correct or treat any non-service-connected disability of such veteran, in addition to treatment incident to the disability for which such veteran is hospitalized, if the veteran is willing, and the Secretary finds such services to be reasonably necessary to protect the health of such veteran. The Secretary may furnish dental services and treatment, and related dental appliances, under this subsection for a non-service-connected dental condition or disability of a veteran only (1) to the extent that the Secretary determines that the dental facilities of the Department to be used to furnish such services, treatment, or appliances are not needed to furnish services, treatment, or appliances for dental conditions or disabilities described in section 1712(a) of this title, or (2) if (A) such non-service-connected dental condition or disability is associated with or aggravating a disability for which such veteran is receiving hospital care, or (B) a compelling medical reason or a dental emergency requires furnishing dental services, treatment, or appliances (excluding the furnishing of such services, treatment, or appliances of a routine nature) to such veteran during the period of hospitalization under this section.

(d) In no case may nursing home care be furnished in a hospital not under the direct jurisdiction of the Secretary except as provided in section 1720 of this title.

(e)(1)(A) A Vietnam-era herbicide-exposed veteran is eligible (subject to paragraph (2)) for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure.

(B) A radiation-exposed veteran is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any disease suffered by the veteran that is—

- (i) a disease listed in section 1112(c)(2) of this title; or
- (ii) any other disease for which the Secretary, based on the advice of the Advisory Committee on Environmental Hazards, determines that there is credible evidence of a positive association between occurrence of the disease in humans and exposure to ionizing radiation.

(C) Subject to paragraph (2) of this subsection, a veteran who served on active duty between August 2, 1990, and November 11, 1998, in the Southwest Asia theater of operations during the Persian Gulf War is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such service.

(D) Subject to paragraphs (2) and (3), a veteran who served on active duty in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during a period of war after the Persian Gulf War, or in combat against a hostile force during a period of hostilities after November 11, 1998, is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such condition is attributable to such service.

(E) Subject to paragraph (2), a veteran who participated in a test conducted by the Department of Defense Desert Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as “Project Shipboard Hazard and Defense (SHAD)” and related land-based tests) is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such illness is attributable to such testing.

(F) Subject to paragraph (2), a veteran who served on active duty in the Armed Forces at Camp Lejeune, North Carolina, for not fewer than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, is eligible for hospital care and medical services under subsection (a)(2)(F) for any of the following illnesses or conditions, notwithstanding that there is insufficient medical evidence to conclude that such illnesses or conditions are attributable to such service:

- (i) Esophageal cancer.
- (ii) Lung cancer.
- (iii) Breast cancer.
- (iv) Bladder cancer.
- (v) Kidney cancer.
- (vi) Leukemia.
- (vii) Multiple myeloma.
- (viii) Myelodysplastic syndromes.

- (ix) Renal toxicity.
- (x) Hepatic steatosis.
- (xi) Female infertility.
- (xii) Miscarriage.
- (xiii) Scleroderma.
- (xiv) Neurobehavioral effects.
- (xv) Non-Hodgkin's lymphoma.

(2)(A) In the case of a veteran described in paragraph (1)(A), hospital care, medical services, and nursing home care may not be provided under subsection (a)(2)(F) with respect to—

(i) a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than an exposure described in paragraph (4)(A)(ii); or

(ii) a disease for which the National Academy of Sciences, in a report issued in accordance with section 3 of the Agent Orange Act of 1991, has determined that there is limited or suggestive evidence of the lack of a positive association between occurrence of the disease in humans and exposure to a herbicide agent.

(B) In the case of a veteran described in subparagraph (C), (D), (E), or (F) of paragraph (1), hospital care, medical services, and nursing home care may not be provided under subsection (a)(2)(F) with respect to a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than the service or testing described in such subparagraph.

(3) In the case of care for a veteran described in paragraph (1)(D), hospital care, medical services, and nursing home care may be provided under or by virtue of subsection (a)(2)(F) only during the following periods:

(A) Except as provided by subparagraph (B), with respect to a veteran described in paragraph (1)(D) who is discharged or released from the active military, naval, or air service after January 27, 2003, the five-year period beginning on the date of such discharge or release.

(B) With respect to a veteran described in paragraph (1)(D) who is discharged or released from the active military, naval, or air service after January 1, 2009, and before January 1, 2011, but did not enroll to receive such hospital care, medical services, or nursing home care pursuant to such paragraph during the five-year period described in subparagraph (A), the one-year period beginning on the date of the enactment of the Clay Hunt Suicide Prevention for American Veterans Act.

(C) With respect to a veteran described in paragraph (1)(D) who is discharged or released from the active military, naval, or air service on or before January 27, 2003, and did not enroll in the patient enrollment system under section 1705 of this title on or before such date, the three-year period beginning on January 27, 2008.

(4) For purposes of this subsection—

(A) The term “Vietnam-era herbicide-exposed veteran” means a veteran (i) who served on active duty in the Republic of Vietnam (*including offshore of such Republic as described in section 1116A(d) of this title*) during the period beginning on January

9, 1962, and ending on May 7, 1975, and (ii) who the Secretary finds may have been exposed during such service to dioxin or was exposed during such service to a toxic substance found in a herbicide or defoliant used for military purposes during such period.

(B) The term “radiation-exposed veteran” has the meaning given that term in section 1112(c)(3) of this title.

(5) When the Secretary first provides care for veterans using the authority provided in paragraph (1)(D), the Secretary shall establish a system for collection and analysis of information on the general health status and health care utilization patterns of veterans receiving care under that paragraph. Not later than 18 months after first providing care under such authority, the Secretary shall submit to Congress a report on the experience under that authority. The Secretary shall include in the report any recommendations of the Secretary for extension of that authority.

(f)(1) The Secretary may not furnish hospital care or nursing home care (except if such care constitutes hospice care) under this section to a veteran who is eligible for such care under subsection (a)(3) of this section unless the veteran agrees to pay to the United States the applicable amount determined under paragraph (2) or (4) of this subsection.

(2) A veteran who is furnished hospital care or nursing home care under this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such care shall be liable to the United States for an amount equal to—

(A) the lesser of—

(i) the cost of furnishing such care, as determined by the Secretary; or

(ii) the amount determined under paragraph (3) of this subsection; and

(B) before September 30, 2020, an amount equal to \$10 for every day the veteran receives hospital care and \$5 for every day the veteran receives nursing home care.

(3)(A) In the case of hospital care furnished during any 365-day period, the amount referred to in paragraph (2)(A)(ii) of this subsection is—

(i) the amount of the inpatient Medicare deductible, plus

(ii) one-half of such amount for each 90 days of care (or fraction thereof) after the first 90 days of such care during such 365-day period.

(B) In the case of nursing home care furnished during any 365-day period, the amount referred to in paragraph (2)(A)(ii) of this subsection is the amount of the inpatient Medicare deductible for each 90 days of such care (or fraction thereof) during such 365-day period.

