

VETERANS BENEFITS IMPROVEMENT ACT OF 1998

JULY 15, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 4110]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 4110) to provide a cost-of-living adjustment in rates of compensation paid to veterans with service-connected disabilities, to make various improvements in education, housing, and cemetery programs of the Department of Veterans Affairs, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

INTRODUCTION

On June 10, 1998, the Subcommittee on Benefits met to receive testimony on H.R. 2887, a bill to amend chapter 37 of title 38 to require the Department of Veterans Affairs to use full and open competition for the award of VA housing management contracts and H.R. 3212, a bill to amend chapter 72 to authorize staggered early retirement for current judges of the U.S. Court of Veterans Appeals.

On June 18, 1998, the Subcommittee on Benefits met to receive testimony on a draft bill which would provide a cost of living increase for those veterans and survivors receiving compensation, dependency and indemnity compensation and related benefits. The draft bill proposed several changes to programs involving education, home loan guaranties, state cemetery grants, burial benefits, pension payments and Disabled Veterans Outreach Programs Specialists. The draft bill also contained provisions taken from H.R. 2887 and H.R. 3212.

Following the hearing, the Subcommittee on Benefits met and recommended the draft bill to the full Committee by unanimous voice vote.

On June 24, 1998, the full Committee met and ordered H.R. 4110 reported favorably by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 4110 would:

1. Provide a cost of living adjustment for service-connected compensation, dependency and indemnity compensation (DIC) and related benefits computed using the same percentage increase as given to Social Security recipients.

2. Make several changes to existing education programs including a change in the way schools calculate the number of veterans attending under the GI Bill for whom they receive an administrative fee; make advance payment of 40 percent of the work study allowance optional to the veteran; allow VA to consider up to 12 hours of academic credits granted for life experiences as meeting the eligibility requirements for Montgomery GI Bill (MGIB); require a veteran to hold an FAA Class II physical at the beginning and end of a VA-paid flight training program; exempt job training programs operated by Federal, State and local governments from the wage requirements required for VA approval; and improve VA education outreach and pre-discharge counseling by the military services.

3. Make changes to the retirement system of the Court of Veterans Appeals to allow early staggered retirement of current judges; determine rates of pay for retired judges and survivors annuities; prescribe conditions for the recall of retired judges; and request a report on merging the Court's retirement and annuity systems with other federal judiciary annuity systems.

4. Make changes to several different programs of the Department of Veterans Affairs and the Department of Labor including increasing the federal share of the cost to construct and equip state veterans' cemeteries to 100 percent; changing the way VA awards contracts for property management; making the loan guaranty program for members of the Selected Reserves permanent and providing them with burial flags; reauthorizing VA to retain pension funds in excess of \$90 paid to veterans without dependents and residing in VA nursing homes; removing the Vietnam-era status requirement as a qualification to be a Disabled Veterans Outreach Programs Specialist; and authorizing payment of dividends to National Service Life Insurance "H" policy holders.

BACKGROUND AND DISCUSSION

TITLE I

Section 101—Increase in rates of disability compensation and dependency and indemnity compensation

This section would increase, effective December 1, 1998, the rates of compensation for service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for surviving spouses and children of veterans who die of service-connected

causes, as well as the additional amounts for dependents and survivors, and clothing allowances for certain veterans. The percentage of increase would be the same as that automatically received by Social Security recipients.

As of May, 1998, there were approximately 2.3 million veterans receiving compensation. According to VA budget estimates, the Department will expend about \$14.4 billion in fiscal year 1999 for compensation-related benefits. According to VA budget documents, there are about 328,000 dependents receiving DIC, and VA will expend \$3.3 billion in fiscal year 1999 for DIC benefits.

TITLE II

Section 201—Calculation of reporting fee based on total veteran enrollment during a calendar year

Educational institutions are required to submit certain reports and certifications to the VA regarding veteran-students training at their schools. Once a year, the VA pays the schools a “reporting fee” to cover, in part, costs associated with the reports. Under current law, the amount sent to an individual school is determined by multiplying \$7 by the number of veterans enrolled in the school on October 31 of the year. Section 201 would base the reporting fee on the number of veterans who enroll in a school during an entire year rather than relying on the one-day “snapshot.”

