

to the European Union, in the absence of such a resolution, the accession of Cyprus to the European Union could act as a further catalyst for the solution of the Cyprus problem without the latter being a precondition for accession and with all relevant factors being considered;

(4) membership of the Republic of Cyprus in the European Union should be strongly supported;

(5) all Cypriots be urged to support and encourage efforts to bring the Republic of Cyprus into the European Union; and

(6) the various agencies of the United States Government in support of United Nations efforts to facilitate a settlement should pursue as an issue of high priority new initiatives that will help promote and achieve reunification, reconciliation, stability, and prosperity on Cyprus.

Mr. REID. Mr. President, I ask unanimous consent that the substitute amendment to the concurrent resolution be agreed to; the concurrent resolution be agreed to, as amended; the amendment to the preamble be agreed to; the preamble, as amended, be agreed to; the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The concurrent resolution (S. Con. Res. 122), as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The concurrent resolution, as amended, with its preamble, as amended, reads as follows:

S. CON. RES. 122

Whereas the current status quo on Cyprus remains unacceptable and the reunification of Cyprus remains a desirable foreign policy objective;

Whereas a just and lasting resolution of the Cyprus problem, in full consideration of United Nations Security Council resolutions and international treaties, must safeguard the security and fundamental rights of the population of Cyprus, Greek-Cypriots and Turkish-Cypriots alike;

Whereas Cyprus is among the leading candidate countries for accession to the European Union, in recognition of its commitment to free markets, human rights, democracy, and the rule of law;

Whereas the European Union guarantees to all its citizens the indivisible universal values of human dignity (supporting fair and equal treatment of all), freedom (right to security, marriage, family, among others), equality (celebrating cultural, religious, and linguistic diversity), solidarity (protecting workers' rights and providing social security), citizens' rights (voting), and justice (holding a fair trial);

Whereas membership in the European Union will guarantee each citizen of the Republic of Cyprus important legal, civil, and human rights, as well as the means and legal recourse necessary to secure the full application of these fundamental individual rights, and to promote the respect of cultural diversity and traditions;

Whereas membership in the European Union will bring significant benefits to both Greek-Cypriots and Turkish-Cypriots, including new economic opportunities, access to new markets, a freer exchange of goods and services, balanced and sustainable development as well as the free movement of persons, goods, and services and capital;

Whereas the European Council in its Summit Conclusions of December 1999, in Helsinki, stated that "a political settlement [of the Cyprus problem] will facilitate the accession of Cyprus to the European Union . . . [I]f no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition . . . [i]n this the Council will take account of all relevant factors";

Whereas both the United States and the European Union in their summit statement on the New Transatlantic Agenda of June 14, 2001, pledge to continue to work together to support the efforts of the United Nations Secretary General to achieve a comprehensive settlement with respect to Cyprus in full consideration of relevant United Nations Security Council resolutions and international treaties;

Whereas the Greek and Turkish Cypriot leadership began direct talks on January 16, 2002, with the United Nations Special Advisor in attendance and the European Council at the Seville Conference in June 2002 called on the Greek and Turkish Cypriot leaders to intensify and expedite their talks in order to seize the unique opportunity to reach a comprehensive settlement; and

Whereas resolution of the Cyprus problem is also consistent with American values, as enshrined in the rights guaranteed by the Constitution of the United States, which guarantees the right to life, liberty, and the pursuit of happiness: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the current status quo on Cyprus must be ended and the island and its people be reunited, in a bizonal, bicomunal federal Cyprus, with full consideration of United Nations Security Council resolutions and international treaties;

(2) the direct and intensive negotiations between the Greek and Turkish Cypriot leaders, which began in January 2002, and which are continuing on a regular basis, have been most welcome and are encouraged to continue until a comprehensive settlement has been achieved;

(3) while a successful resolution of the Cyprus problem would facilitate the accession of Cyprus to the European Union, in the absence of such a resolution, the accession of Cyprus to the European Union could act as a further catalyst for the solution of the Cyprus problem without the latter being a precondition for accession and with all relevant factors being considered;

(4) membership of the Republic of Cyprus in the European Union should be strongly supported;

(5) all Cypriots be urged to support and encourage efforts to bring the Republic of Cyprus into the European Union; and

(6) the various agencies of the United States Government in support of United Nations efforts to facilitate a settlement should pursue as an issue of high priority new initiatives that will help promote and achieve reunification, reconciliation, stability, and prosperity on Cyprus.

VETERANS BENEFITS ACT OF 2002

Mr. REID. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 2237) to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve

the administration of benefits for veterans, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

Resolved, That the bill from the Senate (S. 2237) entitled "An Act to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE*.—This Act may be cited as the "Veterans Benefits Act of 2002".

(b) *TABLE OF CONTENTS*.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

Sec. 101. Retention of CHAMPVA for surviving spouses remarrying after age 55.

Sec. 102. Clarification of entitlement to special monthly compensation for women veterans who have service-connected loss of breast tissue.

Sec. 103. Specification of hearing loss required for compensation for hearing loss in paired organs.

Sec. 104. Assessment of acoustic trauma associated with military service from World War II to present.

TITLE II—MEMORIAL AFFAIRS

Sec. 201. Prohibition on certain additional benefits for persons committing capital crimes.

Sec. 202. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.

Sec. 203. Application of Department of Veterans Affairs benefit for Government markers for marked graves of veterans at private cemeteries to veterans dying on or after September 11, 2001.

Sec. 204. Authorization of placement of a memorial in Arlington National Cemetery honoring World War II veterans who fought in the Battle of the Bulge.

TITLE III—OTHER MATTERS

Sec. 301. Increase in aggregate annual amount available for State approving agencies for administrative expenses for fiscal years 2003 through 2007.

Sec. 302. Authority for Veterans' Mortgage Life Insurance to be carried beyond age 70.

Sec. 303. Authority to guarantee hybrid adjustable rate mortgages.

Sec. 304. Increase in amount payable as Medal of Honor special pension.

Sec. 305. Extension of protections under the Soldiers' and Sailors' Civil Relief Act of 1940 to National Guard members called to active duty under title 32, United States Code.

Sec. 306. Extension of income verification authority.

Sec. 307. Fee for loan assumption.

Sec. 308. Technical and clarifying amendments.

Sec. 309. Codification of cost-of-living adjustment provided in Public Law 107-247.

TITLE IV—JUDICIAL MATTERS

Sec. 401. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.

Sec. 402. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.

Sec. 403. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

SEC. 101. RETENTION OF CHAMPVA FOR SURVIVING SPOUSES REMARRYING AFTER AGE 55.

(a) EXCEPTION TO TERMINATION OF BENEFITS UPON REMARRIAGE.—Paragraph (2) of section 103(d) is amended—

- (1) by inserting “(A) after “(2)””; and
- (2) by adding at the end the following:

“(B) The remarriage after age 55 of the surviving spouse of a veteran shall not bar the furnishing of benefits under section 1781 of this title to such person as the surviving spouse of the veteran.”.

(b) APPLICATION FOR BENEFITS.—In the case of an individual who but for having remarried would be eligible for medical care under section 1781 of title 38, United States Code, and whose remarriage was before the date of the enactment of this Act and after the individual had attained age 55, the individual shall be eligible for such medical care by reason of the amendments made by subsection (a) only if an application for such medical care is received by the Secretary of Veterans Affairs during the one-year period ending on the effective date specified in subsection (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 60 days after the date of the enactment of this Act.

SEC. 102. CLARIFICATION OF ENTITLEMENT TO SPECIAL MONTHLY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED LOSS OF BREAST TISSUE.

Section 1114(k) is amended by striking “one or both breasts (including loss by mastectomy)” and inserting “25 percent or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy) or has received radiation treatment of breast tissue”.

SEC. 103. SPECIFICATION OF HEARING LOSS REQUIRED FOR COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

Section 1160(a)(3) is amended—

- (1) by striking “total deafness” the first place it appears and inserting “deafness compensable to a degree of 10 percent or more”; and
- (2) by striking “total deafness” the second place it appears and inserting “deafness”.

SEC. 104. ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH MILITARY SERVICE FROM WORLD WAR II TO PRESENT.

(a) ASSESSMENT BY NATIONAL ACADEMY OF SCIENCES.—The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences for the Academy to perform the activities specified in this section. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(b) DUTIES UNDER AGREEMENT.—Under the agreement under subsection (a), the National Academy of Sciences shall do the following:

- (1) Review and assess available data on hearing loss that could reasonably be expected to have been incurred by members of the Armed Forces during the period from the beginning of

World War II to the date of the enactment of this Act.

(2) Identify the different sources of acoustic trauma that members of the Armed Forces could reasonably be expected to have been exposed to during the period from the beginning of World War II to the date of the enactment of this Act

(3) Determine how much exposure to each source of acoustic trauma identified under paragraph (2) is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level.