(C)(i) Except as provided in clause (ii) of this subparagraph, in the case of a veteran who is admitted for nursing home care under this section after being furnished, during the preceding 365-day period, hospital care for which the veteran has paid the amount of the inpatient Medicare deductible under this subsection and who has not been furnished 90 days of hospital care in connection with such payment, the veteran shall not incur any liability under para-

graph (2) of this subsection with respect to such nursing home care until—

(I) the veteran has been furnished, beginning with the first day of such hospital care furnished in connection with such payment, a total of 90 days of hospital care and nursing home care; or

(II) the end of the 365-day period applicable to the hospital care for which payment was made, whichever occurs first.

(ii) In the case of a veteran who is admitted for nursing home care under this section after being furnished, during any 365-day period, hospital care for which the veteran has paid an amount under subparagraph (A)(ii) of this paragraph and who has not been furnished 90 days of hospital care in connection with such payment, the amount of the liability of the veteran under paragraph (2) of this subsection with respect to the number of days of such nursing home care which, when added to the number of days of such hospital care, is 90 or less, is the difference between the inpatient Medicare deductible and the amount paid under such subparagraph until—

(I) the veteran has been furnished, beginning with the first day of such hospital care furnished in connection with such payment, a total of 90 days of hospital care and nursing home care; or

(II) the end of the 365-day period applicable to the hospital care for which payment was made,

whichever occurs first.

(D) In the case of a veteran who is admitted for hospital care under this section after having been furnished, during the preceding 365-day period, nursing home care for which the veteran has paid the amount of the inpatient Medicare deductible under this subsection and who has not been furnished 90 days of nursing home care in connection with such payment, the veteran shall not incur any liability under paragraph (2) of this subsection with respect to such hospital care until—

(i) the veteran has been furnished, beginning with the first day of such nursing home care furnished in connection with such payment, a total of 90 days of nursing home care and hospital care; or

(ii) the end of the 365-day period applicable to the nursing home care for which payment was made,

whichever occurs first.

(E) A veteran may not be required to make a payment under this subsection for hospital care or nursing home care furnished under this section during any 90-day period in which the veteran is furnished medical services under paragraph (3) of subsection (a) to the extent that such payment would cause the total amount paid by the veteran under this subsection for hospital care and nursing home care furnished during that period and under subsection (g) for medical services furnished during that period to exceed the amount of the inpatient Medicare deductible in effect on the first day of such period.

(F) A veteran may not be required to make a payment under this subsection or subsection (g) for any days of care in excess of 360 days of care during any 365-calendar-day period.

(4) In the case of a veteran covered by this subsection who is also described by section 1705(a)(7) of this title, the amount for which the veteran shall be liable to the United States for hospital care under this subsection shall be an amount equal to 20 percent of the total amount for which the veteran would otherwise be liable for such care under subparagraphs (2)(B) and (3)(A) but for this paragraph.

(5) For the purposes of this subsection, the term “inpatient Medicare deductible” means the amount of the inpatient hospital deductible in effect under section 1813(b) of the Social Security Act (42 U.S.C. 1395e(b)) on the first day of the 365-day period applicable under paragraph (3) of this subsection.

(g)(1) The Secretary may not furnish medical services (except if such care constitutes hospice care) under subsection (a) of this section (including home health services under section 1717 of this title) to a veteran who is eligible for hospital care under this chapter by reason of subsection (a)(3) of this section unless the veteran agrees to pay to the United States in the case of each outpatient visit the applicable amount or amounts established by the Secretary by regulation.

(2) A veteran who is furnished medical services under subsection (a) of this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such services shall be liable to the United States, in the case of each visit in which such services are furnished to the veteran, for an amount which the Secretary shall establish by regulation.

(3) This subsection does not apply with respect to the following:

(A) Home health services under section 1717 of this title to the extent that such services are for improvements and structural alterations.

(B) Education on the use of opioid antagonists to reverse the effects of overdoses of specific medications or substances.

(h) Nothing in this section requires the Secretary to furnish care to a veteran to whom another agency of Federal, State, or local government has a duty under law to provide care in an institution of such government.

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CHAPTER 18—BENEFITS FOR CHILDREN OF VIETNAM VETERANS AND CERTAIN OTHER VETERANS

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[SUBCHAPTER III—CHILDREN OF CERTAIN KOREA SERVICE VETERANS BORN WITH SPINA BIFIDA]

SUBCHAPTER III—CHILDREN OF CERTAIN KOREA AND THAILAND SERVICE VETERANS BORN WITH SPINA BIFIDA

1821. Benefits for children of certain Korea service veterans born with spina bifida.

1822. *Benefits for children of certain Thailand service veterans born with spina bifida.*

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SUBCHAPTER III—CHILDREN OF CERTAIN KOREA AND
THAILAND SERVICE VETERANS BORN WITH SPINA BIFIDA

* * * * *

§ 1822. Benefits for children of certain Thailand service veterans born with spina bifida

(a) *BENEFITS AUTHORIZED.*—*The Secretary may provide to any child of a veteran of covered service in Thailand who is suffering from spina bifida the health care, vocational training and rehabilitation, and monetary allowance required to be paid to a child of a Vietnam veteran who is suffering from spina bifida under subchapter I of this chapter as if such child of a veteran of covered service in Thailand were a child of a Vietnam veteran who is suffering from spina bifida under such subchapter.*

(b) *SPINA BIFIDA CONDITIONS COVERED.*—*This section applies with respect to all forms and manifestations of spina bifida, except spina bifida occulta.*

(c) *VETERAN OF COVERED SERVICE IN THAILAND.*—*For purposes of this section, a veteran of covered service in Thailand is any individual, without regard to the characterization of that individual's service, who—*

(1) *served in the active military, naval, or air service in Thailand, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on January 9, 1962, and ending on May 7, 1975; and*

(2) *is determined by the Secretary, in consultation with the Secretary of Defense, to have been exposed to a herbicide agent during such service in Thailand.*

(d) *HERBICIDE AGENT.*—*For purposes of this section, the term "herbicide agent" means a chemical in a herbicide used in support of United States and allied military operations in Thailand, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on January 9, 1962, and ending on May 7, 1975.*

SUBCHAPTER IV—GENERAL PROVISIONS

§ 1831. Definitions

In this chapter:

(1) The term "child" means the following:

(A) For purposes of subchapters I and II of this chapter, an individual, regardless of age or marital status, who—

(i) is the natural child of a Vietnam veteran; and

(ii) was conceived after the date on which that veteran first entered the Republic of Vietnam during the Vietnam era.

(B) For purposes of [subchapter III of this chapter] section 1821 of this title, an individual, regardless of age or marital status, who—

(i) is the natural child of a veteran of covered service in Korea (as determined for purposes of [section 1821 of this title] that section); and

(ii) was conceived after the date on which that veteran first entered service described in subsection (c) of that section.

(C) For purposes of section 1822 of this title, an individual, regardless of age or marital status, who—

(i) is the natural child of a veteran of covered service in Thailand (as determined for purposes of that section); and

(ii) was conceived after the date on which that veteran first entered service described in subsection (c) of that section.

(2) The term “Vietnam veteran” means an individual who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era, without regard to the characterization of that individual’s service.

(3) The term “Vietnam era” with respect to—

(A) subchapter I of this chapter, means the period beginning on January 9, 1962, and ending on May 7, 1975; and

(B) subchapter II of this chapter, means the period beginning on February 28, 1961, and ending on May 7, 1975.

