

is certainly no different. I ask you to join me in commending them for the important and necessary role they play in society by working tirelessly to help an expanding number of adults who desire to remain vital and active in their later years.

EARMARK DECLARATION

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 2008

Mr. POE. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information for publication in the CONGRESSIONAL RECORD regarding earmarks I received as part of H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act for FY09.

Account: Army, RDT&E, Army Missile Defense Systems Integration (Non-Space).

Legal Name of Requesting Entity: Lamar University.

Address of Requesting Entity: 4400 MLK Blvd., P.O. Box 10009, Beaumont, TX 77710.

Description of Request: The Advanced Fuel Cell Research Program (AFC) at Lamar University is currently operating fuel cell test beds on behalf of U.S. Army Space and Missile Defense Command (USASMDC) that simulates power requirements and characterizes alternative power and storage capabilities for a wide variety of USASMDC systems. Critical need continues to exist for an efficient and clean advanced renewable energy source to meet urgent U.S. Army space and missile defense battlefield requirements. AFC continues to develop, test and validate advanced fuel cell technologies necessary to enable lightweight, power efficient, environmentally clean, and cost-effective renewable energy technology and products for Army space and missile defense systems including: sensors, radars, weapons, and communications. The FY09 request will leverage fuel cell technology achievements funded through previous DoD Appropriations bills by transitioning prototype lightweight fuel cells into Army renewable power products. UAV (unmanned aerial vehicle) prototypes integrated with the AFC-developed fuel cells will be flight-tested and demonstrated under field conditions to validate reliable, long duration, and quality power for missile defense situational awareness missions. The AFC's advanced hydride fuel cell will validate the UAV's unique long loitering time and stealth capabilities for critical extended endurance surveillance missions. Amount Received: \$3,000,000. These funds will be used to pay labor costs for 22 full time personnel, lab and test bed equipment and supplies, and facilities improvement.

Account: Department of Homeland Security, U.S. Coast Guard Bridge Replacement.

Legal Name of Requesting Entity: Gulf Intracoastal Canal Association.

Address of Requesting Entity: 2010 Butler Drive, Friendswood, TX 77546.

Description of Request: Galveston Causeway Railroad Bridge Replacement. Today, 21 thousand barges move 29 million tons of cargo worth \$10 billion through the Galveston Bridge each year. In 2001, after a lengthy review process, the bridge was declared a haz-

ard to navigation by the Coast Guard under the Truman Hobbs Act. The current estimated cost of replacement is almost \$68 million. This request is consistent with the intended and authorized purpose of the Department of Homeland Security, U.S. Coast Guard, under the Truman Hobbs Act. Amount Received: \$4,000,000. Under the Truman Hobbs Act, the federal government pays 90 percent of replacement cost and the bridge owner, Galveston County pays 10 percent.

VETERANS' BENEFITS IMPROVEMENT ACT OF 2008

SPEECH OF

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 2008

Mr. FILNER. Madam Speaker, I submit the following:

S. 3023, as amended, the Veterans' Benefits Improvement Act of 2008, reflects a Compromise Agreement reached by the House and Senate Committees on Veterans' Affairs (the Committees) on the following bills reported during the 110th Congress: H.R. 674; H.R. 3681, as amended; H.R. 3889, as amended; H.R. 4255, as amended; H.R. 5664, as amended; H.R. 5892, as amended; H.R. 6221, as amended; H.R. 6225, as amended, and H.R. 6832 (House Bills); S. 1315, as amended; and S. 3023, as amended (Senate Bills).

H.R. 674 passed the House on July 31, 2008; H.R. 3681, as amended, passed the House on May 20, 2008; H.R. 3889, as amended, passed the House on May 20, 2008; H.R. 4255, as amended, passed the House on July 31, 2008; H.R. 5664, as amended, passed the House on May 20, 2008; H.R. 5892, as amended, passed the House on July 30, 2008; H.R. 6221, as amended, passed the House on July 31, 2008; H.R. 6225, as amended, passed the House on July 31, 2008; H.R. 6832 passed the House on September 11, 2008; S. 1315, as amended, passed the Senate on April 24, 2008, and passed the House, as amended, on September 22, 2008; and S. 3023, as amended, passed the Senate on September 16, 2008.

The Committees have prepared the following explanation of S. 3023, as further amended, to reflect a Compromise Agreement between the Committees. Differences between the provisions contained in the Compromise Agreement and the related provisions of the House Bills and the Senate Bills 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 PENSION MATTERS

REGULATIONS ON CONTENTS OF NOTICE TO BE PROVIDED CLAIMANTS BY THE DEPARTMENT OF VETERANS AFFAIRS REGARDING THE SUBSTANTIATION OF CLAIMS

CURRENT LAW

Under current law, the Secretary has general authority to issue regulations.

SENATE BILL

Section 101 of S. 3023, as amended, would amend subsection (a) of section 5103 of title 38, United States Code, to add a new paragraph that would require the Department of Veterans Affairs (VA) to promulgate regulations specifying the content of notices required by the Veterans Claims Assistance Act (VCAA). The regulations required by S.

3023 would provide that the notice specify for each type of claim for benefits the general information and evidence required to substantiate the claim. The regulations would specify different content of the notices depending on the type of claim concerned, whether it be an original claim, a claim for reopening, or a claim for increase in benefits. The Senate bill would provide authority for additional or alternative content for notice if appropriate to the particular benefit or services sought under the claim. The regulations would also be required to include in the notice the time period within which such information and evidence must be submitted. The provision would be applicable only to notices which would be sent on or after the date the regulations are effective.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 101 of the Compromise Agreement generally follows the Senate language.

The Committees note that the notice required by section 5103 applies to all types of applications for benefits and services. While the Committees recognize that veterans seeking service-connected compensation are most likely to receive VCAA notices, the Compromise Agreement specifically provides that the notice shall provide that the content of notices be appropriate to the type of benefits or services sought. The Committees intend that the Compromise Agreement would require a notice involving a pension claim to have different content than a notice concerning a clothing allowance or a claim for specially adapted housing.

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

In other respects, the Committees agree that Senate Report 110-148 contains a full explanation of the provision contained in the Compromise Agreement.

JUDICIAL REVIEW OF ADOPTION AND REVISION BY THE SECRETARY OF VET- ERANS AFFAIRS OF THE SCHEDULE OF RATINGS FOR DISABILITIES OF VET- ERANS

CURRENT LAW

Under current law, section 502 of title 38, judicial review of actions involving VA's rating schedule for disabilities is prohibited.

SENATE BILL

Section 102 of S. 3023, as amended, would authorize the United States Court of Appeals for the Federal Circuit to review VA actions relating to the adoption or revision of the VA disability rating schedule in the same manner as other comparable actions of the Secretary are reviewed.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 102 of the Compromise Agreement follows the Senate language.

CONFORMING AMENDMENT RELATING TO NON-DEDUCTIBILITY FROM VETERANS' DISABILITY COMPENSATION OF DISABILITY SEVERANCE PAY FOR DISABILITIES INCURRED BY MEMBERS OF THE ARMED FORCES IN COMBAT ZONES

CURRENT LAW

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

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

SENATE BILL

Section 104 of S. 3023, as amended, would make a conforming amendment, so that section 1161 of title 38 will be consistent with section 1212 of title 10. The amendment would take effect on January 28, 2008, as if it had been included in the Wounded Warrior Act. As a result, the amended section 1161 of title 38 would reflect the change to section 1212 of title 10 eliminating the requirement that severance pay for a disability incurred in a combat zone be deducted from disability compensation from VA.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 103 of the Compromise Agreement follows the Senate language.

REPORT ON PROGRESS OF THE SECRETARY OF VETERANS AFFAIRS IN ADDRESSING CAUSES FOR VARIANCES IN COMPENSATION PAYMENTS FOR VETERANS FOR SERVICE-CONNECTED DISABILITIES

CURRENT LAW

There is no applicable provision in current law.

SENATE BILL

Section 105 of S. 3023, as amended, would require VA to submit a report to Congress describing the Department's progress in addressing the causes for any unacceptable variances in compensation payments to veterans.

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

Section 105 would require the report to include three specific elements: (1) a description of the Veterans Benefits Administration's efforts to coordinate with the Veterans Health Administration (VHA) to improve the quality of disability examinations performed by VHA and contract clinicians,

including the use of standardized templates; (2) an assessment of the current personnel requirements at each regional office for each type of claims adjudication position; and (3) a description of the differences, if any, in current patterns of submittal rates for claims from various segments of the veterans population, including veterans from rural and highly rural areas, minority veterans, veterans who served in the National Guard or Reserve, and military retirees.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 104 of the Compromise Agreement generally follows the Senate language. The Committees acknowledge that it is unreasonable to expect states to have exactly the same average compensation or percentage of veterans receiving compensation. In determining whether differences are unacceptable, the Committees expect that the Secretary would identify those that do not result from such basis demographic discrepancies.

EXTENSION OF TEMPORARY AUTHORITY FOR THE PERFORMANCE OF MEDICAL DISABILITY EXAMINATIONS BY CONTRACT PHYSICIANS

CURRENT LAW

Public Law 104-275, the Veterans' Benefits Improvements Act of 1996, authorized VA to carry out a pilot program of contract disability examinations at ten VA regional offices using amounts available for payment of compensation and pensions. Public Law 108-183, the Veterans Benefits Act of 2003, provided additional authority to VA, on a time-limited basis, to contract for disability examinations using appropriated funds. This additional authority expires on December 31, 2009.

SENATE BILL

Section 604 of S. 3023, as amended, would amend section 704(c) of the Veterans Benefits Act of 2003 (Public Law 108-183) by striking "December 31, 2009" and inserting "December 31, 2012." This would extend VA's authority, through December 31, 2012, to use appropriated funds for the purpose of contracting with non-VA providers to conduct disability examinations.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 105 of the Compromise Agreement follows the Senate language except that the authority extends only until December 31, 2010.