(4) Determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

- (A) immediate or delayed onset;
- (B) cumulative;
- (C) progressive; or
- (D) any combination of subparagraph (A), (B), and (C).

(5) Identify age, occupational history, and other factors which contribute to an individual's noise-induced hearing loss.

(6) Identify—

(A) the period of time at which audiometric measures used by the Armed Forces became adequate to evaluate individual hearing threshold shift; and

(B) the period of time at which hearing conservation measures to prevent individual hearing threshold shift were available to members of the Armed Forces, shown separately for each of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and, for each such service, shown separately for members exposed to different sources of acoustic trauma identified under paragraph (2).

(c) REPORT.—Not later than 180 days after the date of the entry into the agreement referred to in subsection (a), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subsection (b).

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of decisions issued by the Secretary in each of fiscal years 2000, 2001, and 2002 on claims for disability compensation for hearing loss, tinnitus, or both.

(B) Of the decisions referred to in subparagraph (A)—

- (i) the number in which compensation was awarded, and the number in which compensation was denied, set forth by fiscal year; and
- (ii) the total amount of disability compensation paid on such claims during each such fiscal year.

(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department of Veterans Affairs health care facilities during fiscal years specified in subparagraph (A) for hearing-related disorders, set forth by the number of veterans per year.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

TITLE II—MEMORIAL AFFAIRS

SEC. 201. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.

(a) PRESIDENTIAL MEMORIAL CERTIFICATE.—Section 112 is amended by adding at the end the following new subsection:

“(c) A certificate may not be furnished under the program under subsection (a) on behalf of a deceased person described in section 2411(b) of this title.”.

(b) FLAG TO DRAPE CASKET.—Section 2301 is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

“(g) A flag may not be furnished under this section in the case of a person described in section 2411(b) of this title.”.

(c) HEADSTONE OR MARKER FOR GRAVE.—Section 2306 is amended by adding at the end the following new subsection:

“(g)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

“(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

“(3) A marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

SEC. 202. PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES.

Section 2411(a)(2) is amended—

(1) by striking “The prohibition” and inserting “In the case of a person described in subsection (b)(1) or (b)(2), the prohibition”; and

(2) by striking “or finding under subsection (b)” and inserting “referred to in subsection (b)(1) or (b)(2), as the case may be.”.

SEC. 203. APPLICATION OF DEPARTMENT OF VETERANS AFFAIRS BENEFIT FOR GOVERNMENT MARKERS FOR MARKED GRAVES OF VETERANS AT PRIVATE CEMETERIES TO VETERANS DYING ON OR AFTER SEPTEMBER 11, 2001.

(a) IN GENERAL.—Subsection (d) of section 502 of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107-103; 115 Stat. 995; 38 U.S.C. 2306 note) is amended by striking “the date of the enactment of this Act” and inserting “September 11, 2001”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of such section 502.

SEC. 204. AUTHORIZATION OF PLACEMENT OF A MEMORIAL IN ARLINGTON NATIONAL CEMETERY HONORING WORLD WAR II VETERANS WHO FOUGHT IN THE BATTLE OF THE BULGE.

The Secretary of the Army is authorized to place in Arlington National Cemetery a memorial marker honoring veterans who fought in the battle in the European theater of operations during World War II known as the Battle of the Bulge.

TITLE III—OTHER MATTERS

SEC. 301. INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES FOR FISCAL YEARS 2003 THROUGH 2007.

The first sentence of section 3674(a)(4) is amended by inserting before the period at the end the following: “, for fiscal year 2003, \$14,000,000, for fiscal year 2004, \$18,000,000, for fiscal year 2005, \$18,000,000, for fiscal year 2006, \$19,000,000, and for fiscal year 2007, \$19,000,000”.

SEC. 302. AUTHORITY FOR VETERANS' MORTGAGE LIFE INSURANCE TO BE CARRIED BEYOND AGE 70.

Section 2106 is amended—

- (1) in subsection (a), by inserting “age 69 or younger” after “any eligible veteran”; and

(2) in subsection (i), by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

SEC. 303. AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.

(a) TWO-YEAR DEMONSTRATION PROJECT TO GUARANTEE CERTAIN ADJUSTABLE RATE MORTGAGES.—Chapter 37 is amended by inserting after section 3707 the following new section:

“§3707A. Hybrid adjustable rate mortgages

“(a) The Secretary shall carry out a demonstration project under this section during fiscal years 2004 and 2005 for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the National Housing Act in accordance with the provisions of this section with respect to hybrid adjustable rate mortgages described in subsection (b).

“(b) Adjustable rate mortgages that are guaranteed under this section shall be adjustable rate mortgages (commonly referred to as ‘hybrid adjustable rate mortgages’) having interest rate adjustment provisions that—

“(1) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

“(2) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (1); and

“(3) comply in such initial adjustment, and any subsequent adjustment, with subsection (c).

“(c) Interest rate adjustment provisions of a mortgage guaranteed under this section shall—

“(1) correspond to a specified national interest rate index approved by the Secretary, information on which is readily accessible to mortgagors from generally available published sources;

“(2) be made by adjusting the monthly payment on an annual basis;

“(3) be limited, with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and

“(4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

“(d) The Secretary shall promulgate underwriting standards for loans guaranteed under this section, taking into account—

“(1) the status of the interest rate index referred to in subsection (c)(1) and available at the time an underwriting decision is made, regardless of the actual initial rate offered by the lender;

“(2) the maximum and likely amounts of increases in mortgage payments that the loans would require;

“(3) the underwriting standards applicable to adjustable rate mortgages insured under title II of the National Housing Act; and

“(4) such other factors as the Secretary finds appropriate.

“(e) The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage term.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 37 is amended by inserting after the item relating to section 3707 the following new item:

“3707A. Hybrid adjustable rate mortgages.”.

SEC. 304. INCREASE IN AMOUNT PAYABLE AS MEDAL OF HONOR SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking “\$600” and inserting “\$1,000, as adjusted from time to time under subsection (e)”.

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following new subsection:

“(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly

special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).”.

(c) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—That section is further amended by adding after subsection (e), as added by subsection (b) of this section, the following new subsection:

“(f)(1) The Secretary shall pay, in a lump sum, to each person who is in receipt of special pension payable under this section an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person’s special pension in fact commenced.

“(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension for such month under laws for eligibility for special pension (with the exception of the eligibility law requiring a person to have been awarded a Medal of Honor) in effect at the beginning of such month.”.

(d) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on September 1, 2003. No payment may be made pursuant to subsection (f) of section 1562 of title 38, United States Code, as added by subsection (c) of this section, before October 1, 2003.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (b) of this section, in 2003.

SEC. 305. EXTENSION OF PROTECTIONS UNDER THE SOLDIERS’ AND SAILORS’ CIVIL RELIEF ACT OF 1940 TO NATIONAL GUARD MEMBERS CALLED TO ACTIVE DUTY UNDER TITLE 32, UNITED STATES CODE.

Section 101(1) of the Soldiers’ and Sailors’ Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking “and all” and inserting “all”; and

(B) by inserting before the period the following: “, and all members of the National Guard on service described in the following sentence”; and

(2) in the second sentence, by inserting before the period the following: “, and, in the case of a member of the National Guard, shall include service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds”.

SEC. 306. EXTENSION OF INCOME VERIFICATION AUTHORITY.

Section 6103(l)(7)(D) of the Internal Revenue Code of 1986 is amended by striking “September 30, 2003” in the second sentence after clause (ix) and inserting “September 30, 2008”.

SEC. 307. FEE FOR LOAN ASSUMPTION.

(a) IN GENERAL.—For the period described in subsection (b), the Secretary of Veterans Affairs shall apply section 3729(b)(2)(I) of title 38, United States Code, by substituting “1.00” for “0.50” each place it appears.

(b) PERIOD DESCRIBED.—The period referred to in subsection (a) is the period that begins on the date that is 7 days after the date of the en-

actment of this Act and ends on September 30, 2003.

SEC. 308. TECHNICAL AND CLARIFYING AMENDMENTS.

(a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM ERA VETERANS FOR EDUCATION BENEFITS.—Section 3011(a)(1)(C)(ii) is amended by striking “on or”.

(b) ACCELERATED PAYMENT OF ASSISTANCE FOR EDUCATION LEADING TO EMPLOYMENT IN HIGH TECHNOLOGY INDUSTRY.—(1) Subsection (b)(1) of section 3014A is amended by striking “employment in a high technology industry” and inserting “employment in a high technology occupation in a high technology industry”.

(2)(A) The heading for section 3014A is amended to read as follows:

“§3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry”.

(B) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

“3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.”.