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PART III—READJUSTMENT AND RELATED BENEFITS

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CHAPTER 37—HOUSING AND SMALL BUSINESS LOANS

* * * * *

SUBCHAPTER I—GENERAL

* * * * *

§ 3703. Basic provisions relating to loan guaranty and insurance

(a)(1)(A) Any loan to a veteran eligible for benefits under this chapter, if made for any of the purposes specified in section 3710 of this title and in compliance with the provisions of this chapter, is automatically guaranteed by the United States in an amount not to exceed the lesser of—

(i)(I) in the case of any loan of not more than \$45,000, 50 percent of the loan;

(II) in the case of any loan of more than \$45,000, but not more than \$56,250, \$22,500;

(III) except as provided in subclause (IV) of this clause, in the case of any loan of more than \$56,250, the lesser of \$36,000 or 40 percent of the loan; or

(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

(ii) the maximum amount of guaranty entitlement available to the veteran as specified in [subparagraph (B) of this paragraph] *subparagraph (B) or (C)*.

(B) **【The maximum】** *With respect to loans described in subclauses (I), (II), or (III) of subparagraph (A)(i), the maximum amount of guaranty entitlement available to a veteran for purposes specified in section 3710 of this title shall be \$36,000, [or in the case of a loan described in subparagraph (A)(i)(IV) of this paragraph, the maximum guaranty amount (as defined in subparagraph (C)),] reduced by the amount of entitlement previously used by the veteran under this chapter and not restored as a result of the exclusion in section 3702(b) of this title.*

【(C) In this paragraph, the term “maximum guaranty amount” means the dollar amount that is equal to 25 percent of the Freddie Mac conforming loan limit limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a single-family residence, as adjusted for the year involved.】

(C)(i) With respect to loans described in subclause (IV) of subparagraph (A)(i) made to a veteran not covered by clause (ii), the maximum amount of guaranty entitlement available to the veteran shall be 25 percent of the loan.

(ii) With respect to loans described in subclause (IV) of subparagraph (A)(i) made to a covered veteran, the maximum amount of guaranty entitlement available to the veteran shall be 25 percent of the Freddie Mac conforming loan limit, reduced by the amount of entitlement previously used by the veteran under this chapter and not restored as a result of the exclusion in section 3702(b) of this title.

(iii) In this subparagraph:

(I) The term “covered veteran” means a veteran who has previously used entitlement under this chapter and for whom the full amount of entitlement so used has not been restored as a result of the exclusion in section 3702(b) of this title.

(II) The term “Freddie Mac conforming loan limit” means the limit determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a single-family residence, as adjusted for the year involved.

(2)(A) Any housing loan which might be guaranteed under the provisions of this chapter, when made or purchased by any financial institution subject to examination and supervision by any agency of the United States or of any State may, in lieu of such guaranty, be insured by the Secretary under an agreement whereby the Secretary will reimburse any such institution for losses incurred on such loan up to 15 per centum of the aggregate of loans so made or purchased by it.

(B) Loans insured under this section shall be made on such other terms, conditions, and restrictions as the Secretary may prescribe within the limitations set forth in this chapter.

(b) The liability of the United States under any guaranty, within the limitations of this chapter, shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation.

(c)(1) Loans guaranteed or insured under this chapter shall be payable upon such terms and conditions as may be agreed upon by the parties thereto, subject to the provisions of this chapter and regulations of the Secretary issued pursuant to this chapter, and shall bear interest not in excess of such rate as the Secretary may

from time to time find the loan market demands, except that in establishing the rate of interest that shall be applicable to such loans, the Secretary shall consult with the Secretary of Housing and Urban Development regarding the rate of interest applicable to home loans insured under section 203(b) of the National Housing Act (12 U.S.C. 1709(b)). In establishing rates of interest under this paragraph for one or more of the purposes described in clauses (4) and (7) of section 3710(a) of this title, the Secretary may establish a rate or rates higher than the rate specified for other purposes under such section, but any such rate may not exceed such rate as the Secretary may from time to time find the loan market demands for loans for such purposes.

(2) The provisions of the Servicemen's Readjustment Act of 1944 which were in effect before April 1, 1958, with respect to the interest chargeable on loans made or guaranteed under such Act shall, notwithstanding the provisions of paragraph (1) of this subsection, continue to be applicable—

(A) to any loan made or guaranteed before April 1, 1958; and

(B) to any loan with respect to which a commitment to guarantee was entered into by the Secretary before April 1, 1958.

(3) This section shall not be construed to prohibit a veteran from paying to a lender any reasonable discount required by such lender, when the proceeds from the loan are to be used—

(A) to refinance indebtedness pursuant to clause (5), (8), or (9)(B)(i) of section 3710(a) of this title or section 3712(a)(1)(F) of this title;

(B) to repair, alter, or improve a farm residence or other dwelling pursuant to clauses (4) and (7) of section 3710(a) of this title;

(C) to construct a dwelling or farm residence on land already owned or to be acquired by the veteran except where the land is directly or indirectly acquired from a builder or developer who has contracted to construct such dwelling for the veteran;

(D) to purchase a dwelling from a class of sellers which the Secretary determines are legally precluded under all circumstances from paying such a discount if the best interest of the veteran would be so served; or

(E) to refinance indebtedness and purchase a manufactured-home lot pursuant to section 3710(a)(9)(B)(ii) or 3712(a)(1)(G) of this title, but only with respect to that portion of the loan used to refinance such indebtedness.

(4)(A) In guaranteeing or insuring loans under this chapter, the Secretary may elect whether to require that such loans bear interest at a rate that is—

(i) agreed upon by the veteran and the mortgagee; or

(ii) established under paragraph (1).

The Secretary may, from time to time, change the election under this subparagraph.

(B) Any veteran, under a loan described in subparagraph (A)(i), may pay reasonable discount points in connection with the loan. Except in the case of a loan for the purpose specified in section 3710(a)(8), 3710(b)(7), or 3712(a)(1)(F) of this title, discount points may not be financed as part of the principal amount of a loan guaranteed or insured under this chapter.

(C) Not later than 10 days after an election under subparagraph (A), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a notification of the election, together with an explanation of the reasons therefor.

(d)(1) The maturity of any housing loan at the time of origination shall not be more than thirty years and thirty-two days.

(2)(A) Any loan for a term of more than five years shall be amortized in accordance with established procedure.

(B) The Secretary may guarantee loans with provisions for various rates of amortization corresponding to anticipated variations in family income. With respect to any loan guaranteed under this subparagraph—

(i) the initial principal amount of the loan may not exceed the reasonable value of the property as of the time the loan is made; and

(ii) the principal amount of the loan thereafter (including the amount of all interest to be deferred and added to principal) may not at any time be scheduled to exceed the projected value of the property.

(C) For the purposes of subparagraph (B) of this paragraph, the projected value of the property shall be calculated by the Secretary by increasing the reasonable value of the property as of the time the loan is made at a rate not in excess of 2.5 percent per year, but in no event may the projected value of the property for the purposes of such subparagraph exceed 115 percent of such reasonable value. A loan made for a purpose other than the acquisition of a single-family dwelling unit may not be guaranteed under such subparagraph.

