Calendar No. 155

111TH CONGRESS } SENATE { REPORT
1st Session } { 111–71

VETERANS' BENEFITS ENHANCEMENT ACT OF 2009

SEPTEMBER 2, 2009.—Ordered to be printed

Filed, under authority of the order of the Senate of August 7, 2009

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

R E P O R T

[To accompany S. 728]

The Committee on Veterans' Affairs (hereinafter, "the Committee"), to which was referred the bill (S. 728), to amend title 38, United States Code (hereinafter, "U.S.C."), to enhance veterans' insurance benefits, and for other purposes, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

INTRODUCTION

On March 26, 2009, Committee Chairman Daniel K. Akaka introduced S. 728, the proposed "Veterans' Insurance and Benefits Enhancement Act of 2009." S. 728 as introduced would amend title 38 to enhance veterans' insurance benefits, and for other purposes.

Earlier, on January 15, 2009, Senator Casey introduced S. 263, the proposed "Servicemembers Access to Justice Act of 2009," which would amend title 38 to improve the enforcement of the Uniformed Services Employment and Reemployment Rights Act of 1994 (hereinafter, "USERRA"). Senators Burris, Kennedy, and Wyden are cosponsors.

On January 29, 2009, Senator Ensign introduced S. 347, which would allow the Department of Veterans Affairs (hereinafter, "VA") to distinguish between the severity of a qualifying loss of a dominant hand and a qualifying loss of a non-dominant hand for purposes of traumatic injury protection under Servicemembers' Group Life Insurance (hereinafter, "SGLI"). Senator Rockefeller is a cosponsor.

79–010

On March 3, 2009, Chairman Akaka introduced S. 514, the proposed "Veterans Rehabilitation and Training Improvements Act of 2009," to enhance vocational rehabilitation benefits for veterans. Senator Burris is a cosponsor.

On April 2, 2009, Senator Sanders introduced S. 820, the proposed "Veterans Mobility Enhancement Act of 2009." S. 820 would increase the automobile assistance allowance for veterans from $11,000 to $22,500 and provide for an annual adjustment to an amount equal to 80 percent of the average retail cost of new automobiles for the preceding calendar year.

On April 21, 2009, Senator Kerry introduced S. 842, which would reinforce VA's authority to purchase a VA-guaranteed home loan from a mortgage holder, if the loan is modified during bankruptcy.

On April 21, 2009, Senator Webb introduced S. 847, which would provide that utilization of survivors' and dependents' educational assistance shall not be subject to the 48-month limitation on the aggregate amount of assistance available under multiple veterans-related educational assistance programs.

On April 28, 2009, Chairman Akaka introduced S. 919, the proposed "Clarification of Characteristics of Combat Service Act of 2009." S. 919 would clarify the additional requirements for consideration to be afforded time, place, and circumstances of service in determination of service-connection.

On April 29, 2009, the Committee held a hearing on the above-referenced bills and other benefits-related legislation. Testimony was offered by: Bradley G. Mayes, Director, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs; Robert Jackson, Assistant Director, National Legislative Service, Veterans of Foreign Wars of the United States; Raymond Kelley, Legislative Director, AMVETS; R. Chuck Mason, Legislative Attorney, Congressional Research Service; Ian de Planque, Assistant Director for Claims Service, Veterans Affairs and Rehabilitation Commission, The American Legion; and Rebecca Noah Poynter, Director, Military Spouse Business Organization.

On May 11, 2009, Committee Ranking Member Richard Burr introduced S. 1015, which would enhance disability compensation for certain disabled veterans with difficulties using prostheses and disabled veterans in need of regular aid and attendance for residuals of traumatic brain injury (hereinafter, "TBI"). Senators Durbin and Isakson are original cosponsors.

On May 11, 2009, Ranking Member Burr introduced S. 1016, which would modify the commencement of the period of payment of original awards of compensation for veterans who are retired or separated from the uniformed services for catastrophic disability.

Committee Meeting

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on May 21, 2009, to consider, among other legislation, an amended version of S. 728, consisting of provisions from S. 728 as introduced, provisions from the other legislation noted above, and several freestanding provisions. The Committee voted, without dissent, to report favorably S. 728 as amended.

SUMMARY OF S. 728 AS REPORTED

S. 728, as reported (hereinafter, "the Committee bill"), which consists of six titles, would make numerous enhancements and expansions to veterans benefits, services, and rights and would amend the title of the original bill.

TITLE I—INSURANCE MATTERS

Section 101 would provide additional supplemental insurance for totally disabled veterans.

Section 102 would adjust the coverage of dependents under SGLI.

Section 103 would expand the number of individuals qualifying for retroactive benefits from traumatic injury protection coverage under SGLI (hereinafter, "TSGLI").

Section 104 would permit VA to consider the loss of a dominant hand in prescription of the schedule of payments for TSGLI.

Section 105 would enhance the amount of insurance provided an individual under the Veterans' Mortgage Life Insurance (hereinafter, "VMLI") program.

TITLE II—COMPENSATION AND PENSION MATTERS

Section 201 would establish a cost-of-living increase for temporary dependency and indemnity compensation (hereinafter, "DIC") payable to surviving spouses with dependent children under the age of 18.

Section 202 would clarify the eligibility of veterans 65 years of age or older for service pension for a period of war.

Section 203 would require VA to issue regulations recognizing circumstances in which lay evidence does not require confirmatory official documentary evidence.

Section 204 would extend, through the end of fiscal year 2014, provisions that reduce VA pension for certain VA beneficiaries with no dependents who are covered by Medicaid plans for services furnished by nursing facilities.

Section 205 would enhance disability compensation for certain disabled veterans who have difficulties using prostheses and disabled veterans in need of regular aid and attendance for the residuals of TBI.

Section 206 would modify the commencement of the period of payment of original awards of compensation for veterans who are retired or separated from the uniformed services for a catastrophic disability.

Section 207 would treat adult-disabled children of veterans who receive pension in nursing homes in the same manner as veterans and surviving spouses.

Section 208 would provide for the payment of DIC to the survivors of former prisoners of war (hereinafter, "POWs") who died on or before September 30, 1999, on the same basis as survivors of former POWs who die or have died after that date.

TITLE III—READJUSTMENT AND RELATED BENEFIT MATTERS

Section 301 would repeal the annual cap of 2,600 on the number of veterans that may enroll each year in the VA program of independent living services and assistance.

Section 302 would expand eligibility for automobile and adaptive equipment to disabled veterans and members of the Armed Forces with severe burn injuries.

Section 303 would increase the automobile assistance allowance for certain disabled veterans and members of the Armed Forces.

Section 304 would reinforce VA's authority to purchase a VA-guaranteed home loan that is modified by a bankruptcy judge.

TITLE IV—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

Section 401 would waive sovereign immunity of a State under the 11th Amendment to the Constitution with respect to enforcement of USERRA.

Section 402 would clarify the definition of "successor in interest" under USERRA.

Section 403 would clarify that USERRA prohibits wage discrimination against members of the Armed Forces.

Section 404 would require Federal agencies to notify contractors of their potential USERRA obligations.

Section 405 would direct the Comptroller General of the United States to conduct a study on the effectiveness of the Federal government's USERRA education and outreach programs.

Section 406 would make technical and conforming amendments.

TITLE V—BURIAL AND MEMORIAL MATTERS

Section 501 would authorize supplemental benefits for funeral and burial expenses.

Section 502 would authorize supplemental plot allowances.

TITLE VI—OTHER MATTERS

Section 601 would require the National Academies to review the best treatments for Gulf War Illness.

Section 602 would extend the National Academies' reviews and evaluations regarding illness and service in the Gulf War.

Section 603 would extend the authority for the VA Regional Office in the Republic of the Philippines from December 31, 2009, to December 31, 2011.

Section 604 would increase the aggregate amount of educational assistance available to individuals who receive both survivors' and dependents' educational assistance and other veterans and related educational assistance.

BACKGROUND AND DISCUSSION

TITLE I—INSURANCE MATTERS

Sec. 101. Increase in amount of supplemental insurance for totally disabled veterans.

Section 101 of the Committee bill, which is derived from S. 728 as introduced, would provide additional supplemental insurance to totally disabled veterans under the Service-Disabled Veterans' Insurance (hereinafter, "S–DVI") program.

Background. Many totally disabled veterans find it difficult to obtain commercial life insurance. These are the veterans this program aids by providing them with a reasonable amount of life in-

surance coverage. S–DVI was established during the Korean War to provide life insurance for veterans with service-connected disabilities. The $10,000 base benefit has never been increased. In comparison, the SGLI and Veterans' Group Life Insurance (hereinafter, "VGLI") benefits, which were at their inception $10,000 and $20,000 respectively, have been increased over time to $400,000.

In 1992, in Public Law 102–568, the Veterans' Benefits Act of 1992, Congress increased the amount of life insurance available to S–DVI policyholders by offering $20,000 worth of supplemental coverage to those who are considered totally disabled. Forty-five percent of the veterans enrolled in the S–DVI program are considered totally disabled and are eligible for a premium waiver for their basic coverage. According to VA, 27 percent of veterans with a premium waiver currently have a supplemental S–DVI policy. However, even with $30,000 in coverage, the amount of life insurance available to disabled veterans falls well short of the death benefits available to servicemembers and veterans enrolled in the SGLI and VGLI programs.

The Congressionally-mandated study completed in 2001, entitled "Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities," found the lowest area of veteran satisfaction to be the maximum amount of S–DVI insurance coverage that veterans were authorized to purchase.

Committee Bill. Section 101 of the Committee bill would amend section 1922A(a) of title 38 so as to increase the amount of life insurance available to totally disabled veterans by allowing them to purchase an additional $10,000 in supplemental insurance coverage.

Sec. 102. Adjustment of coverage of dependents under Servicemembers' Group Life Insurance.

Section 102 of the Committee bill, which is derived from S. 728 as introduced, would amend current law so that no insurable dependent could be covered under SGLI for more than 120 days after the member's separation or release from service or assignment.

Background. Before the passage of Public Law 110–389, the Veterans' Benefits Improvement Act of 2008, SGLI coverage of a servicemember's insurable dependent ended either 120 days after the servicemember elected to end coverage or the earliest of three dates: (1) 120 days after the servicemember died; (2) 120 days after the date the servicemember's coverage ended; or (3) 120 days after the dependent ceased to be an insurable dependent.

Section 403(b) of Public Law 110–389 amended the second of the three listed dates to be the date the servicemember's coverage ended. The purpose was to provide that an insurable dependent's coverage would end when the servicemember's coverage ended, generally 120 days after separation or release from active service, rather than 120 days after the member's coverage ended, or 240 days after the member's separation or release from active service.

However, Public Law 110–389 unintentionally allowed insurable dependents of servicemembers on active duty, or Ready Reservists who are totally disabled on the date of separation or release from service or assignment, to continue receiving insurance coverage long after the servicemembers' separation or release from service. Servicemembers on active duty are potentially eligible for contin-

ued coverage for up to 2 years after the date of separation or release from service; Ready Reservists are potentially eligible for an additional 1 year of coverage after separation or release from an assignment. Therefore, the insurable dependents of covered servicemembers on active duty are also potentially eligible for continued coverage for up to 2 years after the date of separation or release from service or, in the case of an insurable dependent of a Ready Reservist, up to 1 year after the date of separation or release from an assignment.

Committee Bill. Section 102 of the Committee bill would amend section 1968(a)(5)(B)(ii) of title 38 so that no insurable dependent, not even those of servicemembers who remain covered for up to 1 or 2 years after service or assignment, could remain covered under SGLI for more than 120 days after the servicemember's separation or release from service or assignment.

In the interest of equity, the Committee intends that all insurable spouses of servicemembers, whether those who are disabled or not, would have the same time period in which to obtain private insurance.

Sec. 103. Expansion of individuals qualifying for retroactive benefits from traumatic injury protection coverage under Servicemembers' Group Life Insurance.

Section 103 of the Committee bill, which is derived from S. 728 as introduced, would expand the number of individuals qualifying for retroactive benefits under TSGLI.

Background. Section 1032 of Public Law 109–13, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (hereinafter, "Supplemental Appropriations Act"), established traumatic injury protection coverage under the SGLI program. TSGLI provides coverage against qualifying losses incurred as a result of a traumatic injury event. In the event of a loss, VA will pay between $25,000 and $100,000 depending on the severity of the qualifying loss. A key factor in analyzing the severity of a particular traumatic injury is the impact it has on the length of hospitalization and rehabilitation. Currently, servicemembers and Reserve component members with any amount of SGLI coverage are automatically covered under TSGLI. A premium (currently $1 monthly) is collected from covered members to meet peacetime program expenses; the Department of Defense (hereinafter, "DOD") is required to fund TSGLI program costs associated with the extra hazards of military service.

TSGLI went into effect on December 1, 2005. Thus, all insured servicemembers under SGLI from that point forward are also insured under TSGLI and their injuries are covered regardless of where they occur. In order to provide assistance to those servicemembers suffering traumatic injuries on or between October 7, 2001, and November 30, 2005, retroactive TSGLI payments were authorized under section 1032(c) of the Supplemental Appropriations Act to individuals whose qualifying losses were sustained as "a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom." Under section 501(b) of Public Law 109–233, the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, this definition was amended to allow retroactive payments to individuals whose qualifying losses were sustained as

"a direct result of a traumatic injury incurred in the theater of operations for Operation Enduring Freedom and Operation Iraqi Freedom."

Without corrective action, men and women who were traumatically injured on or between October 7, 2001, and November 30, 2005, but were not in the Operation Iraqi Freedom (hereinafter, "OIF") or Operation Enduring Freedom (hereinafter, "OEF") theaters of operation, will continue to be denied the same retroactive payment given to their wounded comrades, even though the SGLI for which TSGLI is a rider was made retroactive.

Committee Bill. Section 103 of the Committee bill would amend section 501(b) of Public Law 109–233 so as to remove the requirement that limits retroactive TSGLI payments to those who served in the OIF or OEF theaters of operation. Thus, this section of the Committee bill would authorize retroactive TSGLI payments for qualifying traumatic injuries incurred on or after October 7, 2001, but before December 1, 2005, irrespective of where the injuries occurred.

Sec. 104. Consideration of loss of dominant hand in prescription of schedule of severity of traumatic injury under Servicemembers' Group Life Insurance.

Section 104 of the Committee bill, which is derived from S. 728 as introduced, would allow VA to consider the loss of a dominant hand in developing the schedule of payments for TSGLI.

Background. TSGLI provides for payment to servicemembers who suffer a qualifying loss as a result of a traumatic injury event. In the event of a qualifying loss, VA will pay between $25,000 and $100,000, depending on the severity of the qualifying loss. In prescribing payments, VA does not account for the effect, if any, that the loss of a dominant hand has on lengthening hospitalization or rehabilitation periods.

Committee Bill. Section 104 of the Committee bill would amend section 1980A(d) of title 38 to authorize VA to distinguish in specifying payments for qualifying losses of a dominant hand and a non-dominant hand.

Sec. 105. Enhancement of veterans' mortgage life insurance.

Section 105 of the Committee bill, which is derived from S. 728 as introduced, would enhance the amount of insurance provided a service-connected disabled veteran under the VMLI program.

Background. The VMLI program was established in 1971 and is available to service-connected disabled veterans who have received specially adapted housing grants from VA. In the event of the veteran's death, the veteran's family is protected because VA will pay the balance of the mortgage owed up to the maximum amount of insurance purchased.

In today's housing market where, according to the Federal Housing Finance Board, the average mortgage loan in the United States in May 2009 was $221,200, the current maximum of $90,000 in VMLI insurance protection is not adequate.

Committee Bill. Section 105 of the Committee bill would amend section 2106(b) of title 38 to increase the maximum amount of insurance that may be purchased under the VMLI program from the

current maximum of $90,000 to $150,000 and then, on January 1, 2012, from $150,000 to $200,000.

The Committee believes that these changes will help ensure that this important benefit, which helps secure the financial futures of many veterans and their families, keeps pace with changes in the economy.

TITLE II—COMPENSATION AND PENSION MATTERS

Sec. 201. Cost-of-living increase for temporary dependency and indemnity compensation payable for surviving spouses with dependent children under the age of 18.

Section 201 of the Committee bill, which is derived from S. 728 as introduced, would establish a cost-of-living increase for temporary DIC payable to surviving spouses with dependent children under the age of 18.

Background. Under section 1310 of title 38, VA provides DIC to a surviving spouse if a veteran's death resulted from: (1) a disease or injury incurred or aggravated in the line of duty while on active duty or active duty for training; (2) an injury incurred or aggravated in the line of duty while on inactive duty for training; or (3) a service-connected disability or a condition directly related to a service-connected disability.

In a May 2001 report, Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities (hereinafter, "DIC Report"), a recommendation was made to increase DIC by $250 per month for DIC surviving spouses with dependent children during the 5-year period after the veteran's death. It was noted in the DIC Report that, "While the DIC program provides increased benefits for survivors that vary according to the number of dependent children, the evidence suggests a need for even greater benefit allowances for these survivors. Furthermore, this additional need is affected more by the presence of dependent children in the household than by number of children."

Section 301 of Public Law 108–454, the Veterans Benefits Improvement Act of 2004, amended section 1311 of title 38, to authorize VA to pay a $250 per month temporary benefit to a surviving spouse with one or more children below the age of 18, during the 2 years following the date on which entitlement to DIC began. This provision was enacted in response to the DIC Report's recommendation on the need for transitional DIC.

Committee Bill. Section 201 of the Committee bill would amend section 1311(f) of title 38 by authorizing a permanent, automatic, cost-of-living adjustment for this temporary DIC payment so that the value of the benefit does not erode over time.

This cost-of-living increase would occur whenever there is an increase in benefit amounts payable under title II of the Social Security Act, section 401 et seq., title 42, U.S.C.

Sec. 202. Eligibility of veterans 65 years of age or older for service pension for a period of war.

Section 202 of the Committee bill, which is derived from S. 728 as introduced, would amend section 1513 of title 38, relating to VA pension for veterans age 65 and over, so as to clarify the scope of that provision. The Committee bill would overturn a decision of the

United States Court of Appeals for Veterans Claims in *Hartness* v. *Nicholson*, 20 Vet. App. 216, 217 (2006) (hereinafter, "*Hartness*"), so as to reaffirm that certain VA pension benefits are only provided to veterans who are significantly disabled and not merely on the basis of age.

Background. The provision of pension benefits to wartime veterans has a long history in American and English law. Officers of the Revolutionary War who served for the full term of the war were entitled to receive pay without regard to disability; service pensions were also provided to those who served for at least 14 days in the War of 1812. BROWNING, ARTHUR, A TREATISE ON THE LAWS RELATING TO PENSIONS, PATENTS, BOUNTIES AND OTHER APPLICATIONS BEFORE THE EXECUTIVE DEPARTMENTS 73 (Gibson Bros., Printers and Bookbinders 1893) (hereinafter, "BROWNING"). Veterans of the Mexican-American War also were eligible for a service pension (BROWNING at 78), as were veterans of the Indian Wars (BROWNING at 82).

A Report to the President (April 1956) by The President's Commission on Veterans' Pensions, chaired by General Omar N. Bradley, provided this assessment on page 351:

> Stripped of all passing considerations, the main concern of pension legislation for veterans has been to keep them and their kin from want and degradation * * *. Even where need was not required to be shown, it was presumed to exist by reason of old age. We have been unwilling as a Nation ever to see the citizen-soldier who had rendered honorable service in wartime reduced to the dishonorable status of "pauper." Pensions were provided to them as an "honorable" form of economic assistance.

Prior to World War I, financial need was not an explicit basis for all pension benefits. Pension for veterans of the Indian Wars and Spanish American War were not based upon need. However, there are benefits, such as housebound and aid and attendance benefits, which have been based on a finding of disability.

Current law continues the longstanding practice of providing pension benefits to veterans of wartime service. Under section 1521 of title 38, there are three elements that a veteran must establish to qualify for basic VA disability pension—service during a period of war, an annual income below specified levels (depending on the number of the veteran's dependents), and total and permanent disability.

Each of these elements is integral to fulfilling the purpose of the basic disability pension benefit—service in a period of war so as to place the veteran in the special category of those who are seen to have a particular claim on the Nation's gratitude, limited income so as to demonstrate the veteran's need for financial assistance, and permanent and total disability so as to establish that the veteran's status is not the result of some minor or temporary disability from which recovery can be expected.

While these three elements have been adjusted over the years—the amount of service required during a period of war, for example, or a change in what assets are included in determining a veteran's income—one aspect that has been particularly challenging has

been the relationship between finding a qualifying state of permanent and total disability and a veteran's age.

In 1967, shortly after the enactment of the Medicare program, which uses age 65 as the point at which someone qualifies for the benefits of that program, Congress passed legislation, enacted as Public Law 90–77, which provided that, at age 65, a veteran would be considered totally and permanently disabled for purposes of VA pension.

Later, in 1990, Congress again acted with respect to the question of age and disability, this time passing legislation, enacted as part of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, which repealed the automatic presumption of permanent and total disability at age 65.

Most recently, in 2001, the issue of age and disability was again before Congress. As noted in the joint explanatory statement accompanying final passage of H.R. 1291, which was enacted as Public Law 107–103, the Veterans Education and Benefits Expansion Act of 2001 (the compromise legislation that dealt with this issue), the legislation was in response to an action taken by VA to address a looming backlog of claims.

The Veterans' Affairs Committees learned that the Veterans Benefits Administration had advised VA adjudicators to presume that veterans age 65 and older were totally and permanently disabled for VA pension purposes and, on that basis, to not require a physical examination before finding eligibility for pension.

