

113TH CONGRESS
1ST SESSION

S. 748

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to consider the resources of individuals applying for pension that were recently disposed of by the individuals for less than fair market value when determining the eligibility of such individuals for such pension, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 2013

Mr. WYDEN (for himself, Mr. BURR, Mr. TESTER, Mr. HELLER, Mr. BLUMENTHAL, and Mrs. McCASKILL) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to consider the resources of individuals applying for pension that were recently disposed of by the individuals for less than fair market value when determining the eligibility of such individuals for such pension, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Pension Pro-
5 tection Act”.

1 **SEC. 2. CONSIDERATION BY SECRETARY OF VETERANS AF-**
2 **FAIRS OF RESOURCES DISPOSED OF FOR**
3 **LESS THAN FAIR MARKET VALUE BY INDIVID-**
4 **UALS APPLYING FOR PENSION.**

5 (a) VETERANS.—Section 1522 of title 38, United
6 States Code, is amended—

7 (1) in subsection (a)—

8 (A) by inserting “(1)” before “The Sec-
9 retary”; and

10 (B) by adding at the end the following new
11 paragraph:

12 “(2)(A) If a veteran otherwise eligible for payment
13 of pension under section 1513 or 1521 of this title or the
14 spouse of such veteran disposes of covered resources for
15 less than fair market value on or after the look-back date
16 described in subparagraph (C)(i), the Secretary shall deny
17 or discontinue the payment of pension to such veteran
18 under section 1513 or 1521 of this title, as the case may
19 be, for months during the period beginning on the date
20 described in subparagraph (D) and equal to the number
21 of months calculated as provided in subparagraph (E).

22 “(B)(i) For purposes of this paragraph, a covered re-
23 source is any resource that was a part of the corpus of
24 the estate of the veteran or, if the veteran has a spouse,
25 the corpus of the estates of the veteran and of the vet-
26 eran’s spouse, that the Secretary considers that under all

1 the circumstances, if the veteran or spouse had not dis-
2 posed of such resource, it would be reasonable that the
3 resource (or some portion of the resource) be consumed
4 for the veteran's maintenance.

5 “(ii) For purposes of this paragraph, the Secretary
6 may consider, in accordance with regulations the Sec-
7 retary shall prescribe, a transfer of an asset (including a
8 transfer of an asset to an annuity, trust, or other financial
9 instrument or investment) a disposal of a covered resource
10 for less than fair market value if such transfer reduces
11 the amount in the corpus of the estate of the veteran or,
12 if the veteran has a spouse, the corpus of the estates of
13 the veteran and of the veteran's spouse, that the Secretary
14 considers, under all the circumstances, would be reason-
15 able to be consumed for the veteran's maintenance.

16 “(C)(i) The look-back date described in this clause
17 is a date that is 36 months before the date described in
18 clause (ii).

19 “(ii) The date described in this clause is the date on
20 which the veteran applies for pension under section 1513
21 or 1521 of this title or, if later, the date on which the
22 veteran (or the spouse of the veteran) disposes of covered
23 resources for less than fair market value.

24 “(D) The date described in this subparagraph is the
25 first day of the first month in or after which covered re-

1 sources were disposed of for less than fair market value
 2 and which does not occur in any other period of ineligi-
 3 bility under this paragraph.

4 “(E) The number of months calculated under this
 5 subparagraph shall be equal to—

6 “(i) the total, cumulative uncompensated value
 7 of all covered resources so disposed of by the veteran
 8 (or the spouse of the veteran) on or after the look-
 9 back date described in subparagraph (C)(i); divided
 10 by

11 “(ii) the maximum amount of monthly pension
 12 that is payable to a veteran under section 1513 or
 13 1521 of this title, including the maximum amount of
 14 increased pension payable under such sections on ac-
 15 count of family members, but not including any
 16 amount of pension payable under such sections be-
 17 cause a veteran is in need of regular aid and attend-
 18 ance or is permanently housebound,

19 rounded, in the case of any fraction, to the nearest whole
 20 number, but shall not in any case exceed 36 months.”;

21 (2) in subsection (b)—

22 (A) by inserting “(1)” before “The Sec-
 23 retary”; and

24 (B) by adding at the end the following new
 25 paragraph:

1 “(2)(A) If a veteran otherwise eligible for payment
2 of increased pension under subsection (c), (d), (e), or (f)
3 of section 1521 of this title on account of a child, the
4 spouse of the veteran, or the child disposes of covered re-
5 sources for less than fair market value on or after the
6 look-back date described in subparagraph (C)(i), the Sec-
7 retary shall deny or discontinue payment of such increased
8 pension for months during the period beginning on the
9 date described in subparagraph (D) and equal to the num-
10 ber of months calculated as provided in subparagraph (E).