(3)(A) Any real estate housing loan (other than for repairs, alterations, or improvements) shall be secured by a first lien on the realty. In determining whether a loan is so secured, the Secretary may either disregard or allow for subordination to a superior lien created by a duly recorded covenant running with the realty in favor of either of the following:

(i) A public entity that has provided or will provide assistance in response to a major disaster as determined by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(ii) A private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services, or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Secretary determines that the interests of the veteran borrower and of the Government will not be prejudiced by the operation of such covenant.

(B) With respect to any superior lien described in subparagraph (A) created after June 6, 1969, the Secretary's determination under clause (ii) of such subparagraph shall have been made prior to the recording of the covenant.

(e)(1) Except as provided in paragraph (2) of this subsection, an individual who pays a fee under section 3729 of this title, or who is exempted under section 3729(c) of this title from paying such fee, with respect to a housing loan guaranteed or insured under this chapter that is closed after December 31, 1989, shall have no liabil-

ity to the Secretary with respect to the loan for any loss resulting from any default of such individual except in the case of fraud, misrepresentation, or bad faith by such individual in obtaining the loan or in connection with the loan default.

(2) The exemption from liability provided by paragraph (1) of this subsection shall not apply to—

(A) an individual from whom a fee is collected (or who is exempted from such fee) under section 3729(b)(2)(I) of this title; or

(B) a loan made for any purpose specified in section 3712 of this title.

(f) The application for or obtaining of a loan made, insured, or guaranteed under this chapter shall not be subject to reporting requirements applicable to requests for, or receipts of, Federal contracts, grants, loans, loan guarantees, loan insurance, or cooperative agreements except to the extent that such requirements are provided for in, or by the Secretary pursuant to, this title.

* * * * *

SUBCHAPTER II—LOANS

§ 3710. Purchase or construction of homes

(a) Except as provided in section 3704(c)(2) of this title, any loan to a veteran, if made pursuant to the provisions of this chapter, is automatically guaranteed if such loan is for one or more of the following purposes:

(1) To purchase or construct a dwelling to be owned and occupied by the veteran as a home.

(2) To purchase a farm on which there is a farm residence to be owned and occupied by the veteran as the veteran's home.

(3) To construct on land owned by the veteran a farm residence to be occupied by the veteran as the veteran's home.

(4) To repair, alter, or improve a farm residence or other dwelling owned by the veteran and occupied by the veteran as the veteran's home.

(5) To refinance existing mortgage loans or other liens which are secured of record on a dwelling or farm residence owned and occupied by the veteran as the veteran's home.

(6) To purchase a one-family residential unit in a condominium housing development or project, if such development or project is approved by the Secretary under criteria which the Secretary shall prescribe in regulations.

(7) To improve a dwelling or farm residence owned by the veteran and occupied by the veteran as the veteran's home through energy efficiency improvements, as provided in subsection (d).

(8) To refinance in accordance with subsection (e) of this section an existing loan guaranteed, insured, or made under this chapter.

(9)(A)(i) To purchase a manufactured home to be permanently affixed to a lot that is owned by the veteran.

(ii) To purchase a manufactured home and a lot to which the home will be permanently affixed.

(B)(i) To refinance, in accordance with the terms and conditions applicable under the provisions of subsection (e) of this section (other than paragraph (1)(E) of such subsection) to the guaranty of a loan for the purpose specified in clause (8) of this subsection, an existing loan guaranteed, insured, or made under this chapter that is secured by a manufactured home permanently affixed to a lot that is owned by the veteran.

(ii) To refinance, in accordance with section 3712(a)(5) of this title, an existing loan that was made for the purchase of, and that is secured by, a manufactured home that is permanently affixed to a lot and to purchase the lot to which the manufactured home is affixed.

(10) To purchase a dwelling to be owned and occupied by the veteran as a home and make energy efficiency improvements, as provided in subsection (d).

(11) To refinance in accordance with subsection (e) an existing loan guaranteed, insured, or made under this chapter, and to improve the dwelling securing such loan through energy efficiency improvements, as provided in subsection (d).

(12) With respect to a loan guaranteed after the date of the enactment of this paragraph and before the date that is five years after that date, to purchase stock or membership in a cooperative housing corporation for the purpose of entitling the veteran to occupy for dwelling purposes a single family residential unit in a development, project, or structure owned or leased by such corporation, in accordance with subsection (h).

If there is an indebtedness which is secured by a lien against land owned by the veteran, the proceeds of a loan guaranteed under this section or made under section 3711 of this title for construction of a dwelling or farm residence on such land may be used also to liquidate such lien, but only if the reasonable value of the land is equal to or greater than the amount of the lien.

(b) No loan may be guaranteed under this section or made under section 3711 of this title unless—

(1) the proceeds of such loan will be used to pay for the property purchased, constructed, or improved;

(2) the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the construction cost bear a proper relation to the veteran's present and anticipated income and expenses;

(3) the veteran is a satisfactory credit risk, as determined in accordance with the credit underwriting standards established pursuant to subsection (g) of this section;

(4) the nature and condition of the property is such as to be suitable for dwelling purposes;

(5) except in the case of a loan described in clause (7) or (8) of this subsection, the loan to be paid by the veteran for such property or for the cost of construction, repairs, or alterations, does not exceed the reasonable value thereof as determined pursuant to section 3731 of this title;

(6) if the loan is for repair, alteration, or improvement of property, such repair, alteration, or improvement substantially protects or improves the basic livability or utility of such property;

(7) in the case of a loan (other than a loan made for a purpose specified in subsection (a)(8) of this section) that is made to refinance—

- (A) a construction loan,
 - (B) an installment land sales contract, or
 - (C) a loan assumed by the veteran that provides for a lower interest rate than the loan being refinanced,
- the amount of the loan to be guaranteed or made does not exceed the lesser of—

(i) the reasonable value of the dwelling or farm residence securing the loan, as determined pursuant to section 3731 of this title; or

(ii) the sum of the outstanding balance on the loan to be refinanced and the closing costs (including discounts) actually paid by the veteran, as specified by the Secretary in regulations; and

(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 100 percent of the reasonable value of the dwelling or farm residence securing the loan, as determined pursuant to section 3731 of this title.

(d)(1) The Secretary shall carry out a program to demonstrate the feasibility of guaranteeing loans for the acquisition of an existing dwelling and the cost of making energy efficiency improvements to the dwelling or for energy efficiency improvements to a dwelling owned and occupied by a veteran. A loan may be guaranteed under this subsection only if it meets the requirements of this chapter, except as those requirements are modified by this subsection.

(2) The cost of energy efficiency measures that may be financed by a loan guaranteed under this section may not exceed the greater of—

(A) the cost of the energy efficiency improvements, up to \$3,000; or

(B) \$6,000, if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficiency improvements.

(3) Notwithstanding the provisions of section 3703(a)(1)(A) of this title, any loan guaranteed under this subsection shall be guaranteed in an amount equal to the sum of—

(A) the guaranty that would be provided under those provisions for the dwelling without the energy efficiency improvements; and

(B) an amount that bears the same relation to the cost of the energy efficiency improvements as the guaranty referred to in subparagraph (A) bears to the amount of the loan minus the cost of such improvements.