While the Committee did not then, and does not now, believe that there is a rationale basis in medical science for equating age 65 with permanent and total disability, it did recognize that there was merit to providing a service pension to older veterans, similar to that provided to veterans of the Indian and Spanish American Wars, so as to allow VA to avoid using scarce resources to carry out examinations on impoverished, wartime veterans age 65 and over.

In enacting the legislation that added section 1513 to title 38, so as to provide a service pension to older wartime veterans, the House and Senate Committees on Veterans' Affairs noted their disapproval of VA's failure to follow existing law, but agreed, as stated in the explanatory statement accompanying the legislation, that

> a policy of requiring proof of disability for an aged wartime veteran with incomes (sic) below the pension benefit amount involves use of scarce agency resources without a commensurate return. The Committees have determined that aged wartime veterans should be provided a needs-based pension under conditions similar to that provided for veterans of the Indian Wars and the Spanish-American War.

147 CONG. REC. S13239 (daily ed. Dec. 13, 2001) (Joint Explanatory Statement on Public Law 107–103) (hereinafter, "JES").

As noted above, the Committee bill would overturn a decision of the United States Court of Appeals for Veterans Claims (hereinafter, "Court") in *Hartness* v. *Nicholson*, 20 Vet. App. 216 (2006), which interpreted a reference to section 1521 in subsection (a) of section 1513 of title 38 to mean that veterans age 65 and older who applied for a service pension under that section would also be eligi-

ble to receive benefits on the basis of being housebound without meeting the disability criteria of section 1521.

The *Hartness* decision has resulted in disparate benefits for similarly situated veterans who differ only in whether they have reached 65 years of age. As a result of this ruling, veterans who are 65 years of age and older are eligible to be paid at the higher housebound rate even if they have only one disability rated at 60 percent, a benefit which veterans who are under 65 years of age are not automatically eligible to receive.

In *Hartness*, the Court was confronted with what it described as a question of first impression—the relationship between sections 1513 and 1521 of title 38. The question, as articulated by the Court, was whether section 1513 operated to remove the requirement that a veteran age 65 or older have both a total and permanent disability as well as the additional disabling conditions set forth in section 1521(e) in order to qualify for the additional benefits.

According to the Court's opinion, Mr. Hartness was a World War II veteran, over the age of 65, who had originally sought a special monthly pension under section 1521 on the basis of both needing aid and attendance and being housebound. On appeal to the Court, Mr. Hartness dropped the aid and attendance element of his claim, focusing only on his meeting the criteria for the special benefit on the basis of being housebound. Also on appeal to the Court, Mr. Hartness shifted the focus of his argument from being entitled to pension under section 1521 and instead argued, for the first time, that he was entitled to this special benefit under section 1513.

The Court ruled that "the Board [of Veterans' Appeals] *failed to apply section 1513* when considering whether Mr. Hartness was entitled to a special monthly pension under *section 1521(e)*" and that "a wartime veteran is awarded a special monthly pension if, in addition to being at least 65 years old, he or she possesses *a minimum disability rating of 60%* or is considered permanently housebound." *Hartness*, 20 Vet. App. at 217, 221–22 [emphasis added].

It is the Committee's view that the Court, in ruling that VA must apply the age criteria of the service pension paid under section 1513 to non-service-connected disability benefits paid under section 1521, misunderstood the intent of the service pension provided to older veterans under section 1513 and, in particular, subsection (b) of that section.

In its decision, the Court did not discuss the difference between service pensions and disability pensions; rather, the Court appeared to treat the two provisions in a similar fashion, understanding section 1513 to mean that older veterans could obtain significantly higher benefits, with their age substituting for the permanent and total disability requirement of section 1521(e).

The Committee recognizes the difficulty faced by the Court in *Hartness* in interpreting the two provisions and their relationship. The legislative history of section 207 of H.R. 1291, which added section 1513 to title 38, is sparse. In addition, the Court was hampered in its analysis by the apparent failure of VA to address in its brief the criteria for benefits under section 1513, including the limitation of subsection (b), and the ambiguous nature of the record with regard to Mr. Hartness' eligibility for benefits under section 1521. *Hartness* at 222. Finally, the Court noted that VA's regula-

tions, 38 C.F.R. §§3.3 and 3.351, do not distinguish between the service pension paid under section 1513 and the non-service-connected disability pension paid under section 1521. *Hartness* at 221.

Based on the Court's decision, it appears that VA argued that, "as a matter of law, Mr. Hartness is not entitled to a special monthly pension because he does not have a disability that is *rated* as permanent and total * * *." *Hartness* at 218 [emphasis added]. As a result, VA claimed that "Mr. Hartness does not meet the threshold requirements of 38 C.F.R. §3.351(d)." *Id.*

The factual basis for VA's position is not articulated in the decision. As the Court notes, the record on appeal is ambiguous as to Mr. Hartness' eligibility for non-service-connected pension and special monthly pension under section 1521. *Hartness* at 222.

Under VA's regulations, the criteria for permanent total disability are met "when the impairment is reasonably certain to continue throughout the life of the disabled person." 38 C.F.R. §4.15. Total disability for pension purposes may be found when the veteran has a single disability rated at 60 percent and is unemployable. 38 C.F.R. §§4.16, 4.17.

Mr. Hartness was rated at 70 percent for one disability described as permanent. The Court cited, without disagreement, a physician report that "Mr. Hartness was *permanently* and legally blind because of *age-related macular degeneration of the retina*." *Hartness* at 217 [emphasis added]. The Court's decision indicates that he relied on Social Security benefits for income and made no reference to any evidence suggesting that the veteran was employable. *Id.* On these facts, it is unclear why VA believed Mr. Hartness did not meet the permanent and total disability criteria of section 1521.

In light of these ambiguous factual matters, and given the prohibition on paying benefits under section 1513(b) to veterans who also qualify for benefits under section 1521, it is the Committee's view that the Court misconstrued the intent of section 1513, which is to provide only a service pension without any special monthly pension to older veterans who are not disabled under the criteria set forth in section 1521.

As noted above, the Court did not discuss the difference between service and disability pensions. Rather, the Court apparently understood the prohibition against paying benefits under section 1513(b) if the veteran were eligible for benefits under section 1521 to mean that older veterans could obtain significantly higher benefits under section 1521(e) with their age substituting for the permanent and total disability requirement of that section. As a result, following *Hartness*, older veterans who have only one 60 percent disability would be eligible for benefits paid at the housebound rate under section 1521(e) while younger veterans rated at 60 percent would only qualify for the basic pension amount. There is nothing in the legislative history of section 1513 to suggest that Congress intended such a disparate result.

In establishing a service pension for older veterans under section 1513, the Committees on Veterans' Affairs of the Senate and House "determined that aged wartime veterans should be provided a needs-based pension under conditions similar to that provided for veterans of the Indian Wars and the Spanish American War." JES at S13239. Thus, section 1513 was placed in the "Service Pension" part of Subchapter II (Veterans' Pensions) of chapter 15, the por-

tion of the chapter under which veterans of the Indian Wars and the Spanish American War were entitled to pension benefits, by section 1511 and 1512, without regard to disability, rather than in the "Non-Service-Connected Disability Pension" part of that subchapter where section 1521 is located.

Service benefits based upon age, and limited means, are provided under section 1513 to low-income wartime veterans who are age 65 and older. There is no requirement that veterans who receive a pension based upon age suffer from any disability, although some of these veterans may also have disabilities.

Under sections 1511 and 1512, the provisions under which older veterans who served during the Indian and Spanish American Wars were eligible for service pensions, veterans who were also disabled and thereby also eligible for pensions under section 1521, could make an irrevocable election to receive disability pension benefits under that section rather than service pension benefits. In enacting section 1513, however, the Congress did not provide such an option. Under section 1513(b), if a veteran is age 65 or older and also disabled, that veteran can only receive benefits under the non-service-connected disability pension of section 1521 and is not eligible to receive benefits under the service pension program provided by section 1513.

Section 1513 is silent with regard to any specific provision for housebound or aid and attendance benefits. The formal legislative history of section 207 of Public Law 107–103 contained in the JES is likewise silent. However, while not reflected in the JES, the Committee notes that the language of section 1513 is identical to the language contained in H.R. 3087 of the 107th Congress, the proposed "Veterans' Pension Improvement Act of 2001," as introduced by Congressman Lane Evans, the then-Ranking Democratic Member of the House Committee on Veterans' Affairs. In introducing this legislation, Mr. Evans stated that, if the bill were enacted, "VA would only be required to obtain a medical examination and *a finding of disability* for those veterans over age 65 who seek additional benefits based upon a disability which renders them homebound or in need of aid and attendance." [Emphasis added.] 147 CONG. REC. E1859 (extension of remarks Oct. 12, 2001) (statement of Rep. Evans) (hereinafter, "Evans Introduction").

Like H.R. 3087, section 1513(b) as enacted specifically provides that a veteran who qualifies for a pension based upon age, who also meets the disability criteria of section 1521, is to be paid only under section 1521. There was no suggestion in the Evans Introduction or in the enactment of the legislation that added section 1513 to title 38 that the age requirements of a service pension under section 1513 were intended to serve as a substitute for the total and permanent disability requirements for housebound or aid and attendance benefits paid under section 1521, as the *Hartness* decision holds.

Subsection (a) of section 1513 does require that the rates used to pay service pensions paid under that section will be "the rates prescribed by section 1521 of this title and under the conditions (other than the permanent and total disability requirement) applicable to pension paid under that section." Benefits paid under section 1513, while paid by reference to the rates used in section 1521,

are not and may not be paid under section 1521. In discussing the section 1521 cross reference, the JES explained that:

> [t]hese veterans must still meet the nondisability requirements of section 1521 of title 38, United States Code, such as income and net worth. In determining that benefits will be provided at age 65 without regard to employment status, the Committees noted that any veteran employed full-time and receiving at least a minimum wage would not qualify for pension based on the pension income limitation.

JES at S13239 (compare JES language to Evans Introduction at E1859).

It is the Committee's view that, by placing the benefits for aged veterans in the service pension part of chapter 15 of title 38, with the service pension for Indian and Spanish American War veterans, the intent was for benefits under section 1513 to be considered a separate and distinct benefit from the disability pension provided by section 1521, as was true for service pensions provided under sections 1511 and 1512.

It is the Committee's further view that subsection (b) of section 1513 is intended to prohibit a veteran who is both aged and disabled from receiving benefits under section 1513.

Committee Bill. Section 202 of the Committee bill would amend section 1513 of title 38 so as to list the separate provisions of section 1521 that are to be used in connection with determining eligibility for a service pension under section 1513 and the amount of benefits to be paid under that section. The provisions in the Committee bill would exclude the rates related to special monthly pension, namely housebound benefits and aid and attendance benefits contained in subsections (d), (e), (f)(2), (f)(3), and (f)(4) of section 1521.

These changes would clarify that veterans who qualify for service pension benefits based upon age under section 1513 are not eligible to receive special monthly pension under the same criteria applied in that section. Instead, older veterans must qualify for special monthly pension benefits under all of the criteria of section 1521, the same criteria applied to younger disabled veterans, if they are so disabled as to be housebound or require aid and attendance.

Because veterans who are actually housebound or in need of aid and attendance are likely to qualify for benefits under the criteria set forth in section 1521 under any circumstances, the Committee bill would affect primarily those veterans who are age 65 and older and who are not significantly disabled.

The Committee bill provides that the proposed modification to section 1513 would be effective with respect to claims for pension filed on or after the effective date of the Committee bill.

Sec. 203. Clarification of additional requirements for consideration to be afforded time, place, and circumstances of service in determinations regarding service-connected disabilities.

Section 203 of the Committee bill, which is derived from S. 919, would require VA to promulgate regulations that direct how certain circumstances of a claimant's military service should be considered when determining service-connection.

Background. A number of precedential decisions of the U.S. Court of Appeals for Veterans Claims, such as *Suozzi* v. *Brown*,[1] have recognized that corroboration of every detail of a claimed combat exposure or event by official military documents is not required for the resolution of VA claims. Nonetheless, some VA claims adjudicators have continued to read the requirement of corroboration narrowly. For example, in *Falk* v. *West*,[2] the Court found that a veteran's presence on a ship involved in combat was adequate to corroborate that a veteran assigned to that particular ship was in combat. VA had earlier denied the veteran's claim of service-connection for Post-Traumatic Stress Disorder (hereinafter, "PTSD"), after finding that the record did not demonstrate that veteran had served in combat or had been exposed to the claimed stressors. The decision in *Pentecost* v. *Principi*[3] noted that a veteran's presence in a specific unit during a combat event is sufficient corroboration of exposure to that event. In this case, unit records corroborated the veteran's assertion that enemy rocket attacks occurred during the time period he was stationed at the airbase. The Court found that the veteran's unit records were credible evidence that the rocket attacks that the veteran alleged did occur. However, VA had earlier determined that the veteran had not corroborated his alleged in-service stressor with independent evidence. Despite these precedents, recent Court decisions, such as *Castle* v. *Mansfield*[4] and *Bobby King* v. *Peake,*[5] consistently demonstrate that proper consideration of lay evidence is still not being accorded by VA when the place and conditions of military service are generally documented.

Committee Bill. Section 203 of the Committee bill would direct VA to promulgate regulations that direct how VA should generally consider lay evidence that is consistent with the place, conditions, dangers, or hardships associated with a particular veteran's military service. The Committee intends that the requirement to consider lay evidence in assessing the place, conditions, dangers, and hardships of service not be limited to combat service, but also include other types of exposures, including environmental conditions. For example, in assessing lay testimony concerning a claimant's exposure to sub-freezing conditions, the regulation may acknowledge that lay evidence, such as weather reports or contemporaneous newspaper accounts of sub-freezing conditions, may provide corroboration of exposure to the cold when a servicemember was assigned to an area when sub-freezing conditions were present. Another example: In a claim alleging hearing loss or tinnitus, although an individual's service record might not include details of exposure to improvised explosive devices (hereinafter, "IEDs"), the individual may have been assigned to a particular unit at a particular location where lay evidence shows that the unit was repeatedly exposed to IEDs.

The Committee expects that the regulations required by this section would encourage the development of common-sense guidance

[1] *Suozzi* v. *Brown*, 10 Vet. App. 307 (1997).
[2] *Falk* v. *West*, 12 Vet. App. 402 (1999).
[3] *Pentecost* v. *Principi*, 16 Vet. App. 124 (2002).
[4] *Castle* v. *Mansfield*, No. 05–3010, 2007 U.S. App. Vet. Claims LEXIS 1938 (U.S. App. Vet. Cl. Dec. 13, 2007).
[5] *Bobby King* v. *Peake*, No. 08–0033, 2008 U.S. App. Vet. Claims LEXIS 1177 (U.S. App. Vet. Cl. Nov. 6, 2008).

to claims adjudicators, from the Department, about how the circumstances of a claimant's military service should be considered when evaluating a claim for service-connection.

Sec. 204. Extension of reduced pension for certain veterans covered by Medicaid plans for services furnished by nursing facilities.

Section 204 of the Committee bill would extend, from the end of fiscal year 2011 to the end of fiscal year 2014, the expiration date for provisions that reduce VA pension for certain beneficiaries with no dependents who are covered by Medicaid plans for services furnished by nursing facilities.

Background. Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, reduced VA pension for certain veterans in receipt of Medicaid-covered nursing home care to no more than $90 per month, for any period after the month of admission to the nursing care facility. This authority expired on September 30, 1992, and was extended through 1997 in Public Law 102–568, the Veterans' Benefits Act of 1992; through 1998 in Public Law 103–66, the Omnibus Budget Reconciliation Act of 1993; through 2002 in Public Law 105–33, the Balanced Budget Act of 1997; through 2008 in Public Law 106–419, the Veterans' Benefits and Health Care Improvement Act of 2000; and through 2011 in Public Law 107–103, the Veterans' Education and Benefits Expansion Act of 2001.

Committee Bill. Section 204 of the Committee bill would amend section 5503(d)(7) of title 38 to extend, from September 30, 2011, to September 30, 2014, the authority for limitation of VA pension to $90 per month for certain beneficiaries receiving Medicaid-covered nursing home care.

Sec. 205. Enhancement of disability compensation for certain disabled veterans with difficulties using prostheses and disabled veterans in need of regular aid and attendance for residuals of traumatic brain injury.

Section 205 of the Committee bill, which is derived from S. 1015, would provide higher levels of VA compensation to certain veterans who experience difficulty using prostheses or who have a severe TBI.

Subsec. 205(a). Veterans suffering anatomical loss of hands, arms, or legs.

Section 205(a) of the Committee bill would allow veterans who suffer certain severe anatomical losses and are impeded from using prosthetic devices, for any reason, to qualify for higher levels of VA compensation.

Background. Under subsections (a) through (j) of section 1114 of title 38, VA pays disability compensation to a veteran based on the rating assigned to the veteran's service-connected disabilities. Under subsections (m), (n), and (o) of section 1114, higher levels of monthly compensation are paid to veterans with severe disabilities if certain criteria are satisfied.

The criteria for compensation under section 1114(m) include "the anatomical loss * * * of both legs at a level, or with complications, preventing natural knee action with prostheses in place" or "the anatomical loss * * * of one arm and one leg at levels, or with complications, preventing natural elbow and knee action with

prostheses in place." The criteria for compensation under section 1114(n) include "the anatomical loss * * * of both arms at levels, or with complications, preventing natural elbow action with prostheses in place"; "the anatomical loss of both legs so near the hip as to prevent the use of prosthetic appliances"; or "the anatomical loss of one arm and one leg so near the shoulder and hip as to prevent the use of prosthetic appliances." The criteria for compensation under section 1114(o) include "the anatomical loss of both arms so near the shoulder as to prevent the use of prosthetic appliances."

Committee Bill. Section 205(a) of the Committee bill would amend subsections (m), (n), and (o) of section 1114 to remove the provisions conditioning higher monthly compensation on the site of, or complications from, an anatomical loss. Instead, if the other requirements are satisfied, it would allow the higher rates to be paid if any factors prevent natural elbow or knee action with prostheses in place or prevent the use of prosthetic appliances.

Subsec. 205(b). Veterans with service-connected disabilities in need of regular aid and attendance for residuals of traumatic brain injury.

Section 205(b) of the Committee bill would allow veterans suffering from severe TBIs to receive the highest level of aid and attendance benefits from VA.

Background. Under subsections (a) through (j) of section 1114 of title 38, VA pays disability compensation to a veteran based on the rating assigned to the veteran's service-connected disabilities. Currently, the monthly compensation ranges from $123 per month for a single veteran with no dependents rated 10 percent to $2,673 per month for the same single veteran rated 100 percent. Under section 1114(l) of title 38, VA provides a higher amount of compensation, currently $3,327 per month for a single veteran, if the veteran is "in need of regular aid and attendance."

A veteran who requires regular aid and attendance may be entitled to an additional $2,002 per month, under section 1114(r)(1) of title 38 if the veteran suffers from severe service-connected physical disabilities. Also, under section 1114(r)(2), a higher level of aid and attendance compensation, currently an additional $2,983 per month, is provided to certain veterans with severe service-connected disabilities who need "a higher level of care" in addition to regular aid and attendance. Under section 1114(r)(2), this higher level of compensation generally is provided only to a veteran who has suffered a severe anatomical loss, who needs "health-care services provided on a daily basis in the veteran's home," and who would require institutionalization in the absence of that care.

In 2007, the Veterans' Disability Benefits Commission provided its views on these aid and attendance provisions: "[T]he primary focus is on physical impairments and locomotion. Very little emphasis is placed on cognitive (e.g., TBI) or psychological impairments and the needs of those conditions for supervision and management as well as aid and attendance." When asked whether VA agreed with that assessment, a VA representative testified at the Committee's April 29, 2009, hearing that the higher level of aid and attendance compensation "doesn't focus on the cognitive disabilities."

In connection with the Committee's April 29, 2009, hearing, the Committee also received written testimony from Sarah Wade, the wife of a veteran, Ted Wade, who suffered a severe TBI while serving in Iraq. In part, Mrs. Wade provided this assessment of the current law:

> Though veterans with severe TBI may require 24-hour care, supervision for safety, or assistance with most, or all, higher level activities, they are not always provided the same level of compensation as a veteran with a severe physical disability. Though a veteran with a severe TBI may be able to perform some [independent activities of daily living], they may require prompting to do them or it may take much longer to complete these tasks than it would have pre-injury. These veterans not only need assistance with tasks they can no longer perform, but also someone to facilitate, or to accomplish ones they cannot keep up with. Without the aid of a family member with additional resources, although having no major physical disabilities, these veterans are not able to reside in their own homes, and therefore, will require residential care. A veteran who requires a greater amount of assistance, in the home or out in the community, medical or non-medical, should be considered for compensation under 1114(r)(1) and 1114(r)(2). We believe all veterans should be given access to the community whenever medically possible, not homebound, and [aid and attendance] should be changed to allow that.

Committee Bill. Section 205(b) of the Committee bill would add a new subsection (t) to section 1114, which would provide that, if a veteran is in need of regular aid and attendance due to the residuals of TBI, is not eligible for compensation under section 1114(r)(2), and, in the absence of regular aid and attendance, would require institutional care, the veteran will be entitled to a monthly aid and attendance allowance equivalent to the allowance provided under section 1114(r)(2). This change would take effect on August 31, 2010.

The Committee believes that these changes would provide veterans suffering from severe TBIs with the resources to arrange whatever services they may need to live as independently as possible in their own homes and to integrate as fully as they can into their communities.

Sec. 206. Commencement of period of payment of original awards of compensation for veterans retired or separated from the uniformed services for disability.

Section 206 of the Committee bill, which is derived from S. 1016, would eliminate the statutorily-required delay in how soon after discharge from service a catastrophically injured veteran may begin to receive VA disability compensation.