(c) SOURCE OF FUNDS FOR INCREASED USAGE OF MONTGOMERY GI BILL ENTITLEMENT UNDER ENTITLEMENT TRANSFER AUTHORITY.—(1) Section 3035(b) is amended—

(A) in paragraph (1), by striking “paragraphs (2) and (3) of this subsection,” and inserting “paragraphs (2), (3), and (4).”; and

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

“(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.”.

(2) The amendments made by this subsection shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107), to which such amendments relate.

(d) LICENSING OR CERTIFICATION TESTS.—Section 3689(c)(1)(B) is amended by striking “the test” and inserting “such test, or a test to certify or license in a similar or related occupation.”.

(e) PERIOD OF ELIGIBILITY FOR SURVIVORS’ AND DEPENDENTS’ ASSISTANCE EDUCATION BENEFITS.—(1) Section 3512(a) is amended—

(A) in paragraph (3)—

(i) by striking “paragraph (4)” in the matter preceding subparagraph (A) and inserting “paragraph (4) or (5).”; and

(ii) by striking “subsection (d)” in subparagraph (C)(i) and inserting “subsection (d), or any date between the two dates described in subsection (d).”; and

(B) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

(C) by inserting after paragraph (3) the following new paragraph (4):

“(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person’s entitlement shall be the date of the Secretary’s decision that the parent has a service-connected total disability permanent in nature, or that the parent’s death was service-connected, whichever is applicable.”; and

(D) in paragraph (6), as so redesignated, by striking “paragraph (4)” and inserting “paragraph (5).”.

(2) The amendments made by this subsection shall take effect November 1, 2000.

(f) **LOAN FEES.**—(1) Section 3703(e)(2)(A) is amended by striking “3729(b)” and inserting “3729(b)(2)(I)”.

(2) The amendment made by paragraph (1) shall take effect as if included in the enactment of section 402 of the Veterans Benefits and Health Care Improvement Act of 2000 (Public Law 106-419; 114 Stat. 1861).

(g) **ADDITIONAL MISCELLANEOUS TECHNICAL AMENDMENTS TO TITLE 38, UNITED STATES CODE.**—(1)(A) The tables of chapters preceding part I and at the beginning of part IV are each amended by striking “5101” in the item relating to chapter 51 and inserting “5100”.

(B) The table of parts preceding part I is amended by striking “5101” in the item relating to part IV and inserting “5100”.

(2) Section 107(d)(2) is amended by striking “the date of the enactment of this subsection” and inserting “November 1, 2000.”.

(3) Section 1701(10)(A) is amended by striking “the date of the enactment of the Veterans’ Millennium Health Care and Benefits Act” and inserting “November 30, 1999.”.

(4) Section 1705(c)(1) is amended by striking “Effective on October 1, 1998, the Secretary” and inserting “The Secretary”.

(5) Section 1707(a) is amended by inserting “(42 U.S.C. 14401 et seq.)” before the period at the end.

(6) Section 1710(e)(1)(D) is amended by striking “the date of the enactment of this subparagraph” and inserting “November 11, 1998”.

(7) Section 1729B(b) is amended by striking “the date of the enactment of this section” and inserting “November 30, 1999.”.

(8) Section 1781(d) is amended—

(A) in paragraph (1)(B)(i), by striking “as of the date” and all that follows through “of 2001” and inserting “as of June 5, 2001”; and

(B) in paragraph (4), by striking “paragraph” and inserting “subsection”.

(9) Section 3018C(e)(2)(B) is amended by striking the comma after “April”.

(10) Section 3031(a)(3) is amended by striking “the date of the enactment of this paragraph” and inserting “December 27, 2001”.

(11) Section 3485(a)(4) is amended in subparagraphs (A), (C), and (F), by striking “the five-year period beginning on the date of the enactment of the Veterans Education and Benefits Expansion Act of 2001” and inserting “the period preceding December 27, 2006”.

(12) Section 3734(b)(2) is amended—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B) (C), (D), and (E), respectively.

(13) Section 7315(a) is amended by inserting “Veterans Health” in the first sentence after “in the”.

(h) **PUBLIC LAW 107-103.**—Effective as of December 27, 2001, and as if included therein as originally enacted, section 103(c) of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107-103; 115 Stat. 979) is amended by inserting closing quotation marks at the end of the text inserted by the amendment made by paragraph (2).

(i) **PUBLIC LAW 102-86.**—Section 403(e) of the Veterans’ Benefits Programs Improvement Act of 1991 (Public Law 102-86; 105 Stat. 424) is amended by striking “section 321” and all that follows through “and 484)” and inserting “subchapter II of chapter 5 of title 40, United States Code, sections 541 through 555 and 1302 of title 40, United States Code”.

SEC. 309. CODIFICATION OF COST-OF-LIVING ADJUSTMENT PROVIDED IN PUBLIC LAW 107-247.

(a) **VETERANS’ DISABILITY COMPENSATION.**—Section 1114 is amended—

(1) by striking “\$103” in subsection (a) and inserting “\$104”;

(2) by striking “\$199” in subsection (b) and inserting “\$201”;

(3) by striking “\$306” in subsection (c) and inserting “\$310”;

(4) by striking “\$439” in subsection (d) and inserting “\$445”;

(5) by striking “\$625” in subsection (e) and inserting “\$633”;

(6) by striking “\$790” in subsection (f) and inserting “\$801”;

(7) by striking “\$995” in subsection (g) and inserting “\$1,008”;

(8) by striking “\$1,155” in subsection (h) and inserting “\$1,171”;

(9) by striking “\$1,299” in subsection (i) and inserting “\$1,317”;

(10) by striking “\$2,163” in subsection (j) and inserting “\$2,193”;

(11) in subsection (k)—

(A) by striking “\$80” both places it appears and inserting “\$81”; and

(B) by striking “\$2,691” and “\$3,775” and inserting “\$2,728” and “\$3,827”, respectively;

(12) by striking “\$2,691” in subsection (l) and inserting “\$2,728”;

(13) by striking “\$2,969” in subsection (m) and inserting “\$3,010”;

(14) by striking “\$3,378” in subsection (n) and inserting “\$3,425”;

(15) by striking “\$3,775” each place it appears in subsections (o) and (p) and inserting “\$3,827”;

(16) by striking “\$1,621” and “\$2,413” in subsection (r) and inserting “\$1,643” and “\$2,446”, respectively; and

(17) by striking “\$2,422” in subsection (s) and inserting “\$2,455”.

(b) **ADDITIONAL COMPENSATION FOR DEPENDENTS.**—Section 1115(1) is amended—

(1) by striking “\$124” in subparagraph (A) and inserting “\$125”;

(2) by striking “\$213” in subparagraph (B) and inserting “\$215”;

(3) by striking “\$84” in subparagraph (C) and inserting “\$85”;

(4) by striking “\$100” in subparagraph (D) and inserting “\$101”;

(5) by striking “\$234” in subparagraph (E) and inserting “\$237”; and

(6) by striking “\$196” in subparagraph (F) and inserting “\$198”.

(c) **CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.**—Section 1162 is amended by striking “\$580” and inserting “\$588”.

(d) **DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.**—(1) Section 1311(a) is amended—

(A) by striking “\$935” in paragraph (1) and inserting “\$948”; and

(B) by striking “\$202” in paragraph (2) and inserting “\$204”.

(2) The table in section 1311(a)(3) is amended to read as follows:

“Pay grade	Monthly rate	Pay grade	Monthly rate
E-1 ..	\$948	W-4	\$1,134
E-2 ..	948	O-1	1,001
E-3 ..	948	O-2	1,035
E-4 ..	948	O-3	1,107
E-5 ..	948	O-4	1,171
E-6 ..	948	O-5	1,289
E-7 ..	980	O-6	1,453
E-8 ..	1,035	O-7	1,570
E-9 ..	1,080	O-8	1,722
W-1 ..	1,001	O-9	1,843
W-2 ..	1,042	O-10 ...	2,021
W-3 ..	1,072		

“If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse’s rate shall be \$1,165.

“If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse’s rate shall be \$2,168.”.

(3) Section 1311(b) is amended by striking “\$234” and inserting “\$237”.

(4) Section 1311(c) is amended by striking “\$234” and inserting “\$237”.

(5) Section 1311(d) is amended by striking “\$112” and inserting “\$113”.

(e) **DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.**—(1) Section 1313(a) is amended—

(A) by striking “\$397” in paragraph (1) and inserting “\$402”;

(B) by striking “\$571” in paragraph (2) and inserting “\$578”;

(C) by striking “\$742” in paragraph (3) and inserting “\$752”; and

(D) by striking “\$742” and “\$143” in paragraph (4) and inserting “\$752” and “\$145”, respectively.

(2) Section 1314 is amended—

(A) by striking “\$234” in subsection (a) and inserting “\$237”;

(B) by striking “\$397” in subsection (b) and inserting “\$402”; and

(C) by striking “\$199” in subsection (c) and inserting “\$201”.