(4) The amount of the veteran's entitlement, calculated in accordance with [section 3703(a)(1)(B) of this title] *subparagraph (B) or*

(C) of section 3703(a)(1) of this title, shall not be affected by the amount of the guaranty referred to in paragraph (3)(B).

(5) The Secretary shall take appropriate actions to notify eligible veterans, participating lenders, and interested realtors of the availability of loan guarantees under this subsection and the procedures and requirements that apply to the obtaining of such guarantees.

(6) For the purposes of this subsection:

(A) The term “energy efficiency improvement” includes a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system, and the application of a residential energy conservation measure.

(B) The term “solar heating” has the meaning given such term in section 3(1) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502(1)) and, in addition, includes a passive system based on conductive, convective, or radiant energy transfer.

(C) The terms “solar heating and cooling” and “combined solar heating and cooling” have the meaning given such terms in section 3(2) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502(2)) and, in addition, include a passive system based on conductive, convective, or radiant energy transfer.

(D) The term “passive system” includes window and skylight glazing, thermal floors, walls, and roofs, movable insulation panels (when in conjunction with glazing), portions of a residential structure that serve as solar furnaces so as to add heat to the structure, double-pane window insulation, and such other energy-related components as are determined by the Secretary to enhance the natural transfer of energy for the purpose of heating or heating and cooling a residence.

(E) The term “residential energy conservation measure” means—

(i) caulking and weatherstripping of all exterior doors and windows;

(ii) furnace efficiency modifications limited to—

(I) replacement burners, boilers, or furnaces designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

(II) devices for modifying flue openings which will increase the efficiency of the heating system, and

(III) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(iii) clock thermostats;

(iv) ceiling, attic, wall, and floor insulation;

(v) water heater insulation;

(vi) storm windows and doors;

(vii) heat pumps; and

(viii) such other energy conservation measures as the Secretary may identify for the purposes of this subparagraph.

(e)(1) For a loan to be guaranteed for the purpose specified in subsection (a)(8) or for the purpose specified in subsection (a)(11) of this section—

(A) the interest rate of the loan must be less than the interest rate of the loan being refinanced or, in a case in which the loan is a fixed rate loan and the loan being refinanced is an adjustable rate loan, the loan bears interest at a rate that is agreed upon by the veteran and the mortgagee;

(B) the loan must be secured by the same dwelling or farm residence as was the loan being refinanced;

(C) the amount of the loan may not exceed—

(i) an amount equal to the sum of the balance of the loan being refinanced and such closing costs (including any discount permitted pursuant to section 3703(c)(3)(A) of this title) as may be authorized by the Secretary (under regulations which the Secretary shall prescribe) to be included in the loan; or

(ii) in the case of a loan for the purpose specified in subsection (a)(11), an amount equal to the sum of the amount referred to with respect to the loan under clause (i) and the amount specified under subsection (d)(2);

(D) notwithstanding section 3703(a)(1) of this title, the amount of the guaranty of the loan may not exceed the greater of (i) the original guaranty amount of the loan being refinanced, or (ii) 25 percent of the loan;

(E) the term of the loan may not exceed the original term of the loan being refinanced by more than 10 years; and

(F) the veteran must own the dwelling or farm residence securing the loan and—

(i) must occupy such dwelling or residence as such veteran's home;

(ii) must have previously occupied such dwelling or residence as such veteran's home and must certify, in such form as the Secretary shall require, that the veteran has previously so occupied such dwelling or residence; or

(iii) in any case in which a veteran is in active duty status as a member of the Armed Forces and is unable to occupy such residence or dwelling as a home because of such status, the spouse of the veteran must occupy, or must have previously occupied, such dwelling or residence as such spouse's home and must certify such occupancy in such form as the Secretary shall require.

(2) A loan to a veteran may be guaranteed by the Secretary under this chapter for the purpose specified in clause (8) of subsection (a) of this section without regard to the amount of outstanding guaranty entitlement available for use by such veteran, and the amount of such veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for such purpose. For purposes of section 3702(b) of this title, such loan shall be deemed to have been obtained with the guaranty entitlement used to obtain the loan being refinanced.

(3) If a veteran is deceased and if such veteran's surviving spouse was a co-obligor under an existing loan guaranteed, insured, or made under this chapter, such surviving spouse shall, only for the purpose specified in subsection (a)(8) of this section, be deemed to be a veteran eligible for benefits under this chapter.

(f)(1) For a loan to be guaranteed for the purpose specified in subclause (A)(ii) or (B)(ii) of subsection (a)(9) of this section, the

purchase of (or the refinancing of a loan secured by) the manufactured home and the lot for that home shall be considered as one loan and must comply with such criteria as may be prescribed by the Secretary in regulations.

(2) A loan may not be guaranteed for the purposes of subsection (a)(9) of this section unless the manufactured home purchased, upon being permanently affixed to the lot, is considered to be real property under the laws of the State where the lot is located.

(g)(1) For the purposes of this subsection, the term “veteran”, when used with respect to a loan guaranteed or to be guaranteed under this chapter, includes the veteran’s spouse if the spouse is jointly liable with the veteran under the loan.

(2) For the purpose of determining whether a veteran meets the standards referred to in subsection (b)(3) of this section and section 3712(e)(2) of this title, the Secretary shall prescribe regulations which establish—

(A) credit underwriting standards to be used in evaluating loans to be guaranteed under this chapter; and

(B) standards to be used by lenders in obtaining credit information and processing loans to be guaranteed under this chapter.

(3) In the regulations prescribed under paragraph (2) of this subsection, the Secretary shall establish standards that include—

(A) debt-to-income ratios to apply in the case of the veteran applying for the loan;

(B) criteria for evaluating the reliability and stability of the income of the veteran applying for the loan; and

(C) procedures for ascertaining the monthly income required by the veteran to meet the anticipated loan payment terms.

If the procedures described in clause (C) of this paragraph include standards for evaluating residual income, the Secretary shall, in establishing such standards, give appropriate consideration to State statistics (in States as to which the Secretary determines that such statistics are reliable) pertinent to residual income and the cost of living in the State in question rather than in a larger region.

(4)(A) Any lender making a loan under this chapter shall certify, in such form as the Secretary shall prescribe, that the lender has complied with the credit information and loan processing standards established under paragraph (2)(B) of this subsection, and that, to the best of the lender’s knowledge and belief, the loan meets the underwriting standards established under paragraph (2)(A) of this subsection.

(B) Any lender who knowingly and willfully makes a false certification under subparagraph (A) of this paragraph shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary’s loss on the loan involved or to another appropriate amount, not to exceed \$10,000, whichever is greater. All determinations necessary to carry out this subparagraph shall be made by the Secretary.

(5) Pursuant to regulations prescribed to carry out this paragraph, the Secretary may, in extraordinary situations, waive the application of the credit underwriting standards established under paragraph (2) of this subsection when the Secretary determines,

considering the totality of circumstances, that the veteran is a satisfactory credit risk.

(h)(1) A loan may not be guaranteed under subsection (a)(12) unless—

(A) the development, project, or structure of the cooperative housing corporation complies with such criteria as the Secretary prescribes in regulations; and

(B) the dwelling unit that the purchase of stock or membership in the development, project, or structure of the cooperative housing corporation entitles the purchaser to occupy is a single family residential unit.