ADDITION OF OSTEOPOROSIS TO DISABILITIES PRESUMED TO BE SERVICE-CONNECTED IN FORMER PRISONERS OF WAR WITH POST-TRAUMATIC STRESS DISORDER

CURRENT LAW

Subsection 1112(b) of title 38 contains two lists of diseases that are presumed to be related to an individual's experience as a prisoner of war. The first presumptive list, in paragraph (2) of section 1112(b), requires no minimum internment period and includes diseases associated with mental trauma or acute physical trauma which could plausibly be caused by even a single day of captivity. The second presumptive list, found under paragraph (3) of section 1112(b), has a 30-day minimum internment requirement.

SENATE BILL

Section 601 of S. 1315, as amended, would add osteoporosis in veterans whom the Secretary has previously determined have post-

traumatic stress disorder (PTSD), to the list of disabilities presumed to be service-connected in former prisoners of war found under paragraph (3) of section 1112(b) of title 38.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 106 of the Compromise Agreement follows the Senate language.

TITLE II—MODERNIZATION OF DEPARTMENT OF VETERANS AFFAIRS DISABILITY COMPENSATION SYSTEM

SUBTITLE A—BENEFITS MATTERS

AUTHORITY FOR TEMPORARY DISABILITY RATINGS

CURRENT LAW

Under current law, the Secretary has, under the Secretary's general authority, issued regulations providing temporary ratings for veterans with unstabilized medical conditions who are recently discharged from active duty, hospitalized veterans, veterans undergoing convalescent care, and veterans who are discharged from active duty with a mental disorder that develops as the result of a highly stressful event.

HOUSE BILL

Section 109 of H.R. 5892, as amended, would have provided VA with authority to issue partial ratings and to act in a more expeditious manner for claims presenting undisputed severe and very severe injuries and in turn provide compensation more quickly where the service-connection link is indisputable. VA currently possesses the ability to issue partial ratings, although this authority is not expressly stated in statute. H.R. 5892, as amended, would expressly grant VA that authority and require VA to issue a partial rating in the instances where a veteran has sustained severe injuries (50 percent or above) and very severe injuries (100 percent) that can be promptly rated, while deferring other conditions that may not be ready to rate. VA and the Department of Defense (DOD) have defined these conditions, and they include limb amputations, paralysis, traumatic brain injury (TBI), severe burns, blindness, deafness, along with other radical injuries.

The House bill also further clarified the language so that VA could rate the indisputable injuries based solely on the Department of Defense medical records, which would be extensive for these categories of injuries.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 211 of the Compromise Agreement would codify the various provisions for temporary ratings contained in current regulations. Specifically, the Committees intend to provide a specific statutory basis for the regulations currently found at sections 4.28, 4.29, 4.30 and 4.129 of title 38, Code of Federal Regulations.

In addition to the authority currently contained in regulations, the Compromise Agreement provides that veterans discharged or released from active duty within 365 days of application who have stabilized medical conditions would be eligible to receive a temporary rating under certain circumstances. In general, veterans with stabilized disabilities would be eligible to receive a temporary rating under conditions which are similar to those applied to veterans with unstabilized conditions when a total rating is not immediately assignable.

The Committees intend that, under this new authority, a veteran who has a stabilized condition, such as a healed amputation, but has one or more severe disabilities for which a total rating is not immediately assignable under the regular provisions of the rating schedule or on the basis of Individual Unemployability, could qualify for a temporary rating when employment was adversely impacted by such disabilities. The Compromise Agreement would permit such a veteran to be eligible to receive a temporary rating when such veteran has severe disabilities that result in substantially gainful employment not being feasible or advisable or the veteran has unhealed or incompletely healed wounds or injuries that make material impairment of employability likely. The Committees intend that, in considering eligibility for a temporary rating under this section, both stabilized and unstabilized conditions could be considered in determining the impact of such disabilities upon employment.

The rating assigned under these conditions would be as prescribed by the Secretary in regulations. The Committees note that, where current regulations are adequate to address the conditions for temporary ratings, as set forth in this section, the Secretary would not be required to issue new regulations.

SUBSTITUTION UPON DEATH OF CLAIMANT

CURRENT LAW

Currently, upon the death of a claimant with a claim or appeal pending adjudication at the time of death, the surviving spouse or other beneficiary is unable to take up the claim where it is in the process and must refile the claim separately as if submitting a new claim. Section 5121 of title 38 allows for survivors, in order of priority, to refile this new claim for accrued benefits.

HOUSE BILL

Section 111 of H.R. 5892, as amended, would provide that, in the event of the death of a veteran with a pending disability claim, an eligible dependent as identified under section 5121(a)(2) of title 38 would be authorized to substitute for the deceased claimant rather than being forced to re-file and restart the claim or appeal. This provision would also allow an eligible survivor to submit additional evidence for up to one year after the death of a veteran. This provision further stipulates that only one person may be treated as the claimant under this section. Additionally, if the person who would be eligible to be a claimant under this section certifies to the Secretary that he or she does not want to be treated as the claimant for such purposes, he or she may designate the person who could then be entitled to receive the benefits under this section. The effective date of this section would apply only to claims of veterans who die on or after the date of enactment.

SENATE BILL

The Senate bill contains no comparable provisions.

COMPROMISE AGREEMENT

Section 212 of the Compromise Agreement generally follows the House language. However, the Compromise Agreement stipulates that, not later than one year after the date of the death of the claimant, the individual who would be eligible to receive accrued benefits under section 5121(a) of title 38 must file a request to be substituted as the claimant for the purpose of processing the claim to completion. This is the same time period within which claimants for accrued benefits are required to file an application for accrued benefits must file such a claim under

current law. Under the Compromise Agreement, any person seeking substitution shall present evidence of the right to claim such status within the time period prescribed by the Secretary in regulations.

REPORT ON COMPENSATION OF VETERANS FOR LOSS OF EARNING CAPACITY AND QUALITY OF LIFE AND ON LONG-TERM TRANSITION PAYMENTS TO VETERANS UNDERGOING REHABILITATION FOR SERVICE-CONNECTED DISABILITIES

CURRENT LAW

Under chapter 11 of title 38, VA pays compensation to veterans who suffer disabilities as a result of an injury or disease incurred or aggravated in the line of duty during active duty. Section 1155 of title 38 requires VA to adopt and apply a schedule of disability ratings, which is used to determine the amount of compensation that will be provided. That schedule is based on the average impairment of earning capacity caused by a service-connected disability.

In July 2007, the President's Commission on Care for America's Returning Wounded Warriors recommended that Congress restructure VA disability payments to include transition payments and that VA update the rating schedule to reflect current injuries and the impact of disability on quality of life. In 2008, the Secretary entered into a contract to conduct studies on those issues. The studies examined the appropriate level of disability compensation to be paid to veterans to compensate for loss of earning capacity and loss of quality of life as a result of service-connected disabilities. The studies also examined the feasibility and appropriate level of long-term transition payments to veterans who are separated from the Armed Forces due to a disability while those veterans are undergoing a program of rehabilitation.

SENATE BILL

Section 106 of S. 3023, as amended, would require the Secretary to provide Congress with a report regarding the results of studies examining the appropriate compensation to be provided to veterans for loss of earning capacity and loss of quality of life caused by service-connected disabilities and examining long-term transition payments to veterans undergoing rehabilitation for service-connected disabilities.

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

HOUSE BILL

Section 102(a) of H.R. 5892, as amended, would require the Secretary to conduct a study on adjusting the schedule for rating disabilities adopted and applied under section 1155 of title 38. It would require VA to complete the study within 180 days after the date of enactment and would require VA, within 60 days after completing the study, to submit to Congress a report on the study. Not later than 120 days after the Secretary submits the report, the Secretary would be required to submit a plan for readjusting the rating schedule.

COMPROMISE AGREEMENT

Section 213 of the Compromise Agreement generally follows the Senate language.

ADVISORY COMMITTEE ON DISABILITY COMPENSATION

CURRENT LAW

There is no applicable provision in current law.

HOUSE BILL

Section 102(d) of H.R. 5892, as amended, would require the Secretary to establish an 18-member Advisory Committee on Disability Compensation. The Committee would consist of individuals who have demonstrated civic or professional achievement and who have experience in the provision of disability compensation or have other relevant scientific or medical expertise. The Secretary would determine the terms of pay and service of such members, but their terms of service would not exceed two years. The Secretary would be authorized to reappoint members for subsequent terms.

Section 102 would require the Committee to be responsible for providing advice to the Secretary with respect to the maintenance and periodic adjustment of the rating schedule.

It would also require the Committee to submit annual reports to the Secretary and require the Secretary to submit reports and recommendations to the Committees on Veterans' Affairs of the House and Senate.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 214 of the Compromise Agreement contains the House provision with modifications. The Committees intend that this Committee provide medical and scientific advice to the Secretary concerning the maintenance and readjustment of the rating schedule. Therefore, the Compromise Agreement provides that membership be limited to individuals with experience with the provision of disability compensation by the Department or individuals who are leading medical or scientific experts in relevant fields. The Compromise Agreement extends the term of service of such members to four years and provides that the terms are to be staggered so as to provide for continuity of membership on the Committee. The Compromise Agreement provides that the Secretary shall appoint a Chair of the Committee.

The Compromise Agreement specifically provides that the Secretary shall ensure that appropriate personnel, funding, and other resources are provided to the Committee to carry out its responsibilities. The Compromise Agreement requires the Committee to submit biennial reports to the Secretary. The Compromise Agreement requires the Secretary to submit such biennial reports to the Committees on Veterans' Affairs of the Senate and House together with the recommendations of the Committee and the Secretary.