TITLE IV—JUDICIAL MATTERS

SEC. 401. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS’ APPEALS.

(a) **STANDARD FOR REVERSAL.**—Paragraph (4) of subsection (a) of section 7261 is amended—

(1) by inserting “adverse to the claimant” after “material fact”; and

(2) by inserting “or reverse” after “and set aside”.

(b) **REQUIREMENTS FOR REVIEW.**—Subsection (b) of that section is amended to read as follows:

“(b) In making the determinations under subsection (a), the Court shall review the record of proceedings before the Secretary and the Board of Veterans’ Appeals pursuant to section 7252(b) of this title and shall—

“(1) take due account of the Secretary’s application of section 5107(b) of this title; and

“(2) take due account of the rule of prejudicial error.”.

(c) **APPLICABILITY.**—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by this section shall apply with respect to any case pending for decision before the United States Court of Appeals for Veterans Claims other than a case in which a decision has been entered before the date of the enactment of this Act.

SEC. 402. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.

(a) **REVIEW.**—Section 7292(a) is amended by inserting “a decision of the Court on a rule of law or of” in the first sentence after “the validity of”.

(b) **APPLICABILITY.**—The amendment made by subsection (a) shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.

SEC. 403. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.

Amend the title so as to read "An Act to amend title 38, United States Code, to improve authorities of the Department of Veterans Affairs relating to veterans' compensation, dependency and indemnity compensation, and pension benefits, education benefits, housing benefits, memorial affairs benefits, life insurance benefits, and certain other benefits for veterans, to improve the administration of benefits for veterans, to make improvements in procedures relating to judicial review of veterans' claims for benefits, and for other purposes."

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the amendment of the House, and that a statement of Senator ROCKEFELLER be printed in the RECORD as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. Mr. President, as Chairman of the Committee on Veterans' Affairs, I urge the Senate to pass S. 2237, the proposed "Veterans Benefits Act of 2002."

Mr. President, the pending measure is the final compromise version of an omnibus bill that would improve a variety of veterans benefits, from pensions for heroes awarded the Medal of Honor to fairness in evaluating the disabilities of veterans with hearing loss. I will briefly highlight some of the provisions of which I am most proud, and refer my colleagues seeking more detail to the Joint Explanatory Statement accompanying this statement.

S. 2237, which I will refer to as the "Compromise Agreement," would eliminate many inequities and obstacles that affect veterans and their families. I thank Ranking Member ARLEN SPECTER and his staff for their efforts on behalf of our Nation's veterans, and my colleagues in the House for working with our Committee staff to craft this agreement.

I would also like to take this moment to note the loss of a dear colleague, a dedicated advocate for veterans. Many have eulogized Senator Paul Wellstone in the past few weeks, and I do not need to tell my colleagues of his passion, his energy, and his unwavering commitment to shout on behalf of those who cannot speak for themselves. However, few have noted his work on behalf of America's veterans, particularly those most neglected by a Nation that has not always kept its promises. Senator Wellstone worked on behalf of homeless veterans, veterans suffering from the mental illnesses that can be the silent legacy of the battlefield, and for those who returned from war to fight their own government's denials about the invisible wounds caused by chemicals and radiation. Paul Wellstone may have launched his political career in protest of the Vietnam War, but as a Senator, he chose to fight for those who served. It is up to all of us now to carry on his work.

As veterans and their families—like the rest of Americans expect to enjoy—lengthening life spans, we must regularly review and update laws crafted in

earlier times. Last year, I proudly authored legislation to allow survivors of severely disabled veterans to continue receiving VA healthcare coverage through the program called CHAMPVA after age 65. Section 101 of the Compromise Agreement would take this further, allowing the eligible surviving spouses of veterans who died from service-connected disabilities or in the line of duty to retain their eligibility for CHAMPVA benefits even if they remarry after age 55. Those who sacrificed so much for their Nation throughout their lives should not be further penalized by losing the special healthcare safety net that CHAMPVA offers.

Mr. President, Congress last year authorized VA to offer special monthly compensation to women who had lost one or both breasts as a result of military service. VA's subsequently promulgated regulations limited eligibility for this benefit to women who had undergone simple or radical mastectomy. Even if this restriction plays no role in a woman's medical decisions, it implies unfairly that tissue-sparing treatments create no physical, emotional, or financial obstacles to a woman's health. Section 102 of the Compromise Agreement would extend this eligibility to women veterans who have endured service-connected loss of 25 percent or more of a breast's tissue, or radiation treatment to a breast. As women comprise a growing percentage of our Armed Services, we must ensure that they receive fair recognition for their sacrifices, and equitable assistance in overcoming the medical challenges that they face.

I am enormously proud that the Compromise Agreement would help veterans who have both service-connected and unrelated hearing loss expect a fair disability rating. Currently, VA can consider whether a veteran has bilateral damage to "paired" organs or extremities—such as kidneys, lungs, feet, or hands—when rating the veteran's disability, even if only one of the paired organs was injured through military service. However, VA can only consider how non-service-connected hearing loss might further disable a veteran if he or she suffers total deafness in both ears. Section 103 of the Compromise Agreement would allow VA to consider whether a veteran suffers from partial non-service-connected hearing loss in one ear when evaluating disability caused by compensable service-connected hearing loss in the other ear. This would not only extend the same special consideration to damage to the ears that VA gives to other paired organs, but would assist veterans whose hearing loss has been made even worse due to military service.

This provision represents an important step for veterans with hearing loss, but other challenges remain. America's aging veterans suffer increasingly from hearing loss and tinnitus, and the number of disability

claims for hearing disorders submitted to VA continues to climb. Many veterans who left service decades ago received an ineffective hearing examination at separation, or no evaluation at all, leaving VA with a legacy of incomplete records and uncertain clinical evidence. This affects not only veterans with hearing loss, but all veterans who must wait for VA to process a staggering burden of hearing loss claims without a clear scientific standard on past exposures.

Section 104 of the Compromise Agreement would require VA to contract with the National Academy of Sciences to review evidence on hearing damage suffered during military service from World War II to the present. As part of this study, scientists would determine when the audiometric testing and hearing conservation programs initiated by the military services became adequate for VA to assess whether an individual veteran had hearing loss at or prior to separation. The Compromise Agreement would also require VA to review its own records on hearing loss or tinnitus in veterans, including the cost of adjudicating these claims under the current system and the cost of treating hearing disorders. These reports together should provide VA's Secretary with critical tools to decide how to assist veterans whose hearing loss may have resulted from damage suffered years ago quickly and fairly.

Mr. President, Section 304 of the Compromise Agreement would increase the special pension granted to recipients of the Medal of Honor as a token of recognition for their extraordinary heroism from \$600 to \$1000, and adjust this pension annually with inflation. The agreement would also provide a one-time payment to Medal of Honor recipients who—due to a time lag between the date of the act of valor and the actual awarding of the Medal of Honor—received this pension only after a delay.

The next section of the Compromise Agreement grew from legislation introduced by Senator Paul Wellstone, another example of his advocacy on behalf of those who serve this Nation. The Soldiers' and Sailors' Relief Act of 1940 (SSCRA) applies to servicemembers, including National Guard Members, who serve on active duty under title 10 of the United States code. It suspends enforcement of certain civil liabilities against servicemembers on active duty so that they can devote their concentration to their duties.

National Guard members may also be called to active duty by their State Governors under title 32. National Guard missions under title 32 are funded by the federal government "to perform training and other duty." However, if the National Guard members are called up under title 32, rather than title 10, they are not entitled to SSCRA protections.

In the days following September 11, 2001, under the direction of the President, the Federal Aviation Administration and the Secretary of Defense coordinated the use of National Guard members at commercial airports. These National Guard members, called to active duty from four to six months, clearly served a national mission. However, because they were called up under title 32, they were not entitled to SSCRA protections.

Section 305 of the Compromise Agreement would extend SSCRA protections to include National Guard members called to active service for more than 30 consecutive days in response to a national emergency declared by the President, even if they serve under title 32. This provision is intended to protect members of the National Guard when called up under circumstances similar to those following last September's terrorist attacks.

Mr. President, it is time to amend the Soldiers' and Sailors' Relief Act of 1940 to reflect the critical role that National Guard members now play in protecting this Nation. These National Guard members have increasingly been called onto active duty since September 11th. Like all active duty servicemembers, National Guard members deserve these rights and legal protections to allow them to concentrate on national defense. Paul Wellstone recognized this, and took steps to make sure that those who don the uniform to protect our freedoms—at home or abroad—have earned our protection.