(2) In this subsection, the term “cooperative housing corporation” has the meaning given such term in section 216(b)(1) of the Internal Revenue Code of 1986.

(3) When applying the term “value of the property” to a loan guaranteed under subsection (a)(12), such term means the appraised value of the stock or membership entitling the purchaser to the permanent occupancy of the dwelling unit in the development, project, or structure of the cooperative housing corporation.

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SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

* * * * *

§ 3729. Loan fee

(a) REQUIREMENT OF FEE.—(1) Except as provided in subsection (c), a fee shall be collected from each person obtaining a housing loan guaranteed, insured, or made under this chapter, and each person assuming a loan to which section 3714 of this title applies. No such loan may be guaranteed, insured, made, or assumed until the fee payable under this section has been remitted to the Secretary.

(2) The fee may be included in the loan and paid from the proceeds thereof.

(b) DETERMINATION OF FEE.—(1) The amount of the fee shall be determined from the loan fee table in paragraph (2). The fee is expressed as a percentage of the total amount of the loan guaranteed, insured, or made, or, in the case of a loan assumption, the unpaid principal balance of the loan on the date of the transfer of the property.

(2) The loan fee table referred to in paragraph (1) is as follows:

【LOAN FEE TABLE

【Type of loan	Active duty veteran	Reservist	Other obligor
(A)(i) Initial loan described in section 3710 (a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710 (a) other than with 5-down or 10-down (closed before January 1, 2004)	2.00	2.75	NA
(A)(ii) Initial loan described in section 3710 (a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710 (a) other than with 5-down or 10-down (closed on or after January 1, 2004, and before October 1, 2004)	2.20	2.40	NA
(A)(iii) Initial loan described in section 3710 (a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710 (a) other than with 5-down or 10-down (closed on or after October 1, 2004, and before September 30, 2028)	2.15	2.40	NA
(A)(iv) Initial loan described in section 3710 (a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710 (a) other than with 5-down or 10-down (closed on or after September 30, 2028)	1.40	1.65	NA

【LOAN FEE TABLE—Continued

Type of loan	Active duty veteran	Reservist	Other obligor
(B)(i) Subsequent loan described in section 3710 (a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710 (a) (closed before September 30, 2028)	3.30	3.30	NA
(B)(ii) Subsequent loan described in section 3710 (a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710 (a) (closed on or after September 30, 2028)	1.25	1.25	NA
(C)(i) Loan described in section 3710 (a) to purchase or construct a dwelling with 5-down (closed before September 30, 2028)	1.50	1.75	NA
(C)(ii) Loan described in section 3710 (a) to purchase or construct a dwelling with 5-down (closed on or after September 30, 2028)	0.75	1.00	NA
(D)(i) Initial loan described in section 3710 (a) to purchase or construct a dwelling with 10-down (closed before September 30, 2028)	1.25	1.50	NA
(D)(ii) Initial loan described in section 3710 (a) to purchase or construct a dwelling with 10-down (closed on or after September 30, 2028)	0.50	0.75	NA
(E) Interest rate reduction refinancing loan	0.50	0.50	NA
(F) Direct loan under section 3711	1.00	1.00	NA
(G) Manufactured home loan under section 3712 (other than an interest rate reduction refinancing loan)	1.00	1.00	NA

【LOAN FEE TABLE—Continued

【Type of loan	Active duty veteran	Reservist	Other obligor
(H) Loan to Native American veteran under section 3762 (other than an interest rate reduction refinancing loan)	1.25	1.25	NA
(I) Loan assumption under section 3714	0.50	0.50	0.50
(J) Loan under section 3733 (a)	2.25	2.25	2.25】

<i>Type of loan</i>	<i>Active duty veteran</i>	<i>Reservist</i>	<i>Other obligor</i>
(A)(i) <i>Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2004, and before January 1, 2020)</i>	2.15	2.40	NA
(A)(ii) <i>Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after January 1, 2020, and before January 1, 2022)</i>	2.30	2.30	NA
(A)(iii) <i>Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after January 1, 2022, and before October 1, 2029)</i>	2.15	2.15	NA

<i>Type of loan</i>	<i>Active duty veteran</i>	<i>Reservist</i>	<i>Other obligor</i>
<i>(A)(iv) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2029)</i>	<i>1.40</i>	<i>1.40</i>	<i>NA</i>
<i>(B)(i) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2004, and before January 1, 2020)</i>	<i>3.30</i>	<i>3.30</i>	<i>NA</i>
<i>(B)(ii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after January 1, 2020, and before January 1, 2022)</i>	<i>3.60</i>	<i>3.60</i>	<i>NA</i>
<i>(B)(iii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after January 1, 2022, and before October 1, 2029)</i>	<i>3.30</i>	<i>3.30</i>	<i>NA</i>
<i>(B)(iv) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2029)</i>	<i>1.25</i>	<i>1.25</i>	<i>NA</i>

<i>Type of loan</i>	<i>Active duty veteran</i>	<i>Reservist</i>	<i>Other obligor</i>
<i>(C)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed before January 1, 2020)</i>	<i>1.50</i>	<i>1.75</i>	<i>NA</i>
<i>(C)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after January 1, 2020, and before January 1, 2022)</i>	<i>1.65</i>	<i>1.65</i>	<i>NA</i>
<i>(C)(iii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after January 1, 2022, and before October 1, 2029)</i>	<i>1.50</i>	<i>1.50</i>	<i>NA</i>
<i>(C)(iv) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after October 1, 2029)</i>	<i>0.75</i>	<i>0.75</i>	<i>NA</i>
<i>(D)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed before January 1, 2020)</i>	<i>1.25</i>	<i>1.50</i>	<i>NA</i>
<i>(D)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after January 1, 2020, and before January 1, 2022)</i>	<i>1.40</i>	<i>1.40</i>	<i>NA</i>
<i>(D)(iii) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after January 1, 2022, and before October 1, 2029)</i>	<i>1.25</i>	<i>1.25</i>	<i>NA</i>

<i>Type of loan</i>	<i>Active duty veteran</i>	<i>Reservist</i>	<i>Other obligor</i>
<i>(D)(iv) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after October 1, 2029)</i>	<i>0.50</i>	<i>0.50</i>	<i>NA</i>
<i>(E) Interest rate reduction refinancing loan</i>	<i>0.50</i>	<i>0.50</i>	<i>NA</i>
<i>(F) Direct loan under section 3711</i>	<i>1.00</i>	<i>1.00</i>	<i>NA</i>
<i>(G) Manufactured home loan under section 3712 (other than an interest rate reduction refinancing loan)</i>	<i>1.00</i>	<i>1.00</i>	<i>NA</i>
<i>(H) Loan to Native American veteran under section 3762 (other than an interest rate reduction refinancing loan)</i>	<i>1.25</i>	<i>1.25</i>	<i>NA</i>
<i>(I) Loan assumption under section 3714</i>	<i>0.50</i>	<i>0.50</i>	<i>0.50</i>
<i>(J) Loan under section 3733(a)</i>	<i>2.25</i>	<i>2.25</i>	<i>2.25</i>

(3) Any reference to a section in the “Type of loan” column in the loan fee table in paragraph (2) refers to a section of this title.