SUBTITLE B—ASSISTANCE AND PROCESSING MATTERS

PILOT PROGRAMS ON EXPEDITED TREATMENT OF FULLY DEVELOPED CLAIMS AND PROVISION OF CHECKLISTS TO INDIVIDUALS SUBMITTING CLAIMS

CURRENT LAW

Section 5103 of title 38 requires the Secretary to notify a claimant of the information and medical or lay evidence needed to substantiate the claimant's claim. Under section 5103A of title 38, the Secretary is required to assist the claimant by making reasonable efforts to obtain evidence necessary

to substantiate the claimant's claim. In claims for service-connection, this duty includes obtaining records held by any Federal department or agency and by providing a medical examination or opinion necessary to make a determination on the claim. VA is required to comply with these laws before issuing a decision on the claim.

HOUSE BILL

Section 107(a) of H.R. 5892, as amended, would require the Secretary to provide for the expeditious treatment of any fully developed claim. A fully developed claim would be defined as a claim for which the claimant received assistance from a veterans service officer, a State or county veterans service officer, an agent, an attorney or for which the claimant submits with the claim an indication that the claimant does not want to submit any additional information and does not require assistance with respect to the claim. The claimant would certify in writing that no additional information is available or needed to be submitted in order for the claim to be adjudicated. The Secretary would be required to decide such claims within 90 days of submittal.

Section 107(b) of H.R. 5892, as amended, would require the Secretary to amend the notice required by section 5103 of title 38 to require the creation of a detailed checklist for claims for specific requests of additional information or evidence.

The checklist would be required to be developed within 180 days of enactment.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 221 of the Compromise Agreement accepts the House provision with an amendment that creates two pilot programs to test the effectiveness of providing expedited treatment of fully-developed claims and providing an additional checklist that includes information or evidence required to be submitted by the claimant to substantiate the claim. The pilot program on expedited treatment of fully developed claims would be carried out at 10 VA regional offices for a period of one year beginning 60 days after the date of enactment; the pilot program on the provision of checklists to individuals submitting claims would be carried out at four VA regional offices for a period of one year beginning 60 days after the date of enactment for original claims and for a period of three years beginning 60 days after the date of enactment for reopened claims and claims for increased disability ratings. The Secretary would be required to provide interim reports for each pilot authorized under this section and final reports would be due to Congress upon conclusion of the pilots.

The Compromise Agreement provides that such checklist be construed as an addendum to the notice require by section 5103 of title 38 and shall not be considered as part of the notice for purposes of reversal or remand of a decision of the Secretary. As such, the Committees stress that these checklists are intended to serve only as guidance for claimants and that any errors in these checklists should not be the basis for a remand of the claimant's claim.

The Committees expect that, in selecting locations for the pilot projects, the Secretary shall ensure that regional offices of various size and geographic location are included in the pilot projects. The Committees encourage the Secretary to locate the four pilot programs for the checklist at locations selected for the expedited claims pilot projects.

OFFICE OF SURVIVORS ASSISTANCE

CURRENT LAW

There is no relevant provision in current law.

HOUSE BILL

Section 101 of H.R. 5892, as amended, would require VA to create an Office of Survivors Assistance (Office) within the Veterans Benefits Administration that would provide policy and program analysis and oversight regarding all benefits and services delivered by the VA to survivors of deceased veterans and servicemembers.

The Office would be responsible for ensuring that survivors and dependents of deceased veterans and deceased members of the Armed Forces have access to applicable benefits and services provided under title 38. The Office would also be responsible for regular and consistent monitoring of benefits delivery to survivors and dependents and ensuring that appropriate referrals are made with respect to various administrations within the VA.

The Office would act as a primary advisor to the Secretary on all matters related to the policies, programs, legislative issues, and other initiatives affecting such survivors and dependents.

The Secretary would be required to identify and include the activities of the Office in the annual report to Congress under section 529 of title 38.

In establishing the Office, the Secretary would have to seek guidance from interested stakeholders, including veterans service organizations and other service organizations.

The Secretary would be required to ensure that appropriate personnel, funding, and other resources are provided to the Office to carry out its responsibilities.

SENATE BILL

The Senate Bills contain no comparable provisions.

COMPROMISE AGREEMENT

Section 222 of the Compromise Agreement follows the House language with modifications. In the Compromise Agreement, the Office is established in the Department rather than in the Veterans Benefits Administration (VBA). The Committees expect that, by placing the Office under the Department, the full spectrum of VA benefits and services for survivors would be addressed.

The Compromise Agreement does not specify the duties of the office in the legislation. However, the Committees intend that the Office be responsible for ensuring that the surviving spouses, children and parents of deceased veterans, including deceased members of the Armed Forces, have access to applicable benefits and services under title 38. The Committees expect that programs carried out by the Department for such survivors will be conducted in a manner that is responsive to their specific needs. The Committees expect the Office to conduct regular and consistent monitoring of the delivery of benefits and services to this population. The Committees expect the Office to ensure that policies and procedures are such that such survivors will receive appropriate referrals to the relevant administrations and offices of the Department, so that such survivors may receive all of the benefits and services for which they are eligible.

COMPTROLLER GENERAL REPORT ON ADEQUACY OF DEPENDENCY AND INDEMNITY COMPENSATION TO MAINTAIN SURVIVORS OF VETERANS WHO DIE FROM SERVICE-CONNECTED DISABILITIES

CURRENT LAW

VA dependency and indemnity compensation (DIC) is a benefit that is paid to survivors of certain veterans. To be eligible, the veteran's death must have resulted from: a disease or injury incurred or aggravated in the line of duty or active duty for training; an injury incurred or aggravated in the line

of duty while on inactive duty training; or, a service-connected disability or a condition directly related to a service-connected disability.

DIC may also be paid to survivors of veterans who were totally disabled from service-connected conditions at the time of death, even if the death was not cause by their service-connected disabilities. To be eligible for the benefit under this circumstance, the veteran must have been rated totally disabled for the ten years preceding death; rated totally disabled from the date of military discharge and for at least five years immediately preceding death; or, a former prisoner of war who died after September 30, 1999, and who was rated totally disabled for at least one year immediately preceding death.

Surviving spouses of veterans who died on or after January 1, 1993, receive a basic rate, plus additional amounts for dependent children. Surviving spouses of veterans who died prior to January 1, 1993, receive an amount based on the deceased veteran's military pay grade, plus additional amounts for dependents.

SENATE BILL

Section 807 of S. 1315, as amended, would require the Comptroller General to report on the adequacy of DIC to maintain survivors of veterans who die from service-connected disabilities. The Comptroller General would be required to submit, to the Committees on Veterans' Affairs of the Senate and House of Representatives, a report regarding the adequacy of the benefits to survivors in replacing the deceased veteran's income. The Comptroller General would be required to include a description of the current system of payment of DIC to survivors, including a statement of DIC rates; an assessment of the adequacy of DIC in replacing a deceased veteran's income; and any recommendations that the Comptroller General considers appropriate in order to improve or enhance the effects of DIC in replacing the deceased veteran's income. The Comptroller General would be required to submit the report not later than ten months after the date of enactment of the provision.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 223 of the Compromise Agreement follows the Senate language.

INDEPENDENT ASSESSMENT OF QUALITY ASSURANCE PROGRAM

CURRENT LAW

Section 7731 of title 38 requires the Secretary to carry out a quality assurance program within the Veterans Benefits Administration. Under this provision, the Secretary has elected to carry out a separate quality assurance program, the Systematic Technical Accuracy Review (STAR), for measuring compensation and pension claims processing accuracy.

HOUSE BILL

Section 106 of H.R. 5892, as amended, would require the Secretary to contract with an independent third-party entity for an annual quality assurance assessment. The assessment would measure a statistically valid sample of VBA employees and their work product to assess quality and accuracy. The provision would also require the production of automated categorizable data to help identify trends. Under this provision, the Secretary would be required to use information gathered through the annual assessment to develop an employee certification as found in section 105 of H.R. 5892, as amended.

SENATE BILL

The Senate Bills contain no similar provision.

COMPROMISE AGREEMENT

Section 224 of the Compromise Agreement follows the House bill with modifications. Under the Compromise Agreement, the Secretary would enter into a contract with an independent third-party entity to conduct a three-year assessment of the quality assurance program. The Committees intend that this provision would be applicable only to quality assurance programs involving the adjudication of claims for compensation and pension benefits. The Compromise Agreement does not include language from section 106 of H.R. 5892, as amended, which would have expressly required the Secretary to ensure the accuracy and consistency across different regional offices with the Department as an amendment to 7731, of title 38, United States Code. However, the Committees agree that the Secretary should strive to reduce variances in ratings for disability compensation between regional offices. The Committees note that section 104 of the Compromise Agreement requires a report from the Secretary in addressing unacceptable variances in compensation payments.

The Compromise Agreement also contains provisions from the House bill which would require the Secretary to retain, monitor, and store in an accessible format certain data with respect to claims for service-connected disability compensation. The Committee recognizes that sex and race data are not kept by the Department within the database utilized by the Veterans Benefits Administration at this time and, therefore, excluded those items from the data required to be collected.

In other respects, the Compromise Agreement generally follows the House bill. The Committees agree that House Report 110-789 contains a full explanation of the House provisions which were modified in the Compromise Agreement.

CERTIFICATION AND TRAINING OF EMPLOYEES OF THE VETERANS BENEFITS ADMINISTRATION RESPONSIBLE FOR PROCESSING CLAIMS

CURRENT LAW

The Secretary has general authority to manage and provide for certification of employees of the Department. There is no specific applicable provision in current law.

HOUSE BILL

Section 105 of H.R. 5892, as amended, would require the Secretary to develop a certification examination to test appropriate VBA employees and managers who are responsible for processing claims for benefits. The Secretary would be required to develop such examinations in consultation with specified stakeholders. The Secretary would be directed to require such employees and managers to take a certification examination. The Secretary would be prohibited from satisfying the requirements of the bill through the use of any certification examination or program that exists as of the date of enactment of the bill.