11 “(B)(i) For purposes of this paragraph, a covered re-
12 source is any resource that was a part of the corpus of
13 the estate of the child that the Secretary considers that
14 under all the circumstances, if the veteran, the spouse of
15 the veteran, or the child had not disposed of such resource,
16 it would be reasonable that the resource (or some portion
17 of the resource) be consumed for the child’s maintenance.

18 “(ii) For purposes of this paragraph, the Secretary
19 may consider, in accordance with regulations the Sec-
20 retary shall prescribe, a transfer of an asset (including a
21 transfer of an asset to an annuity, trust, or other financial
22 instrument or investment) a disposal of a covered resource
23 for less than fair market value if such transfer reduces
24 the amount in the corpus of the estate of the child that
25 the Secretary considers, under all the circumstances,

1 would be reasonable to be consumed for the child's mainte-
2 nance.

3 “(C)(i) The look-back date described in this clause
4 is a date that is 36 months before the date described in
5 clause (ii).

6 “(ii) The date described in this clause is the date on
7 which the veteran applies for payment of increased pen-
8 sion under subsection (c), (d), (e), or (f) of section 1521
9 of this title on account of a child or, if later, the date
10 on which the veteran, the spouse of the veteran, or the
11 child disposes of covered resources for less than fair mar-
12 ket value.

13 “(D) The date described in this subparagraph is the
14 first day of the first month in or after which covered re-
15 sources were disposed of for less than fair market value
16 and which does not occur in any other period of ineligi-
17 bility under this paragraph.

18 “(E) The number of months calculated under this
19 subparagraph shall be equal to—

20 “(i) the total, cumulative uncompensated value
21 of all covered resources so disposed of by the vet-
22 eran, the spouse of the veteran, or the child on or
23 after the look-back date described in subparagraph
24 (C)(i); divided by

1 “(ii) the maximum amount of increased month-
2 ly pension that is payable to a veteran under sub-
3 section (c), (d), (e), or (f) of section 1521 of this
4 title on account of a child,
5 rounded, in the case of any fraction, to the nearest whole
6 number, but shall not in any case exceed 36 months.”;
7 and

8 (3) by adding at the end the following new sub-
9 section:

10 “(c)(1) The Secretary shall not deny or discontinue
11 payment of pension under section 1513 or 1521 of this
12 title or payment of increased pension under subsection (c),
13 (d), (e), or (f) of section 1521 of this title on account of
14 a child by reason of the application of subsection (a)(2)
15 or (b)(2) of this section to the disposal of resources by
16 an individual to the extent that—

17 “(A) a satisfactory showing is made to the Sec-
18 retary (in accordance with regulations promulgated
19 by the Secretary) that all resources disposed of for
20 less than fair market value have been returned to
21 the individual who disposed of the resources; or

22 “(B) the Secretary determines, under proce-
23 dures established by the Secretary, that the denial
24 or discontinuance of payment would work an undue

1 hardship as determined on the basis of criteria es-
 2 tablished by the Secretary.

3 “(2) At the time a veteran applies for pension under
 4 section 1513 or 1521 of this title or increased pension
 5 under subsection (c), (d), (e), or (f) of section 1521 of
 6 this title on account of a child, and at such other times
 7 as the Secretary considers appropriate, the Secretary
 8 shall—

9 “(A) inform such veteran of the provisions of
 10 subsections (a)(2) and (b)(2) providing for a period
 11 of ineligibility for payment of pension under such
 12 sections for individuals who make certain disposi-
 13 tions of resources for less than fair market value;
 14 and

15 “(B) obtain from such veteran information
 16 which may be used in determining whether or not a
 17 period of ineligibility for such payments would be re-
 18 quired by reason of such subsections.”.