School officials have pointed out that many veterans for whom they submit reports are never counted under the “snapshot” procedure because they enroll only for the spring or summer term and thus aren’t enrolled on October 31. The Committee believes section 201 would provide a fairer, more accurate count of veteran-students.

Section 202—Election of advance payment of work-study allowance

Under VA’s work-study program, veteran-students who demonstrate need are paid the minimum hourly wage by the VA to do veteran-related work in VA regional offices, educational institutions, and at DOD or National Guard facilities. The VA and the veteran-student agree upon the number of hours to be worked during a semester, and current law requires that work-study students be paid 40 percent of his/her work-study agreement in advance. Because not all veteran work-study students want an advance payment, section 202 would eliminate this requirement. Those who prefer to be paid the 40 percent in advance would continue to have this option available.

Section 203—Alternative to twelve semester hour equivalency requirement

Under current law, servicemembers must complete the requirements for a high school diploma (or GED) or complete the equivalent of 12 college semester hours before they leave active duty in order to be eligible for their Montgomery GI Bill benefits.

Today, many colleges grant credit hours for life experiences, but current law doesn’t permit these types of credits to be used to establish eligibility for the GI Bill. The Committee believes that if a college is giving the veteran credit for life and work experiences,

that should be sufficient to fulfill the requirement for GI Bill eligibility. Section 203 would change current law to allow for this.

Section 204—Medical evidence for flight training requirements

This section would change “pilot’s license” to “pilot’s certificate.” Current Federal Aviation Administration (FAA) regulations refer to pilot’s certificates rather than pilot’s licenses.

Section 204 would also amend current law by requiring a veteran-student to have the required medical certification level only on the day he begins a flight training course. Because of FAA requirements, the veteran will also have to meet the maximum medical certification requirement when he takes the test for his flight certification, but he will not be penalized if his initial medical certification is automatically downgraded for a period of time.

By way of background, the FAA requires pilots to have valid medical certificates appropriate for their level of flying. These certificates range from the most stringent (first class) to the least stringent (third class). A first class certificate automatically downgrades to a second class certificate after six months unless the pilot renews the physical exam, which confirms that his health status makes him eligible for a first class certificate. Similarly, a second class certificate becomes a third class certificate after 12 months unless a physical confirms the pilot’s eligibility for a second class certificate.

The FAA requires at least a second class medical certificate for most pilot certificates that lead to jobs in aviation, but the individual is not required to obtain this certificate until he takes the test needed for the pilot certificate. If the individual doesn’t pass the physical, he doesn’t receive his pilot’s certificate, and he may have spent a significant amount of money on flight training without achieving his goal of becoming a commercial-rated pilot.

To ensure that veterans who take flight training do not waste their VA education entitlement because they can’t pass the physical requirements needed to be rated as a commercial pilot at the end of their training, current law requires veterans to have the medical certificate necessary to obtain a pilot certificate from the first day and throughout their training. This requirement, however, has had an unintended effect on veteran-students.

The VA has told the Committee that, too often, and understandably, veteran-students forget that the level of the medical certificate they qualify for at the beginning of their course of training automatically downgrades after a period of time (first class after six months and second class after 12 months). Consequently, for example, a veteran who begins training with a required second class health certificate, but whose training lasts 15 months, and who doesn’t upgrade his medical classification when it downgrades to third class after 12 months, is out of compliance with VA requirements for the last three months of his training. As a result, he is ineligible for VA benefits during those final three months, and VA will create an overpayment for any benefits paid during that period. The Committee believes this change will relieve the Department of the burdensome collection process while still ensuring that veterans who desire flight training are physically qualified for the training.