The House provision would also require the Secretary to contract with an outside entity to conduct an evaluation of VBA's training and quality assurance programs within 180 days of enactment and provide the results of such evaluation to Congress.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 225 of the Compromise Agreement follows the House language with modifications. The Compromise Agreement would apply only to employees and managers who are responsible for processing claims for compensation and pension benefits. By using

the general term "compensation and pension" benefits, the Committees intend that the provision would apply to employees and managers responsible for processing claims for all monetary benefits paid to veterans and survivors, including DIC, death compensation, death pension and benefits paid to children under chapter 18 of title 38.

Under the Compromise Agreement, the Secretary is required to consult with examination development experts, interested stakeholders, and employee representatives and consider the data produced under section 7731(c)(3) of title 38 as added by section 224 of the bill.

The Compromise Agreement does not contain the prohibition on use of certification examinations or programs that currently exist as in H.R. 5892, as amended. However, the Compromise Agreement requires the Secretary to develop an updated certification examination no later than one year after the date of enactment of this bill and to begin using the updated examination within 90 days after the date on which development of the updated examination is complete.

The Compromise Agreement does not include the House provision requiring that VA contract for an evaluation. However, it does require the Comptroller General of the United States to evaluate the training programs administered for employees of the Veterans Benefits Administration and submit a report on the findings of the evaluation to the Committees.

STUDY OF PERFORMANCE MEASURES FOR CERTAIN EMPLOYEES OF THE VETERANS BENEFITS ADMINISTRATION

CURRENT LAW

There is no applicable provision in current law.

HOUSE BILL

Section 103 of H.R. 5892, as amended, would require the Secretary to conduct a study of VBA's work credit system, which is used to measure the work production of VBA employees. This section of the House bill would require that the Secretary consider the advisability of implementing: performance standards and accountability measures; guidelines and procedures for the prompt processing of claims that are ready to rate upon submission; guidelines and procedures for the processing of such claims submitted by severely injured and very severely injured veterans; and requirements for assessments of claims processing at each regional office for the purposes of producing lessons learned and best practices. A report on the study would be required no later than 180 days after the Secretary submits to Congress the report; and the Secretary would be obligated to establish a new system for evaluating work production. This section of H.R. 5892, as amended, would prohibit the Secretary from awarding a work credit to any employee of the Department if the Secretary has not implemented a new system within the time specified.

Section 104 of H.R. 5892, as amended, would require the Secretary to conduct a study on the work management system of the Veterans Benefits Administration designed to improve accountability, quality, and accuracy and reducing the time for processing claims for benefits.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 226 of the Compromise Agreement generally follows the House language with modifications. Under the Compromise Agree-

ment, the Secretary would be required to conduct a study on the effectiveness of the current employee work credit system and the work management system of the Veterans Benefits Administration which is used to measure and manage the work production of employees of the Veterans Benefits Administration who handle claims for compensation and pension benefits. The Secretary would be required to report to Congress on the work credit system and work management system no later than October 31, 2009. The report would be required to identify the components required to implement an updated system for evaluating such VBA employees.

In addition, the Compromise Agreement requires that not later than 210 days after the date on which the Secretary submits to Congress the report required under this section, the Secretary shall establish an updated system, based upon the findings of the study, for evaluating the performance and accountability of VBA employees who are responsible for processing claims for compensation or pension benefits.

REVIEW AND ENHANCEMENT OF USE OF INFORMATION TECHNOLOGY IN VETERANS BENEFITS ADMINISTRATION

CURRENT LAW

There is no applicable provision in current law.

HOUSE BILL

Section 110 of H.R. 5892, as amended, would require the Secretary to conduct a review, no later than one year after the date of enactment of this Act, on the use of information technology within the Veterans Benefits Administration. It also requires the Secretary to develop a comprehensive plan for use of such technology in processing claims for benefits so as to reduce subjectivity, avoidable remands, and regional office variances in disability ratings for specific disabilities.

The House bill would also require that the comprehensive plan include information technology upgrades including web portals, rules-based expert systems, and decision support software.

Under the House bill, a report on the progress of the review and plan would be due to Congress by no later than January 1, 2009.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 227 of the Compromise Agreement generally follows the House bill, except that it clarifies two of the comprehensive plan requirements contained in section 110 of H.R. 5892, as amended. The Compromise Agreement gives the Secretary the discretion to include the following elements, to the extent practicable: the ability for benefits' claimants to view applications online and compliance with security requirements as noted in section 227 (b)(3)(B)(ii) of the Compromise Agreement.

The Compromise Agreement also requires that the plan be developed, not later than one year after date of enactment.

The Compromise Agreement requires, no later than April 1, 2010, a report to Congress on the review and the comprehensive plan required under this section.

STUDY AND REPORT ON IMPROVING ACCESS TO MEDICAL ADVICE

CURRENT LAW

There is no applicable provision in current law.

HOUSE BILL

Section 108 of H.R. 5892, as amended, would require the Secretary to conduct a study to

evaluate the need of the Veterans Benefits Administration to employ medical professionals who are not physicians, to act as a medical reference for employees of the Administration so that such employees may accurately assess medical evidence submitted in support of claims for benefits under laws administered by the Secretary. The House bill would prohibit any medical professionals of the Veterans Health Administration from being employed to rate any disability or evaluate any claim. It would require the Secretary to conduct a statistically significant survey of VBA employees to ascertain whether, how, and to what degree medical professionals could provide assistance to such employee.

Section 108 would also require the Secretary to submit to Congress a report, within 180 days of enactment of the bill, to evaluate the need to employ such medical professionals. If the Secretary hired medical professionals pursuant to this study, the House bill would require that all employees of all VBA regional offices have access to the medical professionals.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 228 of the Compromise Agreement generally follows the House language with modifications. The Compromise Agreement requires the Secretary to conduct a study to assess the feasibility and advisability of various mechanisms to improve communication between the Veterans Benefits Administration and the Veterans Health Administration when needed by Veterans Benefits Administration employees to carry out their duties. The study is also required to evaluate whether additional medical professionals are necessary to provide access to relevant Veterans Benefits Administration employees. The Compromise Agreement omits the requirement in the House bill for a statistically significant study of employees.

TITLE III—LABOR AND EDUCATION MATTERS

SUBTITLE A—LABOR AND EMPLOYMENT MATTERS

REFORM OF USERRA COMPLAINT PROCESS

CURRENT LAW

Chapter 43 of title 38 provides reemployment and employment rights to servicemembers, veterans, and those who seek to join a uniformed service through the Uniformed Services Employment and Reemployment Rights Act (USERRA). Individuals can privately enforce their rights by filing a complaint in federal or state court, or, in the case of a complaint against a federal employer, by submitting a complaint to the Merit Systems Protection Board (MSPB). In addition, individuals can request assistance from the federal government by filing a complaint with the Department of Labor's Veterans' Employment and Training Service (DOL VETS), which investigates and attempts to resolve complaints, and, if requested, will refer complaints for litigation. DOL VETS refers complaints against federal agencies to the Office of Special Counsel (OSC) and complaints against private sector employers and state and local governments to the Attorney General. The Special Counsel or Attorney General may represent individuals before the MSPB or in federal court, respectively.

SENATE BILL

Section 302 of S. 3023, as amended, would create deadlines for DOL VETS, OSC, and the Attorney General to provide assistance to servicemembers who believe that their rights under USERRA have been violated.

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

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 311 of the Compromise Agreement follows the Senate language.

MODIFICATION AND EXPANSION OF REPORTING REQUIREMENTS WITH RESPECT TO ENFORCEMENT OF USERRA

CURRENT LAW

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

SENATE BILL

Section 303 of S. 3023, as amended, would expand the reporting requirements regarding the federal government's enforcement of USERRA by requiring data on the number of individuals whose cases are reviewed by both the Department of Defense Employer Support of the Guard and Reserve (DOD ESGR), DOL VETS, OSC, and the Attorney General that involve a disability-related issue, and the number of cases that involve a person with a service-connected disability. In addition, the Senate bill would change the date on which the report is required.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 312 of the Compromise Agreement follows the Senate language.

TRAINING FOR EXECUTIVE BRANCH HUMAN RESOURCES PERSONNEL ON EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

CURRENT LAW

There is no applicable provision in current law.

SENATE BILL

Section 304 of S. 3023, as amended, would add a new section to chapter 43 of title 38 to require the head of each Federal executive agency to provide training for human resources personnel on the rights, benefits, and obligations of members of the Armed Forces under USERRA and the administration of USERRA by Federal executive agencies. It would require that the training be developed and provided in consultation with the Office of Personnel Management. The training would be provided as often as specified by the Director of the Office of Personnel Management in order to ensure that the human resources personnel are kept fully and currently informed about USERRA.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 313 of the Compromise Agreement follows the Senate language.

REPORT ON THE EMPLOYMENT NEEDS OF NATIVE AMERICAN VETERANS LIVING ON TRIBAL LANDS

CURRENT LAW

There is no applicable provision in current law.

SENATE BILL

Section 305 of S. 3023, as amended, would require a report by the Secretary of Labor on efforts to address the employment needs of Native American veterans living on tribal lands.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 314 of the Compromise Agreement follows the Senate language.

EQUITY POWERS

CURRENT LAW

Under section 4323(e) of title 38 courts may, in an action brought against a State or private employer, use their full equity powers to vindicate the rights or benefits of individuals provided under USERRA.

HOUSE BILL

Section 2 of H.R. 6225, as amended, would amend section 4323(e) of title 38 to require that, in USERRA actions brought against private or State employers, courts shall use their equity powers in any case in which the court determines it is appropriate.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 315 of the Compromise Agreement follows the House language.