Background. In general, if a servicemember is injured during service, the servicemember may go through the disability evaluation process at DOD to determine whether the individual is fit for duty and, if found to be unfit, to determine what rating, between 0 and 100 percent, should be assigned to the disabilities that

render the servicemember unfit. If the servicemember is assigned a rating of 30 percent or higher by DOD, the servicemember will be medically retired from the military. Then, the injured veteran may go through the disability evaluation process at VA to be assigned a disability rating, which will determine the level of monthly disability compensation the veteran will receive from VA.

Because of concerns about the delays and complexities of this disability evaluation system, DOD and VA have taken steps to reduce the time it takes to navigate the system and to create a smoother transition from military to civilian life. For one thing, DOD and VA recently created an expedited disability evaluation process for servicemembers who have suffered catastrophic injuries as a result of armed conflict. That expedited process will allow the injured servicemember to receive an automatic 100 percent rating from DOD and begin directly with the VA disability rating process.

Although this and other actions taken by VA and DOD may help speed up the disability evaluation process, transitioning servicemembers still may experience a delay in receiving their VA disability compensation because of statutory mandates. Specifically, under section 5110(b)(1) of title 38, if a veteran files a claim for VA disability compensation within 1 year after being discharged from military service, the effective date of an award of service connection will be the day after the date of discharge. However, under section 5111(a) of title 38 the effective date for payment of compensation based on that award will not be until the first day of the month following the month in which the service-connection award is effective.

As a result, if a servicemember suffered catastrophic injuries during service, there may be a delay in the veteran's receipt of VA disability compensation, even if VA is prepared to award the veteran service connection immediately upon his or her discharge from service. For example, if an individual is medically retired from the military on June 30, the veteran's effective date for the award of service connection would be July 1, the effective date for the payment of compensation would be August 1, and the first VA disability compensation check would be sent on September 1, paying for August but not for July.

Committee Bill. Section 206 of the Committee bill would amend section 5111 of title 38 to provide that, if a veteran is retired from the military for a catastrophic disability or disabilities, payment of disability compensation based on an original claim for benefits will be made as of the date on which the award of compensation becomes effective. "Catastrophic disability" would be defined as a permanent, severely disabling injury, disorder, or disease that compromises the ability of the veteran to carry out the activities of daily living to such a degree that the veteran requires personal or mechanical assistance to leave home or bed, or requires constant supervision to avoid physical harm to self or others. These changes would take effect on the date of enactment and would apply with respect to awards of VA compensation based on original claims for benefits that become effective on or after that date.

These changes will allow a catastrophically disabled veteran to leave military service at whatever time best suits his or her needs, without the stress and financial burden that may be caused by a delay in receiving VA disability compensation.

Sec. 207. Applicability of limitation to pension payable to certain children of veterans of a period of war.

Section 207 of the Committee bill, which is derived from S. 728 as introduced, would treat surviving adult-disabled children of veterans, who receive VA death pension and are Medicaid recipients residing in nursing homes, in the same manner as veterans and surviving spouses.

Background. As described in connection with section 204 of the Committee bill, under current law, a veteran with no dependents who is entitled to receive pension under section 1521 of title 38 cannot be paid more than $90 per month if the veteran is in a nursing facility where services are covered by a Medicaid plan. In instances where a veteran's surviving spouse is entitled to receive pension under section 1541 of title 38, the surviving spouse also cannot be paid more than $90 per month if the surviving spouse has no dependents and is in a nursing facility where services are covered by a Medicaid plan. The $90 pension benefit may not be counted in determining eligibility for Medicaid or the patient's share of cost. It is to be available to the pensioner and may be used to meet his or her personal needs not provided under Medicaid, such as clothing and personal care items.

Under section 101(4)(A) of title 38, a child is defined as a person who is unmarried and under the age of 18 years; before reaching the age of 18 years, became permanently incapable of self-support; or, after attaining the age of 18 years and until completion of education or training, but not after attaining the age of 23 years, is pursuing a course of instruction at an approved educational institution. Such a child is entitled to pension under section 1542 of title 38 if the income of the child is less than the statutory benefit amount payable to the child. If such a child is admitted to a nursing facility where services are covered by a Medicaid plan, the pension benefits for the child are not currently reduced to $90.

Committee Bill. Section 207 of the Committee bill would amend section 5503 of title 38 so that adult-disabled children of veterans who receive pension under section 1542 of title 38 and are covered by a Medicaid plan while residing in nursing homes, would have their pension benefits reduced in the same manner as veterans and surviving spouses.

Sec. 208. Payment of dependency and indemnity compensation to survivors of former prisoners of war who died on or before September 30, 1999.

Section 208 of the Committee bill would provide for the payment of DIC to the survivors of former POWs who died on or before September 30, 1999, under the same rules as applied to survivors of former POWs who die or have died after that date.

Background. Under chapter 13 of title 38, DIC is paid to the surviving spouse or children of a veteran when the veteran's death is a result of a service-connected disability. In addition, VA provides DIC to the surviving spouses and children of veterans who have died after service from a non-service-connected disability if the veteran had been totally disabled due to a service-connected disability for a continuous period of 10 or more years immediately preceding death or for a continuous period of at least 5 years after the veteran's release from service.

Prior to Public Law 106–117, the Veterans' Millennium Health Care and Benefits Act, the survivors of former POWs were eligible for DIC under the same rules as all other survivors. However, there were concerns that many former POWs died before they met the 10-year statutory requirement and their surviving spouses were therefore not eligible for DIC. Section 501 of Public Law 106–117 extended eligibility for DIC to the survivors of former POWs who died after September 30, 1999, from non-service-connected causes if the former POWs were totally disabled due to a service-connected cause for a period of 1 or more years, rather than 10 or more years, immediately prior to death.

Committee Bill. Section 208 of the Committee bill would amend section 1318(b)(3) of title 38 to make all survivors of former POWs eligible for DIC if the veteran died from non-service-connected causes and was totally disabled due to a service-connected condition for a period of 1 or more years immediately prior to death, without regard to date of death.

TITLE III—READJUSTMENT AND RELATED BENEFIT MATTERS

Sec. 301. Repeal of limitation on number of veterans enrolled in programs of independent living services and assistance.

Section 301 of the Committee bill, which is derived from S. 514, would repeal the limitation on the number of veterans who are authorized to enroll annually in a program of independent living services and assistance conducted under chapter 31 of title 38, U.S.C.

Background. Under current law, individual veterans for whom a determination is made that a program of rehabilitation leading to employment is not reasonably feasible may be eligible for enrollment in a program of independent living services, which is designed to help the veterans achieve a maximum level of independence in daily life. However, the number of veterans who in any 1 year may enroll in these programs is capped at 2,600.

VA's Independent Living (hereinafter, "IL") Program was first established in 1980 by Public Law 96–466, the Veterans' Rehabilitation and Education Amendments of 1980. Initially, that law provided for the establishment of a 4-year pilot program designed to provide independent living services for severely disabled veterans for whom the achievement of a vocational goal was not reasonably feasible. The number of veterans who could be accepted annually into the IL pilot program was capped at 500. In 1986, the program was extended through 1989 and then, in 1989, it was made permanent by Public Law 101–237, the Veterans' Benefits Amendments of 1989. In 2001, the 500 annual cap on enrollees was increased to 2,500 by Public Law 107–103, the Veterans Education and Benefits Expansion Act of 2001. Last year, Public Law 110–389, the Veterans' Benefits Improvement Act of 2008, further increased the cap to 2,600.

In earlier years, as a pilot project, the cap may have been appropriate in order to provide VA with an opportunity to manage the program in the most effective manner possible. In 2001, it made sense to increase that cap in light of the increased demand and need for the program. Now, however, since this important program is designed to meet the needs of the most severely service-connected disabled veterans and more of those returning from combat

have suffered the kind of devastating injuries that may make employment not reasonably feasible for extended periods of time, it makes sense to lift the cap altogether.

In a report issued in December 2007, VA's Inspector General found that "[T]he effect of the statutory cap has been to delay IL services to severely disabled veterans." This delay happens because VA has developed a procedure that holds veterans in a planning and evaluation stage when the statutory cap may be in danger of being exceeded.

Committee Bill. Section 301 of the Committee bill would amend section 3120 of title 38 so as to strike subsection (e) to eliminate the cap on the IL program entirely.

The Committee is concerned that the effect of any cap is to put downward pressure on VA's enrollment of eligible veterans in this very important program. This is of particular concern when so many of today's returning servicemembers suffer from disabilities that may require extensive periods of rehabilitation and assistance in achieving independence in their daily lives that can result from such conditions as TBI or PTSD.

VA, which has testified in the past that this enrollment cap does not present any problem for the effective conduct of the program, has now also testified in support of the elimination of the annual enrollment cap.

Sec. 302. Eligibility of disabled veterans and members of the Armed Forces with severe burn injuries for automobiles and adaptive equipment.

Section 302 of the Committee bill, which is derived from S. 728 as introduced, would provide automobile and adaptive equipment assistance to disabled veterans and servicemembers with severe burn injuries.

Background. Under current law, section 3901 of title 38, veterans and members of the Armed Forces are eligible for assistance with automobiles and adaptive equipment if they suffer from one of three qualifying service-connected disabilities: loss or permanent loss of use of one or both feet; loss or permanent loss of use of one or both hands; or a central visual acuity of 20/200 or less or a peripheral field of vision of 20 degrees or less. Individuals with these disabilities experience great difficulty operating a standard automobile not equipped to accommodate their disabilities.

During an oversight visit to the Brooke Army Medical Center (hereinafter, "BAMC") in San Antonio, Texas, Committee staff learned that victims of severe burn injuries also experience great difficulty operating standard automobiles. BAMC is DOD's leading center for the treatment and rehabilitation of burn victims and the home of the U.S. Army's Institute of Surgical Research Burn Unit. Staff at BAMC indicated that, like amputees and the vision impaired, severe burn victims frequently need vehicles with special adaptations. Due to the severe damage done to their skin, burn victims often require special adaptations for assistance in and out of the vehicle, seat comfort, and climate control.

Committee Bill. Section 302 of the Committee bill would amend section 3901 of title 38 so as to include individuals with a service-connected disability due to a severe burn injury, effective October 1, 2010. The scope and definition of what constitutes a disability due

to a severe burn injury would be determined pursuant to regulations prescribed by VA.

Sec. 303. Enhancement of automobile assistance allowance for veterans.

Section 303 of the Committee bill, which is derived from S. 820, would increase and provide an index for an existing VA grant program, which provides funds to assist severely disabled veterans in purchasing automobiles or other conveyances that can accommodate their disabilities.

Background. In 1946, when VA's automobile assistance program began, the $1,600 automobile allowance represented 85 percent of the average retail cost of an automobile. Currently, the $11,000 benefit represents only 37.8 percent of the cost of a new automobile. A benefit of $22,500 would equal 77.4 percent of the March 2009 average new vehicle cost, which is $29,061, and even that figure may be inadequate as many severely disabled veterans require larger and more expensive vehicles to accommodate their disabilities.

Committee Bill. Section 303 of the Committee bill would amend section 3902 of title 38 to increase the maximum authorized automobile assistance allowance from $11,000 to $22,500, effective October 1, 2010. Section 303 would also direct VA to establish a method of determining the average retail cost of new automobiles for the preceding calendar year. The maximum allowance would increase, effective October 1 of each fiscal year, beginning in 2011, to an amount equal to 80 percent of what VA determined to be the average retail cost of new automobiles for the preceding calendar year.

The Committee notes that increases in automobile and adaptive equipment grants have been infrequent, despite the fact that the market prices of these items continue to rise. Unless the amounts of the grants are periodically adjusted, inflation erodes the value and effectiveness of these benefits, making it more difficult for beneficiaries to afford the accommodations they need. This legislation aims to help veterans live independently and recognizes that transportation is a crucial part of independent living.

Sec. 304. Payment of unpaid balances of Department of Veterans Affairs guaranteed loans.

Section 304 of the Committee bill, which is derived from S. 842, would reinforce VA's authority to purchase a VA-guaranteed home loan from the mortgage holder, if the loan is modified by a bankruptcy judge under the authority of section 1322(b) of title 11, U.S.C., by paying the unpaid balance of the loan, plus accrued interest, as of the date a bankruptcy petition is filed. The mortgage holder would first have to assign, transfer, and deliver to VA all rights, interest, claims, evidence, and records with respect to the housing loan.

Background. The mission of the VA Home Loan Guaranty program is to help veterans and active duty personnel purchase and retain homes in recognition of their service to the Nation. In addition, the unmarried surviving spouse of a veteran who died on active duty or as the result of a service-connected disability is also eligible for the home loan benefit.

Since its inception, the VA Home Loan Guaranty program has guaranteed over $1 trillion which accounts for 18.6 million loans to veterans. The Committee recognizes that this program has been successful. The VA home loan program has made mortgage credit available to many veterans whose loans otherwise would not have been made. In this connection, although VA borrowers have been directly favored by the more liberal terms on those loans, it is possible that these terms have induced a competitive liberalization of the terms on conventional mortgages, whose recipients have benefited as well. As a result, the impact of the VA home loan programs on the economy and on the mortgage market may exceed the actual volume of VA home loans.

While section 3732 of title 38 provides default procedures for VA home loans and illustrates the actions VA may take to preserve the loan before suit or foreclosure, it does not address what would occur in the event an individual files for bankruptcy and a loan is modified under the authority provided under section 1322(b) of title 11.

In the last 20 years, through its supplemental services, VA has assisted over 158,000 veterans, with VA-guaranteed loans at risk of foreclosure, retain their homes. These efforts have saved an estimated $3.2 billion. Amending the default procedures to include actions to be taken in the event a loan is modified under title 11 gives lenders more confidence in approving loans to veterans, which is advantageous to individuals during hard economic times.

Committee Bill. Section 304 of the Committee bill would amend section 3732(a)(2) by adding a new subparagraph that would authorize additional default procedures for VA home loans in the event that a VA home loan is modified under the authority provided under section 1322(b) of title 11. This new authority would allow VA to pay the holder of the obligation the unpaid balance of the obligation due as of the date of the filing of the petition under title 11 plus accrued interest, but only upon the assignment, transfer, and delivery to VA in a form and manner satisfactory to VA of all rights, interest, claims, evidence, and records with respect to the housing loan.

TITLE IV—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

Sec. 401. Waiver of sovereign immunity under the 11th Amendment with respect to enforcement of USERRA.

Section 401 of the Committee bill, which is derived from S. 263, would limit the ability of state employers to thwart enforcement of their employees' USERRA rights by asserting their immunity from individual suit under the 11th Amendment of the U.S. Constitution.

Background. Under existing law, USERRA provides a number of important and substantive rights to an individual who leaves civilian employment when called to active duty military service—including the right to be reemployed by his or her pre-service employer after the completion of military service, the right to reenroll in employee-sponsored health care plans, and the right to continue to accrue seniority in a civilian position during a period of military service. The term "employer" for USERRA purposes is broadly de-

fined and specifically includes state governments. The inclusion of states as employers, however, has become a problem of constitutional dimensions when it comes to the enforcement mechanisms that are available.

As originally enacted in 1994, section 4323 of USERRA permitted an individual to sue a State in Federal court, with private counsel or through the assistance of Department of Justice (hereinafter, "DOJ"). In 1996, however, the Supreme Court decided *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44 (1996), which held, among other things, that Congress cannot abrogate 11th Amendment sovereign state immunity based on powers that predate the 11th Amendment. USERRA is based upon the "war powers" clauses of Article I, Section 8 of the Constitution, which predates the 11th Amendment by 8 years, and therefore the U.S. Court of Appeals for the Seventh Circuit, in applying *Seminole Tribe*, held that USERRA did not override state sovereignty. *Velasquez* v. *Frapwell*, 160 F.3d 389 (7th Cir. 1998).

Congress responded to *Velasquez* by amending USERRA later in 1998 to authorize the Attorney General of the United States to bring a USERRA action against a State as an employer in the name of the United States as a plaintiff in the action. *See* 38 U.S.C. § 4323(a)(1). This addressed the 11th Amendment problem, because the 11th Amendment precludes suits against States in Federal court brought by individuals, but does not preclude a lawsuit against a State brought by the Attorney General in the name of the United States as plaintiff. Congress also amended USERRA in 1998 to replace the authority for private individuals to sue State employers in Federal court with authority to bring such suits in a State court of competent jurisdiction. *McIntosh* v. *Partridge*, 540 F.3d 315, 321 (5th Cir. 2008); *Townsend* v. *University of Alaska*, 543 F.3d 478, 482 (9th Cir. 2008). Since the Supreme Court decided *Seminole Tribe* and *Alden* v. *Maine*, 527 U.S. 706 (1999) (States retain a residual sovereign immunity to private suits in their own courts that is similar to States' immunity to private suits in Federal courts), however, courts have held that Federal statutory provisions permitting private, individual suits against States are prohibited by the 11th Amendment in the absence of a waiver of sovereign immunity by the State. *See, e.g., Larkins* v. *Department of Mental Health*, 806 So.2d 358 (Ala. 2001).

Thus, while under existing law DOJ has the authority, and has exercised its authority, to bring actions against States in Federal district court on behalf of individuals in the name of the United States, individual State employees represented by private counsel or by themselves are not able to pursue important USERRA protections unless their State has waived its sovereign immunity.

Committee Bill. Section 401 of the Committee Bill would amend section 4323 of title 38, by conditioning a State's receipt or use of Federal financial assistance on its waiving State sovereign immunity to lawsuits brought under the USERRA protections by individuals who are or were employees or who apply for employment or reemployment in programs or activities that receive or use Federal financial assistance. The bill also restores the ability of private plaintiffs to bring USERRA suits against State employers in Federal court.

Sec. 402. Clarifying the definition of "successor in interest."

Section 402 of the Committee bill, which is derived from S. 263, would amend section 4303 of title 38 to clarify the definition of "successor in interest" by incorporating language that mirrors the regulatory definition adopted by the Department of Labor (hereinafter, "DOL").

Background. Section 4303 of title 38 uses a broad definition of the term "employer" for purposes of USERRA, which includes in subsection (4)(A)(iv) a "successor in interest." In regulations, DOL has provided that an employer is a "successor in interest" where there is a substantial continuity in operations, facilities, and workforce from the former employer. Section 1002.35 of title 20, C.F.R., further stipulates that the determination of whether an employer is a successor in interest must be made on a case-by-case basis using a multifactor test.

One Federal court, however, in a decision made prior to the promulgation of that regulation, held that an employer could not be a successor in interest unless there was a merger or transfer of assets from the first employer to the second. *See Coffman* v. *Chugach Support Services, Inc.*, 411 F.3d 1231 (11th Cir. 2005); *but see Murphree* v. *Communications Technologies, Inc.*, 460 F. Supp. 2d 702 (E.D. La 2006) (applying section 1002.35 of title 20, C.F.R., and rejecting the *Coffman* merger or transfer of assets requirement).

Committee Bill. Section 402 of the Committee bill would clarify the definition of "successor in interest" by incorporating into USERRA DOL's multifactor test for successor in interest.

Sec. 403. Clarifying that USERRA prohibits wage discrimination against members of the Armed Forces.

Section 403 of the Committee bill, which is derived from S. 263, would clarify that USERRA prohibits wage discrimination against members of the Armed Forces.

Background. Under current law, section 4311(a) of title 38, employers may not deny any "benefit of employment" to employees or applicants on the basis of membership in the uniformed services, application for service, performance of service, or service obligation. However, the U.S. Court of Appeals for the Eighth Circuit held in 2002 that USERRA does not prohibit wage discrimination because "wages or salary for work performed" are specifically excluded from the law's definition of "benefit of employment." *Gagnon* v. *Sprint Corp.*, 284 F.3d 839, 853 (8th Cir. 2002).

Committee Bill. Section 403 of the Committee bill would amend section 4303(2) of title 38 to make it clear that wage discrimination is not permitted under USERRA. This is not intended, however, to require the payment of wages or salaries for work not performed while on military service.

The Committee is concerned that the *Gagnon* decision could lead employers to believe that they may pay their employees less because they are members of the military or because they have military obligations, and section 403 aims to prevent any such mistaken belief.

Sec. 404. Requirement that Federal agencies provide notice to contractors of potential USERRA obligations.

Section 404 of the Committee bill, which is derived from S. 263, would require Federal agencies to notify government contractors of their potential USERRA obligations.

Background. The protections required to be provided by the provisions of USERRA apply to all employers in the private and public sectors, including the Federal government. Under various provisions of existing law, Federal agencies are permitted to enter into contracts with non-governmental entities for a variety of reasons.

Committee Bill. Section 404 of the Committee bill would amend the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) to provide that each contract for the procurement of property or services entered into by a non-military agency of the Federal government must contain a notice that the contractor may have obligations under USERRA. Section 404 would similarly amend title 10, U.S.C., to provide that contracts entered into by military agencies of the Federal government must contain such a notice.

The Committee believes that it should be clear to all Federal agencies and their contractors that they have and share responsibilities for protecting the USERRA rights of returning servicemembers who work on Federal contracts.

Sec. 405. Comptroller General of the United States study on effectiveness of Federal programs of education and outreach on employer obligations under USERRA.

Section 405 would require a Comptroller General study on the effectiveness of outreach and education initiatives.

Background. Under existing policies and procedures, the Federal government conducts a variety of initiatives designed to outreach to and educate employers, veterans, and servicemembers about the protections and obligations provided under USERRA.

Committee Bill. Section 405 of the Committee bill would require the Comptroller General to conduct a study on the effectiveness of the variety of outreach and education initiatives conducted. This section also sets forth specific assessments and evaluations that would be required to be addressed in the report, which would be required to be submitted not later than June 30, 2010.

Sec. 406. Technical amendments.