The Compromise Agreement would also ensure that veterans receive a full judicial review when appealing claims denied by VA. The "benefit of the doubt" rule, the standard applicable to proceedings before VA, states that a veteran's claim is granted unless the preponderance of the evidence is against the claimant. This rule, unique in administrative law, recognizes the tremendous sacrifices made by the men and women who have served in our Armed Forces. A number of veterans service organizations have expressed concern that the current appellate process is overly deferential to VA findings of fact that are adverse to veteran claimants. Specifically, these groups argue that the "clearly erroneous" standard applied by the U.S. Court of Appeals for Veterans Claims (CAVC) when reviewing Board of Veterans' Appeals (BVA) cases results in veterans' claims receiving only cursory review on appeal, not allowing for full application of the "benefit of the doubt" rule.

Section 401 of the Compromise Agreement would maintain the current "clearly erroneous" standard of review, but modify the requirements of the review the court must perform when making determinations under section 7261(a) of title 38. CAVC would be specifically required to examine the record of proceedings—that is, the record on appeal—before the Secretary and BVA. Section 401 would also pro-

vide special emphasis during the judicial process to the "benefit of the doubt" provisions of section 5107(b) as CAVC makes findings of fact in reviewing BVA decisions. The combination of these changes is intended to provide for more searching appellate review of BVA decisions, and thus give full force to the "benefit of doubt" provision. The addition of the words "or reverse" after "and set aside" in section 7261(a)(4) is intended to emphasize that CAVC should reverse clearly erroneous findings when appropriate, rather than remand the case. This new language in section 7261 would overrule the recent U.S. Court of Appeals for the Federal Circuit decision of *Hensley v. West*, which emphasized that CAVC should perform only limited, deferential review of BVA decisions, and stated that BVA fact-finding "is entitled on review to substantial deference." However, nothing in this new language is inconsistent with the existing section 7261(c), which precludes the court from conducting trial de novo when reviewing BVA decisions, that is, receiving evidence that is not part of the record before BVA.

Section 402 of the Compromise Agreement would also expand the Federal Circuit's authority to review CAVC decisions based on rules of law that are not derived from a specific statute or regulation. This change would allow the Federal Circuit to review comprehensively any CAVC decisions of law that adversely affect appellate reviews of veterans' claims.

Currently, attorneys and non-attorney practitioners supervised by attorneys who represent certain claimants may receive compensation for their services under the Equal Access to Justice Act. Section 403 of the Compromise Agreement would allow non-attorney practitioners admitted to practice before the CAVC, such as veterans service organization representatives, to be awarded fees under this act without the signature of a supervising attorney. This would make organizations that provide invaluable assistance to veterans eligible for richly deserved compensation.

The Joint Explanatory Statement contains language responding to the Executive Branch's interpretation that the CAVC is part of the Executive Branch, and subject to rescissions of budget pursuant to section 1403 of Public Law 107-206. I wish to reiterate that it is the Committees' intent to clarify that the CAVC is not part of the Executive Branch. The Committees have previously stated as much, finding in reports in both the House and Senate that the "Court, established by the Congress under Article I of the Constitution to exercise judicial power, has unusual status as an independent tribunal that is not subject to the control of the President or the executive branch." It is my hope that the Committees will not have to address this issue again through legislation or other means.

Mr. President, in conclusion, I want to thank Senator SPECTER and his benefits staff—Bill Tuerk, Jon Towers, David Goetz, and Chris McNamee—for diligently working with me and my benefits staff—Mary Schoelen, Julie Fischer, Chris Reinard, and Dahlia Melendrez—to craft this legislation during such an incredible year. I urge my colleagues to support this bipartisan commitment to our Nation's veterans, and to send a strong message of support to the men and women who now serve in uniform by caring for those who served before.

I ask unanimous consent that the joint explanatory statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT ON HOUSE
AMENDMENT TO SENATE BILL, S. 2237

S. 2237, as amended, the "Veterans Benefits Act of 2002," reflects a Compromise Agreement the Senate and House Committees on Veterans' Affairs have reached on the following bills considered in the House and Senate during the 107th Congress: S. 2237 ("Senate Bill"), H.R. 2561, H.R. 3423, H.R. 4085, H.R. 4940, and H.R. 5055 ("House Bills"). S. 2237, as amended, passed the Senate on September 26, 2002; H.R. 2561 and H.R. 3423, as amended, passed the House on December 20, 2001; H.R. 4085, as amended, passed the House on May 21, 2002; and H.R. 4940, as amended, and H.R. 5055 passed the House on July 22, 2002.

The Senate and House Committees on Veterans' Affairs have prepared the following explanation of S. 2237, as amended, ("Compromise Agreement"). Differences between the provisions contained in the Compromise Agreement and the related provisions of S. 2237, H.R. 2561, H.R. 3423, H.R. 4085, H.R. 4940, H.R. 5055, are noted in this document, except for clerical corrections, conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—COMPENSATION AND BENEFITS
IMPROVEMENTS

RETENTION OF CIVILIAN HEALTH AND MEDICAL
PROGRAM OF THE DEPARTMENT OF VETERANS
AFFAIRS FOR SURVIVING SPOUSES REMARRY-
ING AFTER AGE 55

Current law

Section 103(d) of title 38, United States Code, prohibits a surviving spouse who has remarried from receiving dependency and indemnity compensation ("DIC"), VA health insurance under the Civilian Health and Medical Program of the Department of Veterans Affairs ("CHAMPVA"), home loan, and education benefits. These benefits may be reinstated in the event the subsequent remarriage is terminated.

House bill

Section 3 of H.R. 4085 would allow a surviving spouse who remarries after attaining age 65 to retain DIC, CHAMPVA health insurance, home loan, and education benefits. Spouses who remarried at age 65 or older prior to enactment of the bill would have one year from the date of enactment to apply for reinstatement of DIC and related benefits. The amount of DIC would be paid with no reduction of certain other benefits to which the surviving spouse might be entitled.

SENATE BILL

The Senate Bill contains no comparable provision.

Compromise agreement

Section 101 of the Compromise Agreement would provide that a surviving spouse, upon remarriage after attaining age 55, would retain CHAMPVA eligibility. Surviving spouses who remarried after attaining age 55 but prior to enactment of this Act would have one year to apply for reinstatement of this benefit. The Committees expect the Secretary will maintain data concerning the number of surviving spouses who become eligible or retain eligibility under this provision.

The Committees intend in the 108th Congress to consider full restoration of benefits for surviving spouses who remarry after attaining age 55.

CLARIFICATION OF ENTITLEMENT TO SPECIAL MONTHLY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED LOSS OF BREAST TISSUE

Current law

Section 1114(k) of title 38, United States Code, authorizes the Department of Veterans Affairs ("VA") to provide special monthly compensation to any woman veteran who "has suffered the anatomical loss of one or both breasts (including loss by mastectomy)" as a result of military service. Regulations published at section 4.116 of title 38, Code of Federal Regulations, have limited this compensation to "Anatomical loss of a breast exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). As defined under this section, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not."

Senate bill

Section 101 of S. 2237 would amend section 1114(k) of title 38, United States Code, to specify that women veterans who have suffered the anatomical loss of half of the tissue of one or both breasts in or as a result of military service may be eligible for special monthly compensation.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 102 of the Compromise Agreement follows the Senate language, and would amend it to extend eligibility to women veterans who have suffered the anatomical loss of 25 percent or more of tissue from one or both breasts (including loss by mastectomy or partial mastectomy) or who received radiation treatment of breast tissue. The Committees intend that this change should extend eligibility for special monthly compensation to women veterans whose medical treatments (other than "cosmetic surgery") or injuries have resulted in a significant change in size, form, function, or appearance of one or both breasts.

SPECIFICATION OF HEARING LOSS REQUIRED FOR COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS

Current law

Under section 1160 of title 38, United States Code, special consideration is extended to a veteran's service-connected disabilities in "paired organs or extremities," such as kidneys, lungs, feet, or hands. For these paired organs or extremities, VA is authorized when rating disability to consider any degree of damage to both organs, even if only one resulted from military service. Total impairment is not a requirement for kidneys, hands, feet, or lungs. Proportional impairment, such as "the loss or loss of use of one

kidney as a result of service-connected disability and involvement of the other kidney as a result of non-service-connected disability," is specifically provided for in subsections (2), (4), and (5) of section 1160(a) of title 38, United States Code. However, total deafness in both ears is required under section 1160(a)(3) of title 38, United States Code, for special consideration of hearing loss.

Senate bill

Section 102 of S. 2237 would eliminate the word "total" from section 1160(a)(3) of title 38, United States Code, and allow VA to consider partial non-service-connected hearing loss in one ear when rating disability for veterans with compensable service-connected hearing loss in the other ear.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 103 of the Compromise Agreement follows the Senate language.

ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH MILITARY SERVICE FROM WORLD WAR II TO PRESENT

Current law

There is no applicable current law.