Section 205—Waiver of wage increase and minimum payment rate requirements for government job training approval

Under current law, an on-job training program must guarantee a wage increase during the veteran's training period, and the wage paid in the final month of training must be 85 percent of the wages paid to a fully trained employee in order to be approved by VA. The VA has told the Committee that many excellent programs, particularly in the fields of law enforcement, public safety, and health run by State and local governments, cannot be approved because trainees do not receive a wage increase until training has been completed. Section 205 waives the wage increase requirement and the 85 percent final month wage requirement only for those on-job programs offered by Federal, State or local governments. The Committee shares the VA's view that these training programs, which will still have to be approved by the VA or State Approving Agencies, are sound and should be available to veterans.

Sections 206 and 207—Expansion of education outreach services; information on minimum requirements for education benefits for members of the Armed Forces discharged early from duty for the convenience of the government

College and VA officials have told the Committee that active duty servicemembers and veteran-students are not well informed regarding their GI Bill benefits. These sections would require the VA and the individual service branches to provide additional information to servicemembers who are participating in the Montgomery GI Bill while they are still on active duty. The Committee expects that the VA and service branches will work together to ensure full and effective compliance with the requirements of this section.

TITLE III

The Judicial Review Act of 1988, Public Law 100-687, established the U.S. Court of Veterans Appeals as an Article I court in 1988. The Committee attempted to replicate many of the features of the federal Tax Court when drafting the current provisions governing the Court of Veterans Appeals. The Court's seven judges are appointed by the President for a 15-year term and may be reappointed. The Court provided a legislative proposal to the Committee on June 16, 1997, which was introduced by Mr. Stump and Mr. Evans as H.R. 3212. The sections in H.R. 4110 affecting the Court reflect the proposals in H.R. 3212 with relatively minor changes. In making these changes, the Committee has attempted to create a personnel system that provides equity relative to other federal court systems and encourages efficient management of the Court's workload.

Because the Court was established in 1989 and the initial appointments to the Court were made relatively close in time to one another, five of the remaining six original appointees will be eligible for retirement within an 11-month period in 2004 to 2005. The Committee is very concerned that such an en masse departure would shut down the Court, with disastrous consequences for veterans whose appeals are pending.

The Committee is also concerned about the need to provide the Court with additional flexibility to manage its caseload in ways similar to other federal courts. In the last two years, the Court's workload has been steadily increasing due to increased output from the Board of Veterans' Appeals (BVA). In 1990, the first full year of Court operations, there were 1,261 appeals to the Court with a pending backlog of 964. Appeals have fluctuated since then, largely because of changes in the output by the Board. By 1997, there were 2,229 appeals and a backlog of 2,261. Since the production trend at the Board indicates no decrease in decisions, the Committee assumes the Court's workload will remain at the current high levels. The Court's average caseload generally exceeds those carried by judges in the federal appeals court system.

To smooth the workload for active judges and to retain the court's experience base, nearly all retired federal judges volunteer to continue working on a part-time basis. They usually carry about 25 percent of a normal caseload and in return, receive retired pay equal to that of an active judge. Judges who do not volunteer for part-time work while retired do not receive the increased retired pay. The Committee believes that it is important to provide the Court and its retired judges the same authority and responsibilities as other federal court systems as an effective tool to prevent lengthening the time a veteran must wait for a decision on an appeal.

The Committee does not intend the Court's ability to recall retired judges to be a means to increase the number of active members of the Court through non-legislative means. The Committee believes the authority to recall retired judges should be used only when necessary to avoid increased delays in decisions on claims.

Section 301—Continuation in office of judges pending confirmation for a second term

The Committee recognizes the confirmation process is sometimes lengthy. To prevent an unnecessary break in service when a judge is nominated for an additional term, this section would allow a sitting judge to remain on the bench for up to one year, pending Senate confirmation.

Section 302—Authority to prescribe rules and regulations

Section 302 would allow the Court to prescribe rules and regulations applicable to chapter 72, title 38 U.S.C., subchapters III and V.