Committee Bill. Section 406 of the Committee bill would make three technical and conforming changes to various provisions of law in order to correct cross references to various USERRA provisions contained in chapter 43 of title 38 and clarify existing language in the USERRA.

TITLE V—BURIAL AND MEMORIAL MATTERS

Sec. 501. Supplemental benefits for veterans for funeral and burial expenses.

Section 501, which is derived from S. 728 as introduced, would authorize supplemental benefits for veterans for funeral and burial expenses.

Background. Our country has long been concerned that veterans have a proper burial. In 1862, President Lincoln signed legislation that authorized the establishment of national cemeteries to ensure a proper burial for soldiers who died in the service of the country. Congress expanded burial benefits with the War Risk Insurance Act Amendments of 1917 so as to avoid a potter's field burial for war veterans. That Act provided a cash payment, of no more than $100, to pay for funeral and burial expenses for deaths occurring prior to separation from military service.

In 1923, the burial allowance was extended to veterans who died without sufficient assets to pay for burial. The asset limitation requirement was removed in 1936. In addition, eligibility for cash payments was extended to veterans who served during a war or died in the line of duty. In 1946, Public Law 79–529 increased the burial allowance from $100 to $150 for war veterans. The increase was justified by the increase in cost of a funeral and the many costly associated expenses. In 1958, Public Law 85–674 increased the burial allowance from $150 to $250. This increase was justified by increases in the cost of living. In 1973, Congress, in Public Law 93–43, the National Cemeteries Act, set the amount of service-connected and non-service-connected burial expenses at $800 (covering 72 percent of an average adult funeral) and $250 (covering 22 percent of the total cost), respectively. Congress intended to make veterans' burial benefits in line with the then-existent system of Federal civilian employees' burial benefits. The increase also showed a clear recognition by the Federal government of its responsibility to veterans who suffered a service-connected death. In 1978, the burial allowance for a service-connected death was raised to $1,100 (80 percent of the total cost). The non-service-connected death allowance rose from $250 to $300, where it has remained since that time.

Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981, restricted burial benefits to veterans who were in receipt of or entitled to receive compensation or pension at the time of death for non-service-connected deaths. The basis for the restriction was to impose some limitation on who was entitled to non-service-connected veterans benefits as the death rates among World War II veterans began to climb. By restricting the burial benefit, Congress was focusing the benefits so only the neediest of veterans were entitled to burial aid. A straight "needs test" was rejected because of the difficulty it would present to VA to administer a program that used such tax terms as "net estate" and "adjusted gross income." Congress thought it was hard enough for the Internal Revenue Service to decipher such terms and believed it to be beyond the capacity of VA. Congress subsequently adopted an "eligible to receive pension or other compensation from VA" test. Congress thought this would be easier for VA to administer with its then-existing pension and compensation program.

In 2001, in Public Law 107–103, the Veterans' Education and Benefits Expansion Act of 2001, the service-connected burial benefit was raised from $1,500 to $2,000 for burial and funeral expenses for a service-connected death. Legislation at that time was spurred by the issuance of a VA report in December 2000, which showed the effect of inflation on the burial benefit. In 1973, the average cost of an adult funeral was $1,116. In 1999, the average cost

for an adult funeral had increased to $5,157. Funeral costs were rising faster than the cost of inflation.

According to the National Funeral Directors Association, the average cost of a funeral, as of December 31, 2006, was $7,323. Section 501 is intended to increase the burial benefit to fight the erosion of this important benefit.

Committee Bill. Section 501 would authorize supplemental benefits for both service-connected and non-service-connected allowances. Disbursement of these supplemental benefits would be subject to the availability of funds specifically provided for that purpose in advance in an appropriations act. VA would be prohibited from making the supplemental payments if all funds specifically provided for this purpose in an appropriations act have already been expended. The supplemental benefit for those dying from service-connected disabilities would be $2,100 above the current $2,000 benefit, bringing the total authorized benefit to $4,100. The non-service-connected-death supplemental benefit would be $900 in addition to the current $300, for a total of $1,200 in authorized burial benefits. Finally, section 501 would also provide for an annual increase in the authorized supplemental allowance in both categories to preserve the purchasing power of the benefit.

Sec. 502. Supplemental plot allowances.

Section 502, which is derived from S. 728 as introduced, would authorize supplemental plot allowances.

Background. A growing problem caught the attention of the Committee in 1972 and helped lead to the establishment of maximum plot allowances. According to testimony given by Dead Giveaway, a group of law students, at a 1972 Committee hearing, cemeteries advertised “free” or a “one time only perpetual care charge” to veterans in an attempt to sell veterans plot space on a “pre-need basis.” According to Dead Giveaway’s testimony, the practice of cemetery owners was less of a patriotic gesture than a business venture. The cemetery operators charged veterans up to $1,400 for a burial plot when the national average cost for a plot at that time was $122. In 1972, the Pre-Arrangement Internment Association of America (PIAA) adopted a resolution stating that, if Congress provided a plot allowance, then PIAA members would accept the sum provided by Congress as payment in full for America’s veterans.

Public Law 93–43, the same law that formally established the National Cemetery System in VA, authorized payment of not more than $250 as a plot or interment allowance in connection with the burial of deceased veterans who die while properly admitted to a hospital, nursing home, or domiciliary administered or paid for by VA. In 1978, Public Law 95–476, the Veterans’ Housing Benefits Improvement Act, increased this allowance to $300.

Public Law 93–43 also authorized payment of not more than $150 in connection with the burial of deceased veterans who choose to be interred at a cemetery not under the jurisdiction of the United States government. Public Law 107–103 increased this allowance to $300 in 2001. Thus, as of 2001, plot allowances authorized in section 2303 of title 38 were uniformly set at $300.

While the increase in the plot allowance to $300 in 2001 was significant, it has not been adjusted since, although this amount represents a fraction of what it was worth when the government

began paying the plot allowance in 1973. The 1973 limits were developed as a means of protecting veterans from being overcharged for interment costs.

Public Law 97–35 limited, effective October 1, 1981, veterans' burial and funeral benefits under sections 2302 and 2303 of title 38 to burials of deceased veterans who were entitled to receive VA compensation or pension. Previously, the plot allowance had been available to any honorably discharged wartime veteran.

Under current law, VA will pay a $300 plot allowance when a veteran is buried in a cemetery not under U.S. government jurisdiction if: the veteran was discharged from active duty because of a disability incurred or aggravated in the line of duty; the veteran was receiving compensation or pension, or would have been if he/she was not receiving military retired pay; or the veteran died in a VA facility. The plot allowance may be paid to the state for the cost of a plot or interment in a state-owned cemetery reserved solely for veteran burials if the veteran was buried without charge. The plot allowance cannot be paid to a deceased veteran's employer or a state agency.

Committee Bill. Section 502 of the Committee bill would create a program to authorize supplemental benefits to individuals who are already eligible to receive these benefits. Disbursement of these supplemental benefits would be subject to the availability of funds specifically provided for that purpose in advance in an appropriations act. VA would be prohibited from making the supplemental payments if all funds specifically provided for this purpose in an appropriations act have already been expended.

Section 502 would maintain the current $300 plot allowance and authorize a new supplemental plot allowance of $445. Section 502 would also provide for an annual increase in the authorized supplemental plot allowance to preserve the purchasing power of the benefit.

TITLE VI—OTHER MATTERS

Sec. 601. National Academies review of best treatments for Gulf War Illness.

Section 601 of the Committee bill would require VA to contract with the Institute of Medicine (hereinafter, "IOM") of the National Academies to conduct a comprehensive review of the best treatments for Gulf War Illness.

Background. The term "Gulf War Illness" means a medically unexplained chronic multisymptom illness, such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome, that is defined by a cluster of signs or symptoms relating to service in the Persian Gulf War in the Southwest Asian theater of operations or the Post-9/11 Global Operations theaters.

After receiving research reports for more than 15 years on Gulf War Illness, the Committee seeks to ensure that veterans are provided the best forms of treatment for this condition.

Committee Bill. Section 601 would require VA to contract with IOM to gather a group of medical professionals, who are experienced in treating individuals diagnosed with Gulf War Illness, in order to conduct a comprehensive review of the best treatments for this illness. The individuals these medical professionals must have

experience treating must have served during the Persian Gulf War in the Southwest Asia theater of operations, or in Afghanistan, Iraq, or any other theater in which the Global War on Terrorism Expeditionary Medal is awarded for service.

The final report on the review required by this section must be submitted to VA and the House and Senate Committees on Veterans' Affairs by December 31, 2011, and include recommendations for legislative or administrative actions as IOM considers appropriate in light of the results of that review.

Sec. 602. Extension of National Academy of Sciences reviews and evaluations regarding illness and service in Persian Gulf War.

Section 602 of the Committee bill would extend the National Academy of Sciences' reviews and evaluations regarding associations between illnesses and exposures, and health effects, as a result of Persian Gulf War service.

Background. Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, required VA to enter into an agreement with the National Academy of Sciences to review and evaluate the available scientific evidence regarding associations between illnesses and exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines associated with Persian Gulf War service. Congress extended these reviews and evaluations in Public Law 107–103, the Veterans Education and Benefits Expansion Act of 2001. This requirement will expire on October 1, 2010.

Public Law 105–368, the Veterans Programs Enhancement Act of 1998, required the National Academy of Sciences to examine the scientific and medical literature on the potential health effects of chemical and biological agents related to the 1991 Gulf War. The requirement for this examination ends this year.

The Committee believes that these reports are valuable to its understanding of the associations between illness and exposure, and health outcomes, of Persian Gulf War veterans as a result of the Persian Gulf War.

Committee Bill. Section 602(a) would extend until October 1, 2015, the mandate for the National Academy of Sciences to review and evaluate scientific evidence regarding associations between illnesses and exposure. Section 602(b) would extend until October 1, 2018, the requirement for the National Academy of Sciences to report on the health effects of exposure.

Sec. 603. Extension of Authority for Regional Office in Republic of the Philippines.

Section 603 of the Committee bill would extend until December 31, 2011, VA's authority to operate a Regional Office in the Republic of the Philippines.

Background. Section 315(b) of title 38 authorizes VA to maintain a regional office in the Republic of the Philippines until December 31, 2009. Congress has periodically extended this authority, most recently in Public Law 108–183, the Veterans Benefits Act of 2003.

Were VA to close the Manila regional office, veterans' assistance activities would still be needed in the Philippines. A Federal Benefits Unit would have to be attached to the Department of State, and under such an arrangement, VA's control of costs and quality

of service would be limited. Because a Federal Benefits Unit would assume responsibility only for disseminating information and assistance, but not processing benefits, there could be no assurance that the extensive fraud-prevention activities currently performed by the Manila regional office would continue. VA has determined that it would be more costly, and less effective, to administer veterans' assistance activities in the Philippines through a Federal Benefits Unit attached to the Department of State than to maintain a VA regional office.

Committee Bill. Section 603 would authorize VA to maintain a regional office in the Republic of the Philippines until December 31, 2011.

Sec. 604. Aggregate amount of educational assistance available to individuals who receive both survivors' and dependents' educational assistance and other veterans and related educational assistance.

Section 604 of the Committee bill, which is derived from S. 847, would amend section 3695 of title 38 to modify the maximum number of months of educational assistance available to certain individuals.

Background. Under chapter 35 of title 38, certain survivors and dependents of individuals who die or are disabled while on active duty are eligible for educational assistance benefits. Section 3511(a)(1) provides that each eligible person is entitled to the equivalent of 45 months of full-time benefits.

Under chapter 33 of title 38, the new program of educational assistance for individuals who served on active duty after September 11, 2001, the Post-9/11 Veterans Educational Assistance Act of 2008, establishes a program of educational assistance in which individuals may earn up to a maximum of 36 months of full-time benefits.

Section 3695 of title 38 further provides that an individual who is eligible for assistance under two or more programs may not receive in excess of the equivalent of 48 months of full-time benefits. This means that an eligible dependent who is entitled to receive benefits under the chapter 35 program and who uses all 45 months of those benefits to obtain a college education, and who then subsequently decides to enter the military, would only be able to earn the equivalent of three months of benefits under the new Post-9/11 Veterans Educational Assistance Act of 2008.

Committee Bill. Section 604 of the Committee bill would amend section 3695 of title 38 to provide that an individual entitled to benefits under chapter 35 will not be subject to the 48-month cap. However, the maximum aggregate months of benefits an individual may receive under chapter 33 (or any other education program administered by VA) and chapter 35 would be capped at 81. In part, this would allow individuals who use their dependents' educational assistance benefits to also establish in their own right entitlement to the full range of benefits under the new Post-9/11 Veterans Educational Assistance Act of 2008.

COMMITTEE BILL COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the CBO, estimates that enactment of the Committee bill would, relative to current law, increase discretionary spending by $150 million in 2010 and by $772 million over the 2010–2014 period, assuming appropriation of the necessary amounts. The Committee bill would decrease net direct spending by $2 million in 2010, and by $28 million over the 2010–2019 period. S. 728, as amended, would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require governmental and private-sector employers to comply with new federal protections under the Uniformed Services Employment and Reemployment Rights Act (USERRA). CBO estimates that the costs of the mandates would fall below the annual thresholds established in UMRA.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 25, 2009.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 728, the Veterans' Benefits Enhancement Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

S. 728—Veterans' Benefits Enhancement Act of 2009

Summary: S. 728 would affect several veterans programs, including disability compensation, pension, burial, life insurance, and readjustment benefits. CBO estimates that implementing this legislation would cost $772 million over the 2010–2014 period, assuming appropriation of the necessary amounts. The bill also contains provisions that would both increase and decrease direct spending for veterans benefits. CBO estimates that enacting S. 728 would decrease net direct spending by $28 million over the 2010–2019 period. Enacting the bill would have no effect on revenues.

S. 728 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require governmental and private-sector employers to comply with new federal protections under the Uniformed Services Employment and Reemployment Rights Act (USERRA). CBO estimates that the costs of the mandates would fall below the annual thresholds established in UMRA ($69 million for intergov-

ernmental mandates and $139 million for private-sector mandates in 2009, adjusted annually for inflation).

Pursuant to section 311 of S. Con. Res. 70, CBO estimates that S. 728 would not cause a net increase in deficits in excess of $5 billion in any of the four 10-year periods beginning after 2019.

Estimated cost to the Federal government: The estimated budgetary impact of S. 728 is summarized in Table 1. The costs of this legislation fall within budget function 700 (veterans benefits and services).

Basis of estimate: For the purposes of this estimate, CBO assumes that S. 728 will be enacted near the start of fiscal year 2010.

Table 1.—Estimated Budgetary Impact of S. 728

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	150	155	153	155	159	772
Estimated Outlays	150	155	153	155	159	772
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	-2	47	-100	-141	-146	-340
Estimated Outlays	-2	47	-100	-141	-146	-340

Notes: In addition to the direct spending effects shown here, enacting S. 728 would have additional effects on direct spending after 2014 (see Table 3). CBO estimates that net direct spending over the 2010–2019 period would decrease by $28 million.
Details may not sum to totals because of rounding.

Spending Subject to Appropriation

S. 728 contains provisions that would increase discretionary spending for several benefits provided by the Department of Veterans Affairs (VA). CBO estimates that implementing those provisions would cost $772 million over the 2010–2014 period, assuming appropriation of the necessary amounts (see Table 2).

Supplemental Funeral and Burial Expenses. Under current law, VA pays funeral expenses of up to $300 for certain deceased veterans. VA also pays up to $2,000 for burial expenses to the survivors of veterans who die as a result of a service-connected disability. Section 501 authorize supplemental payments—subject to availability of funds provided for that purpose—that would increase the maximum payments for funeral and burial expenses to $1,200 and $4,100, respectively, and would increase these amounts annually by a cost-of-living adjustment.

Based on information from VA regarding veteran mortality, CBO expects about 86,000 grants to be made for funeral expenses in 2010 increasing to about 92,200 by 2014. For burial expenses, CBO expects about 16,000 grants to be made in 2010 increasing to about 18,000 in 2014. We estimate that implementing this section would cost $582 million over the 2010–2014 period, assuming appropriation of the necessary amounts.

Table 2.—Components of Discretionary Spending Under S. 728

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Supplemental Funeral and Burial Expenses						
Estimated Authorization Level	111	114	116	119	122	582

Table 2.—Components of Discretionary Spending Under S. 728—Continued

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
Estimated Outlays	111	114	116	119	122	582
Supplemental Plot Allowances						
Estimated Authorization Level	31	32	33	34	35	165
Estimated Outlays	31	32	33	34	35	165
Regional Office in the Philippines						
Estimated Authorization Level	5	6	2	0	0	13
Estimated Outlays	5	6	2	0	0	13
Review of Illnesses Related to Service in the Persian Gulf War						
Estimated Authorization Level	2	2	2	2	2	10
Estimated Outlays	2	2	2	2	2	10
Reports						
Estimated Authorization Level	1	1	*	0	0	2
Estimated Outlays	1	1	*	0	0	2
Total Changes						
Estimated Authorization Level	150	155	153	155	159	772
Estimated Outlays	150	155	153	155	159	772

Note: * = less than $500,000.

Supplemental Plot Allowance. Under current law, VA pays a $300 plot allowance for veterans who died in a VA facility or who are to be buried in a state or private cemetery. Section 502 would increase the plot allowance to $745 and adjust the payment annually by a cost-of-living index. Based on information from VA on veterans mortality rates, CBO expects about 71,000 grants to be made for plot allowances in 2010, increasing to about 76,000 by 2014. We estimate that implementing section 502 would increase the cost of this program by $165 million over the 2010–2014 period, assuming appropriation of the necessary amounts.

Regional Office in the Philippines. Section 603 would extend—through December 31, 2011—VA's authority to operate a regional office in the Republic of the Philippines. Under current law, that authority expires on December 31, 2009. Currently, the cost to operate that office is about $6 million per year. After accounting for inflation, CBO estimates that enacting section 603 would cost $13 million over the 2010–2012 period, assuming appropriation of the necessary amounts.

Review of Illnesses Related to Service in the Persian Gulf War. Section 602 would extend the deadlines for completing two studies by the National Academy of Sciences (NAS) regarding illness associated with service in the Persian Gulf War. The NAS review of toxic drugs and illnesses associated with the Persian Gulf War would be extended by five years, from October 1, 2010, to October 1, 2015. The NAS review regarding health problems associated with service in the Persian Gulf would be extended from September 30, 2009, to October 1, 2018. Based on information from NAS, CBO estimates that extending the deadlines for completing those studies would cost $10 million over the 2010–2014 period, assuming appropriation of the necessary amounts.

Reports. S. 728 would require both VA and the Government Accountability Office (GAO) to prepare and submit reports to the Congress. Section 601 would require VA to enter into a contract with the Institutes of Medicine to conduct a review of the best treatments for Gulf War illness and to submit a report by December 31,

2011. Section 405 would require GAO to prepare a report by June 30, 2010, on the effectiveness of programs intended to educate employers on their obligations under the Uniformed Services Employment and Reemployment Rights Act. CBO estimates that completing the required reports would cost $2 million over the 2010–2012 period, assuming availability of the necessary amounts.

Direct Spending

S. 728 contains a number of provisions that would both increase and decrease direct spending. CBO estimates that enacting those provisions would decrease net direct spending by $340 million over the 2010–2014 period and $28 million over the 2010–2019 period (see Table 3).

Pensions for Veterans in Medicaid Nursing Homes. Section 204 would extend from September 30, 2011, to September 30, 2014, the expiration date of a provision of current law that sets a $90 per month limit on pensions paid to any veteran without a spouse or child, or to any survivor of a veteran, who is receiving Medicaid coverage in a Medicaid-approved nursing home. The law also allows the beneficiary to retain the pension instead of having to use it to defray nursing home costs. Using data provided by VA, CBO estimates that in 2010 about 15,000 veterans and 19,000 survivors would be affected by this provision and that the average savings to VA would total about $18,600 per veteran and $11,600 per survivor in that year. Extrapolating from this estimate to account for mortality and new nursing home patients, CBO estimates the provision would save VA $1.5 billion over the 2012–2014 period. Higher Medicaid payments to nursing homes would offset some of those savings. We estimate that those costs would total about $920 million over the 2012–2014 period, resulting in a net savings of $545 million over the period.

Enhanced Automobile Assistance. Seriously disabled veterans who have lost the use of one or both hands or feet or who have suffered a severe vision impairment as the result of a service-connected injury or disease are eligible to receive a grant of $11,000 to purchase an automobile. Those veterans are also entitled to receive the adaptive equipment necessary for them to safely operate their vehicles, and to have that equipment repaired or replaced as necessary.

Section 303 would increase the amount of the automobile grant from $11,000 to $22,500 in 2011. As the average retail cost of new automobiles increases in future years, the benefit would be adjusted to cover 80 percent of that cost. CBO estimates that doubling the benefit would cause the number of veterans receiving automobile grants to increase by 10 percent to approximately 1,600 veterans annually. CBO estimates that section 303 would increase the cost of automobile grants by $170 million over the 2010–2019 period.

The additional grantees also would be provided with the adaptive equipment necessary for them to safely operate the vehicles. Based on the level of current grant payments, CBO estimates that section 303 would increase the cost of adaptive equipment grants by $19 million over the 2010–2019 period. In total, CBO estimates that section 303 would increase direct spending for automobile and

adaptive equipment grants by $189 million over the 2010–2019 period.

Remove Cap on Independent Living. Section 301 would remove the cap on the number of veterans allowed to participate in the Independent Living program. Under current law, participation is capped at 2,600 veterans each year. The Independent Living program provides services to maximize independence in daily living for veterans who are too severely disabled to pursue employment. Based on information from VA, CBO estimates that this section would raise participation in the program by about 200 veterans in 2010 and by over 2,000 veterans annually by 2019 at a cost of approximately $13,000 per participating veteran in 2010. Accounting for inflation, CBO estimates that enacting section 301 would increase direct spending by $181 million over the 2010–2019 period.