Senate bill

Section 103(a) of S. 2237 would authorize the Secretary to establish a presumption of service connection for hearing loss or tinnitus in veterans who served in certain military occupational specialties during specific periods of time if VA finds that evidence warrants such a presumption. Section 103(b) would extend presumption rebuttal provisions in title 38, United States Code, to cover service-connected hearing loss, should such a presumption be established.

Section 103(c) of the Senate Bill would require VA to enter into a contract with the National Academy of Sciences ("NAS") or an equivalent scientific organization to review scientific evidence on forms of acoustic trauma that could contribute to hearing disorders for personnel serving in specific military occupational specialties. Section 103(c)(2)(B) of the Senate Bill would direct NAS to identify forms of acoustic trauma likely to cause hearing damage in servicemembers, and, in section 103(c)(2)(C), to determine whether such damage would be immediate, cumulative, or delayed. Section 103(c)(2)(D) of the Senate Bill would require NAS to assess when audiometric data collected by the military services became adequate to allow an objective assessment of individual exposure by VA, examining a representative sample of records from World War II to present by period of service. Section 103(c)(2)(E) of the Senate Bill would require NAS to identify military occupational specialties in which servicemembers are likely to be exposed to sufficient acoustic trauma to cause hearing disorders.

Section 103(d) of S. 2237 would require VA to report on medical care provided to veterans for hearing disorders from fiscal years 1999–2001; on the number of disability compensation claims received and granted for hearing loss, tinnitus, or both during those years; and an estimate of the total cost to VA of adjudicating those claims in full-time employee equivalents.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 104 of the Compromise Agreement would strike sections 103(a) and 103(b) of the Senate Bill authorizing a presumption of service connection. The Compromise Agreement follows the Senate language requiring

VA to enter into a contract with NAS, but would change the focus of the study to assessment of acoustic trauma associated with military service from World War II to present.

The Compromise Agreement would strike sections 103(c)(2)(B), 103(c)(2)(D), 103(c)(2)(E), and all references to military occupational specialties. The Compromise Agreement follows the Senate language requiring NAS to determine how much exposure to acoustic trauma or noise damage during military service might cause or contribute to hearing loss, hearing threshold shift, or tinnitus, and whether this damage may be immediate- or delayed-onset, cumulative, progressive, or a combination of these.

The Compromise Agreement would preserve provisions requiring NAS to assess when audiometric measures became adequate to assess individual hearing threshold shift reliably and when sufficiently protective hearing conservation measures became available. It would also add a third provision requiring NAS to identify age, occupational history, and other factors which could contribute to an individual's noise-induced hearing loss.

In assessing when audiometric data collected by the military became adequate for VA to evaluate if a veteran's hearing threshold shift could be detected at or prior to separation, the Committees intend for NAS to review and report on a representative sample of individual records. This should reflect not only an appropriate distribution of individuals among the various Armed Forces, but within each military service branch so that these records represent servicemembers who might reasonably be expected to have different levels of noise exposure in the course of their duties. The representative sample should also include records of servicemembers discharged during or after distinct periods of war or conflict and consider the environment in which they served in order to gauge how adequately each branch collected audiometric data following World War II, the Korean conflict, the Vietnam era, and during and following the Persian Gulf War.

The Compromise Agreement would generally follow the Senate language requiring VA to report on hearing loss claims and medical treatment for hearing disorders. The Compromise Agreement would amend this language to refer to the number of decisions issued and their results, rather than claims submitted in fiscal years 2000 through 2002, and would remove references to military occupational specialties.

TITLE II—MEMORIAL AFFAIRS

PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES

Current law

Sections 2411 and 2408(d) of title 38, United States Code, prohibit persons who are convicted of capital crimes from interment or memorialization in National Cemetery Administration cemeteries, Arlington National Cemetery ("ANC"), or a State cemetery that receives VA grant funding. Section 5313 of title 38, United States Code, further limits VA benefits available to veterans who die while fleeing prosecution or after being convicted of a capital crime.

Senate bill

Section 402 of S. 2237 would prohibit the issuance of Presidential Memorial Certificates, flags, and memorial headstones or grave markers to veterans convicted of or fleeing from prosecution for a State or Federal capital crime.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 201 of the Compromise Agreement follows the Senate language.

PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES

Current Law

Section 2411 of title 38, United States Code, prohibits interment or memorialization in National Cemetery Administration cemeteries or in Arlington National Cemetery ("ANC") of any person convicted of a capital crime. This section further prohibits interment or memorialization of persons found by the Secretary of Veterans Affairs or the Secretary of the Army to have committed capital crimes but who avoided conviction of the crime through flight or death preceding prosecution. In such cases, the Secretary of Veterans Affairs or the Secretary of the Army must receive notice from the Attorney General of the United States, or the appropriate State official, of the Secretary's own finding before the prohibition shall apply.

Senate bill

Section 403 of S. 2237 would eliminate the requirement that the Secretary of Veterans Affairs or the Secretary of the Army be notified of a finding by the Attorney General or the appropriate State official in cases of persons who are found to have committed capital crimes but who avoided conviction of the crime through flight or death preceding prosecution.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 202 of the Compromise Agreement follows the Senate language.

APPLICATION OF DEPARTMENT OF VETERANS AFFAIRS BENEFIT FOR GOVERNMENT MARKERS FOR MARKED GRAVES OF VETERANS AT PRIVATE CEMETERIES TO VETERANS DYING ON OR AFTER SEPTEMBER 11, 2001

Current law

Section 2306(d)(1) provides that the Secretary shall furnish a government marker to those families who request one for the marked grave of a veteran buried at a private cemetery, who died on or after December 27, 2001.

House bill

Section 6 of H.R. 4940 would make section 2306(d)(1) retroactive to veterans who died on or after September 11, 2001.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 203 of the Compromise Agreement follows the House language.

AUTHORIZATION OF PLACEMENT OF MEMORIAL IN ARLINGTON NATIONAL CEMETERY HONORING WORLD WAR II VETERANS WHO FOUGHT IN THE BATTLE OF THE BULGE

Current law

Section 2409 of title 38, United States Code, authorizes the Secretary of Army to erect appropriate memorials or markers in Arlington National Cemetery to honor the memory of members of the Armed Forces.

House bill

H.R. 5055 would authorize the Secretary of the Army to place in ANC a new memorial marker honoring veterans who fought in the Battle of the Bulge during World War II. The Secretary of the Army would have exclusive authority to approve an appropriate design and site within ANC for the memorial.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 204 of the Compromise Agreement would authorize the Secretary of the Army to place in ANC a new memorial marker honoring veterans who fought in the Battle of the Bulge.

TITLE III—OTHER MATTERS

INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES FOR FISCAL YEARS 2003, 2004, 2005, 2006, AND 2007

Current law

Section 3674(a)(4) of title 38, United States Code, funds State approving agencies. From fiscal years 1995 to 2000, State approving agency ("SAA") funding was capped, with no annual increase, at \$13 million. Public Law 106-419 increased SAA funding to \$14 million for fiscal years 2001 and 2002. Under current law, the authorization amount was reduced to \$13 million as of October 1, 2002. SAAs are the agencies that determine which schools, courses, and training programs qualify as eligible for veterans seeking to use their GI Bill benefits.

Senate bill

Section 201 of S. 2237 would restore SAA funding to \$14 million per year and would increase it to \$18 million per year during fiscal years 2003, 2004, and 2005.

House bill

Section 6 of H.R. 4085 contains an identical provision.

Compromise agreement

Section 301 of the Compromise Agreement would restore SAA funding at \$14 million for fiscal year 2003, \$18 million for fiscal year 2004, \$18 million for fiscal year 2005, \$19 million for fiscal year 2006, and \$19 million for fiscal year 2007.

AUTHORITY FOR VETERANS' MORTGAGE LIFE INSURANCE TO BE CARRIED BEYOND AGE 70

Current law

Section 2106(i)(2) of title 38, United States Code, provides that Veterans' Mortgage Life Insurance ("VMLI") shall be terminated on the veteran's seventieth birthday. VMLI is designed to provide financial protection to cover eligible veterans' home mortgages in the event of death. VMLI is issued only to those severely disabled veterans who have received grants for Specially Adapted Housing from the Department of Veterans Affairs.

House bill

Section 5(b) of H.R. 4085 would permit veterans for specially-adapted housing grants to continue their VMLI coverage beyond age 70. No new policies would be issued after age 70.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 302 of the Compromise Agreement follows the House language.

AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES

Current law

There is no authorization in current law for VA to guarantee adjustable rate mortgages ("ARMs") and hybrid adjustable rate mortgages ("hybrid ARMs"). A hybrid ARM combines features of fixed rate mortgages and adjustable rate mortgages. A hybrid ARM has a fixed rate of interest for at least the first 3 years of the loan, with an annual interest rate adjustment after the fixed rate has expired.