Section 311—Recall of retired judges

This section requires a retiring judge of the Court of Veterans Appeals to make an irrevocable decision at the time of retirement as to whether he or she will be available for recall to service as a judge of the Court. Section 311 also authorizes the Chief Judge of the Court to recall retired judges for periods of up to 90 days, or for up to 180 days with the written consent of the retired judge, and establishes conditions for removal from recall status and the pay of recall-eligible judges.

Section 312—Calculation of years of service as a judge

Section 312 directs that 183 days or more of service be counted as a full year in the calculation of years of service for the purposes of retirement.

Section 313—Judges' retired pay

This section would authorize pay for recall-eligible retired judges at the rate paid to active judges of the Court, and those who are not recall-eligible at the rate of pay on the date of retirement. Increases in the salary of active judges would also be provided to recall-eligible judges. Judges whose retirement benefit is less than the salary of office and who are available for recall would be eligible for periodic increases provided to other federal retirees as long as retired pay does not exceed the pay of active judges.

Section 314—Exemption of retirement fund from sequestration orders

Provides for treatment of the Court's retirement fund on the same basis as the Court of Claims Judges' Retirement fund and other federal retirees' retirement funds.

Section 315—Limitation on activities of retired judges

The Committee believes that it is inappropriate for a retired judge of the Court to represent veterans while drawing retired pay because such representation creates a potential conflict of interest, especially if the judge is recall-eligible. Therefore, section 315 requires forfeiture of retired pay for any period, plus one year, during which a retired judge of the Court of Veterans Appeals represents a client in making a claim for veterans benefits against the United States government.

Section 316—Early retirement authority for current judges in order to provide for staggered terms of judges

The section would authorize early retirement of one judge per year for the years 1999 through 2003. This provision would eliminate the potential for en masse retirements and provide for an orderly replacement of the current panel of judges. The provision would also specify the computation of a reduced retired pay for judges who retire early. Under the formula, a judge's age and years of judicial service would be divided by 80 to yield a percentage to be applied to the retirement benefit currently authorized for judges of the Court.

Section 317—Adjustments for survivor annuities

This section would provide for a cost-of-living increase for the survivors of deceased judges.

Section 318—Reports on retirement program modifications

This section directs the Court to submit a report on the feasibility of merging the retirement and survivor annuity plans with another federal court retirement and survivor annuity program.

Section 321—Renaming the Court of Veterans Appeals

The Court is often perceived as being part of the Department of Veterans Affairs, a mistake made even within the Judicial Branch of the government. The current name of the Court also fails to adequately reflect the level of jurisdiction of the Court. Therefore, the Committee believes a change to the “United States Court of Appeals for Veterans Claims” is appropriate.

TITLE IV

Section 401

This section of the bill requires the Department of Veterans Affairs’ Housing Loan Program, as authorized by chapter 37 of title 38, United States Code, to comply with the requirements of the Competition in Contracting Act (CICA) and the Federal Acquisition Regulations (FAR). In general, departments and agencies of the Federal government, including the Department of Veterans Affairs, are required to comply with these requirements. Because of the broad discretion given to the Secretary of Veterans Affairs under 38 U.S.C. § 3720, VA has not been required to comply with these customary contracting requirements with respect to the home loan program.

Among the contracts which VA is likely to enter into regarding the home loan program are contracts for property management activities. These activities are customarily required by the Department when the VA has taken possession in a foreclosure proceeding of residential property insured by VA. Section 401 will provide that persons who contract with VA to provide property management services will have the rights and protections of CICA and FAR available to them as do other persons who contract with VA to provide other goods or services to the Department.

Section 402—Permanent eligibility of members of the Selected Reserve for veterans housing loans

The Department’s authority to guarantee home loans for members of the National Guard and Reserve components will expire on September 30, 1999. Under current law, these members pay an additional .75 percent funding fee, which will also expire in 1999. The Department has guaranteed about 43,000 loans for members of the Selected Reserve of which 67 percent were made to first-time buyers. VA data indicates that the foreclosure rate on mortgages to members of the Selected Reserve is approximately one-half that experienced on other VA loan guaranty programs. Given that success, the Committee believes that making the program permanent is one small way the nation can recognize the increased responsibilities being placed on the Selected Reserves.