Table 3.—Components of Direct Spending Under S. 728

	Outlays in millions of dollars, by fiscal year—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
CHANGES IN DIRECT SPENDING [a]												
Pensions for Veterans in Medicaid Nursing Homes	0	0	-153	-196	-196	0	0	0	0	0	-545	-545
Enhanced Automobile Assistance	0	17	19	21	21	21	22	22	23	23	78	189
Remove Cap on Independent Living	2	4	8	12	16	21	24	28	31	35	42	181
Enhanced VMLI	0	3	5	5	6	6	6	7	7	7	19	52
Expansion of Retroactive Benefits for T-SGLI	0	19	14	10	2	2	0	0	0	0	45	47
Special Monthly Pension	-4	-4	-4	-4	-4	-4	-4	-4	-4	-4	-20	-42
Enhanced Disability Compensation for Veterans with TBI	0	5	5	5	4	4	4	4	4	4	19	39
Exemption of Survivors and Dependents from 48-month Limitation on Educational Benefits	0	2	2	2	2	2	2	3	3	3	8	21
Automobiles and Adaptive Equipment for Individuals with Severe Burns	0	*	3	2	1	1	*	*	1	1	6	9
Supplemental Service-Disabled Insurance	*	*	*	1	1	1	1	1	1	1	2	7
Payments to Survivors of Former POWs	*	1	1	1	1	1	1	1	*	*	4	6
Commencement of Period of Payment for Veterans with Catastrophic Disabilities	*	*	*	*	*	*	*	*	*	*	1	3
Cost-of-Living Adjustment for Surviving Spouses	0	0	0	*	*	*	*	*	*	*	*	3
Consideration of Dominant Hand as Qualifying Loss for T-SGLI	*	*	*	*	*	*	*	*	*	*	*	2
Total Changes	-2	47	-100	-141	-146	55	56	62	66	70	-340	-28

Note: VMLI = Veterans Mortgage Life Insurance; T-SGLI = Traumatic Servicemembers Group Life Insurance; TBI = Traumatic Brain Injury; POWs = Prisoners of Wars; * = less than $500,000.
[a] Details may not sum to totals because of rounding.

Enhanced Veterans' Mortgage Life Insurance (VMLI). VMLI is insurance coverage intended to pay off or make payments on a veteran's home mortgage in the event of the veteran's death. VMLI is restricted to those veterans who receive grants for specially adapted housing and it ceases once a veteran reaches age 70. Under current law, the maximum amount of VMLI is $90,000. Section 105

would increase that amount to $15,000 as of October 2, 2010, and to $200,000 on January 1, 2012.

Based on VA's actuarial projections of current and future policy holders, premium payments, and death claims, CBO expects about 2,200 policyholders to take advantage of the increased coverage in 2011, decreasing to about 1,900 by 2019. Based on the current cost of the program, CBO estimates that enacting section 105 would increase direct spending by $52 million over the 2010–2019 period.

Expansion of Retroactive Benefits for Traumatic Servicemembers Group Life Insurance (T–SGLI). VA began offering T–SGLI in December 2005. This program provides a payment to eligible servicemembers who suffer a traumatic injury including, but not limited to, the loss of a hand or foot. When the program was established, it provided retroactive coverage only to veterans who suffered such injuries as a result of their service in Operation Enduring Freedom or Operation Iraqi Freedom (OEF/OIF). Section 103 would extend that retroactive benefit to all veterans who suffered a qualifying traumatic injury during the period of October 7, 2001, to November 30, 2005.

CBO assumes that retroactive claims for non-OEF/OIF traumatic injuries will be similar to non-OEF/OIF claims made since the beginning of the program. Between December 2005 and September 2006 (the most recent period for which data can be obtained), 390 veterans made nonretroactive T–SGLI claims for traumatic injuries. Of that number, about 22 percent were for non-war-zone injuries. Based on claims made in the first year of the program, CBO expects that about 2,500 war-related claims will be made for the period of October 7, 2001, to November 30, 2005. Under section 103, we estimate that an additional 700 non-war related claims would be made. According to VA, the average size of a non-war-zone claim for T–SGLI was $68,700. Therefore, CBO estimates that enacting section 103 would increase direct spending by $47 million over the 2010–2019 period.

Special Monthly Pension (SMP). VA provides basic pension benefits for war veterans with low incomes who are totally disabled and whose disabilities are unrelated to their service. A larger benefit is available to such veterans who have multiple disabilities. The SMP is payable at one level for veterans considered "housebound" and at a higher level, for those unable to care for themselves (known as the "aid and attendance" level).

As of 2001, war veterans over age 65 with low incomes are eligible to receive the basic pension benefit without a determination of total disability. Until a recent court holding, however, they had to meet the same requirements as younger veterans to receive SMPs.[1] To qualify to receive the SMP at the housebound level, veterans over age 65 were required to have two disabilities; one disability rated at 100 percent and one rated at 60 percent or greater. The Court of Appeals for Veterans Claims (CAVC) found that otherwise eligible veterans over age 65 did not need the initial disability rating of 100 percent, significantly expanding the number of veterans who are eligible to receive the housebound SMP. Pursuant to that holding, VA has recently begun to pay that higher amount to

[1] *Robert A. Hartness* v. *R. James Nicholson*, VA 20 Vet. App. 216 (2006).

veterans over 65 with a single disability rated at 60 percent or greater.

Section 202 would change the eligibility requirements for SMPs to those in force before the court ruling, reducing the number of veterans eligible for SMPs and thereby reducing the cost of the pension program. Based on data from VA, CBO estimates that, of the veterans over age 65 (about 15,700) who are receiving the basic pension without a requirement of disability, about 1,000 are receiving an SMP due to the CAVC decision.

In addition, CBO estimates that under current law about 300 new pension recipients will qualify for the SMPs because of the court ruling each year. Thus, CBO estimates that a total of 1,300 additional veterans will receive SMPs in 2010, and, using normal mortality rates for that population and adding in each year's cohort of new pensioners, that by 2019, about 1,400 pensioners will receive SMPs because of the court ruling.

The maximum annual pension rate for a veteran with no dependents in 2009 is $11,830. The similar rate for housebound SMPs is $14,457. After adjusting for cost-of-living increases, by 2019 the difference between the maximum annual pension rate and the housebound SMP rate would be about $3,000. Using those increases in benefit levels and the populations specified above, CBO estimates that under current law the effect of this court ruling will be to increase direct spending on veterans pensions by $42 million over the 2010–2019 period. Enacting section 202 would undo that increase, resulting in savings of that amount.

Enhanced Disability Compensation for Veterans with Traumatic Brain Injuries (TBI). Section 205 would increase the amount of aid and attendance (A&A) that certain veterans are eligible to receive. Eligible veterans would be those who suffer from the residual effects of service-connected TBI and who, without the increased A&A payment, would require hospitalization, nursing home care, or some other form of institutional care. Section 205 would take effect on August 31, 2010.

Based on data from VA, CBO estimates that in 2010, 150 veterans would qualify for an increased monthly payment under section 205. Given the age of the population and the severity of their disabilities, CBO expects that population to decrease to about 40 in 2019. Similarly, CBO assumes that an additional 10 veterans per year with residual effects of TBI will become eligible for a higher rate of A&A under section 205. Assuming a similar mortality rate, CBO expects that by 2019 about 60 veterans would be eligible for this enhanced benefit.

Under section 205, in 2010, eligible veterans would receive a benefit increase of $2,923 per month ($35,076 annually). After adjusting for estimated cost-of-living increases, that amount would be $3,241 ($38,888 annually) in 2019. Based on our estimates of the affected population and the amount of the benefit increase, CBO expects that enacting section 205 would increase direct spending by $39 million over the 2010–2019 period.

Exemption of Survivors and Dependents from 48-month Limitation on Educational Benefits. Spouses and children of certain deceased or totally disabled veterans are eligible for up to 45 months of veterans' educational benefits. If the survivors and dependents are eligible for additional educational benefits due to their own

military service or through the transfer of benefits, they are limited to a total of 48 months of benefits. Beginning October 1, 2010, section 604 would allow such survivors and dependents to use a maximum of 81 months of benefits. Based on information from the Department of Defense (DOD), CBO estimates that approximately 100 survivors each year would use the additional benefits. We estimate that section 604 would increase direct spending by $21 million over the 2010–2019 period.

Automobiles and Adaptive Equipment for Individuals with Severe Burns. Beginning in October 2010 section 302 would expand eligibility for automobile and adaptive equipment grants for disabled veterans to include totally disabled veterans with severe burn injuries. Based on information from the services, CBO estimates that nearly 150 current veterans would qualify for automobile and adaptive equipment grants immediately under this expansion, and that, on average, an additional 15 veterans would become eligible annually.

Through 2019, CBO estimates that a total of 270 additional veterans would receive grants under this section. Those veterans would be eligible for the automobile grant at the $22,500 level, as increased under section 303. They also would be eligible to receive the necessary adaptive equipment to operate their vehicles safely and to have that equipment replaced at intervals. Between 2010 and 2019, CBO estimates that section 302 would increase the cost for automobile grants by $6 million and the cost for adaptive equipment grants by $3 million. In total, CBO estimates that section 302 would increase direct spending by $9 million over the 2010–2019 period.

Supplemental Service-Disabled Insurance (S–DVI). Section 101 would increase the amount of supplemental S–DVI coverage available from $20,000 to $30,000.

S–DVI is a life insurance program for veterans with service-related disabilities. They must apply for the program within two years of notification that a service connection has been established for a disability. Supplemental S–DVI is available to current S–DVI policyholders who qualify for a waiver of premiums because of a total disability that began after the insured's application for insurance, while the insured was paying premiums for S–DVI, and before the insured's 65th birthday.

Based on VA's actuarial projections of current and future policyholders, premium payments, and death claims, CBO expects about 2,000 policyholders would take advantage of the increased coverage in 2010, increasing to about 15,100 by 2019. Using mortality rates appropriate to this population, CBO estimates that enacting section 101 would increase direct spending by $7 million over the 2010–2019 period.

Payments to Survivors of Former Prisoners-of-War (POWs). Under current law, survivors of veterans who die as a result of a service-connected disability are eligible to receive dependency and indemnity compensation (DIC). Survivors of certain veterans who die from a nonservice-connected condition also can qualify to receive DIC, including former POWs who were rated totally disabled for at least one year prior to their death and who died after September 30, 1999.

Section 208 would extend eligibility for DIC to survivors of such POWs who died before September 30, 1999.

Based on data provided by VA, CBO estimates that about 285 survivors would be newly eligible for DIC under section 208. Many of the affected veterans died many years ago and we expect that many of their survivors will have lost touch with veterans' organizations that could inform them about the new benefit. We also expect that some survivors will have remarried, making them ineligible for DIC. Given these factors, CBO assumes that only about one-third, (about 95) of the eligible survivors would apply for DIC under the bill. CBO also assumes that these new DIC cases would phase in over a five-year period as eligible survivors learn about their eligibility and apply for benefits from VA.

The average DIC payment in fiscal year 2008 was $13,676. Such payments are adjusted annually for increases in the cost of living. CBO estimates that enacting section 208 would increase direct spending by $6 million over the 2010–2019 period.

Commencement of Period of Payment for Veterans with Catastrophic Disabilities. Section 206 would enable veterans who are retired or separated from active-military service due to catastrophic disabilities (i.e., they are unable to carry out the activities of daily living or require supervision to avoid physical harm to self or others) to begin receiving disability compensation payments from VA as of their date of discharge. Under current law, such payments begin on the first day of the month immediately following the month for which a claim was filed.

Based on information from the DOD on retirees, CBO expects about 200 veterans each year would be eligible for one additional payment for half a month. In 2008, the average monthly payment for a veteran rated at 100 percent disabled was about $2,900. These payments are adjusted annually for cost-of-living increases, so the average benefit payment for such a veteran in 2010 will be about $3,390. Assuming that on average, each of the 200 veterans would receive half an additional payment, CBO assumes direct spending would increase by $3 million over the 2010–2019 period.

Cost-of-Living Adjustment (COLA) for Surviving Spouses. Surviving spouses who are eligible for DIC may receive an extra $250 a month for up to two years if they have one or more children under the age of 18. Section 201 would increase the $250 benefit by the same annual COLA applied to the regular DIC benefit for about 2,000 spouses per year. CBO estimates that this provision would not increase the monthly benefit for 2010 because we do not estimate that there will be a COLA for 2010. By 2019, the monthly benefit payment is projected to be $277, relative to current law and CBO's baseline. CBO estimates that enacting section 201 would increase direct spending for veterans compensation by $3 million over the 2010–2019 period.

Consideration of Dominant Hand as Qualifying Loss for T–SGLI. Section 104 would allow VA to consider the loss of a dominant hand in determinations of severity of traumatic loss when making payments to servicemembers under the T–SGLI program and would make the payments retroactive to the beginning of that program. From the start of the T–SGLI program on December 1, 2005, through February 2008, there were about 90 claims for the loss of one hand, representing claims made retroactive to the start of Op-

eration Iraqi Freedom in 2003. CBO assumes that half of those cases were for the dominant hand—45 cases or 9 per year—and would have qualified under section 104. Assuming a similar rate going forward of nine claims per year, with a payment of $25,000 per claim, CBO estimates that enacting section 104 would cost $2 million over the 2010–2019 period.

Intergovernmental and private-sector impact: The USERRA requires governmental and private-sector employers to grant employment and reemployment rights to members of the uniformed services. S. 728 would expand benefits under the bill to include wage and salary protections; such an expansion constitutes a mandate as defined in UMRA. Based on discussions with agency officials, CBO estimates that most employers currently comply the new standards and thus the cost of complying with the mandates would fall below the annual thresholds established in UMRA for both intergovernmental and private-sector mandates ($69 million and $139 million in 2009, respectively, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Compensation, Pension, and Burial Insurance—Dwayne M. Wright; Readjustment Benefits—Camille Woodland; Impact on State, Local, and Tribal Governments: Lisa Ramirez Branum; Impact on the Private Sector: Elizabeth Bass.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Regulatory Impact Statement

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

Tabulation of Votes Cast in Committee

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its May 21, 2009, meeting. The Committee, by voice vote, ordered S. 728 reported favorably to the Senate, subject to amendment.

Yeas	Senator	Nays
X (by proxy)	Mr. Rockefeller	
X	Mrs. Murray	
X (by proxy)	Mr. Sanders	
X	Mr. Brown	
X	Mr. Webb	
X	Mr. Tester	
X	Mr. Begich	
X	Mr. Burris	
X (by proxy)	Mr. Specter	
X	Mr. Burr	
X	Mr. Isakson	

Yeas	Senator	Nays
X (by proxy)	Mr. Wicker	
X	Mr. Johanns	
	Mr. Graham	
X	Mr. Akaka, Chairman	
14	TALLY	0

AGENCY REPORT

On April 29, 2009, Bradley G. Mayes, Director, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, appeared before the Committee at a hearing on pending benefits legislation and submitted testimony on, S. 263, S. 347, S. 514, S. 728, S. 820, S. 842, S. 919, S. 1015, and S. 1016, among other bills. Excerpts from this statement are reprinted below:

PREPARED STATEMENT OF BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee: I am pleased to be here today to provide the Department of Veterans Affairs' (VA) views on pending benefits legislation. I will not be able to address a few of the bills on today's agenda because VA received them in insufficient time to coordinate the Administration's position and develop cost estimates, but we will provide that information in writing for the record. Those bills are S. 315, section 203 of S. 728, S. 847, the draft "Clarification of Characteristics of Combat Service Act of 2009," and a draft bill to modify the commencement of the period of payment of original awards of compensation for veterans who are retired or separated from the uniformed services for disability.

S. 263 "SERVICEMEMBERS ACCESS TO JUSTICE ACT OF 2009"

S. 263, the "Servicemembers Access to Justice Act of 2009," would make several revisions to the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. Because that Act is administered by the Department of Labor, VA defers to the Department of Labor concerning the Administration's position on S. 263.

Because this bill required extensive coordination among several VA components, we did not have sufficient time before this hearing to finalize a position. However, we will provide our position to the Committee in writing for the record.

S. 347

The Servicemembers' Group Life Insurance program includes protection for covered servicemembers from certain qualifying losses directly resulting from traumatic injury in service (known as Traumatic Servicemembers' Group Life Insurance or "TSGLI"). Current law requires that the qualifying losses prescribed by VA by regulation include "[l]oss of a hand * * * at or above the wrist." Section 1(a) of S. 347 would authorize VA, in specifying the amount of the payment to be made under the TSGLI program for each qualifying loss, to distinguish between the severity of a qualifying loss of a dominant hand and a qualifying loss of a non-dominant hand. Section 1(b) would require VA to issue regulations providing mechanisms for payments for such losses incurred before the date of enactment of this bill.

VA does not support enactment of this bill because it is unnecessary. VA already has the authority to adjust the schedule of payments under the TSGLI program as needed. Furthermore, VA has previously considered, as part of its "Year-One Review" of the

TSGLI program, whether the payment for a qualifying loss of a dominant hand should be higher than the payment for a qualifying loss of a non-dominant hand and concluded that it should not, for the reasons discussed below.

The TSGLI program is modeled after the accidental death and dismemberment programs in the commercial sector. In the commercial sector, there is no precedent for paying a higher benefit for a "dominant" hand. Furthermore, medical professionals we consulted on the issue of dominance of one hand or arm in the course of the Year-One Review commented that some individuals use the "non-dominant" arm as the primary arm for a few activities, i.e., there is some degree of variability with respect to which arm is dominant for different activities. They also pointed out that some individuals are ambidextrous. These factors would complicate the adjudication of such claims.

The purpose of the TSGLI program is to provide short-term financial assistance to servicemembers and their families because the families often suffer financial hardship to be with the injured members during their treatment and recovery periods. The amount of a payment depends on the nature of the injury and the expected time needed for recovery. There is no evidence to date that loss of a dominant hand requires a longer recovery and rehabilitation period than loss of a non-dominant hand does.

We are also concerned about the impact of this proposal on our ability to maintain a peacetime premium of $1.00 per month, as Congress intended. Although the relatively low incidence of amputation of the dominant hand alone would not likely affect the premium, it would open the door to requests for disparate treatment of other injuries, such as loss of a dominant foot or leg, the dominant eye, burns on the dominant side of the body, etc. The establishment of higher payments for other dominant-side losses could result in the need to charge a higher premium for coverage.

The law provides that covered members are covered against inability to carry out the activities of daily living resulting from traumatic brain injury and defines the term "inability to carry out the activities of daily living" as inability to independently perform 2 or more of 6 specified functions, such as bathing, dressing, and eating. We are also concerned that enactment of S. 347 could result in requests for disparate treatment if it were alleged that traumatic brain injuries had a greater impact on the dominant side of the body than the non-dominant side.

Finally, VA's compensation program, not TSGLI, is designed to compensate for the long-term effects of injuries incurred in service. The compensation program does pay a greater benefit for loss of a dominant hand.

VA estimates that enactment of S. 347 would result in costs of $1.1 million over five years and $2.3 million over ten years.

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S. 514 "VETERANS REHABILITATION AND TRAINING IMPROVEMENTS ACT OF 2009"

S. 514, the "Veterans Rehabilitation and Training Improvements Act of 2009," would provide for an increase in the amount of sub-

sistence allowance payable by VA to veterans participating in vocational rehabilitation programs under chapter 31 of title 38, United States Code, allow reimbursement of certain costs to those veterans, and remove the limitation on the number of veterans who may be provided programs of independent living.

Specifically, section 2 of S. 514 would increase the rates of subsistence allowance provided veterans under section 3108(b) of title 38, United States Code. The amount of monthly subsistence allowance payable would be equal to the national average of the amount of basic allowance for housing payable under section 403 of title 37, United States Code, for a member of the uniformed services in pay grade E–5. The revision would increase the amount of subsistence allowance provided to veterans participating in training and employment services under chapter 31 to be roughly equivalent to the housing allowance veterans will receive under the chapter 33 Post-9/11 GI Bill.

Section 3 of the bill would authorize reimbursement of costs incurred by a veteran as a direct consequence of participation in a rehabilitation program under chapter 31. Such cost would include child-care expenses and clothing for employment interviews, as well as other costs VA would prescribe in regulations. Reimbursement of these costs could serve as an incentive for veterans to complete their rehabilitation programs.

Section 4 of the bill would remove section 3120(e) from chapter 31, thereby removing the limitation on the number of veterans who may enter independent living programs each fiscal year.

We support, in principle, efforts to facilitate successful completion of vocational rehabilitation programs under chapter 31, and we recognize that increasing the subsistence allowance and reimbursements provided to veterans participating in training and employment services will encourage more veterans to continue their rehabilitation programs. Increased rates of subsistence allowance would allow veterans to pursue rehabilitation on a full-time basis, leading to entry into employment in a shorter period of time. However, we are unable to support sections 2 and 3 of S. 514 at this time.

Recent changes to VA education benefits, including the new Post-9/11 GI Bill, may affect chapter 31 participation and completion rates. In addition, as recommended by the Dole-Shalala Commission on Wounded Warriors, VA is currently completing a review of its compensation program and proposed transition payments, which may have implications for the vocational rehabilitation program. Complete review of comprehensive benefits, including possible transition benefits and current subsistence allowance, is necessary before VA can fully evaluate the subsistence allowance and reimbursement increases proposed in S. 514. The Department plans to evaluate its total benefit package and recommend necessary improvements. For these reasons, and due to the bill's large increase in direct costs without an identified offset, VA cannot support this bill. VA estimates that the costs for sections 2 and 3 of S. 514 if enacted would be $361.4 million during the first year, $2.2 billion over five years, and $4.4 billion over ten years.