Senate bill

Section 301 of S. 2237 would authorize VA to establish a three-year pilot program to

guarantee hybrid ARMs and reauthorize a fiscal year-1993 to 1995 pilot program to guarantee conventional ARMs. This authority would begin in fiscal year 2003 and expire at the end of fiscal year 2005.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 303 of the Compromise Agreement would authorize VA to guarantee hybrid ARMs for a period of two years. The effective date of this provision would be October 1, 2003.

INCREASE IN THE AMOUNT PAYABLE AS MEDAL OF HONOR SPECIAL PENSION

Current law

Section 1562 of title 38, United States Code, provides a special pension of \$600 per month to recipients of the Medal of Honor. Eligibility to receive the Medal of Honor special pension is contingent upon having first been awarded the Medal of Honor.

Senate bill

Section 104 of S. 2237 would increase the Medal of Honor special pension from \$600 to \$1,000 per month. Beginning in January 2003, the pension amount would be adjusted annually to maintain the value of the pension in the face of the rising cost of living. The amount of this adjustment would match the percentage of the cost-of-living adjustment paid to Social Security recipients. The Senate Bill would also provide for a one-time, lump-sum payment in the amount of special pension the recipient would have received between the date of the act of valor and the date that the recipient's pension actually commenced.

House bill

H.R. 2561 would increase the special pension payable to Medal of Honor recipients from \$600 to \$1,000 per month, and provide a lump sum payment for existing Medal of Honor recipients in an amount equal to the total amount of special pension that the person would have received had the person received special pension during the period beginning the first day of the month that began after the act giving rise to the receipt of the Medal of Honor, and ending with the last day of the month preceding the month that such person's special compensation commenced. H.R. 2561 also would provide criminal penalties for the unauthorized purchase or possession of the Medal and for making a false representation as a Medal recipient.

Compromise agreement

Section 304 of the Compromise Agreement follows the Senate language, but would modify the effective date of the provision to September 1, 2003. It is the Committee's understanding that the first month a Medal of Honor recipient would receive special pension is October 2003.

It is the Committees' intent that the lump sum payment of special pension be determined using the rates of special pension and the laws of eligibility in effect (including applicable age requirements) for months beginning after an individual's act of gallantry. Excluded from this rule would be the law of eligibility requiring an individual to have been awarded a Medal of Honor.

EXTENSION OF PROTECTIONS UNDER SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO NATIONAL GUARD MEMBERS CALLED TO ACTIVE DUTY UNDER TITLE 32, UNITED STATES CODE

Current law

The Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA"), sections 510 et seq., of title 50, United States Code Appendix, suspends enforcement of certain civil liabilities

and provides certain rights and legal protections to servicemembers who have been called up to active duty under title 10, United States Code. However, these protections do not extend to National Guard members called to duty under section 502(f) of title 32, United States Code, "to perform training or other duty." Certain homeland security duties performed under title 32, United States Code, such as protecting the nation's airports, have been carried out at the request and expense of the Federal government with National Guard members under the command of their state governors.

Senate bill

Section 401 of S. 2237 would expand SSCRA protections to include those National Guard members serving full-time, upon an order of the Governor of a State at the request of the head of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, under 502(f) of title 32, United States Code for homeland security purposes.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 305 of the Compromise Agreement would provide that when members of the National Guard are called to active service for more than 30 consecutive days under section 502(f) of title 32, United States Code, to respond to a national emergency declared by the President, coverage under the provisions of the SSCRA would be available. The Committees note that this provision is intended to extend protections of the SSCRA to members of the National Guard when called to duty under circumstances similar to those following the terrorist attacks of September 11, 2001.

EXTENSION OF INCOME VERIFICATION AUTHORITY

Current law

Section 6103(l)(7)(D) of the Internal Revenue Code gives the Internal Revenue Service ("IRS") authority to furnish income information to the VA from IRS records so that VA might determine eligibility for VA need-based pension, parents dependency and indemnity compensation, and priority for VA health-care services. This provision currently expires on September 30, 2003, pursuant to Public Law 105-33.

Section 5317 of title 38, United States Code, provides parallel authority for VA to use IRS information and requires VA to notify applicants for needs-based benefits that income information furnished by the applicant may be compared with the information obtained from the Departments of Health and Human Services and Treasury under section 6103(l)(7)(D). This parallel authority is scheduled to expire on September 30, 2008, pursuant to Public Law 106-409.

Senate bill

Section 106(a) of S. 2237 would extend section 6103(l)(7)(D) of the Internal Revenue Code through September 30, 2011. Section 106(b) would extend section 5317 of title 38, United States Code, through September 30, 2011.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 306 of the Compromise Agreement would extend section 6103(l)(7)(D) of the Internal Revenue Code through September 30, 2008.

FEE FOR LOAN ASSUMPTION

Current law

Section 3729(b)(2)(1) of title 38, United States Code, requires a 0.50 percent loan fee

for active-duty servicemembers, veterans, Reservists, and others participating in loan assumptions under section 3714.

Senate bill

The Senate Bill contains no comparable language.

House bill

The House Bills contain no comparable language.

Compromise agreement

Section 307 of the Compromise Agreement would increase the loan fee for assumptions for loans closed more than 7 days after enactment in fiscal year 2003 from 0.50 percent to 1.0 percent. The Committees intend this fee increase to expire at the end of fiscal year 2003.

TITLE IV—JUDICIAL MATTERS

The U.S. Court of Appeals for Veterans Claims ("CAVC") is an Article I Court of limited jurisdiction. It has come to the Committees' attention that the Administration has disregarded Congressional intent in interpreting the CAVC to be part of the Executive Branch and subject to rescissions of Executive Branch agency budgets, pursuant to section 1403 of Public Law 107-206. The Committees note that while the budget for the Court is included in the President's budget, the Executive Branch has no authority to review it. Public Law 100-687, section 4082(a). It is the Committees' intent to clarify that the CAVC is not part of the Executive Branch. The Committees have so stated on other occasions, e.g., "The Court, established by the Congress under Article I of the Constitution to exercise judicial power, has unusual status as an independent tribunal that is not subject to the control of the President or the executive branch." House of Representatives Report 107-156, July 24, 2001, and Senate Report 107-86, October 15, 2001.

STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS

Current law

Under section 7261(a)(4) of title 38, United States Code, the Court of Appeals for Veterans Claims applies a "clearly erroneous" standard of review to findings of fact made by the Board of Veterans' Appeals ("BVA"). The "clearly erroneous" standard has been defined as requiring CAVC to uphold BVA findings of fact if the findings are supported by "a plausible basis in the record . . . even if [CAVC] might not have reached the same factual determinations." *Wensch v. Principi*, 15 Vet. App. 362, 366-68 (2001). The recent U.S. Court of Appeals for the Federal Circuit decision of *Hensley v. West*, 212 F.3d 1255 (Fed. Cir. 2000) emphasized that CAVC should perform only limited, deferential review of BVA decisions, and stated that BVA fact-finding "is entitled on review to substantial deference." *Id.* at 1263.

Section 5107(b) of title 38, United States Code, provides that VA must find for the claimant when, in considering the evidence of record, there is an approximate balance of positive and negative evidence regarding any material issue including the ultimate merits of the claim. This "benefit of the doubt" standard applicable to proceedings before VA is unique in administrative law. Under the benefit of the doubt rule, unless the preponderance of the evidence is against the claimant, the claim is granted. *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990) and *Forshey v. Principi*, 284 F.3d 1335 (Fed. Cir. 2002).

Senate bill

Section 501 of S. 2237 would amend section 7261(a)(4) of title 38 to change the standard of review CAVC applies to BVA findings of fact

from "clearly erroneous" to "unsupported by substantial evidence." Section 502 would also cross-reference section 5107(b) in order to emphasize that the Secretary's application of the "benefit of the doubt" to an appellant's claim would be considered by CAVC on appeal.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 401 of the Compromise Agreement follows the Senate language with the following amendments.

The Compromise Agreement would modify the standard of review in the Senate bill in subsection (a) by deleting the change to a "substantial evidence" standard. It would modify the requirements of the review the Court must perform when it is making determinations under section 7261(a) of title 38, United States Code. Since the Secretary is precluded from seeking judicial review of decisions of the Board of Veterans Appeals, the addition of the words "adverse to the claimant" in subsection (a) is intended to clarify that findings of fact favorable to the claimant may not be reviewed by the Court. Further, the addition of the words "or reverse" after "and set aside" is intended to emphasize that the Committees expect the Court to reverse clearly erroneous findings when appropriate, rather than remand the case.

New subsection (b) would maintain language from the Senate bill that would require the Court to examine the record of proceedings before the Secretary and BVA and the special emphasis during the judicial process on the benefit of the doubt provisions of section 5107 (b) as it makes findings of fact in reviewing BVA decisions. This would not alter the formula of the standard of review on the Court, with the uncertainty of interpretation of its application that would accompany such a change. The combination of these changes is intended to provide for more searching appellate review of BVA decisions, and thus give full force to the "benefit of doubt" provision.