Section 403—Furnishing burial flags for deceased members and former members of the Selected Reserve

Members of the Selected Reserve are not eligible for a burial flag unless they are eligible for retirement. To recognize the expanded role of the Selected Reserve, the Committee believes that providing eligibility for a burial flag to all members of the National Guard and Reserve components is appropriate. Section 403 would author-

ize a burial flag for all members of the National Guard and Reserves, not otherwise eligible, who have completed at least one term of enlistment under honorable conditions or died while a member of the Guard or Reserves.

The Committee is aware that the Selected Reserve does not issue discharges in a manner similar to the active duty military services, and the various Reserve components are not consistent among themselves in administering the discharge process. While the Committee understands this inconsistency will make it difficult for the Department to administer the provision, the Committee expects the Department of Veterans Affairs to work closely and aggressively with the Department of Defense and the National Guard Bureau to implement this provision in a timely and equitable fashion. Should a uniform solution prove administratively burdensome for the Department, the Committee accepts that the concept of self-certification by the member's survivors may be sufficient to qualify for the benefit.

Section 404—State Cemetery Grants Program

On May 9, 1997, the Department of Veterans Affairs proposed legislation to modify the existing State Cemetery Grants Program to authorize VA to pay up to 100 percent of the cost of constructing and equipping state veterans' cemeteries. Under the current program, VA may pay up to 50 percent of the cost of land and construction. According to the VA, states which have made use of the program have always used either existing state or donated properties for state veterans' cemeteries, thus reducing the cost to the state. Therefore, the Committee believes that requiring the state to furnish the property will not pose an impediment to expanded state participation in the revised program.

When the Department first proposed this program change, officials stated on several occasions that the state grants program was intended to replace construction of new national cemeteries. The Committee strongly disagreed with that concept and told the Department that construction of new national cemeteries must continue to be a high priority, in addition to the state grants program. The Department has changed its position and has stated its agreement with the Committee's position that the state grants program is a supplement to a continuing national cemetery construction program. The Committee expects the Department to rapidly complete an update of the 1987 and 1994 studies which established the areas of greatest need for veterans cemeteries and to implement the results in the next strategic plan.

Section 405—Disabled Veterans Outreach Program Specialists

This section changes the formula used by the Veterans Employment and Training Service (VETS) to determine the number of DVOPs authorized to each state. The current formula is one DVOP for each 6,900 Vietnam-era veterans, veterans who enlisted after 1975, and disabled veterans in a state. The Committee believes it would be more appropriate to use a formula based on the working age veteran population. The Committee notes that in testimony before the Subcommittee on Benefits, the Vietnam Veterans of Amer-

ica, as well as all other veterans service organizations presenting testimony, expressed support for the provision.

Current law also requires that all DVOPS be disabled veterans of the Vietnam-era. The Committee believes that since DVOPS must be able to relate to veterans seeking employment and to perform other duties such as participating in the Transition Assistance Program, it is appropriate to open the position to a wider range of disabled veterans. Therefore, section 405 opens DVOPS positions to any disabled veteran.

Section 406—Permanent authority to use for operating expenses of the Department of Veterans Affairs medical facilities amounts available by reason of the limitation on pension for veterans receiving nursing home care

VA's authority to retain pension amounts in excess of \$90 paid to veterans with no dependents and residing in VA nursing homes expired on September 30, 1997. The retained funds were used to support the operations of the facility in which the pensioner was residing. This provision treats pensioners residing in VA nursing in the same manner as those living in Medicaid-supported, non-VA nursing homes.