19 (b) SURVIVING SPOUSES AND CHILDREN.—Section
 20 1543 of such title is amended—

21 (1) in subsection (a)—

22 (A) by redesignating paragraph (2) as
 23 paragraph (3);

24 (B) by inserting after paragraph (1) the
 25 following new paragraph (2):

1 “(2)(A) If a surviving spouse otherwise eligible for
2 payment of pension under section 1541 of this title dis-
3 poses of covered resources for less than fair market value
4 on or after the look-back date described in subparagraph
5 (C)(i), the Secretary shall deny or discontinue the pay-
6 ment of pension to such surviving spouse under section
7 1541 of this title for months during the period beginning
8 on the date described in subparagraph (D) and equal to
9 the number of months calculated as provided in subpara-
10 graph (E).

11 “(B)(i) For purposes of this paragraph, a covered re-
12 source is any resource that was a part of the corpus of
13 the estate of the surviving spouse that the Secretary con-
14 sidered that under all the circumstances, if the surviving
15 spouse had not disposed of such resource, it would be rea-
16 sonable that the resource (or some portion of the resource)
17 be consumed for the surviving spouse’s maintenance.

18 “(ii) For purposes of this paragraph, the Secretary
19 may consider, in accordance with regulations the Sec-
20 retary shall prescribe, a transfer of an asset (including a
21 transfer of an asset to an annuity, trust, or other financial
22 instrument or investment) a disposal of a covered resource
23 for less than fair market value if such transfer reduces
24 the amount in the corpus of the estate of the surviving
25 spouse that the Secretary considers, under all the cir-

1 cumstances, would be reasonable to be consumed for the
2 surviving spouse's maintenance.

3 “(C)(i) The look-back date described in this clause
4 is a date that is 36 months before the date described in
5 clause (ii).

6 “(ii) The date described in this clause is the date on
7 which the surviving spouse applies for pension under sec-
8 tion 1541 of this title or, if later, the date on which the
9 surviving spouse disposes of covered resources for less
10 than fair market value.

11 “(D) The date described in this subparagraph is the
12 first day of the first month in or after which covered re-
13 sources were disposed of for less than fair market value
14 and which does not occur in any other period of ineligi-
15 bility under this paragraph.

16 “(E) The number of months calculated under this
17 subparagraph shall be equal to—

18 “(i) the total, cumulative uncompensated value
19 of all covered resources so disposed of by the sur-
20 viving spouse on or after the look-back date de-
21 scribed in subparagraph (C)(i); divided by

22 “(ii) the maximum amount of monthly pension
23 that is payable to a surviving spouse under section
24 1541 of this title, including the maximum amount of
25 increased pension payable under such section on ac-

1 count of a child, but not including any amount of
 2 pension payable under such section because a sur-
 3 viving spouse is in need of regular aid and attend-
 4 ance or is permanently housebound,
 5 rounded, in the case of any fraction, to the nearest whole
 6 number, but shall not in any case exceed 36 months.

7 “(F) In the case of a transfer by the surviving spouse
 8 during the veteran’s lifetime that resulted in a period of
 9 ineligibility for the veteran under section 1522 of this title,
 10 the Secretary shall apply to the surviving spouse any re-
 11 maining ineligibility for that period.”; and

12 (C) by adding at the end the following new
 13 paragraph:

14 “(4)(A) If a surviving spouse otherwise eligible for
 15 payment of increased pension under subsection (c), (d),
 16 or (e) of section 1541 of this title on account of a child
 17 or the child disposes of covered resources for less than fair
 18 market value on or after the look-back date described in
 19 subparagraph (C)(i), the Secretary shall deny or dis-
 20 continue payment of such increased pension for months
 21 during the period beginning on the date described in sub-
 22 paragraph (D) and equal to the number of months cal-
 23 culated as provided in subparagraph (E).

24 “(B)(i) For purposes of this paragraph, a covered re-
 25 source is any resource that was a part of the corpus of

1 the estate of the child that the Secretary considers that
2 under all the circumstances, if the surviving spouse or the
3 child had not disposed of such resource, it would be rea-
4 sonable that the resource (or some portion of the resource)
5 be consumed for the child's maintenance.