Subject to the availability of offsets for additional costs associated with the expansion, VA does not object to the removal of the limitation on the number of veterans who may enter programs of

independent living so that all veterans who need independent living services now and in the future may receive them. In 2007, in connection with a similar provision, VA estimated that costs would be $2.9 million in the first year and $104 million over ten years. We will provide for the record an updated cost estimate for section 4 of S. 514.

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S. 728 "VETERANS' INSURANCE AND BENEFITS ENHANCEMENT ACT OF 2009"

TITLE I—INSURANCE MATTERS

Section 101 of S. 728, the "Veterans' Insurance and Benefits Enhancement Act of 2009," would create a new life insurance program that would provide up to $50,000 of coverage to veterans who are less than 65 years old and have a service-connected disability. A veteran would be able to elect an amount less than $50,000 that is evenly divisible by $10,000, but the amount of an insured's coverage would decrease by 80 percent at age 70. To obtain coverage, an eligible veteran would have to apply for the insurance not later than 2 years after being notified by VA that he or she has a service-connected disability or 10 years after separation from the Armed Forces, whichever date is earlier. Premiums would be based on the 2001 Commissioners Standard Ordinary Basic Table of Mortality and interest at the rate of 4½ percent per year, and they would not increase while the insurance is in force. Premiums would be waived for certain veterans who have a totally disabling service-connected disability or who are 70 years of age or older.

The insurance would be granted on a nonparticipating basis. All premiums would be credited to a revolving fund in the United States Treasury, from which any payments would be directly made. Appropriations to the fund would be authorized. Administrative costs for the program would be paid from premiums. Payments for claims in excess of the amounts credited to the fund would be paid from appropriations. There would be a one-year open season beginning on April 1, 2010, during which a veteran currently insured under Service-Disabled Veterans' Insurance (SDVI) who is under age 65 could exchange his or her SDVI for the new insurance. However, an insured's combined amount of coverage under SDVI, Supplemental SDVI, and the new program could not exceed $50,000.

Currently, SDVI provides up to $10,000 in coverage, as either a permanent or term insurance plan, and premiums are based on an insured's age until the insured reaches age 70, when the premium rates are capped. SDVI insureds who become eligible for a waiver of premiums due to total disability can obtain Supplemental SDVI of up to $20,000, for a total available amount of SDVI coverage of $30,000. Current SDVI premium rates per $1,000 of coverage are higher than quotes for healthy individuals from commercial life insurance companies.

Subject to Congress' enactment of legislation offsetting the increased costs that would be associated with the enactment of this section, VA supports section 101 because it would meet service-disabled veterans' needs by providing more adequate amounts of life

insurance than currently available under the SDVI program at more reasonable rates that would be level for the life of the insured.

However, VA does not support paying for administrative costs from premiums because the Administration believes that the cost of entitlements should be separate and distinct from the cost of administering those entitlements. Furthermore, we do not believe that supplementing a discretionary appropriation with mandatory receipts is an appropriate budgeting practice.

VA estimates that enactment of section 101 would result in costs of $83.0 million over 5 years and $326 million over 10 years.

Section 102 would increase the maximum amount of Supplemental SDVI from $20,000 to $30,000.

VA supports section 102, provided Congress identifies an offsetting source of funding. By increasing to $30,000 the amount of available supplemental SDVI, this provision would address a major concern of veterans, as reported in the study "Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities." It would increase the financial security of disabled veterans by affording them the opportunity to purchase additional life insurance coverage otherwise not available to them.

VA estimates that enactment would result in costs of $2.1 million over 5 years and $7.3 million over 10 years.

Section 103 would remove the geographic requirement for eligibility for retroactive TSGLI benefits. It would extend eligibility for retroactive benefits for traumatic injury protection coverage under TSGLI to all members of the uniformed services who sustained a qualifying loss from a traumatic injury between October 7, 2001, and November 30, 2005, regardless of geographic location.

Section 1032 of Public Law No. 109–13 authorized the payment of TSGLI to any servicemember insured under Servicemembers' Group Life Insurance (SGLI) who sustains a traumatic injury that results in one of certain losses. Under section 1032(c) of Public Law 109–13, TSGLI also was authorized for members of the uniformed services who experienced a traumatic injury between October 7, 2001, and December 1, 2005, provided the qualifying loss was a direct result of injuries incurred in Operation Enduring Freedom (OEF) or Operation Iraqi Freedom (OIF). Section 501 (b)(1) of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, Public Law 109–233, narrowed eligibility for retroactive TSGLI to apply only to servicemembers who suffered a qualifying loss as a direct result of a traumatic injury incurred in the theater of operations for OEF or OIF during the period beginning on October 7, 2001, and ending at the close of November 30, 2005. Section 103 would eliminate the requirements that a qualifying loss directly result from a traumatic injury incurred in the theater of operations for OEF or OIF. The amendment would be effective on January 1, 2010.

VA defers to the Department of Defense (DOD) on the merits of this section, because DOD would bear the costs associated with its enactment. VA estimates that enactment of section 103, which would provide retroactive eligibility for the period from October 7, 2001, through November 30, 2005, would result in a cost of $47.7 million for the entire period.

Veterans' Mortgage Life Insurance (VMLI) is available to eligible individuals age 69 or younger with severe service-connected disabilities who receive a specially adapted housing grant. Currently, the maximum amount of VMLI provided is the lesser of $90,000 or the amount of the loan outstanding on the housing unit. Section 104 would increase the $90,000 limitation to $150,000 and then $200,000 after January 1, 2012.

Subject to Congress' enactment of legislation offsetting the increased costs that would be associated with the enactment of this section, VA supports section 104 because the percentage of total mortgage balances covered by the current amount of VMLI available has decreased over the past several years. The maximum VMLI amount was last increased from $40,000 to $90,000 in 1992, but the percentage of total mortgage balances covered by VMLI has declined since then from 91 percent to 64 percent because of the increase in housing costs during that period. Section 104 would bring the program to a level of coverage more in line with today's mortgages.

VA estimates that enactment of section 104 would result in benefit costs of $22.0 million over 5 years and $54.9 million over 10 years.

Before last year, SGLI coverage of a covered servicemember's insurable dependent ended either 120 days after the member elected to end coverage or the earliest of three dates: (1) 120 days after the member died; (2) 120 days after the date the member's coverage ended; or (3) 120 days after the dependent ceased to be an insurable dependent. Section 403(b) of Public Law 110–389, at VA's request, amended the second of the three listed dates to be simply the date the member's coverage ended. The purpose was to provide that an insurable dependent's coverage would end when the member's coverage ended, generally 120 days after separation or release from active service, rather than 120 days after the member's coverage ended, or 240 days after the member's separation or release from active service. That amendment, however, inadvertently allowed certain insurable dependents' coverage to continue long after the members' separation or release from service—insurable dependents of persons on active duty or Ready Reservists who are totally disabled on the date of separation or release from service or assignment. Such insureds on active duty are potentially eligible for continued coverage for up to 2 years after the date of separation or release from service and such Ready Reservists are potentially eligible for an additional one year of coverage after separation or release from an assignment. Under the recent amendment, the insurable dependents of insureds on active duty are also potentially eligible for continued coverage for up to 2 years after the date of separation or release from service or in the case of an insurable dependent of a Ready Reservist up to 1 year after the date of separation or release from an assignment.

Section 105 of the bill would correct the inadvertent omission of those insurable dependents from the scope of the recent amendment. Section 105 would amend the second of the 3 dates listed above to be "120 days after the date of separation or release from the uniformed services." Under that provision, no insurable dependent, not even those of members who remain covered for up to

1 or 2 years after service or assignment, could remain covered under SGLI for more than 120 days after the member's separation or release from service or assignment.

VA supports this provision. It would equitably provide that all insurable spouses of servicemembers, whether those members are disabled or not, would have the same time period in which to convert their SGLI coverage to a privately-obtained policy, consistent with the other conversion time periods specified in section 1 968(a)(5) of title 38 of the United States Code. However, section 105 would specify that a dependent's coverage would terminate within the specified period after the member is separated or released "from the uniformed services." This phrase would not include Ready Reservists who are separated or released from an "assignment" rather than from the "uniformed services."

No costs are associated with this provision.

TITLE II—COMPENSATION AND PENSION MATTERS

Section 201 of S. 728 would require VA to increase the monthly payment of temporary dependency and indemnity compensation (DIC) payable for a limited period under 38 U.S.C. § 1311(f) to a surviving spouse with one or more dependent children under the age of 18 years, whenever benefit payments under title II of the Social Security Act are increased as a result of an increase in the cost of living. These DIC payments would be increased by the same percentage as Social Security benefits are increased, effective the same date as the Social Security benefit increase is effective.

VA supports enactment of this provision, the benefit costs of which would be insignificant.

Section 202 would clarify that veterans entitled to pension based on advanced age alone rather than on permanent and total disability do not qualify for special monthly pension under subsections (d), (e), or (f)(2)–(4) of section 1521, United States Code. Wartime veterans age 65 or older would continue to be eligible for rates of pension prescribed by subsections (b), (c), (f)(1) and (5), and (g) of section 1521. It would also clarify that pension based on age alone is subject to three limitations also applicable to pension based on permanent and total disability: (1) certain children's income is attributable to a veteran for purposes of determining the veteran's annual income; (2) a veteran is considered to be living with a spouse who resides elsewhere unless they are estranged; and (3) a veteran who is entitled to pension based on his or her own wartime service and based on someone else's service is entitled to receive only the greater benefit. These amendments would apply to pension claims filed on or after the date of enactment.

VA supports enactment of section 202 because it would accomplish the same purpose for which VA proposed legislation to the last Congress. In 2001, Congress made wartime veterans age 65 years or older eligible for pension without regard to the permanent-and-total-disability requirement of the statute authorizing pension to veterans who are permanently and totally disabled. In 2006, the Court of Appeals for Veterans Claims held that veterans age 65 or older are also eligible for the higher rate of pension authorized for veterans who are permanently housebound, without regard to the permanent-and-total-disability requirement. Although the court's

holding is arguably a plausible interpretation of the literal terms of the statutes, we believe it is inconsistent with Congress' intent because it results in inconsistent and illogical treatment of veterans' claims and subverts the primary purpose for authorizing the higher rate of pension—to provide additional pension to veterans with additional expenses due to their high degree of disability above and beyond permanent and total disability. Under the court's interpretation, elderly veterans who are not permanently and totally disabled could receive a higher pension rate than elderly veterans who are permanently and totally disabled. Believing that Congress did not intend such an inequitable result, we proposed legislation to overturn the court's interpretation, and we support enactment of section 202.

We estimate cost savings of $3.2 million the first year and $175.5 million over 10 years.

Section 203(a) would increase monthly rates of DIC for disabled surviving spouses. Section 203(b) would increase the maximum and minimum monthly rates of DIC payable to parents and provide for an increased monthly payment for parents who, by reason of disability, are permanently housebound but do not qualify for parents in need of aid and attendance. Section 203(c) would codify increases already made in the annual income limits applicable to parents' DIC. Section 203(d) would replace the obsolete term "six months' death gratuity" in 38 U.S.C. § 1315(f)(1)(A) because the death gratuity paid by DOD under 10 U.S.C. §§ 1475–1 480 is a fixed amount, rather than the equivalent of six months of a servicemember's pay. Section 203(e) would subject the new rate of DIC for a housebound parent and the minimum monthly amounts of parents' DIC to annual increases indexed to cost-of-living increases in Social Security benefits. The amendments made by section 203 would take effect on October 1, 2009, and would apply to DIC payable for months beginning on or after that date. However, there would be no cost-of-living increase in the minimum monthly DIC rates during fiscal year 2010.

VA is committed to administering DIC payments that meet program goals. The 2001 "Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities"—the same study that provides the basis for our support of the proposed increases to life insurance—found that DIC successfully meets the needs of beneficiaries. While our support for cost-of-living increases as proposed under S. 407 demonstrates our commitment to providing adequate and necessary increases over time, we believe that the increases to DIC proposed under section 203 are not necessary to achieve the goals of the program.

In addition, the purpose of increasing the minimum monthly payment for parents' DIC from $5 to $100 and indexing that figure for inflation is not clear. Because paying parents an arbitrary minimum monthly amount of DIC that is higher than the payment computed under the need-based formula established in VA's implementing regulations at 38 C.F.R. § 3.25 is a departure from the need-based principles underlying parents' DIC, any increase in the minimum rate would constitute a further departure from need-based principles, and indexing the minimum payment for inflation would amplify this departure.

VA did not have sufficient time to prepare benefit cost estimates for this provision. No additional administrative costs are anticipated. With the Committee's permission, we will provide a cost estimate for the record.

Section 204(a) would increase from $90 to $100 the maximum monthly pension amounts for spouse-less and childless veterans who are being furnished VA domiciliary or nursing home care or are covered by a Medicaid plan for services furnished by a nursing facility. These limits would be subject to annual cost-of-living increases indexed to such increases to Social Security benefits. Section 204(b) would subject children in receipt of death pension to the limits currently applicable to institutionalized veterans and surviving spouses. Under section 204(c), these amendments would be effective October 1, 2009, but no cost-of-living adjustment would be made during fiscal year 2010.

VA does not object to these increases in maximum pension payments to affected individuals so long as Congress enacts offsetting savings. Application of the limits to children in receipt of death pension would be reasonable. And under the annual cost-of-living adjustment, these beneficiaries would receive benefit increases commensurate with those provided for other VA benefits.

We estimate costs of $5.3 million over one year and $10.7 million over 2 years.

TITLE III—BURIAL AND MEMORIAL AFFAIRS MATTERS

Sections 301 and 302 would require VA to make supplemental payments in addition to currently required statutory payments for funeral and burial-related expenses, but if and only if funds are specifically appropriated in advance for that purpose. Specifically, those sections would require a supplemental payment of $900 for non-service-connected deaths, $2,100 for service-connected deaths, and $445 for the plot or interment allowance. Each supplemental payment would be subject to the availability of funds specifically provided for the particular type of allowance in advance by an appropriations act. These sections would require an annual adjustment to the supplemental payment amounts in relation to the Consumer Price Index, applicable to deaths occurring in subsequent fiscal years. They would require VA to periodically estimate the funding needed to provide supplemental payments for all eligible recipients for the remainder of the fiscal year in which such an estimate is made and the appropriations needed to provide all eligible recipients supplemental payments in the next fiscal year. VA would have to submit these estimates to the Committees on Appropriations and Veterans' Affairs of the Senate and House of Representatives four times a year. Finally, these sections would authorize appropriations for these purposes. These changes would be effective October 1, 2009, and apply to deaths occurring on or after that date.

Veterans' advocates have argued for higher payments because the current allowances generally do not cover present-day burial and funeral costs or plot expenses. Advocates have also pushed for annual cost-of-living increases for funeral, burial, and plot benefits. However, VA cannot support the bill as drafted. The supplemental benefits would only be available up to the point at which discre-

tionary funding is exhausted, which could lead to inequities in the level of benefits available to individuals. VA has not supported similar legislation in the past because funding a single benefit from multiple sources (e.g., from the mandatory Compensations, Pensions, and Burial account and a new discretionary account) can create numerous complications in administration and represents an unsound budgeting practice. Finally, the frequent reporting requirements to Congress would be administratively burdensome and would distract VA from providing Veterans with timely claims adjudication and payment.

We estimate that enactment of section 301 of this bill would result in costs of $106.3 million during the first year, $569.2 million over 5 years, and $1.3 billion over 10 years. We estimate that enactment of section 302 of this bill would result in costs of $30.4 million during the first year, $162.5 million over 5 years, and $367.7 million over 10 years. No administrative costs are associated with this bill.

TITLE IV—OTHER MATTERS

Section 401(a) would add to the list of disabilities that qualify a compensation-receiving veteran or an active duty servicemember for assistance in obtaining an automobile or other conveyance or adaptive equipment an additional disability—a severe burn injury, as determined pursuant to VA regulations. Section 401(b) would make various stylistic changes to section 3901 of title 38, United States Code.

Section 402(a) would require VA to make a supplemental payment in addition to the currently required statutory payment for the purchase of an automobile or other conveyance, but only if funds are specifically appropriated in advance for that purpose. Specifically, it would require the supplemental payment to equal the difference between the amount of payment that would be made if the maximum amount were $22,484 and the current $11,000 amount authorized by section 3902(a).

Section 402(a) would also require VA to annually increase a specified adjusted amount ($22,484) to 80 percent of the average retail cost of new automobiles for the preceding calendar year. It would require VA to periodically estimate the funding needed to provide supplemental payments for all eligible recipients for the remainder of the fiscal year in which such an estimate is made and the appropriations needed to provide all eligible recipients supplemental payments in the next fiscal year and to submit these estimates to the Committees on Appropriations and Veterans' Affairs of the Senate and House of Representatives four times a year.

Finally, section 402(c) would authorize appropriations for these purposes, and, under section 402(d), these changes would be effective October 1, 2009, and apply to payments made under section 3902 on or after that date.

We plan to review the scope of our existing authority to determine if there are circumstances under which severe burn victims are not adequately covered. In any event, VA cannot support the bill as drafted. The supplemental benefits would be available only up to the point at which discretionary funding is exhausted, which could lead to inequities in the level of benefits available to individ-

uals. VA has not supported similar legislation in the past because funding a single benefit from multiple sources can create numerous complications in administration and represents an unsound budgeting practice. Finally, the frequent reporting requirements to Congress would be administratively burdensome and would distract VA from providing Veterans with timely claims adjudication and payment. For an estimate of the costs associated with the increase section 402 would provide, please see our comments regarding S. 820.

S. 820 "VETERANS MOBILITY ENHANCEMENT ACT OF 2009"

S. 820, the "Veterans Mobility Enhancement Act of 2009," would increase from $11,000 to $22,500 the maximum amount of assistance VA is authorized to provide an eligible person to obtain an automobile or other conveyance. It would also require VA to increase that amount, effective October 1 of each year (beginning in 2010), to an amount equal to 80 percent of the average retail cost of new automobiles for the preceding calendar year. It would require VA to establish the method for determining that average retail cost and authorize VA to use data developed in the private sector if VA determines that the data are appropriate.

We understand the importance of providing sufficient resources for vehicles or adaptive equipment to servicemembers and veterans who rely on them, but we cannot support this bill at this time. In order to best support the goals of this program, we will need time to review the appropriate amount to provide for this benefit payment.

We estimate benefit costs of $16.2 million in the first year and $159.9 million over ten years.

S. 842

Section 1 of this bill concerning mortgages and mortgage foreclosures relates to the Servicemembers Civil Relief Act, a law primarily affecting active duty service personnel. Accordingly, VA defers to the views of DOD with regard to that section.

Section 2 of this bill would authorize VA to purchase a VA-guaranteed home loan from the mortgage holder, if the loan is modified by a Bankruptcy Judge under the authority of 11 U.S.C. § 1322(b). Specifically, it would permit VA to pay the mortgage holder the unpaid balance of the loan, plus accrued interest, as of the date a bankruptcy petition is filed. In exchange, the mortgage holder would be required to assign, transfer, and deliver to the Secretary all rights, interest, claims, evidence, and records with respect to the loan.

VA is aware of legislation that, if enacted, would eliminate the apparent incongruity between section 2 of this bill and the current Bankruptcy Code. Section 103 of H.R. 1106, as passed by the House of Representatives on March 5, would eliminate the prohibition against modifying mortgages on principal residences. Additionally, the section 2 provision appears duplicative of the authority that would be provided to VA in section 121 of H.R. 1106. VA cannot support any additional repurchasing authority until the budgetary impacts of such authority on existing and future cohorts of loans can be reviewed. Because VA cannot determine the effects of

section 2 as a stand-alone provision, VA cannot currently estimate the costs or savings associated with the provision.

Section 103 of H.R. 1106, as passed by the House of Representatives on March 5, would eliminate the prohibition against modifying mortgages on principal residences. Additionally, the section 2 provision appears duplicative of the authority that would be provided to VA in section 121 of H.R. 1106. VA cannot support any additional repurchasing authority until the budgetary impacts of such authority on existing and future cohorts of loans can be reviewed. Because VA cannot determine the effects of section 2 as a stand-alone provision, VA cannot currently estimate the costs or savings associated with the provision.

S. 847

We did not have sufficient time before this hearing to develop a position on this bill, but will provide our position to the Committee in writing for the record.

[S. 919]

We did not have sufficient time before this hearing to develop a position on this bill, but will provide our position to the Committee in writing for the record.

[S. 1016]

We did not have sufficient time before this hearing to develop a position on this bill, but will provide our position to the Committee in writing for the record.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions you or the other members of the Committee may have.

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, May 14, 2009.

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

DEAR MR. CHAIRMAN: I am writing to provide you with the views of the Department of Veterans Affairs (VA) on the following bills: S. 315, S. 847, S. 919, and a draft bill to modify the commencement of the payment of original awards of compensation for veterans who are retired or separated from the uniformed services for disability. These bills were included on the Senate Veterans' Affairs Committee agenda for the April 29, 2009, hearing, but VA was unable to provide its views in time for that hearing. We are also providing cost estimates for S. 514 and section 203 of S. 728, as promised during the hearing.

* * * * * * *

S. 847

Currently, section 3695(a) of title 38, United States Code, limits the aggregate entitlement for any person who receives educational

assistance under two or more of the programs listed in that section to 48 months. This limitation is applicable, most notably, to the Montgomery GI Bill Active Duty (MGIB–AD) program (chapter 30), the Vietnam Era Assistance Program (chapter 32), the Survivors' and Dependents' Educational Assistance (DEA) program (chapter 35), the new Post-9/11 GI Bill (chapter 33), the Montgomery GI Bill Selected Reserve program (chapter 1606 of title 10), and the Reserve Educational Assistance Program (chapter 1607 of title 10). Section 1(a) of S. 847 would remove the DEA program from this list of educational assistance programs with a 48-month-aggregate-benefit limitation effective on the date of the enactment of the Act. This amendment would allow an individual who earns entitlement based on his or her own service in the Armed Forces not to have such entitlement reduced because they received benefits under the DEA program.