Section 407—Members of the Board of Veterans' Appeals

This section authorizes Board of Veterans' Appeals members to also be called "veterans administrative law judges" and requires that all members be in good standing with a state bar. Section 407 also provides reversion rights to civil service attorneys who are members of the Board and whose appointments to the Board are terminated. Under current law, only career or career-conditional attorneys are granted the right to revert to a staff attorney position on the Board. Since most attorneys are employed by the federal government under excepted service rules, many Board members are not covered by the current reversion provisions. The Secretary will retain the right to deny reversion if the terminated Board member is not qualified for a staff attorney position.

Section 408—National Service Life Insurance Program

Section 408 would authorize the Department to issue dividends, when appropriate, to the holders of World War II era National Service Life Insurance (NSLI) series "H" policies. These policies were issued to disabled veterans who had not taken advantage of the standard NSLI policies during their enlistment. All other NSLI policies issue dividends, generally ranging up to a few hundred dollars per year. Since the predicted mortality among this group of 1,400 disabled veterans has been lower than expected, VA states there is sufficient excess funds to issue dividends to "H" policy holders. Additionally, since VA is authorized to issue dividends to other NSLI policy holders from the excess income, the Committee on Veterans' Affairs believes it is appropriate to treat "H" policy holders in the same manner.

SECTION-BY-SECTION ANALYSIS

Section 1 states the title of the Act is the "Veterans Benefits Improvement Act of 1998".

Section 2 states that all references made in the Act are to title 38, United States Code unless otherwise specified, and amends title 38, United States Code.

TITLE I

Section 101 directs the Secretary to increase the service-connected compensation, dependency and indemnity compensation, and related payments made to veterans and their survivors under chapter 11 and 13 by a percentage equal to that given to Social Security recipients.

TITLE II

Section 201 amends section 3684(c) to allow schools to collect an administrative fee for all VA beneficiaries attending school in a year. VA currently pays only for those attending on October 31 of each year. Reporting fees are to be made from the readjustment benefits account.

Section 202 amends section 3485(a)(1) to give veterans the option of accepting 40 percent of their work study payments as a lump sum, paid in advance.

Section 203 amends sections 3011(a)(2), 3012(a)(2), 3018(b)(4)(ii), 3018A(a)(2), 3018B(a)(1)(B), 3018B(a)(2)(B) and 3018C(a)(3) to authorize VA to consider academic credit granted by institutions based on experience as meeting the educational requirements for participation in the Montgomery GI Bill.

Section 204 amends sections 3034(d)(2) and 3241(b)(2) of title 38 and section 16136(c)(2) of title 10 to eliminate the requirement for flight students to maintain a class II physical throughout the period of flight training.

Section 205 amends section 3677(b) to exempt government training programs from the minimum wage requirements necessary to qualify for veterans job training benefits.

Section 206 amends section 3034 to require the Department to furnish service members information regarding the requirements to qualify for education benefits. Such information shall be furnished after completion of the member's \$1,200 pay reduction.

Section 207 amends section 3011 to require the military services to counsel members being discharged before the expiration of their enlistment about their eligibility for VA education benefits, including time-in-service requirements.

TITLE III

Section 301 amends section 7253(c) to allow a one-year continuation in office for judges of the Court of Veterans Appeals who have been nominated for an additional term.

Section 302 amends section 7254 to authorize the Court of Veterans Appeals to issue rules and regulations.

Section 303 amends chapter 72 by adding a new section 7257 prescribing procedures for judges of the Court of Veterans Appeals to volunteer for recall upon retirement, for the Court to recall retired judges, and the pay, powers, and duties of recalled judges.

Section 312 amends section 7296(b) by adding a new paragraph (4) which directs that 183 days or more of service shall be counted

as a full year when calculating years-of-service for retirement purposes.

Section 313 amends section 7296(c)(1) to prescribe the rates of pay for certain retired judges, the conditions of eligibility for increases in retired pay, and the maximum amounts of retired pay.

Section 314 adds a new subsection (g) to section 7298 to exempt the Court's judges' retirement account from sequestration.

Section 315 amends chapter 72 by adding a new section 7299 to prescribe limitations on the post-retirement activities of judges of the Court of Veterans Appeals.