WAIVER OF RESIDENCY REQUIREMENT FOR DIRECTORS FOR VETERANS' EMPLOYMENT AND TRAINING

CURRENT LAW

Section 4103(a)(2) of title 38 requires that each State Director of Veterans' Employment and Training (SDVET) have been, at the time of appointment, a bona fide resident of the State for at least two years.

SENATE BILL

Section 303 of S. 1315, as amended, would permit waiver of a residency requirement for SDVETs.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 316 of the Compromise Agreement follows the Senate language.

MODIFICATION OF SPECIAL UNEMPLOYMENT STUDY TO COVER VETERANS OF POST 9/11 GLOBAL OPERATIONS

CURRENT LAW

Section 4110A of title 38 requires the Secretary of Labor, through the Bureau of Labor Statistics, to submit a report every two years on the employment and unemployment experiences of Vietnam-era veterans, Vietnam-theater veterans, special disabled veterans, and recently separated veterans.

SENATE BILL

Section 304 of S. 1315, as amended, would update this special unemployment study to focus on veterans of the Post-9/11 Global Operations period and require an annual report.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 317 of the Compromise Agreement generally follows the Senate language, except that the report would be required to include veterans of the Vietnam era, as well as veterans of the Post-9/11 Global Operations period.

SUBTITLE B—EDUCATION MATTERS

MODIFICATION OF PERIOD OF ELIGIBILITY FOR SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE OF CERTAIN SPOUSES OF INDIVIDUALS WITH SERVICE-CONNECTED DISABILITIES TOTAL AND PERMANENT IN NATURE

CURRENT LAW

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

The spouse generally must use these education benefits within ten years after the date on which the veteran dies or is found to be permanently and totally disabled. However, if the servicemember died while on active duty, the spouse may use the education benefits during the twenty-year period after the servicemember's death.

SENATE BILL

Section 311 of S. 3023, as amended, would extend from ten years to twenty years the time within which the spouses of certain severely injured veterans have to use their DEA benefits. Specifically, the twenty-year period would be available to a spouse of a veteran who becomes permanently and totally disabled within three years after discharge from service, if the spouse remains married to the veteran.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 321 of the Compromise Agreement follows the Senate language.

REPEAL OF REQUIREMENT FOR REPORT TO THE SECRETARY OF VETERANS AFFAIRS ON PRIOR TRAINING

CURRENT LAW

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

SENATE BILL

Section 312 of S. 3023, as amended, would repeal the requirement that an educational institution providing non-accredited courses notify VA of the credit granted for prior training of certain individuals.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 322 of the Compromise Agreement contains the Senate provision.

MODIFICATION OF WAITING PERIOD BEFORE AFFIRMATION OF ENROLLMENT IN A CORRESPONDENCE COURSE

CURRENT LAW

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

SENATE BILL

Section 313 of S. 3023, as amended, would decrease to five days the waiting period before affirmation of enrollment in a correspondence course may be finalized for purposes of receiving educational assistance from VA.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 323 of the Compromise Agreement follows the Senate language.

CHANGE OF PROGRAMS OF EDUCATION AT THE SAME EDUCATIONAL INSTITUTION

CURRENT LAW

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

SENATE BILL

Section 314 of S. 3023, as amended, would repeal the requirement that an individual notify VA when the individual changes educational programs but remains enrolled at the same educational institution.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 324 of the Compromise Agreement follows the Senate language.

REPEAL OF CERTIFICATION REQUIREMENT WITH RESPECT TO APPLICATIONS FOR APPROVAL OF SELF-EMPLOYMENT ON-JOB TRAINING

CURRENT LAW

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

SENATE BILL

Section 315 of S. 3023, as amended, would exempt on-the-job training programs from the requirement to provide participants with wages if the training program is offered in connection with the purchase of a franchise.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 325 of the Compromise Agreement follows the Senate language.

COORDINATION OF APPROVAL ACTIVITIES IN THE ADMINISTRATION OF EDUCATION BENEFITS

CURRENT LAW

Under chapter 36 of title 38 VA contracts for the services of State approving agencies (SAAs) for the purpose of approving programs of education at institutions of higher learning, apprenticeship programs, on-job training programs, and other programs that are located within each SAA's State of jurisdiction. Generally SAA approval of these programs is required before beneficiaries may use their educational assistance benefits to pay for them. The Departments of Education and Labor also assess education and training programs for various purposes, primarily for awarding student aid and providing apprenticeship assistance.

SENATE BILL

Section 301 of S. 1315, as amended, would amend section 3673 of title 38 to require VA to take appropriate actions to ensure the coordination of approval activities performed by SAAs and approval activities performed by the Department of Labor, the Department of Education, and other entities in order to reduce overlap and improve efficiency in the performance of those activities.

HOUSE BILL

The House Bills have no comparable provision.

COMPROMISE AGREEMENT

Section 326 of the Compromise Agreement follows the Senate language.

SUBTITLE C—VOCATIONAL REHABILITATION MATTERS

WAIVER OF 24-MONTH LIMITATION ON PROGRAM OF INDEPENDENT LIVING SERVICES AND ASSISTANCE FOR VETERANS WITH A SEVERE DISABILITY INCURRED IN THE POST-9/11 GLOBAL OPERATIONS PERIOD

CURRENT LAW

Under chapter 31 of title 38 VA may provide services to certain veterans with service-connected disabilities to help them achieve maximum independence in daily living. Under section 3105 of title 38 the general rule is that no more than 24 months of these services may be provided to a veteran. However, under section 3105(d) of title 38 the period may be extended if "the Secretary determines that a longer period is necessary and likely to result in a substantial increase in a veteran's level of independence in daily living."

SENATE BILL

Section 301 of S. 3023, as amended, would amend section 3105(d) of title 38 to allow VA, without having to make such a determination, to extend the 24-month cap on independent living services for any veteran who served on active duty during the Post-9/11 Global Operations period and incurred or aggravated a severe disability during that service.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 331 of the Compromise Agreement follows the Senate language.

INCREASE IN CAP OF NUMBER OF VETERANS PARTICIPATING IN INDEPENDENT LIVING PROGRAM

CURRENT LAW

Section 3120(e) of title 38 authorizes VA to initiate a program of independent living services for no more than 2,500 service-connected disabled veterans in each fiscal year.

SENATE BILL

The Senate Bills contains no comparable provision.

HOUSE BILL

Section 301 of H.R. 6832 increases to 2,600 the number of veterans who may initiate a program of independent living services in any fiscal year.

COMPROMISE AGREEMENT

Section 332 of the Compromise Agreement follows the House language.

REPORT ON MEASURES TO ASSIST AND ENCOURAGE VETERANS IN COMPLETING VOCATIONAL REHABILITATION

CURRENT LAW

Under chapter 31 of title 38, VA provides vocational rehabilitation and employment services to veterans with service-connected disabilities. In its July 2007 report, the President's Commission on Care for America's Returning Wounded Warriors found that, "of the 65,000 who apply for [VA's Vocational Rehabilitation and Employment program] each year, at most 10,000 of all ages complete the employment track in the program each year." The Commission also found that "the effectiveness of various vocational rehabilitation programs is not well established, and the VA should undertake an effort to determine which have the greatest long-term success." In addition, the Commission recommended that "VA should develop financial incentives that would encourage completion" of vocational rehabilitation.

SENATE BILL

Section 306 of S. 3023, as amended, would require VA to conduct a study that would identify the various factors that may prevent or preclude veterans from successfully completing their vocational rehabilitation plans. It would also require identification of actions that the Secretary may take to address such factors. Not later than 270 days after beginning the study, VA would be required to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report including the findings of the study and any recommendations on actions that should be taken in light of that study.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 333 of the Compromise Agreement generally follows the Senate language, except that it includes language to specify that the study is required only to the extent that it does not duplicate elements of a VA study or report released during the one-year period after the date of enactment.

LONGITUDINAL STUDY OF DEPARTMENT OF VETERANS AFFAIRS VOCATIONAL REHABILITATION PROGRAMS

CURRENT LAW

Under chapter 31 of title 38 VA provides vocational rehabilitation and employment services for certain veterans with service-connected disabilities. VA currently collects data that does not accurately demonstrate the long-term results of participation in, or completion of, VA's vocational rehabilitation and employment program. Typically, VA knows how long a veteran spends in the various phases in long-term training and the costs related to that participation. However, VA does not collect data on earnings, promotions, and other long-term employment-related data following completion of the program. VA also does not collect data on those who may qualify for the program but do not complete the track of the program appropriate to their situation.

HOUSE BILL

Section 1 of H.R. 3889 would require VA, subject to the availability of appropriated

funds, to conduct a longitudinal study, over a period of at least 20 years, of a statistically valid sample of certain groups of individuals who participate in VA's vocational rehabilitation and employment program. The groups of individuals would include those who begin participating in the vocational rehabilitation program during fiscal year 2009, those individuals who begin participating in such a program during fiscal year 2011, and those individuals who begin participating in such a program during fiscal year 2014.

By not later than July 1 of each year covered by the study, the Secretary would be required to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the study during the preceding year. The Secretary would be required to include in the report any data necessary to determine the long-term outcomes of the individuals participating in the program. In addition, each report would be required to contain (1) the number of individuals participating in vocational rehabilitation programs who suspended participation in such a program during the year covered by the report; (2) the average number of months such individuals served on active duty; (3) the distribution of disability ratings of such individuals; (4) the types of other benefits administered by the Secretary received by such individuals; (5) the types of social security benefits received by such individuals; (6) any unemployment benefits received by such individuals; (7) the average number of months such individuals were employed during the year covered by the report; (8) the average annual starting and ending salaries of such individuals who were employed during the year covered by the report; (9) the number of such individuals enrolled in an institution of higher learning; (10) the average number of academic credit hours, degrees, and certificates obtained by such individuals during the year covered by the report; (11) the average number of visits such individuals made to VA medical facilities during the year covered by the report; (12) the average number of visits such individuals made to non-VA medical facilities during the year covered by the report; (13) the average annual income of such individuals; (14) the average total household income of such individuals for the year covered by the report; (15) the percentage of such individuals who own their principal residences; and (16) the average number of dependents of each such veteran.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 334 of the Compromise Agreement generally follows the House language, except that study participants would be selected from those individuals who begin participating in VA's vocational rehabilitation program during fiscal years 2010, 2012, and 2014.