(4) For the purposes of paragraph (2):

(A) The term “active duty veteran” means any veteran eligible for the benefits of this chapter other than a Reservist.

(B) The term “Reservist” means a veteran described in section 3701(b)(5)(A) of this title who is eligible under section 3702(a)(2)(E) of this title.

(C) The term “other obligor” means a person who is not a veteran, as defined in section 101 of this title or other provision of this chapter.

(D) The term “initial loan” means a loan to a veteran guaranteed under section 3710 or made under section 3711 of this title if the veteran has never obtained a loan guaranteed under section 3710 or made under section 3711 of this title.

(E) The term “subsequent loan” means a loan to a veteran, other than an interest rate reduction refinancing loan, guaranteed under section 3710 or made under section 3711 of this title if the veteran has previously obtained a loan guaranteed under section 3710 or made under section 3711 of this title.

(F) The term “interest rate reduction refinancing loan” means a loan described in section 3710(a)(8), 3710(a)(9)(B)(i), 3710(a)(11), 3712(a)(1)(F), or 3762(h) of this title.

(G) The term “0-down” means a downpayment, if any, of less than 5 percent of the total purchase price or construction cost of the dwelling.

(H) The term “5-down” means a downpayment of at least 5 percent or more, but less than 10 percent, of the total purchase price or construction cost of the dwelling.

(I) The term “10-down” means a downpayment of 10 percent or more of the total purchase price or construction cost of the dwelling.

(c) WAIVER OF FEE.—(1) A fee may not be collected under this section from a veteran who is receiving compensation (or who, but for the receipt of retirement pay or active service pay, would be entitled to receive compensation) [or from a surviving spouse], *from a surviving spouse* of any veteran (including a person who died in the active military, naval, or air service) who died from a service-connected disability, *or from a member of the Armed Forces who is serving on active duty and who provides, on or before the date of loan closing, evidence of having been awarded the Purple Heart.*

(2)(A) A veteran described in subparagraph (B) shall be treated as receiving compensation for purposes of this subsection as of the date of the rating described in such subparagraph without regard to whether an effective date of the award of compensation is established as of that date.

(B) A veteran described in this subparagraph is a veteran who is rated eligible to receive compensation—

(i) as the result of a pre-discharge disability examination and rating; or

(ii) based on a pre-discharge review of existing medical evidence (including service medical and treatment records) that results in the issuance of a memorandum rating.

* * * * *

§ 3731. Appraisals

(a) The Secretary shall—

(1) subject to subsection (b)(2) and in consultation with appropriate representatives of institutions which are regularly engaged in making housing loans, prescribe uniform qualifications for appraisers, including the successful completion of a written test, submission of a sample appraisal, certification of an appropriate number of years of experience as an appraiser, and submission of recommendations from other appraisers;

(2) use such qualifications in determining whether to approve an appraiser to make appraisals of the reasonable value of any property, construction, repairs, or alterations for the purposes of this chapter; and

(3) in consultation with local representatives of institutions described in clause (1) of this subsection, develop and maintain lists of appraisers who are approved under clause (2) of this subsection to make appraisals for the purposes of this chapter.

(b)(1) The Secretary shall select appraisers from a list required by subsection (a)(3) of this section on a rotating basis to make appraisals for the purposes of this chapter.

(2) If uniform qualifications become applicable for appraisers who perform appraisals for or in connection with the Federal Government, the qualifications required by subsection (a)(1) of this section

may be more stringent than such uniform qualifications, but the Secretary may use no written test in determining the qualifications of appraisers other than the test prescribed to implement such uniform qualifications.

(3) The Secretary shall permit an appraiser on a list developed and maintained under subsection (a)(3) to make an appraisal for the purposes of this chapter based solely on information gathered by a person with whom the appraiser has entered into an agreement for such services.

(c) Except as provided in subsection (f) of this section, the appraiser shall forward an appraisal report to the Secretary for review. Upon receipt of such report, the Secretary shall determine the reasonable value of the property, construction, repairs, or alterations for purposes of this chapter, and notify the veteran of such determination. Upon request, the Secretary shall furnish a copy of the appraisal made of property for the purposes of this chapter to the lender proposing to make the loan which is to be secured by such property and is to be guaranteed under this chapter.

(d) If a lender (other than a lender authorized under subsection (f) of this section to determine reasonable value)—

(1) has proposed to make a loan to be guaranteed under this chapter,

(2) has been furnished a certificate of reasonable value of any property or of any construction, repairs, or alterations of property which is to be the security for such loan, and

(3) within a reasonable period prescribed by the Secretary, has furnished to the Secretary an additional appraisal of the reasonable value of such property, construction, repairs, or alterations which was made by an appraiser selected by the lender from the list required by subsection (a)(3) of this section,

the Secretary shall consider both the initial appraisal and the additional appraisal and shall, if appropriate, issue a revised certificate of reasonable value of such property, construction, repairs, or alterations.

(e)(1) In no case may a veteran be required to pay all or any portion of the cost of the additional appraisal described in subsection (d)(3) of this section.

(2) If a veteran, within a reasonable period prescribed by the Secretary, has furnished to the Secretary an additional appraisal of the reasonable value of such property, construction, repairs, or alterations which was made by an appraiser selected by the veteran from the list required by subsection (a)(3) of this section, the Secretary shall consider such appraisal, along with other appraisals furnished to the Secretary, and shall, if appropriate, issue a revised certificate of reasonable value of such property, construction, repairs, or alterations.

(f)(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, the Secretary may, in accordance with standards and procedures established in regulations prescribed by the Secretary, authorize a lender to determine the reasonable value of property for the purposes of this chapter if the lender is authorized to make loans which are automatically guaranteed under section 3702(d) of this title. In such a case, the appraiser selected by the Secretary pursuant to subsection (b) of this section shall submit the appraisal

report directly to the lender for review, and the lender shall, as soon as possible thereafter, furnish a copy of the appraisal to the veteran who is applying for the loan concerned and to the Secretary.

(2) In exercising the authority provided in paragraph (1) of this subsection, the Secretary shall assign a sufficient number of personnel to carry out an appraisal-review system to monitor, on at least a random-sampling basis, the making of appraisals by appraisers and the effectiveness and the efficiency of the determination of reasonable value of property by lenders.

(4) Not later than April 30 of each year following a year in which the Secretary authorizes lenders to determine reasonable value of property under this subsection, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report relating to the exercise of that authority during the year in which the authority was exercised.

(5) A report submitted pursuant to paragraph (4) of this subsection shall include, for the period covered by each report—

(A) the number and value of loans made by lenders exercising the authority of this subsection;

(B) the number and value of such loans reviewed by the appraisal-review monitors referred to in paragraph (2) of this subsection;

(C) the number and value of loans made under this subsection of which the Secretary received notification of default;

(D) the amount of guaranty paid by the Secretary to such lenders by reason of defaults on loans as to which reasonable value was determined under this subsection; and

(E) such recommendations as the Secretary considers appropriate to improve the exercise of the authority provided for in this subsection and to protect the interests of the United States.