6 “(ii) For purposes of this paragraph, the Secretary
7 may consider, in accordance with regulations the Sec-
8 retary shall prescribe, a transfer of an asset (including a
9 transfer of an asset to an annuity, trust, or other financial
10 instrument or investment) a disposal of a covered resource
11 for less than fair market value if such transfer reduces
12 the amount in the corpus of the estate of the child that
13 the Secretary considers, under all the circumstances,
14 would be reasonable to be consumed for the child's mainte-
15 nance.

16 “(C)(i) The look-back date described in this clause
17 is a date that is 36 months before the date described in
18 clause (ii).

19 “(ii) The date described in this clause is the date on
20 which the surviving spouse applies for payment of in-
21 creased pension under subsection (c), (d), or (e) of section
22 1541 of this title on account of a child or, if later, the
23 date on which the surviving spouse (or the child) disposes
24 of covered resources for less than fair market value.

1 “(D) The date described in this subparagraph is the
 2 first day of the first month in or after which covered re-
 3 sources were disposed of for less than fair market value
 4 and which does not occur in any other period of ineligi-
 5 bility under this paragraph.

6 “(E) The number of months calculated under this
 7 clause shall be equal to—

8 “(i) the total, cumulative uncompensated value
 9 of all covered resources so disposed of by the sur-
 10 viving spouse (or the child) on or after the look-back
 11 date described in subparagraph (C)(i); divided by

12 “(ii) the maximum amount of increased month-
 13 ly pension that is payable to a surviving spouse
 14 under subsection (c), (d), or (e) of section 1541 of
 15 this title on account of a child,

16 rounded, in the case of any fraction, to the nearest whole
 17 number, but shall not in any case exceed 36 months.”;

18 (2) in subsection (b)—

19 (A) by inserting “(1)” before “The Sec-
 20 retary”; and

21 (B) by adding at the end the following new
 22 paragraph:

23 “(2)(A) If a child otherwise eligible for payment of
 24 pension under section 1542 of this title or any person with
 25 whom such child is residing who is legally responsible for

1 such child's support disposes of covered resources for less
2 than fair market value on or after the look-back date de-
3 scribed in subparagraph (C)(i), the Secretary shall deny
4 or discontinue the payment of pension to such child under
5 section 1542 of this title for months during the period be-
6 ginning on the date described in subparagraph (D) and
7 equal to the number of months calculated as provided in
8 subparagraph (E).

9 “(B)(i) For purposes of this paragraph, a covered re-
10 source is any resource that was a part of the corpus of
11 the estate of the child or the corpus of the estate of any
12 person with whom such child is residing who is legally re-
13 sponsible for such child's support that the Secretary con-
14 sidered that under all the circumstances, if the child or per-
15 son had not disposed of such resource, it would be reason-
16 able that the resource (or some portion of the resource)
17 be consumed for the child's maintenance.

18 “(ii) For purposes of this paragraph, the Secretary
19 may consider, in accordance with regulations the Sec-
20 retary shall prescribe, a transfer of an asset (including a
21 transfer of an asset to an annuity, trust, or other financial
22 instrument or investment) a disposal of a covered resource
23 for less than fair market value if such transfer reduces
24 the amount in the corpus of the estate described in clause
25 (i) that the Secretary considers, under all the cir-

1 cumstances, would be reasonable to be consumed for the
2 child's maintenance.

3 “(C)(i) The look-back date described in this clause
4 is a date that is 36 months before the date described in
5 clause (ii).

6 “(ii) The date described in this clause is the date on
7 which the child applies for pension under section 1542 of
8 this title or, if later, the date on which the child (or person
9 described in subparagraph (B)) disposes of covered re-
10 sources for less than fair market value.

11 “(D) The date described in this clause is the first
12 day of the first month in or after which covered resources
13 were disposed of for less than fair market value and which
14 does not occur in any other period of ineligibility under
15 this paragraph.