TITLE IV—INSURANCE MATTERS

REPORT ON INCLUSION OF SEVERE AND ACUTE POST-TRAUMATIC STRESS DISORDER AMONG CONDITIONS COVERED BY TRAUMATIC INJURY PROTECTION COVERAGE UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE

CURRENT LAW

Section 1980A of title 38 provides traumatic injury protection coverage under the Servicemembers Group Life Insurance (SGLI) program. Traumatic Servicemembers Group Life Insurance (TSGLI) provides coverage against qualifying losses incurred as a result of a traumatic injury event. In the event of a loss, VA will pay between \$25,000 and \$100,000 depending on the severity of the qualifying loss. At present, active duty and

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

Subsection (b)(1) of section 1980A lists some qualifying losses for which injured servicemembers are covered under TSGLI, including, among others, complete loss of vision, complete loss of hearing, amputation of a hand or foot and the inability to carry out the activities of daily living resulting from injury to the brain. PTSD is not currently among the conditions classified as qualifying a loss.

SENATE BILL

Section 501 of S. 3023, as amended, would require VA, in consultation with the Department of Defense, to submit a report to Congress assessing the feasibility of and advisability of including severe and acute PTSD among the conditions covered by TSGLI. The report would be due to the Committees not later than 180 days after enactment of this bill.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 401 of the Compromise Agreement follows the Senate language.

TREATMENT OF STILLBORN CHILDREN AS INSURABLE DEPENDENTS UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE

CURRENT LAW

In 2001, section 4 of the Veterans' Survivor Benefits Improvements Act of 2001, Public Law 107-14, established a program of family insurance coverage under SGLI through which an SGLI-insured member's insurable dependents could also be insured. Section 1965(10) of title 38 defines insurable dependents as the member's spouse, and the member's child. Section 101(4)(A) of title 38 defines the term child as a person who is unmarried and under the age of 18 years; who became permanently incapable of self support before attaining the age of 18; or a dependent over the age of 18 that is pursuing education or training at an approved institution. Dependents over the age of 18 are considered a child until they complete their education, or until they reach the age of 23. Under current law, stillborn children are not eligible for coverage as insurable dependents under SGLI.

SENATE BILL

Section 502 of S. 3023, as amended, would amend section 1965(10) of title 38, so as to cover a servicemember's "stillborn child," as an insurable dependent under the SGLI program. The Committees expect VA to issue regulations that would define the term in a manner consistent with the 1992 recommended reporting requirements of the Model State Vital Statistics Act and Regulations as drafted by the Centers for Disease Control and Prevention's National Center for Health Statistics. The Model Act recommends a state reporting requirement of fetal deaths involving fetuses weighing 350 grams or more, if the weight is unknown, or 20 or more completed weeks of gestation, calculated from the date the last normal menstrual began to the date of delivery.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 402 of the Compromise Agreement follows the Senate language.

OTHER ENHANCEMENTS OF SERVICE-MEMBERS' GROUP LIFE INSURANCE COVERAGE

CURRENT LAW

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

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

The Veterans' Insurance Act of 1974, Public Law 93-289, established a new program of post-separation insurance known as Veterans Group Life Insurance (VGLI). Like SGLI, VGLI is supervised by VA but administered by Prudential. VGLI provides for the post-service conversion of SGLI to a renewable term policy of insurance. Persons eligible for full-time coverage include former servicemembers who were insured full-time under SGLI and who were released from active duty or the Reserves, Ready Reservists who have part-time SGLI coverage and who incur certain disabilities during periods of active or inactive duty training, and members of the Individual Ready Reserve and Inactive National Guard. Like SGLI, VGLI is issued in multiples of \$10,000 up to the maximum coverage amount, but in no case can VGLI coverage exceed the amount of SGLI coverage a member had in force at the time of separation from active duty service or the Reserves.

SENATE BILL

Section 503 of S. 3023, as amended, includes numerous amendments to SGLI.

Subsection (a) of section 503 would extend full-time and family SGLI coverage to Individual Ready Reservists (IRRs), those individuals referred to in section 1965(5)(C) of title 38. This group of individuals volunteer for assignment to a mobilization category in the Individual Ready Reserve, as defined in section 12304(i)(1) of title 10. The Veterans' Survivor Benefits Improvement Act of 2001, Public Law 107-14, provided SGLI coverage for Ready Reservists, referred to in section 1965(5)(B), but not to IRRs.

Subsection (b) of section 503 would provide that a dependent's SGLI coverage would terminate 120 days after the date of the member's separation or release from service, rather than 120 days after the member's SGLI terminates.

Subsection (c) of section 503 would clarify that VA has the authority to set premiums for SGLI coverage for the spouses of Ready Reservists based on the spouse's age.

Subsection (d) of section 503 would clarify that any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces or refuses to wear the uniform of the Armed Forces, forfeits all rights to VGLI.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 403 of the Compromise Agreement follows the Senate language.

ADMINISTRATIVE COSTS OF SERVICE DISABLED VETERANS' INSURANCE

CURRENT LAW

Under current law, the administrative costs of the Service-Disabled Veterans Insurance program are paid for by the Government from VA's General Operating Expenses account.

SENATE BILL

Section 102 of S. 1315 would allow administrative costs for the S-DVI program to be paid for by premiums, as is done with all other National Service Life Insurance subfunds. This would allow administrative costs to be provided from Veterans Insurance and Indemnities and not General Operating Expenses in Function 700 of the Budget of the United States Government.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 404 of the Compromise Agreement follows the Senate language.

TITLE V—HOUSING MATTERS TEMPORARY INCREASE IN MAXIMUM LOAN GUARANTY AMOUNT FOR CERTAIN HOUSING LOANS GUARANTEED BY SECRETARY OF VETERANS AFFAIRS

CURRENT LAW

Section 3703 of title 38 stipulates the maximum loan guaranty amounts that VA will provide to veterans under its home loan guaranty program. Public Law 108-454 increased VA's maximum guaranty amount to 25 percent of the Freddie Mac conforming loan limit determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a single family residence, as adjusted for the year involved. The Economic Stimulus Act of 2008 (Stimulus Act), Public Law 110-185, temporarily reset the maximum limits on home loans that the Federal Housing Administration (FHA) may insure and that Fannie Mae and Freddie Mac may purchase on the secondary market to 125 percent of metropolitan-area median home prices, but did so without reference to the VA home loan program. This had the effect of raising the Fannie Mae, Freddie Mac, and FHA limits to nearly \$730,000, in the highest cost areas, while leaving the then-VA limit of \$417,000 in place.

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

SENATE BILL

Section 201 of S. 3023, as amended, in a freestanding provision, would apply the temporary increase in the maximum guaranty amount, enacted in Public Law 110-289, until December 31, 2011.

HOUSE BILL

Section 203 of H.R. 6832 would amend section 2201 of Public Law 110-289 by striking "December 31, 2008" and inserting "December 31, 2011".

COMPROMISE AGREEMENT

Section 501 of the Compromise Agreement follows the Senate language.

REPORT ON IMPACT OF MORTGAGE FORECLOSURES ON VETERANS

CURRENT LAW

There is no applicable provision in current law.

SENATE BILL

Section 205 of S. 3023, as amended, would require VA to report on the impact of the mortgage foreclosure crisis on veterans and the adequacy of existing mechanisms available to help veterans. The report would have to include four specific elements: (1) a general assessment of the income of veterans who have recently separated from the Armed Forces; (2) an assessment of the effects of the length of the disability adjudication process on the capacity of veterans to maintain adequate or suitable housing; (3) a description of the extent to which the provisions of the Servicemembers Civil Relief Act currently protect veterans from mortgage foreclosure; and (4) a description and assessment of the adequacy of the VA home loan guaranty program in preventing foreclosure for recently separated veterans. The report would be due to the Committees on Veterans' Affairs of the Senate and the House of Representatives no later than December 31, 2009.

HOUSE BILL

The House Bills contain no comparable provisions.

COMPROMISE AGREEMENT

Section 502 of the Compromise Agreement follows the Senate language.

REQUIREMENT FOR REGULAR UPDATES TO HANDBOOK FOR DESIGN FURNISHED TO VETERANS ELIGIBLE FOR SPECIALLY ADAPTED HOUSING ASSISTANCE BY SECRETARY OF VETERANS AFFAIRS

CURRENT LAW

Section 2103 of title 38 authorizes VA to provide, without cost, model plans and specifications of suitable housing units to disabled veterans eligible for specially adapted housing under chapter 21 of title 38. Pursuant to this authority, the VA published, in April 1978, Pamphlet 26-13, "Handbook for Design: Specially Adapted Housing."

HOUSE BILL121SECTION 1 OF H.R. 5664 WOULD AMEND SECTION 2103 OF TITLE 38 TO DIRECT THE SECRETARY TO UPDATE AT LEAST ONCE EVERY SIX YEARS THE PLANS AND SPECIFICATIONS FOR SPECIALLY ADAPTED HOUSING FURNISHED TO VETERANS BY VA.189SENATE BILL121THE SENATE BILLS CONTAIN NO COMPARABLE PROVISION.189COMPROMISE AGREEMENT

Section 503 of the Compromise Agreement follows the House language.

ENHANCEMENT OF REFINANCING OF HOME LOANS BY VETERANS

CURRENT LAW

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

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

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

SENATE BILL

Section 202 of S. 3023, as amended, would increase the maximum guaranty limit for refinance loans to the same level as conventional loans, which is 25 percent of the Freddie Mac conforming loan limit for single family home. It would also increase the percentage of an existing loan that VA will refinance under the VA home loan program from 90 percent to 95 percent.