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SUBCHAPTER V—DIRECT HOUSING LOANS FOR NATIVE AMERICAN VETERANS

* * * * *

§ 3762. Direct housing loans to Native American veterans; program administration

(a) The Secretary may make a direct housing loan to a Native American veteran under this subchapter if—

(1)(A) the Secretary has entered into a memorandum of understanding with respect to such loans with the tribal organization that has jurisdiction over the veteran; or

(B) the tribal organization that has jurisdiction over the veteran has entered into a memorandum of understanding with any department or agency of the United States with respect to direct housing loans to Native Americans that the Secretary determines substantially complies with the requirements of subsection (b); and

(2) the memorandum is in effect when the loan is made.

(b)(1) Subject to paragraph (2), the Secretary shall ensure that each memorandum of understanding that the Secretary enters into with a tribal organization shall provide for the following:

(A) That each Native American veteran who is under the jurisdiction of the tribal organization and to whom the Secretary makes a direct loan under this subchapter—

(i) holds, possesses, or purchases using the proceeds of the loan a meaningful interest in a lot or dwelling (or both) that is located on trust land; and

(ii) will purchase, construct, or improve (as the case may be) a dwelling on the lot using the proceeds of the loan.

(B) That each such Native American veteran will convey to the Secretary by an appropriate instrument the interest referred to in subparagraph (A) as security for a direct housing loan under this subchapter.

(C) That the tribal organization and each such Native American veteran will permit the Secretary to enter upon the trust land of that organization or veteran for the purposes of carrying out such actions as the Secretary determines are necessary—

(i) to evaluate the advisability of the loan; and

(ii) to monitor any purchase, construction, or improvements carried out using the proceeds of the loan.

(D) That the tribal organization has established standards and procedures that apply to the foreclosure of the interest conveyed by a Native American veteran pursuant to subparagraph (B), including—

(i) procedures for foreclosing the interest; and

(ii) procedures for the resale of the lot or the dwelling (or both) purchased, constructed, or improved using the proceeds of the loan.

(E) That the tribal organization agrees to such other terms and conditions with respect to the making of direct loans to Native American veterans under the jurisdiction of the tribal organization as the Secretary may require in order to ensure that loans under this subchapter are made in a responsible and prudent manner.

(2) The Secretary may not enter into a memorandum of understanding with a tribal organization under this subsection unless the Secretary determines that the memorandum provides for such standards and procedures as are necessary for the reasonable protection of the financial interests of the United States.

(c)(1)(A) Except as provided in subparagraph (B), the principal amount of any direct housing loan made to a Native American veteran under this section may not exceed \$80,000.

(B)(i) Subject to clause (ii), the Secretary may make loans exceeding the amount specified in subparagraph (A) in a geographic area if the Secretary determines that housing costs in the area are significantly higher than average housing costs nationwide. The amount of such increase shall be the amount that the Secretary determines is necessary in order to make direct housing loans under this subchapter to Native American veterans who are located in a variety of geographic areas and in geographic areas experiencing a variety of economic conditions.

[(ii) The amount of a loan made by the Secretary under this subchapter may not exceed the maximum loan amount authorized for loans guaranteed under section 3703(a)(1)(C) of this title.]

[(2)] (1) Loans made under this section shall bear interest at a rate determined by the Secretary, which rate may not exceed the appropriate rate authorized for guaranteed loans under section 3703(c)(1) or section 3712(f) of this title, and shall be subject to such requirements or limitations prescribed for loans guaranteed under this title as the Secretary may prescribe.

[(3)] (2) Notwithstanding section 3704(a) of this title, the Secretary shall establish minimum requirements for planning, construction, improvement, and general acceptability relating to any direct loan made under this section.

(d)(1) The Secretary shall establish credit underwriting standards to be used in evaluating loans made under this subchapter. In establishing such standards, the Secretary shall take into account the purpose of this program to make available housing to Native American veterans living on trust lands.

(2) The Secretary shall determine the reasonable value of the interest in property that will serve as security for a loan made under this section and shall establish procedures for appraisals upon which the Secretary may base such determinations. The procedures shall incorporate generally the relevant requirements of section 3731 of this title, unless the Secretary determines that such requirements are impracticable to implement in a geographic area, on particular trust lands, or under circumstances specified by the Secretary.

(e) Loans made under this section shall be repaid in monthly installments.

(f) In connection with any loan under this section, the Secretary may make advances in cash to provide for repairs, alterations, and improvements and to meet incidental expenses of the loan transaction. The Secretary shall determine the amount of any expenses incident to the origination of loans made under this section, which expenses, or a reasonable flat allowance in lieu thereof, shall be paid by the veteran in addition to the loan closing costs.

(g) Without regard to any provision of this chapter (other than a provision of this section), the Secretary may—

(1) take any action that the Secretary determines to be necessary with respect to the custody, management, protection, and realization or sale of investments under this section;

(2) determine any necessary expenses and expenditures and the manner in which such expenses and expenditures shall be incurred, allowed, and paid;

(3) make such rules, regulations, and orders as the Secretary considers necessary for carrying out the Secretary's functions under this section; and

(4) in a manner consistent with the provisions of this chapter and with the Secretary's functions under this subchapter, employ, utilize, and compensate any persons, organizations, or departments or agencies (including departments and agencies of the United States) designated by the Secretary to carry out such functions.

(h)(1) The Secretary may make direct loans to Native American veterans in order to enable such veterans to refinance existing loans made under this section.

(2)(A) The Secretary may not make a loan under this subsection unless the loan meets the requirements set forth in subparagraphs (B), (C), and (E) of paragraph (1) of section 3710(e) of this title.

(B) The Secretary may not make a loan under this subsection unless the loan will bear an interest rate at least one percentage point less than the interest rate borne by the loan being refinanced.

(C) Paragraphs (2) and (3) of such section 3710(e) shall apply to any loan made under this subsection, except that for the purposes of this subsection the reference to subsection (a)(8) of section 3710 of this title in such paragraphs (2) and (3) shall be deemed to be a reference to this subsection.

(i)(1) The Secretary shall, in consultation with tribal organizations (including the National Congress of American Indians and the National American Indian Housing Council), carry out an outreach program to inform and educate Native American veterans of the availability of direct housing loans for Native American veterans who live on trust lands.

(2) Activities under the outreach program shall include the following:

(A) Attending conferences and conventions conducted by the National Congress of American Indians in order to work with the National Congress in providing information and training to tribal organizations and Native American veterans regarding the availability of housing benefits under this subchapter and in assisting such organizations and veterans with respect to such housing benefits.

(B) Attending conferences and conventions conducted by the National American Indian Housing Council in order to work with the Housing Council in providing information and training to tribal organizations and tribal housing entities regarding the availability of such benefits.

(C) Attending conferences and conventions conducted by the Department of Hawaiian Homelands in order to work with the Department of Hawaiian Homelands in providing information and training to tribal housing entities in Hawaii regarding the availability of such benefits.

(D) Producing and disseminating information to tribal governments, tribal veterans service organizations, and tribal organizations regarding the availability of such benefits.

(E) Assisting tribal organizations and Native American veterans with respect to such benefits.

(F) Outstationing loan guarantee specialists in tribal facilities on a part-time basis if requested by the tribal government.

(j) The Secretary shall include as part of the annual benefits report of the Veterans Benefits Administration information concerning the cost and number of loans provided under this subchapter for the fiscal year covered by the report.

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