16 “(E) The number of months calculated under this
17 clause shall be equal to—

18 “(i) the total, cumulative uncompensated value
19 of all covered resources so disposed of by the child
20 (or person described in subparagraph (B)) on or
21 after the look-back date described in subparagraph
22 (C)(i); divided by

23 “(ii) the maximum amount of monthly pension
24 that is payable to a child under section 1542 of this
25 title,

1 rounded, in the case of any fraction, to the nearest whole
 2 number, but shall not in any case exceed 36 months.”;
 3 and

4 (3) by adding at the end the following new sub-
 5 section:

6 “(c)(1) The Secretary shall not deny or discontinue
 7 payment of pension under section 1541 or 1542 of this
 8 title or payment of increased pension under subsection (c),
 9 (d), or (e) of section 1541 of this title on account of a
 10 child by reason of the application of subsection (a)(2),
 11 (a)(4), or (b)(2) of this section to the disposal of resources
 12 by an individual to the extent that—

13 “(A) a satisfactory showing is made to the Sec-
 14 retary (in accordance with regulations promulgated
 15 by the Secretary) that all resources disposed of for
 16 less than fair market value have been returned to
 17 the individual who disposed of the resources; or

18 “(B) the Secretary determines, under proce-
 19 dures established by the Secretary, that the denial
 20 or discontinuance of payment would work an undue
 21 hardship as determined on the basis of criteria es-
 22 tablished by the Secretary.

23 “(2) At the time a surviving spouse or child applies
 24 for pension under section 1541 or 1542 of this title or
 25 increased pension under subsection (c), (d), or (e) of sec-

1 tion 1541 of this title on account of a child, and at such
 2 other times as the Secretary considers appropriate, the
 3 Secretary shall—

4 “(A) inform such surviving spouse or child of
 5 the provisions of subsections (a)(2), (a)(4), and
 6 (b)(2), as applicable, providing for a period of ineli-
 7 gibility for payment of pension or increased pension
 8 under such sections for individuals who make certain
 9 dispositions of resources for less than fair market
 10 value; and

11 “(B) obtain from such surviving spouse or child
 12 information which may be used in determining
 13 whether or not a period of ineligibility for such pay-
 14 ments would be required by reason of such sub-
 15 sections.”.

16 (c) EFFECTIVE DATE.—Subsections (a)(2), (b)(2),
 17 and (c) of section 1522 of title 38, United States Code,
 18 as added by subsection (a), and subsections (a)(2), (a)(4),
 19 (b)(2), and (c) of section 1543 of such title, as added by
 20 subsection (b), shall take effect on the date that is one
 21 year after the date of the enactment of this Act and shall
 22 apply with respect to payments of pension and increased
 23 pension applied for after such date and to payments of
 24 pension and increased pension for which eligibility is rede-
 25 termined after such date, except that no reduction in pen-

1 sion shall be made under such subsections because of any
 2 disposal of covered resources made before such date.

3 (d) ANNUAL REPORTS.—

4 (1) IN GENERAL.—Not later than two years
 5 after the date of the enactment of this Act and not
 6 less frequently than once each year thereafter
 7 through 2018, the Secretary of Veterans Affairs
 8 shall submit to the appropriate committees of Con-
 9 gress a report on the administration of subsections
 10 (a)(2), (b)(2), and (c) of section 1522 of title 38,
 11 United States Code, as added by subsection (a), and
 12 subsections (a)(2), (a)(4), (b)(2), and (c) of section
 13 1543 of such title, as added by subsection (b), dur-
 14 ing the most recent 12-month period.

15 (2) ELEMENTS.—Each report submitted under
 16 paragraph (1) shall include the following, for the pe-
 17 riod covered by the report:

18 (A) The number of individuals who applied
 19 for pension under chapter 15 of such title.

20 (B) The number of individuals who re-
 21 ceived pension under such chapter.

22 (C) The number of individuals with respect
 23 to whom the Secretary denied or discontinued
 24 payment of pension under the subsections re-
 25 ferred to in paragraph (1).

1 (D) A description of any trends identified
2 by the Secretary regarding pension payments
3 that have occurred as a result of the amend-
4 ments made by this section.

5 (E) Such other information as the Sec-
6 retary considers appropriate.

7 (3) APPROPRIATE COMMITTEES OF CONGRESS
8 DEFINED.—In this subsection, the term “appro-
9 priate committees of Congress” means—

10 (A) the Committee on Veterans’ Affairs
11 and the Select Committee on Aging of the Sen-
12 ate; and

13 (B) the Committee on Veterans’ Affairs of
14 the House of Representatives.

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