HOUSE BILL

Section 302 of H.R. 6832 contains identical language as the Senate bill with respect to increasing the maximum guaranty limit for refinance loans. In addition, section 302 would increase the percentage of an existing loan that VA will refinance from 90 percent to 100 percent.

COMPROMISE AGREEMENT

Section 504 of the Compromise Agreement includes the language pertaining to the increase in the maximum guaranty limit for refinance loans that appears in both the House and the Senate bills and follows the House language with respect to the equity requirement.

EXTENSION OF CERTAIN VETERANS HOME LOAN GUARANTY PROGRAMS

CURRENT LAW

Section 3707 of title 38 authorizes VA to conduct a demonstration project that offers guaranties of adjustable rate mortgages (ARMs), loans with interest rates that change, and "hybrid" adjustable rate mortgages (hybrid ARMs), loans that carry a fixed rate of interest for an initial period followed by annual interest rate adjustments thereafter. VA currently has authority to continue these demonstration projects through the end of fiscal year 2008.

SENATE BILL

Section 203(a) of S. 3023, as amended, would amend section 3707 of title 38 to extend VA's ARM and hybrid ARM programs through fiscal year 2012.

HOUSE BILL

Section 208 of H.R. 6832 contains identical language.

COMPROMISE AGREEMENT

Section 505 of the Compromise Agreement includes this language.

TITLE VI—COURT MATTERS

TEMPORARY INCREASE IN NUMBER OF AUTHORIZED JUDGES OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CURRENT LAW

Under current law, section 7253(a) of title 38, the United States Court of Appeals for Veterans Claims (CAVC) is limited to seven active judges.

SENATE BILL

Section 401 of S. 3023, as amended, would temporarily increase the number of active judges on the CAVC from seven to nine, effective December 31, 2009. Effective January 1, 2013, no appointment could be made to Court if that appointment would result in there being more judges of the Court than the authorized number of judges of the Court specified in current law.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 601 of the Compromise Agreement follows the Senate language. It is the Committees' expectation that the next Administration will begin vetting candidates for the additional judgeships as soon as practicable so that by the effective date of this provision, December 31, 2009, Congress might begin considering nominations to the Court.

PROTECTION OF PRIVACY AND SECURITY CONCERNS IN COURT RECORDS

CURRENT LAW

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

SENATE BILL

Section 402 of S. 3023, as amended, would amend section 7268 of title 38, so as to require the Court to prescribe rules, in accordance with section 7264(a) of title 38, to protect privacy and security concerns relating to the filing of documents, and the public availability of such documents, that are retained by CAVC or filed electronically. The rules prescribed by the Court would be required to be consistent, to the extent practicable, with rules that address privacy and security issues throughout the Federal courts.

HOUSE BILL

The House Bills contain no comparable provisions.

COMPROMISE AGREEMENT

Section 602 of the Compromise Agreement follows the Senate language.

RECALL OF RETIRED JUDGES OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CURRENT LAW

Under section 7257 of title 38, retiring CAVC judges make an election whether to be recall eligible. If a judge chooses to be recall eligible, the Chief Judge of the CAVC has the authority to involuntarily recall that judge for up to 90 days per calendar year or, with the consent of the judge, to recall the judge for up to 180 days per calendar year. Under section 7296 of title 38, a recall-eligible retired judge receives annual pay equal to the annual salary of an active judge (pay-of-the-office) and that salary level is not impacted by how much recall service is performed during a year.

SENATE BILL

Section 403 of S. 3023, as amended, would modify the authorities for the recall of retired judges and the retirement pay structure. This section would repeal the 180-day limit on how many days per calendar year a recall-eligible retired judge may voluntarily serve in recall status. In addition, for judges appointed on or after the date of enactment, it would create a three-tiered retirement pay structure. Specifically, pay-of-the-office would be reserved for judges who are actively serving, either as a judge of the Court or as a retired judge serving in recall status. When not serving in recall status, a recall-eligible retired judge would receive the rate of pay applicable to that judge as of the date the judge retired, as increased by periodic cost-of-living adjustments. A retired judge who is not recall eligible would receive the rate of pay applicable to that judge at the time of

retirement. Finally, section 403 would exempt current and future recall-eligible retired judges from involuntary recall once they have served an aggregate of five years of recall service.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 603 of the Compromise Agreement follows the Senate language.

ANNUAL REPORTS ON WORKLOAD OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CURRENT LAW

Chapter 72 of title 38 establishes the organization, jurisdiction, and procedures governing the CAVC. That chapter does not require the Court to provide Congress with annual reports on its workload.

SENATE BILL

Section 404 of S. 3023, as amended, would add a section to chapter 72 to establish an annual reporting requirement for the CAVC. The CAVC would be required to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report summarizing the workload of the Court.

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

HOUSE BILL

Section 201 of H.R. 5892, as amended, would add a section to chapter 72 to establish an annual reporting requirement for the CAVC. The CAVC would be required to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report summarizing the workload of the Court. The information required to be reported would include the number of appeals filed; the number of petitions filed; the number EAJA applications filed; the number and type of dispositions; the median time from filing to disposition; the number of oral arguments; the number and status of pending appeals, petitions, and EAJA applications; a summary of any service performed by recalled retired judges; and the number of cases pending longer than 18 months.

COMPROMISE AGREEMENT

Section 604 of the Compromise Agreement follows the Senate language.

ADDITIONAL DISCRETION IN IMPOSITION OF PRACTICE AND REGISTRATION FEES
CURRENT LAW

Under section 7285 of title 38, the CAVC is authorized to impose a periodic registration fee on individuals admitted to practice before the Court. The maximum amount of any such fee is capped at \$30 per year. That amount is significantly lower than other Federal courts generally charge. The Court is also authorized to impose a registration fee on the individuals participating in the Court's judicial conference.

SENATE BILL

Section 502 of S. 1315, as amended, would strike the \$30 cap on the amount of registration fees that may be charged to individuals admitted to practice before the Court. It also would clarify that any registration fee charged by the Court, either for those admitted to practice before the Court or those participating in the judicial conference, must be reasonable.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 605 of the Compromise Agreement follows the Senate language.

TITLE VII—ASSISTANCE TO UNITED STATES PARALYMPIC INTEGRATED ADAPTIVE SPORTS PROGRAM
DEPARTMENT OF VETERANS AFFAIRS
PROVISION OF ASSISTANCE TO UNITED STATES PARALYMPICS, INC. AND DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF NATIONAL VETERANS SPORTS PROGRAMS AND SPECIAL EVENTS

CURRENT LAW

Section 521 of title 38 authorizes the Secretary to assist certain organizations in providing recreational activities which would further the rehabilitation of disabled veterans.

HOUSE BILL

Section 3 of H.R. 4255, as amended, would authorize the Secretary to provide assistance to the Paralympic Program of the United States Olympic Committee (USOC).

Section 4 of H.R. 4255, as amended, would establish the Department of Veterans Affairs Office of National Veterans Sports Programs and Special Events.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Title VII of the Compromise Agreement generally follows the House language. It makes the authority to provide assistance to the Paralympic Program of the USOC a four-year pilot program instead of a permanent program and makes it clear that the agreement entered into is between VA and United States Paralympics, Inc. The Compromise Agreement makes it clear that the United States Paralympics, Inc., shall continue to seek private sponsorship and donors. It further provides for the Comptroller General of the United States to provide a report to the Congress after three years.

TITLE VIII—OTHER MATTERS

AUTHORITY FOR SUSPENSION OR TERMINATION OF CLAIMS OF THE UNITED STATES AGAINST INDIVIDUALS WHO DIED WHILE SERVING ON ACTIVE DUTY IN THE ARMED FORCES

CURRENT LAW

In January 2008, VA disclosed that, in an attempt to collect debts owed to VA, the De-

partment had contacted the estates of twenty-two servicemembers who died while serving in either Operation Enduring Freedom or Operation Iraqi Freedom. Under the relevant law in effect at that time, section 5302 of title 38, any veteran or active duty servicemember indebted to VA due to the overpayment or erroneous payment of benefits was able to apply for a waiver from VA so as to remove the obligation to pay the debt. However, under that law, VA was required to notify the beneficiary, or his or her estate if the beneficiary was deceased, when an outstanding debt arose and to provide information on the right to apply for a waiver.

In an attempt to address this situation, the Supplemental Appropriations Act, 2008, Public Law 110-252, included a provision that added a new section 5302A to title 38, which prohibits VA from collecting all or any part of a debt owed to VA by a servicemember or veteran who dies as the result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001. The Secretary is required to determine that termination of collection is in the best interest of the United States.

SENATE BILL

Section 601 of S. 3023, as amended, would amend section 3711 of title 31 so as to grant VA discretionary authority to suspend or terminate the collection of debts owed to it by individuals who die while serving on active duty in the Armed Forces. The authority to suspend collection would cover all individuals who die while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy.

Section 601 of S. 3023, as amended, also includes a freestanding provision that would permit VA to provide an equitable refund to any estate from which it collected a debt that it otherwise would have waived had this provision been in effect at the time. VA would have the discretion to determine in which cases, if any, the use of this authority would be appropriate.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 801 of the Compromise Agreement follows the Senate language.

THREE-YEAR EXTENSION OF AUTHORITY TO CARRY OUT INCOME VERIFICATION

CURRENT LAW

Section 6103(1)(7)(D)(viii) of title 26 authorizes the release of certain income information by the Internal Revenue Service (IRS) or the Social Security Administration (SSA) to VA for the purposes of verifying the incomes of applicants for VA needs-based benefits, including pensions for wartime veterans and compensation for Individual Unemployability. Section 5317(g) of title 38 provides VA with temporary authority to obtain and use this information in order to ensure that those receiving benefits under these income-programs are not earning a greater annual income than the law permits. This temporary authority will expire on September 30, 2008.