Section 1(b) of S. 847 states that such law would not revive any entitlement to DEA or other assistance under the provisions of law listed under section 3695(a) that was terminated by that section prior to enactment of the Act. Section 1(c) of S. 847 would revive, however, any entitlement to assistance under the provisions of law listed under section 3695(a) that was reduced because the individual used his or her DEA benefits if, the day before enactment of the Act, the individual had not used a total of 48 months entitlement.

(We note that section 1(c) of S. 847 could be read to mean that those individuals who used 48 months of entitlement (including DEA benefits) before date of enactment and who are still within their delimiting period could also have their entitlement recalculated without consideration of their use of DEA benefits.)

The President's Budget includes numerous programs to support our Veterans and their families. However, we are unable to support this measure at this time. VA has not yet begun to administer the new Post-9/11 GI Bill benefit, a generous new benefit for Veterans that includes authority for some servicemembers to transfer eligibility to their dependents. We need more time to study how this new program impacts usage of all VA education benefits before supporting any changes to the benefit package. In addition, VA cannot support this measure because no funding for such a proposal is included in the Administration's fiscal year 2010 budget.

VA does not have the specific data necessary to cost this proposal. While VA can determine the number of participants who used prior VA training and the amount of entitlement used in previous programs, we cannot extract the specific DEA population. Further, VA has no way of determining how many servicemembers elected not to participate in the MGIB–AD program because of their prior use of DEA benefits or how many individuals potentially eligible for the Post-9/11 GI Bill are or were eligible for chapter 35 benefits.

S. 919 "CLARIFICATION OF CHARACTERISTICS OF COMBAT SERVICE ACT OF 2009"

S. 919, the "Clarification of Characteristics of Combat Service Act of 2009," would amend 38 U.S.C. § 1154(a) to revise the requirements for VA regulations pertaining to service connection of

disabilities. Currently, section 1154(a) mandates VA regulations requiring that, when adjudicating a claim for service connection, due consideration be given to the places, types and circumstances of a Veteran's service as shown by the Veteran's service record, official history of each organization in which the veteran served, the Veteran's medical records, and all pertinent medical and lay evidence. In addition to these regulations, S. 919 would require regulations requiring that, in the case of a Veteran who served in a particular combat zone, VA must "accept credible lay or other evidence as sufficient proof that the veteran encountered an event that the Secretary specifies in such regulations as associated with service in particular locations where the veteran served or in particular circumstances under which the veteran served in such combat zone." Under S. 919, the term "combat zone" would be defined in accordance with section 112 of the Internal Revenue Code of 1986 or a predecessor provision of law.

VA opposes enactment of S. 919 for the following reasons. S. 919 would require VA to implement a complex scheme under which VA would be required to specify in regulations "events" that are "associated with service in particular locations" or "in particular circumstances under which the veteran served in" combat zones designated under 26 U.S.C. § 112. The breadth of such a task would be mammoth. Although S. 919 refers to "service in particular locations" and in "combat zones," hostilities can occur anywhere around the globe, overseas as well as on American soil, and thus, to be inclusive, the regulations required by S. 919 would have to cover the entire world. In addition, the language of the proposed amendment is too vague, offering no guidance on what would constitute an "event" that is "associated with service in particular locations where the veteran served or in particular circumstances under which the veteran served in * * * combat." Further, VA does not have the expertise to define events associated with service in particular locations or particular circumstances of combat.

We also oppose defining the term "combat zone" in accordance with 26 U.S.C. § 112. Section 112(c)(2) of title 26, United States Code, defines "combat zone" as any area that the President by Executive Order designates as an area in which U.S. Armed Forces are engaging or have engaged In combat. There are currently three combat zones designated by Executive Order (26 U.S.C. § 112 note), including the airspace above each: (1) Persian Gulf, Red Sea, Gulf of Oman, certain portions of the Arabian Sea, Gulf of Aden, and total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and United Arab Emirates, beginning January 17, 1991; (2) Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, Adriatic Sea, and Ionian Sea north of the 39th parallel, beginning March 24, 1999; and (3) Afghanistan, beginning September 19, 2001. Two other Executive Orders (26 U.S.C. § 112 note) previously designated the following areas as combat zones: (1) Vietnam and adjacent waters within certain limits, for certain periods of service; and (2) Korea and adjacent waters, for service during certain periods.

VA opposes defining "combat zone" in accordance with 26 U.S.C. § 112 because of the breadth of the title 26 definition and implementing regulations and because it would exclude certain Veterans

who served during other periods of hostilities. Combat activities have not been terminated by the President in three of the currently designated combat zones. For example, members who served in Bahrain after fighting ceased in the first Persian Gulf War and before fighting began in Operation Enduring Freedom (OEF) on October 6, 2001, or Operation Iraqi Freedom (OIF) on March 20, 2003, are covered under one of these Executive Orders. If VA regulations promulgated pursuant to S. 919 provided a reduced burden of proof to all veterans covered by these Executive Orders, Veterans who served in Bahrain during a period of relative calm would have the same reduced burden of proof as Veterans who served in Bahrain during the first Persian Gulf War or OIF. Further, these Executive Orders do not cover service in World War II and certain smaller engagements, such as Grenada.

Furthermore, 26 CFR § 1.112–1(e), which implements 26 U.S.C. § 112, provides that a member who performs military service in an area outside the area designated as a combat zone under 26 U.S.C. § 112(c)(2) is deemed to have service in that combat zone "while the member's service is in direct support of military operations in that zone" and the member is qualified for special pay under 37 U.S.C. § 310. For example, the Department of Defense (DOD) has certified service in Kyrgyzstan and Uzbekistan beginning on October 1, 2001, and in Yemen beginning on April 10, 2002, as service in direct support of OEF and service in Israel between January 1, 2003, and July 2003 and service in Jordan, beginning March 19, 2003, as service in direct support of OIF.

There is no termination date for service in certain areas designated by DOD as service in direct support of operations in a combat zone. If VA regulations provided a reduced burden of proof to all veterans covered by 26 CFR § 1.112–1(e), veterans who served, for example, in Jordan in 2008 and 2009 would have the same reduced burden of proof under the proposed rule as veterans who served in Jordan immediately after hostilities began in OIF.

We also believe that S. 919 is unnecessary. Section 1154(b) of title 38, United States Code, already provides a relaxed evidentiary standard for service connection of disabilities that result from a veteran's engagement in combat with the enemy. The purpose of 38 U.S.C. § 1154(b) is to recognize the hardships and dangers involved with military combat and to acknowledge that official documentation is unlikely during the heat of combat. As a result, Veterans who engaged in combat with the enemy and file claims for service-connected disability benefits related to that combat are not subject to the same evidentiary requirements as non-combat veterans but rather are afforded a relaxed evidentiary standard to ensure they are not disadvantaged by the circumstances of their combat service in proving their benefit claims. Many of the Veterans who served in the combat zones designated by Executive Orders likely qualify for the reduced evidentiary standard in section 1154(b). On the other hand, there is no such need for a lowered evidentiary standard for veterans who did not engage in combat with the enemy but did serve in a combat zone designated by Executive Order because evidence necessary to establish service connection is likely to be more easily obtained through routine military record keeping. We believe that this approach is fair and equitable.

VA cannot provide specific benefit costs associated with enactment of S. 919 due to its lack of clarity. There are no data available to assess the numbers of claims that would be granted based on application of regulations promulgated under this provision.

A DRAFT BILL TO MODIFY THE COMMENCEMENT OF THE PERIOD OF PAYMENT OF ORIGINAL AWARDS OF COMPENSATION FOR VETERANS WHO ARE RETIRED OR SEPARATED FROM THE UNIFORMED SERVICES FOR DISABILITY

This unnumbered draft bill would require VA to pay compensation awarded based on an original claim to veterans who retired or separated from service for a disability as of the effective date of the award of compensation. Current law prohibits the payment of benefits based on an award or an increased award of compensation for any period before the first day of the calendar month following the month in which the award or increased award became effective. The draft bill would also provide that, in the case of Veterans retired or separated from active service due to disability who must provide a waiver of retired pay in order to receive VA benefits, the effective date of the waiver would be the effective date of the award of compensation if the waiver is filed not later than 30 days after retirement or separation from military service. Currently, under 38 U.S.C. § 5111(b)(2), if a person in receipt of retired or retirement pay would also be eligible to receive VA compensation upon the filing of a waiver, such waiver does not become effective until the first day of the month following the month in which such waiver is filed. The draft bill would apply to awards of compensation based on original claims that become effective on or after the date of enactment.

VA does not support the draft bill because it would provide up to one additional month of VA compensation for only one group of Veterans, i.e., Veterans who retire or separate from service due to disability. Also, we are unaware of a need to expedite payment of VA compensation to this single group of disabled Veterans. Veterans who retire or separate from service because of disability currently begin receiving disability retirement pay shortly after discharge from service and then receive VA compensation after the military retired pay centers have processed waivers provided by the Veterans and military retirement pay has been reduced by an amount equal to the VA compensation to which the veterans are entitled. We note as well that many of the Veterans who would be entitled to additional VA compensation under this bill may also be entitled to combat-related special compensation under 10 U.S.C. § 1413a and to concurrent receipt of military retired pay under 10 U.S.C. § 1414.

VA estimates the cost associated with this draft bill, if enacted, would be $4.5 million for the first year and $49.2 million over 10 years. Also, there would be substantial administrative cost to reprogram the VETSNET system to provide these payments.

S. 514 "VETERANS REHABILITATION AND TRAINING IMPROVEMENTS ACT OF 2009"

Section 4 of S. 514, the "Veterans Rehabilitation and Training Improvements Act of 2009," would remove the limitation on the

number of veterans who may be provided programs of independent living. VA estimates that there would be no costs associated with this section if enacted. The current cap of 2,600 participants has not been reached in the past two fiscal years, and the number of participants has actually decreased from 2,115 cases in 2007 to 1,728 cases in 2008. This trend indicates that the program is not growing at this time and removing the limit of 2,600 participants would not result in additional participants or cost. Therefore, VA believes this legislation to be unnecessary.

SECTION 203 OF S. 728

Section 203 would increase monthly rates of dependency and indemnity compensation (DIC) for disabled surviving spouses, increase the maximum and minimum monthly rates of DIC payable to parents, provide increased monthly payments for parents who, by reason of disability, are permanently housebound but do not qualify for aid and attendance, and codify increases already made in the annual income limits applicable to parents' DIC. The new rate of DIC for a housebound parent and the minimum monthly amounts of parents' DIC would be subject to annual increases indexed to cost-of-living increases in Social Security benefits. The amendments made by section 203 would become effective on October 1, 2009, and would apply to DIC payable for months beginning on or after that date. However, there would be no cost-of-living increase in the minimum monthly DIC rates during fiscal year 2010. VA does not support section 203 because these proposed increases to DIC are not necessary to achieve the goals of the program.

VA estimates the cost associated with this amendment, if enacted, to be $4.6 million in the first year and nearly $49.6 over 10 years.

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

Sincerely,

ERIC K. SHINSEKI.

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CHANGES IN EXISTING LAW

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

TITLE 3—THE PRESIDENT

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CHAPTER 5—EXTENSION OF CERTAIN RIGHTS AND PROTECTIONS TO PRESIDENTIAL OFFICES

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Subchapter II—Extension of Rights and Protections

Part A. Employment Discrimination, Family and Medical Leave, Fair Labor Standards, Employee Polygraph Protection, Worker Adjustment and Retraining, Employment and Reemployment of Veterans, and Intimidation

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SEC. 416. RIGHTS AND PROTECTIONS RELATING TO VETERANS' EMPLOYMENT AND REEMPLOYMENT

(a) * * *

(b) REMEDY. The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded [under paragraphs (1) and (2)(A) of section 4323(c) of title 38] *under section 4323(d) of title 38*.

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TITLE 10—ARMED FORCES

SUBTITLE A—GENERAL MILITARY LAW

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 137—PROCUREMENT GENERALLY

Sec.
2302. Definitions

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2335. Notice to contractors of potential obligations relating to employment and reemployment of members of the armed forces.

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SEC. 2335. NOTICE TO CONTRACTORS OF POTENTIAL OBLIGATIONS RELATING TO EMPLOYMENT AND REEMPLOYMENT OF MEMBERS OF THE ARMED FORCES

Each contract for the procurement of property or services that is entered into by the head of an executive agency shall include a notice to the contractor that the contractor may have obligations under chapter 43 of title 38.

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TITLE 38—VETERANS' BENEFITS

PART I—GENERAL PROVISIONS

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CHAPTER 3—DEPARTMENT OF VETERANS AFFAIRS

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SEC. 315. REGIONAL OFFICES

(a) * * *

(b) The Secretary may maintain a regional office in the Republic of the Philippines until [December 31, 2009] *December 31, 2011.*

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PART II—GENERAL BENEFITS

CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

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Subchapter II—Wartime Disability Compensation

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SEC. 1114. RATES OF WARTIME DISABILITY COMPENSATION

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(m) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both

hands, or of both legs [at a level, or with complications,] *with factors* preventing natural knee action with prostheses in place, or of one arm and one leg [at levels, or with complications,] *with factors* preventing natural elbow and knee action with prostheses in place, or has suffered blindness in both eyes having only light perception, or has suffered blindness in both eyes, rendering such veteran so significantly disabled as to be in need of regular aid and attendance, the monthly compensation shall be $3,671;

(n) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both arms [at levels, or with complications,] *with factors* preventing natural elbow action with prostheses in place, has suffered the anatomical loss of both legs [so near the hip as to] *with factors that* prevent the use of prosthetic appliances, or has suffered the anatomical loss of one arm and one leg [so near the shoulder and hip as to] *with factors that* prevent the use of prosthetic appliances, or has suffered the anatomical loss of both eyes, or has suffered blindness without light perception in both eyes, the monthly compensation shall be $4,176;

(o) if the veteran, as the result of service-connected disability, has suffered disability under conditions which would entitle such veteran to two or more of the rates provided in one or more subsections (l) through (n) of this section, no condition being considered twice in the determination, or if the veteran has suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 60 percent or more disabling and the veteran has also suffered service-connected total blindness with 20/200 visual acuity or less, or if the veteran has suffered service-connected total deafness in one ear or bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 40 percent or more disabling and the veteran has also suffered service-connected blindness having only light perception or less, or if the veteran has suffered the anatomical loss of both arms [so near the shoulder as to] *with factors that* prevent the use of prosthetic appliances, the monthly compensation shall be $4,667;

(p) in the event the veteran's service-connected disabilities exceed the requirements for any of the rates prescribed in this section, the Secretary may allow the next higher rate or an intermediate rate, but in no event in excess of $4,667. In the event the veteran has suffered service-connected blindness with 5/200 visual acuity or less and (1) has also suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at no less than 30 percent disabling, the Secretary shall allow the next higher rate, or (2) has also suffered service-connected total deafness in one ear or service-connected anatomical loss or loss of use of one hand or one foot, the Secretary shall allow the next intermediate rate, but in no event in excess of $4,667. In the event the veteran has suffered service-connected blindness, having only light perception or less, and has also suffered bilateral deafness (and the hearing impairment in either one or both ears is service

connected) rated at 10 or 20 percent disabling, the Secretary shall allow the next intermediate rate, but in no event in excess of $4,667. In the event the veteran has suffered the anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities, the Secretary shall allow the next higher rate or intermediate rate, but in no event in excess of $4,667. Any intermediate rate under this subsection shall be established at the arithmetic mean, rounded down to the nearest dollar, between the two rates concerned[;] .

* * * * * * *

(t) Subject to section 5503(c) of this title, if any veteran, as the result of service-connected disability, is in need of regular aid and attendance for the residuals of traumatic brain injury, is not eligible for compensation under subsection (r)(2), and in the absence of such regular aid and attendance would require hospitalization, nursing home care, or other residential institutional care, the veteran shall be paid, in addition to any other compensation under this section, a monthly aid and attendance allowance equal to the rate described in subsection (r)(2), which for purposes of section 1134 of this title shall be considered as additional compensation payable for disability. An allowance authorized under this subsection shall be paid in lieu of any allowance authorized by subsection (r)(1).

* * * * * * *

Subchapter VI—General Compensation Provisions

* * * * * * *

SEC. 1154. CONSIDERATION TO BE ACCORDED TIME, PLACE, AND CIRCUMSTANCES OF SERVICE

[(a) The Secretary shall include in the regulations pertaining to service-connection of disabilities (1) additional provisions in effect requiring that in each case where a veteran is seeking service-connection for any disability due consideration shall be given to the places, types, and circumstances of such veteran's service as shown by such veteran's service record, the official history of each organization in which such veteran served, such veteran's medical records, and all pertinent medical and lay evidence, and (2) the provisions required by section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98–542; 98 Stat. 2727).]

(a) The Secretary shall include in the regulations pertaining to service-connection of disabilities the following:

(1) Provisions requiring that, in each case where a veteran is seeking service-connection for any disability, due consideration shall be given to the places, types, and circumstances of such veteran's service as shown by—

(A) such veteran's service record;

(B) the official history of each organization in which such veteran served;

(C) such veteran's medical records; and

(D) all pertinent medical and lay evidence.

(2) Provisions generally recognizing circumstances in which lay evidence consistent with the place, conditions, dangers, or hardships associated with particular military service does not require confirmatory official documentary evidence in order to establish the occurrence of an event or exposure during active military, naval, or air service.

(3) The provisions required by section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98–542; 98 Stat. 2727).

* * * * * * *

CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

* * * * * * *

Subchapter II—Dependency and Indemnity Compensation

* * * * * * *

SEC. 1311. DEPENDENCY AND INDEMNITY COMPENSATION TO A SURVIVING SPOUSE

* * * * * * *

(f)(1) Subject to paragraphs (2) and (3), if there is a surviving spouse with one or more children below the age of 18, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $250 *(as increased from time to time under paragraph (4))*, regardless of the number of such children.

* * * * * * *

(4) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the amount payable under paragraph (1), as such amount was in effect immediately prior to the date of such increase in benefit amounts, by the same percentage as the percentage by which such benefit amounts are increased. Any increase in a dollar amount under this paragraph shall be rounded down to the next lower whole dollar amount.

(5) [(4)] Dependency and indemnity compensation under this subsection is in addition to any other dependency and indemnity compensation payable under this chapter.

* * * * * * *

SEC. 1318. BENEFITS FOR SURVIVORS OF CERTAIN VETERANS RATED TOTALLY DISABLED AT TIME OF DEATH

(a) * * *

(b) * * *

* * * * * * *

(3) the veteran was a former prisoner of war [who died after September 30, 1999,] and the disability was continuously rated totally disabling for a period of not less than one year immediately preceding death.

* * * * * * *

CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

* * * * * * *

Subchapter II—Veterans' Pensions

SERVICE PENSION

* * * * * * *

SEC. 1513. VETERANS 65 YEARS OF AGE AND OLDER

(a) The Secretary shall pay to each veteran of a period of war who is 65 years of age or older and who meets the service requirements of section 1521 of this title (as prescribed in subsection (j) of that section) pension at the rates prescribed [by section 1521 of this title and under the conditions (other than the permanent and total disability requirement) applicable to pension paid under that section.] *by subsection (b), (c), (f)(1), (f)(5), or (g) of that section, as the case may be and as increased from time to time under section 5312 of this title.*

(b) The conditions in subsections (h) and (i) of section 1521 of this title shall apply to determinations of income and maximum payments of pension for purposes of this section.

(c) [(b)] If a veteran is eligible for pension under both this section and section 1521 of this title, pension shall be paid to the veteran only under section 1521 of this title.

* * * * * * *

CHAPTER 19—INSURANCE

Subchapter I—National Service Life Insurance

* * * * * * *

SEC. 1922A. SUPPLEMENTAL SERVICE DISABLED VETERANS' INSURANCE FOR TOTALLY DISABLED VETERANS

(a) Any person insured under section 1922(a) of this title who qualifies for a waiver of premiums under section 1912 of this title is eligible, as provided in this section, for supplemental insurance in an amount not to exceed [$20,000] *$30,000*.

* * * * * * *

Subchapter III—Servicemembers' Group Life Insurance

* * * * * * *

SEC. 1968. DURATION AND TERMINATION OF COVERAGE; CONVERSION

(a) * * *

* * * * * * *

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

(A) * * *

(B) on the earliest of—

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

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

(ii)(I) in the case of a member of the Ready Reserve of a uniformed service who meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title, 120 days after separation or release from such assignment; or

(II) in the case of any other member of the uniformed services, 120 days after the date of the member's separation or release from the uniformed services; or

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

* * * * * * *

SEC. 1980A. TRAUMATIC INJURY PROTECTION

(a) * * *

* * * * * * *

(d)*(1) Payments under* ⟦Payments under⟧ this section for qualifying losses shall be made in accordance with a schedule prescribed by the Secretary, by regulation, specifying the amount of payment to be made for each type of qualifying loss, to be based on the severity of the qualifying loss. The minimum payment that may be prescribed for a qualifying loss is $25,000, and the maximum payment that may be prescribed for a qualifying loss is $100,000.

(2) As the Secretary considers appropriate, the schedule required by paragraph (1) may distinguish in specifying payments for qualifying losses between the severity of a qualifying loss of a dominant hand and a qualifying loss of a nondominant hand.