The Compromise Agreement would also modify the effective date of this provision to apply to cases that have not been decided prior to the enactment of this Act. This provision would not apply to cases in which a decision has been made, but are not final because the time to request panel review or to appeal to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") has not expired.

REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW

Current law

Under section 7292(a) of title 38, United States Code, the Federal Circuit may only review CAVC decisions involving questions of law "with respect to the validity of any statute or regulation." It does not explicitly have the authority to hear appeals of CAVC decisions that are not clearly legal interpretations of statutes or regulations.

Senate bill

Section 502 of S. 2237 would amend sections 7292(a) and (c) of title 38, United States Code, to specifically provide for appellate review of a CAVC decision on any rule of law.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 402 of the Compromise Agreement follows the Senate language.

AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT TO NON-ATTORNEY PRACTITIONERS

Current law

Currently, section 2412(d) of title 28, United States Code, the Equal Access to Justice Act ("EAJA"), shifts the burden of attorney fees from the citizen to the government in cases where the government's litigation position is not substantially justified and the citizen qualifies under certain income and asset criteria. Qualified non-attorneys admitted to practice before the CAVC may only receive fees if the EAJA application is signed by an attorney.

Senate bill

Section 503 of S. 2237 would allow qualified non-attorneys admitted to practice before the CAVC to be awarded fees under EAJA for representation provided to VA claimants without the requirement that an attorney sign the EAJA application.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 403 of the Compromise Agreement follows the Senate language.

The Committees expect that in determining the amount of reasonable fees payable to non-attorney practitioners, the Court will apply the usual rules applicable to fees for the work of other non-attorneys such as paralegals and law students based upon prevailing market rates for the kind and quality of the services furnished. 28 U.S.C. 2412 (d) (2)(A). *See, Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996).

LEGISLATIVE PROVISIONS NOT ADOPTED

ARLINGTON NATIONAL CEMETERY

Current law

Eligibility for burial at Arlington National Cemetery is governed by federal regulations at section 553.15 of title 32, Code of Federal Regulations. The following categories of persons are eligible for in-ground burial: active duty members of the Armed Forces, except those members serving on active duty for training; retired members of the Armed Forces who have served on active duty, are on a retired list and are entitled to receive retirement pay; former members of the Armed Forces discharged for disability before October 1, 1949, who served on active duty and would have been eligible for retirement under 10 U.S.C. 1202 had the statute been in effect on the date of separation; honorably discharged members of the Armed Forces awarded the Medal of Honor, Distinguished Service Cross, Air Force Cross or Navy Cross, Distinguished Service Medal, Silver Star, or Purple Heart; former prisoners of war who served honorably and who died on or after November 30, 1993; provided they were honorably discharged from the Armed Forces, elected federal officials (the President, Vice President, and Members of Congress), federal cabinet secretaries and deputies, agency directors and certain other high federal officials (level I and II executives), Supreme Court Justices, and chiefs of certain diplomatic missions; the spouse, widow or widower, minor child (under 21 years of age) and, at the discretion of the Secretary of the Army, certain unmarried adult children, and certain surviving spouses.

House bill

H.R. 4940 would codify eligibility criteria for in-ground burial at Arlington National Cemetery: members of the Armed Forces who die on active duty; retired members of

the Armed Forces, including reservists who served on active duty; members or former members of a reserve component who, but for age, would have been eligible for retired pay; members of a reserve component who die in the performance of duty while on active duty training or inactive duty training; former members of the Armed Forces who have been awarded the Medal of Honor, Distinguished Service Cross (Air Force Cross or Navy Cross), Distinguished Service Medal, Silver Star, or Purple Heart; former prisoners of war who die on or after November 30, 1993; the President or any former President; members of the Guard or Reserves who served on active duty, who are eligible for retirement, but who have not yet retired; the spouse, surviving spouse, minor child and at the discretion of the Superintendent of Arlington, certain unmarried adult children. Veterans who do not meet these requirements might qualify for the placement of their cremated remains in Arlington's columbarium.

H.R. 4940 would also provide the President the authority to grant a waiver for burial at Arlington in the case of an individual not otherwise eligible for burial under the criteria outlined above but whose acts, service, or contributions to the Armed Forces were so extraordinary as to justify burial at Arlington. The President would be allowed to delegate the waiver authority only to the Secretary of the Army.

H.R. 4940 would codify existing regulatory eligibility for interment of cremated remains in the columbarium at Arlington (generally, this includes all veterans with honorable service and their dependents), clarify that only memorials honoring military service may be placed at Arlington and set a 25-year waiting period for such memorials, and clarify that in the case of individuals buried in Arlington before the date of enactment, the surviving spouse is deemed to be eligible if buried in the same gravesite.

Senate bill

The Senate Bill contains no comparable provision.

INCREASE OF VETERANS' MORTGAGE LIFE INSURANCE ("VMLI") COVERAGE TO \$150,000

Current law

Section 2106(b) of title 38, United States Code, provides that VMLI may not exceed \$90,000.

House bill

Section 5(a) of H.R. 4085 would increase the maximum amount of coverage available under Veterans' Mortgage Life Insurance from \$90,000 to \$150,000. This would increase the amount of the outstanding mortgage, which would be payable if the veteran were to die before the mortgage is paid in full.

Senate bill

The Senate Bill contains no comparable provision.

UNIFORM HOME LOAN GUARANTY FEES FOR QUALIFYING MEMBERS OF THE SELECTED RESERVE AND ACTIVE DUTY VETERANS

Current law

Section 3729(b) of title 38, United States Code, provides the amounts in fees to be collected from each person participating in VA's Home Loan Guaranty Program.

Currently, members of the Selected Reserve pay a 0.75 percent higher funding fee under the home loan program than other eligible veterans.

House bill

Section 4 of H.R. 4085 would amend the Loan Fee Table in section 3729(b) of title 38, United States Code, to provide for uniformity in the funding fees charged to members of the Selected Reserve and active duty

veterans for VA home loans. The fee would be reduced for the period beginning on October 1, 2002, and ending on September 30, 2005.

Senate bill

The Senate Bill contains no comparable provision.

PROHIBIT ASSIGNMENT OF MONTHLY VETERANS BENEFITS AND CREATE AN EDUCATION AND OUTREACH CAMPAIGN ABOUT FINANCIAL SERVICES AVAILABLE TO VETERANS

Current law

Section 5301 of title 38, United States Code, currently prohibits the assignment or attachment of a veteran's disability compensation or pension benefits. In recent years, private companies have offered contracts to veterans that exchange up-front lump sums for future benefits.

Senate bill

Section 105 of S. 2237 would clarify the applicability of the prohibition on assignment of veterans benefits through agreements regarding future receipt of compensation, pension, or dependency and indemnity compensation. This provision would make violation of this prohibition punishable by a fine and up to one year in jail. This provision would also require VA to create a five-year education and outreach campaign to inform veterans about available financial services.

House bill

The House Bills contain no comparable provision.

CLARIFICATION OF RETROACTIVE APPLICATION OF PROVISIONS OF THE VETERANS CLAIMS ASSISTANCE ACT

Current law

Public Law 106-475, the Veterans Claims Assistance Act of 2000 ("VCAA"), restored and enhanced VA's duty to assist claimants in developing their claims for veterans benefits. Specifically, section 3(a) of the VCAA requires VA to take certain steps to assist claimants.

Two recent decisions by the U.S. Court of Appeals for the Federal Circuit have found that the provisions in the VCAA pertaining to VA's duty to assist cannot be applied retroactively to claims pending at the time of its enactment. In *Dyment v. Principi*, 287 F.3d 1377 (Fed. Cir. 2002), the Federal Circuit stated: "The Supreme Court has held that a federal statute will not be given retroactive effect unless Congress has made its contrary intention clear. There is nothing in the VCAA to suggest that section 3(a) was intended to applied [sic] retroactively." In *Bernklau v. Principi*, 291 F.3d 795, 806 (Fed. Cir. 2002), the Court again concluded: "[S]ection 3(a) of the VCAA does not apply retroactively to require that proceedings that were complete before the Department of Veterans Affairs and were on appeal to the Court of Appeals for Veterans Claims or this court be remanded for readjudication under the new statute."

Senate bill

Section 504 of S. 2237 would apply section 3 of VCAA retroactively to cases that were ongoing either at various adjudication levels within VA or pending at the applicable Federal courts prior to the date of VCAA's enactment. Section 505 of the Senate Bill would provide for claims decided between the handing down of the *Dyment* case and enactment of this provision to receive the full notice, assistance, and protection afforded under the VCAA.

House bill

The House Bills contain no comparable provision.