SENATE BILL

Section 603 of S. 3023, as amended, would extend VA's authority to obtain income information from the IRS or the SSA until September 30, 2011.

HOUSE BILL

Section 206 of H.R. 6832 would extend VA's authority to obtain income verification from the IRS or the SSA until September 30, 2010.

COMPROMISE AGREEMENT

Section 802 of the Compromise Agreement follows the Senate language.

MAINTENANCE, MANAGEMENT, AND AVAILABILITY FOR RESEARCH OF ASSETS OF AIR FORCE HEALTH STUDY

CURRENT LAW

Legislation enacted as section 714 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, authorized the Air Force to transfer custody of the data and biological specimens to the Medical Follow-Up Agency (MFUA). There is no provision in current law for the maintenance and management of the assets authorized to be transferred.

SENATE BILL

Section 805 of S. 1315, as amended, would ensure that the assets from the Air Force Health Study (AFHS) transferred to the MFUA are maintained, managed and made available to researchers. In order to ensure that sufficient funds are made available for this purpose, funding in the amount of \$1,200,000 would be made available from VA accounts available for Medical and Prosthetic Research in each fiscal year from 2008 through 2011. In addition, funding from the same source would be provided in the amount of \$250,000 for each year to conduct additional research using the assets of the AFHS. Finally a report would be provided to the Congress by March 31, 2011, concerning the feasibility and advisability of conducting additional research using these assets or disposing of them.

In the late 1970's, Congress urged the DOD to conduct an epidemiologic study of veterans of "Operation Ranch Hand," the military units responsible for aerial spraying of herbicides during the Vietnam War. In response, the AFHS was initiated in 1982 to examine the effects of herbicide exposure and health, mortality, and reproductive outcomes in veterans of Operation Ranch Hand. The study is noteworthy for the amount of data and biological specimens collected. It cost over \$143 million and was concluded in 2006.

The Senate bill would require VA to provide funding during fiscal years 2008 through 2011 for the purposes recommended by IOM in the Disposition of the AFHS report.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 803 of the Compromise Agreement follows the Senate language.

NATIONAL ACADEMIES STUDY ON RISK OF DEVELOPING MULTIPLE SCLEROSIS AS A RESULT OF CERTAIN SERVICE IN THE PERSIAN GULF WAR AND POST-9/11 GLOBAL OPERATIONS THEATERS

CURRENT LAW

Under current law, veterans gain eligibility for disability benefits by demonstrating a link between their disability and their active military, naval, or air service. To establish such a link, the veteran must show, generally, that his or her disability resulted from an injury or disease that was incurred or aggravated during the time of military service.

In addition to disabilities that can be directly linked to service, certain diagnosed diseases are presumed, as a matter of law, to be service-connected if they manifest under conditions specified by statute. For example, section 1112, title 38, provides a presumption for certain chronic diseases if manifested to a degree of disability of 10 percent or more within one year of separation from service, for certain tropical diseases if manifested to

a degree of disability of 10 percent or more, generally, within one year of separation from service, and for active tuberculosis or Hansen's disease if manifested to a degree of disability of 10 percent or more within three years of separation from service.

In 1962, Public Law 87-645 extended the period of time after separation from service that a diagnosis of multiple sclerosis may be presumed to be service-connected from three to seven years for veterans with wartime service.

SENATE BILL

Section 806 of S. 1315, as amended, would require VA to enter into a contract with the IOM to conduct a comprehensive epidemiological study to identify any increased risk of developing multiple sclerosis, and other diagnosed neurological diseases, as a result of service in the Southwest Asia theater of operations or in the Post 9/11 Global Operations theaters. The Southwest Asia theater of operations is defined in section 3.3317 of title 38, Code of Federal Regulations. The Post 9/11 Global Operations theater is defined as Afghanistan, Iraq, or any other theater for which the Global War on Terrorism Expeditionary Medal is awarded for service.

The mandated study would examine the incidence and prevalence of diagnosed neurological diseases, including multiple sclerosis, Parkinson's disease, and brain cancers, as well as central nervous abnormalities, in members of the Armed Forces who served during the Persian Gulf War period and Post-9/11 Global Operations period. The study would also collect information on possible risk factors, such as exposure to pesticides and other toxic substances. IOM would be required to submit a final report to VA and the appropriate committees of Congress by December 31, 2012.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 804 of the Compromise Agreement generally follows the Senate language.

TERMINATION OR SUSPENSION OF CONTRACTS FOR CELLULAR TELEPHONE SERVICE FOR CERTAIN SERVICEMEMBERS

CURRENT LAW

The Servicemembers Civil Relief Act (SCRA), currently found in the appendix to title 50, beginning at section 501, is intended to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. Title III of the SCRA extends the right to terminate real property leases to active duty servicemembers on deployment orders of at least 90 days. It also allows for the termination of automobile leases for use by servicemembers and their dependents on military orders outside the continental United States for a period of 180 days or more.

SENATE BILL

Section 804 of S. 1315, as amended, would expand the SCRA to allow for the termination or suspension, upon request, of the cellular telephone contracts of servicemembers deployed outside the United States.

HOUSE BILL

Section 4 of H.R. 6225, as amended, would extend the SCRA protections to enable servicemembers with deployment orders to terminate or suspend service contracts without fee or penalty for such services as cellular phones, utilities, cable television, or Internet access.

COMPROMISE AGREEMENT

Section 805 of the Compromise Agreement generally follows the Senate language, ex-

cept that it also includes a provision allowing servicemembers to suspend or terminate cellular phone contracts if they receive orders for a permanent change of duty station.

CONTRACTING GOALS AND PREFERENCES FOR VETERAN-OWNED SMALL BUSINESS CONCERNS

CURRENT LAW

Sections 502 and 503 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, require VA to provide certain contracting preferences to small businesses owned by veterans and service-disabled veterans.

HOUSE BILL

Section 2 of H.R. 6221, as amended, would amend section 8127 of title 38 to require the Secretary to include in each contract the Secretary enters with an agent acting on VA's behalf for the acquisition of goods and services a provision that requires the agent to comply with the contracting goals and preferences for small business concerns owned or controlled by veterans set forth in sections 502 and 503 of Public Law 109-461.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 806 of the Compromise Agreement generally follows the House language except that it would apply, to the maximum extent feasible, only to contracts entered into after December 31, 2008.

PENALTIES FOR VIOLATION OF INTEREST RATE LIMITATION UNDER SERVICEMEMBERS CIVIL RELIEF ACT

CURRENT LAW

The SCRA provides that penalties under title 18 may be imposed against anyone who knowingly takes part in or attempts to violate certain applicable protections.

HOUSE BILL

Section 5 of H.R. 6225 would amend section 207 of the SCRA by placing a fine of \$5,000 and \$10,000 on any individual or organization, respectively, who knowingly violates certain SCRA rights of a servicemember. It would further provide for attorney fees and treble damages in certain cases.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 807 of the Compromise Agreement follows the House language to add penalties in section 207 of the SCRA.

FIVE-YEAR EXTENSION OF SUNSET PROVISION FOR ADVISORY COMMITTEE ON MINORITY VETERANS

CURRENT LAW

Section 544 of title 38 required the Secretary to establish an Advisory Committee on Minority Veterans. Under section 544(e) of title 38, the Committee will cease to exist on December 31, 2009.

HOUSE BILL

Section 1 of H.R. 674 would repeal the sunset date on the Advisory Committee on Minority Veterans.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 808 of the Compromise Agreement would extend the sunset date on the Advisory Committee on Minority Veterans for five years from the current date of expiration, until December 31, 2014.

AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO ADVERTISE TO PROMOTE AWARENESS OF BENEFITS UNDER LAWS ADMINISTERED BY THE SECRETARY

CURRENT LAW

The Anti-Deficiency Act, section 1341 of title 5, prohibits the use of appropriated funds for publicity or propaganda purposes. Section 404 of Public Law 110-161, the Consolidated Appropriations Act of 2008, reinforced this prohibition stating:

No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before Congress, except in presentation to Congress itself.

Although executive branch departments and agencies are prohibited from using appropriated funds to engage in "publicity or propaganda," there is no such prohibition against disseminating information about current benefits, policies, and activities. Military recruiting advertising campaigns are a primary example of an acceptable use of appropriated funds.

HOUSE BILL

Section 2 of H.R. 3681 would add a new section 532 to title 38 authorizing the Secretary to advertise in national media to promote awareness of benefits under laws administered by the Secretary.

SENATE BILL

The Senate Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 809 of the Compromise Agreement follows the House language.

MEMORIAL HEADSTONES AND MARKERS FOR DECEASED REMARRIED SURVIVING SPOUSES OF VETERANS

CURRENT LAW

Section 2306(b)(4)(B) of title 38 authorizes VA to furnish an appropriate memorial headstone or marker to commemorate eligible individuals whose remains are unavailable. Individuals currently eligible for memorial headstones or markers include a veteran's surviving spouse, which is defined to include "an unremarried surviving spouse whose subsequent remarriage was terminated by death or divorce." Thus, a surviving spouse who remarried after the veteran's death is not eligible for a memorial headstone or marker unless the remarriage was terminated by death or divorce before the surviving spouse died. However, a surviving spouse who remarried after the veteran's death is eligible for burial in a VA national cemetery without regard to whether any subsequent remarriage ended.

SENATE BILL

Section 602 of S. 3023, as amended, would extend eligibility for memorial headstones or markers to a deceased veteran's remarried surviving spouse, without regard to whether any subsequent remarriage ended.

HOUSE BILL

The House Bills contain no comparable provision.

COMPROMISE AGREEMENT

Section 810 of the Compromise Agreement follows the Senate language.