* * * * * * *

CHAPTER 21—SPECIALLY ADAPTED HOUSING FOR DISABLED VETERANS

* * * * * * *

SEC. 2106. VETERANS' MORTGAGE LIFE INSURANCE

(a) * * *

(b) The amount of insurance provided an individual under this section may not exceed the lesser of ⟦$90,000⟧ *$150,000, or $200,000 after January 1, 2012,* or the amount of the loan outstanding on the housing unit. The amount of such insurance shall be reduced according to the amortization schedule of the loan and may not at any time exceed the amount of the outstanding loan with interest. If there is no outstanding loan on the housing unit, insurance is not payable under this section. If an eligible individual elects not to be insured under this section, the individual may thereafter be insured under this section, but only upon submission of an application, payment of required premiums, and compliance with such health requirements and other terms and conditions as may be prescribed by the Secretary.

* * * * * * *

CHAPTER 23—BURIAL BENEFITS

Sec.
2301. Flags.
2302. Funeral expenses.
2302A. Funeral expenses: supplemental benefits.
2303. Death in Department facility; plot allowance.
2303A. Supplemental plot allowance.
2304. Claims for reimbursement.
2305. Persons eligible under prior law.
2306. Headstones, markers, and burial receptacles.
2307. Death from service-connected disability.
2307A. Death from service-connected disability: supplemental benefits for burial and funeral expenses.
2308. Transportation of deceased veteran to a national cemetery

* * * * * * *

SEC. 2302. FUNERAL EXPENSES

* * * * * * *

SEC. 2302A. FUNERAL EXPENSES: SUPPLEMENTAL BENEFITS

(a) IN GENERAL.—(1) Subject to the availability of funds specifically provided for purposes of this subsection in advance in an appropriations Act, whenever the Secretary makes a payment for the burial and funeral of a veteran under section 2302(a) of this title, the Secretary is also authorized and directed to pay the recipient of such payment a supplemental payment under this section for the cost of such burial and funeral.

(2) No supplemental payment shall be made under this subsection if the Secretary has expended all funds that were specifically provided for purposes of this subsection in an appropriations Act.

(b) AMOUNT.—The amount of the supplemental payment required by subsection (a) for any death is $900 (as adjusted from time to time under subsection (c)).

(c) ADJUSTMENT.—With respect to deaths that occur in any fiscal year after fiscal year 2010, the supplemental payment described in subsection (b) shall be equal to the sum of—

(1) the supplemental payment in effect under subsection (b) for the preceding fiscal year (determined after application of this subsection), plus

(2) the sum of the amount described in section 2302(a) of this title and the amount under paragraph (1), multiplied by the percentage by which—

(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

(d) ESTIMATES.—(1) From time to time, the Secretary shall make an estimate of—

(A) the amount of funding that would be necessary to provide supplemental payments under this section to all eligible recipients for the remainder of the fiscal year in which such an estimate is made; and

(B) the amount that Congress would need to appropriate to provide all eligible recipients with supplemental payments under this section in the next fiscal year.

(2) On the dates described in paragraph (3), the Secretary shall submit to the appropriate committees of Congress the estimates described in paragraph (1).

(3) The dates described in this paragraph are the following:

(A) April 1 of each year.

(B) July 1 of each year.

(C) September 1 of each year.

(D) The date that is 60 days before the date estimated by the Secretary on which amounts appropriated for the purposes of this section for a fiscal year will be exhausted.

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

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

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

SEC. 2303. DEATH IN DEPARTMENT FACILITY; PLOT ALLOWANCE

* * * * * * *

SEC. 2303A. SUPPLEMENTAL PLOT ALLOWANCE

(a) IN GENERAL.—(1) Subject to the availability of funds specifically provided for purposes of this subsection in advance in an appropriations Act, whenever the Secretary makes a payment for the burial and funeral of a veteran under section 2303(a)(1)(A) of this title, or for the burial of a veteran under paragraph (1) or (2) of section 2303(b) of this title, the Secretary is also authorized and directed to pay the recipient of such payment a supplemental payment under this section for the cost of such burial and funeral or burial, as applicable.

(2) No supplemental plot allowance payment shall be made under this subsection if the Secretary has expended all funds that were specifically provided for purposes of this subsection in an appropriations Act.

(b) AMOUNT.—The amount of the supplemental payment required by subsection (a) for any death is $445 (as adjusted from time to time under subsection (c)).

(c) ADJUSTMENT.—With respect to deaths that occur in any fiscal year after fiscal year 2010, the supplemental payment described in subsection (b) shall be equal to the sum of—

(1) the supplemental payment in effect under subsection (b) for the preceding fiscal year (determined after application of this subsection), plus

(2) the sum of the amount described in section 2303(a)(1)(A) of this title and the amount under paragraph (1), multiplied by the percentage by which—

(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June

30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

(d) ESTIMATES.—(1) From time to time, the Secretary shall make an estimate of—

(A) the amount of funding that would be necessary to provide supplemental plot allowance payments under this section to all eligible recipients for the remainder of the fiscal year in which such an estimate is made; and

(B) the amount that Congress would need to appropriate to provide all eligible recipients with supplemental plot allowance payments under this section in the next fiscal year.

(2) On the dates described in paragraph (3), the Secretary shall submit to the appropriate committees of Congress the estimates described in paragraph (1).

(3) The dates described in this paragraph are the following:

(A) April 1 of each year.

(B) July 1 of each year.

(C) September 1 of each year.

(D) The date that is 60 days before the date estimated by the Secretary on which amounts appropriated for the purposes of this section for a fiscal year will be exhausted.

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

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

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

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SEC. 2307. DEATH FROM SERVICE-CONNECTED DISABILITY

* * * * * * *

SEC. 2307A. DEATH FROM SERVICE-CONNECTED DISABILITY: SUPPLEMENTAL BENEFITS FOR BURIAL AND FUNERAL EXPENSES

(a) IN GENERAL.—(1) Subject to the availability of funds specifically provided for purposes of this subsection in advance in an appropriations Act, whenever the Secretary makes a payment for the burial and funeral of a veteran under section 2307(1) of this title, the Secretary is also authorized and directed to pay the recipient of such payment a supplemental payment under this section for the cost of such burial and funeral.

(2) No supplemental payment shall be made under this subsection if the Secretary has expended all funds that were specifically provided for purposes of this subsection in an appropriations Act.

(b) AMOUNT.—The amount of the supplemental payment required by subsection (a) for any death is $2,100 (as adjusted from time to time under subsection (c)).

(c) ADJUSTMENT.—With respect to deaths that occur in any fiscal year after fiscal year 2010, the supplemental payment described in subsection (b) shall be equal to the sum of—

(1) the supplemental payment in effect under subsection (b) for the preceding fiscal year (determined after application of this subsection), plus

(2) the sum of the amount described in section 2307(1) of this title and the amount under paragraph (1), multiplied by the percentage by which—

(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

(d) ESTIMATES.—(1) From time to time, the Secretary shall make an estimate of—

(A) the amount of funding that would be necessary to provide supplemental payments under this section to all eligible recipients for the remainder of the fiscal year in which such an estimate is made; and

(B) the amount that Congress would need to appropriate to provide all eligible recipients with supplemental payments under this section in the next fiscal year.

(2) On the dates described in paragraph (3), the Secretary shall submit to the appropriate committees of Congress the estimates described in paragraph (1).

(3) The dates described in this paragraph are the following:

(A) April 1 of each year.

(B) July 1 of each year.

(C) September 1 of each year.

(D) The date that is 60 days before the date estimated by the Secretary on which amounts appropriated for the purposes of this section for a fiscal year will be exhausted.

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

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

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

* * * * * * *

PART III—READJUSTMENT AND RELATED BENEFITS

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

* * * * * * *

SEC. 3120. PROGRAM OF INDEPENDENT LIVING SERVICES AND ASSISTANCE

(a) The Secretary may, under contracts with entities [described in subsection (f)] *described in subsection (e)* of this section, or through facilities of the Veterans Health Administration, which

possess a demonstrated capability to conduct programs of independent living services for severely handicapped persons, provide, under regulations which the Secretary shall prescribe, programs of independent living services and assistance under this chapter, in various geographic regions of the United States, to veterans described in subsection (b) of this section.

* * * * * * *

【(e) Programs of independent living services and assistance shall be initiated for no more than 2600 veterans in each fiscal year, and the first priority in the provision of such programs shall be afforded to veterans for whom the reasonable feasibility of achieving a vocational goal is precluded solely as a result of a service-connected disability.】

(e) 【(f)】 Entities described in this subsection are (1) public or nonprofit agencies or organizations, and (2) for-profit entities in cases in which the Secretary determines that services comparable in effectiveness to services available from such an entity are not available, or cannot be obtained cost-effectively from, public or nonprofit agencies or through facilities of the Veterans Health Administration.

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CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS

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Subchapter II—Miscellaneous Provisions

* * * * * * *

SEC. 3695. LIMITATION ON PERIOD OF ASSISTANCE UNDER TWO OR MORE PROGRAMS

(a) The aggregate period for which any person may receive assistance under two or more of the provisions of law listed below may not exceed 48 months (or the part-time equivalent thereof):

* * * * * * *

(4) Chapters 30, 32, 33, 34, 【35,】 and 36 of this title, and the former chapter 33.

* * * * * * *

(b) * * *

(c) The aggregate period for which any person may receive assistance under chapter 35 of this title, on the one hand, and any of the provisions of law referred to in subsection (a), on the other hand, may not exceed 81 months (or the part-time equivalent thereof).

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CHAPTER 37—HOUSING AND SMALL BUSINESS LOANS

* * * * * * *

Subchapter III—Administrative Provisions

* * * * * * *

SEC. 3732. Procedure on default

(a)(1) * * *

(2) *(A) Before suit* [Before suit] or foreclosure the holder of the obligation shall notify the Secretary of the default, and within thirty days thereafter the Secretary may, at the Secretary's option, pay the holder of the obligation the unpaid balance of the obligation plus accrued interest and receive an assignment of the loan and security. Nothing in this section shall preclude any forebearance for the benefit of the veteran as may be agreed upon by the parties to the loan and approved by the Secretary.

(B) In the event that a housing loan guaranteed under this chapter is modified under the authority provided under section 1322(b) of title 11, the Secretary may pay the holder of the obligation the unpaid balance of the obligation due as of the date of the filing of the petition under title 11 plus accrued interest, but only upon the assignment, transfer, and delivery to the Secretary (in a form and manner satisfactory to the Secretary) of all rights, interest, claims, evidence, and records with respect to the housing loan.

* * * * * * *

CHAPTER 39—AUTOMOBILES AND ADAPTIVE EQUIPMENT FOR CERTAIN DISABLED VETERANS AND MEMBERS OF THE ARMED FORCES

* * * * * * *

SEC. 3901. DEFINITIONS

For purposes of this [chapter—] *chapter:*

(1) The term "eligible person" [means—] *means the following:*

(A) *Any veteran* [any veteran] entitled to compensation under chapter 11 of this title for any of the disabilities described [in subclause (i), (ii), or (iii) below] *in clause (i), (ii), (iii), or (iv) of this subparagraph*, if the disability is the result of an injury incurred or disease contracted in or aggravated by active military, naval, or air service:

(i) The loss or permanent loss of use of one or both feet[;] *.*

(ii) The loss or permanent loss of use of one or both hands[;] *.*

(iii) The permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than twenty degrees in the better eye[; or] *.*

(iv) A severe burn injury (as determined pursuant to regulations prescribed by the Secretary).

(B) *Any member* [any member] of the Armed Forces serving on active duty who is suffering from any disability described in [subclause (i), (ii), or (iii) of clause (A) of this paragraph] *clause (i), (ii), (iii), or (iv) of subparagraph (A)* if such disability is the result of an injury incurred or dis-

ease contracted in or aggravated by active military, naval, or air service.

* * * * * * *

SEC. 3902. ASSISTANCE FOR PROVIDING AUTOMOBILE AND ADAPTIVE EQUIPMENT

(a) The Secretary, under regulations which the Secretary shall prescribe, shall provide or assist in providing an automobile or other conveyance to each eligible person by paying the total purchase price of the automobile or other conveyance (including all State, local, and other taxes) or 【$11,000】 *$22,500 (as adjusted from time to time under subsection (e))*, whichever is the lesser, to the seller from whom the eligible person is purchasing under a sales agreement between the seller and the eligible person.

* * * * * * *

(e)(1) Effective on October 1 of each year (beginning in 2011), the Secretary shall increase the dollar amount in effect under subsection (a) to an amount equal to 80 percent of the average retail cost of new automobiles for the preceding calendar year.

(2) The Secretary shall establish the method for determining the average retail cost of new automobiles for purposes of this subsection. The Secretary may use data developed in the private sector if the Secretary determines the data is appropriate for purposes of this subsection.

* * * * * * *

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

Subchapter I—General

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SEC. 4303. DEFINITIONS

For the purposes of this chapter—

(1) * * *

(2) The term "benefit", "benefit of employment", or "rights and benefits" means any advantage, profit, privilege, gain, status, account, or interest (【other than】 *including* wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

* * * * * * *

(4)(A) * * *

* * * * * * *

(D)(i) Whether the term "successor in interest" applies with respect to an entity described in subparagraph (A) for purposes of clause (iv) of such subparagraph shall be determined on a case-by-case basis using a multi-factor test that considers the following factors:

(I) Substantial continuity of business operations.

(II) Use of the same or similar facilities.

(III) Continuity of work force.

(IV) Similarity of jobs and working conditions.

(V) Similarity of supervisory personnel.

(VI) Similarity of machinery, equipment, and production methods.

(VII) Similarity of products or services.

(ii) The entity's lack of notice or awareness of a potential or pending claim under this chapter at the time of a merger, acquisition, or other form of succession shall not be considered when applying the multi-factor test under clause (i).

* * * * * * *

Subchapter III—Procedures for Assistance, Enforcement, and Investigation

* * * * * * *

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

(a) * * *

(b) JURISDICTION.—(1) In the case of an action against a State (as an employer) or a private employer commenced by the United States, the district courts of the United States shall have jurisdiction over the action.

[(2) In the case of an action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction in accordance with the laws of the State.]

(2) In the case of an action against a State (as an employer) by a person, the action may be brought in the appropriate district court of the United States or State court of competent jurisdiction.

* * * * * * *

(h) * * *

* * * * * * *

(i) WAIVER OF STATE SOVEREIGN IMMUNITY.—(1) A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by—

(A) a person who is or was an employee in that program or activity for the rights or benefits authorized the person by this chapter;

(B) a person applying to be such an employee in that program or activity for the rights or benefits authorized the person by this chapter; or

(C) a person seeking reemployment as an employee in that program or activity for the rights or benefits authorized the person by this chapter.

(2) In this subsection, the term "program or activity" has the meaning given that term in section 309 of the Age Discrimination Act of 1975 (42 U.S.C. 6107).

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

* * * * * * *

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

* * * * * * *

(b) * * *

(4) has received a notification of a decision from the Special Counsel under subsection (a)(2)(B) *declining to initiate an action and represent the person before the Merit Systems Protection Board*.

* * * * * * *

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

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Subchapter II—Effective Dates

* * * * * * *

SEC. 5111. COMMENCEMENT OF PERIOD OF PAYMENT

(a) *(1)* Notwithstanding section 5110 of this title or any other provision of law and except as provided ⟦in subsection (c) of this section⟧ *in paragraph (2) of this subsection and subsection (c)*, payment of monetary benefits based on an award or an increased award of compensation, dependency and indemnity compensation, or pension may not be made to an individual for any period before the first day of the calendar month following the month in which the award or increased award became effective as provided under section 5110 of this title or such other provision of law.

(2)(A) In the case of a veteran who is retired or separated from the active military, naval, or air service for a catastrophic disability or disabilities, payment of monetary benefits based on an award of compensation based on an original claim shall be made as of the date on which such award becomes effective as provided under section 5110 of this title or another applicable provision of law.

(B) In this paragraph, the term "catastrophic disability", with respect to a veteran, means a permanent, severely disabling injury, disorder, or disease that compromises the ability of the veteran to carry out the activities of daily living to such a degree that the veteran requires personal or mechanical assistance to leave home or bed, or requires constant supervision to avoid physical harm to self or others.

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CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

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SEC. 5305. WAIVER OF RETIRED PAY

Except as provided in [section 1414] *sections 1212(d)(2) and 1414* of title 10, any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Secretary if such person were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of such person's retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Secretary of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.

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CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

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SEC. 5503. HOSPITALIZED VETERANS AND ESTATES OF INCOMPETENT INSTITUTIONALIZED VETERANS

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(c) Where any veteran in receipt of an aid and attendance allowance described [in section 1114(r)] *in subsection (r) or (t) of section 1114* of this title is hospitalized at Government expense, such allowance shall be discontinued from the first day of the second calendar month which begins after the date of the veteran's admission for such hospitalization for so long as such hospitalization continues. Any discontinuance required by administrative regulation, during hospitalization of a veteran by the Department, of increased pension based on need of regular aid and attendance or additional compensation based on need of regular aid and attendance as described in subsection (l) or (m) of section 1114 of this title, shall not be effective earlier than the first day of the second calendar month which begins after the date of the [veterans'] *veteran's* admission for hospitalization. In case a veteran affected by this subsection leaves a hospital against medical advice and is thereafter admitted to hospitalization within six months from the date of such departure, such allowance, increased pension, or additional compensation, as the case may be, shall be discontinued from the date of such readmission for so long as such hospitalization continues.

(d)(1) * * *

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(5) *(A)* The provisions of this subsection shall apply with respect to a surviving spouse having no child in the same manner as they apply to a veteran having neither spouse nor child.

(B) The provisions of this subsection shall apply with respect to a child entitled to pension under section 1542 of this title in the same manner as they apply to a veteran having neither spouse nor child.

(6) * * *

(7) This subsection expires on [September 30, 2011] *September 30, 2014*.

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CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

(2 U.S.C. 1316(b))

TITLE 2—THE CONGRESS

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CHAPTER 24—CONGRESSIONAL ACCOUNTABILITY

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SUBCHAPTER II—Extension of Rights and Protections

PART A—Employment Discrimination, Family and Medical Leave, Fair Labor Standards, Employee Polygraph Protection, Worker Adjustment and Retraining, Employment and Reemployment of Veterans, and Intimidation

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SEC. 1316. RIGHTS AND PROTECTIONS RELATING TO VETERANS' EMPLOYMENT AND REEMPLOYMENT

(a) * * *

(b) REMEDY.—The remedy for a violation of subsection (a) shall be such remedy as would be appropriate if awarded [under paragraphs (1), (2)(A), and (3) of section 4323(c) of title 38, United States Code] *under section 4323(d) of title 38, United States Code*.

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VETERANS' HOUSING OPPORTUNITY AND BENEFITS IMPROVEMENT ACT OF 2006

(Public Law 109—233; 120 Stat. 414; 38 U.S.C. 1980A note)

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TITLE V—TECHNICAL AMENDMENTS

SEC. 501. TECHNICAL AND CLARIFYING AMENDMENTS TO NEW TRAUMATIC INJURY PROTECTION COVERAGE UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE

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(b) APPLICABILITY TO QUALIFYING LOSSES INCURRED [IN OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM] BEFORE EFFECTIVE DATE OF NEW PROGRAM.—

(1) ELIGIBILITY.—A member of the uniformed services who during the period beginning on October 7, 2001, and ending at the close of November 30, 2005, sustains a traumatic injury resulting in a qualifying loss is eligible for coverage for that loss under section 1980A of title 38, United States Code[, if, as determined by the Secretary concerned, that loss was a direct result of a traumatic injury incurred in the theater of operations for Operation Enduring Freedom or Operation Iraqi Freedom].

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FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

(41 U.S.C. 251 et seq.)

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TITLE III—PROCUREMENT PROCEDURE

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SEC. 316. MERIT-BASED AWARD OF GRANTS FOR RESEARCH AND DEVELOPMENT.

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SEC. 318. NOTICE TO CONTRACTORS OF POTENTIAL OBLIGATIONS RELATING TO EMPLOYMENT AND REEMPLOYMENT OF MEMBERS OF THE ARMED FORCES.

Each contract for the procurement of property or services that is entered into by the head of an executive agency shall include a notice to the contractor that the contractor may have obligations under chapter 43 of title 38, United States Code.

VETERANS PROGRAMS ENHANCEMENT ACT OF 1998

(Public Law 105–368; 112 Stat. 3321)

TITLE I—PROVISIONS RELATING TO VETERANS OF PERSIAN GULF WAR AND FUTURE CONFLICTS

SEC. 101. AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES REGARDING EVALUATION OF HEALTH CONSEQUENCES OF SERVICE IN SOUTHWEST ASIA DURING THE PERSIAN GULF WAR.

* * * * * * *

(j) SUNSET.—This section shall cease to be effective [11 years after the last day of the fiscal year in which the National Academy of Sciences enters into an agreement with the Secretary under subsection (b)] *on October 1, 2018*.

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PERSIAN GULF WAR VETERANS ACT OF 1998

(Public Law 105–277; 112 Stat. 2681–745; 38 U.S.C. 1117 note)

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SEC. 1603. AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES.

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(j) SUNSET. This section shall cease to be effective on [October 1, 2010] *October 1, 2015*.

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[SEC. 1604. REPEAL OF INCONSISTENT PROVISIONS OF LAW.

[In the event of the enactment, before, on, or after the date of the enactment of this Act, of section 101 of the Veterans Programs Enhancement Act of 1998, or any similar provision of law enacted during the second session of the 105th Congress requiring an agreement with the National Academy of Sciences regarding an evaluation of health consequences of service in Southwest Asia during the Persian Gulf War, such section 101 (or other provision of law) shall be treated as if never enacted, and shall have no force or effect.]

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