Section 316 sets the requirements and rates of retired pay for, and authorizes early retirement of, one judge of the Court of Veterans Appeals per year for the years 1999 through 2003.

Section 317 amends section 7297(o) to authorize a cost-of-living increase for survivors participating in the Court's survivor annuity program.

Section 318 requires the Court to submit reports to the House and Senate Committees on Veterans' Affairs on the feasibility and desirability of merging the Court's retirement and survivors' annuity programs with those of another federal court system.

Section 321 amends section 7251 to rename the Court as the "United States Court of Appeals for Veterans Claims".

Section 322 provides conforming amendments to chapters 59, 71, and 72 of title 38, section 8440d of title 5, section 2412 of title 28, section 906 of title 44 and section 109 of the Ethics in Government Act of 1978 (5 U.S.C. App.)

TITLE IV

Section 401 amends section 3720(b) to require the Department to comply with the requirements of the Federal Property and Administrative Services Act of 1949 when contracting for property management services.

Section 402 amends section 3702(a)(2)(E) to make the VA Home Loan Guaranty program for members of the Selected Reserves permanent.

Section 403 adds a new paragraph (f) to section 2301 to require the Department to furnish a burial flag for certain members of the Selected Reserve who are not otherwise eligible for a burial flag.

Section 404 amends section 2408(b) to authorize the Department to pay up to 100 percent of the cost to construct and equip a state veterans cemetery, authorizes up to \$10 million per year for such purposes, and extends the program through 2004.

Section 405 amends section 4301A(a)(1) to revise the formula used to determine the number of Disabled Veterans Outreach Program Specialists (DVOPS) authorized for each state, and removes the requirement that DVOPS be veterans of the Vietnam-era.

Section 406 amends section 5503(a)(1)(B) to make permanent VA's authority to retain pension payments in excess of \$90 made to veterans without dependents and residing in VA nursing homes.

Section 407 amends section 7101(a) to authorize the title "veterans administrative law judges" for members of the Board of Veterans' Appeals. It also amends section 7101A(a) to require Board members to be members of a state bar. Finally, it amends section

7101A(d) to prescribe employment reversion rights for members of the Board of Veterans' Appeals who are removed from the Board.
Section 408 amends section 1919(b) to authorize the Department to pay dividends on National Service Life Insurance "H" policies.

OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

STATEMENT OF THE VIEWS OF THE ADMINISTRATION

The following represents the Administration's views and testimony.

U.S. Department of Labor

Assistant Secretary for
Veterans' Employment and Training
Washington, D.C. 20210



June 12, 1998

The Honorable Bob Stump
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Stump:

The Veterans' Employment and Training Service (VETS) of the Department of Labor is a source of information and constituent casework support for Members of Congress. Today, there are more than 14 million veterans, reservists, and National Guard members working in the civilian labor force. In addition, each year 250,000 men and women leave active military duty to join the civilian labor force. These men and women bring needed qualities, skills and abilities to the work force. They are also entitled to targeted employment assistance.

VETS assists veterans make the transition from military to civilian life through programs that offer career training and job search and placement assistance.

Transition to the civilian workforce begins while the individual is still on active duty. The Transition Assistance Program is jointly administered by the Departments of Labor, Veterans Affairs and Defense. It is typically a three-day workshop which includes help with resumes, information on the labor market and job training opportunities, and other relevant information.

After leaving the military, individuals may seek employment assistance at virtually any local employment service office. This assistance is available to veterans throughout their working lives.

The primary source of support for employment services is the veterans' representative in the local employment service office. These representatives, called Disabled Veterans' Outreach Program (DVOP) Specialists or Local Veterans Employment Representatives (LVER), are state employees funded through Federal grants to the states which are administered by VETS. The DVOPs and LVERs are dedicated exclusively to veterans' programs and receive their formal training through VETS at the National Veterans' Training Institute. In addition, VETS maintains field staff in each state to supervise the state grants and the effectiveness of the DVOPs and LVERs.

VETS also administers and helps enforce the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). This law protects veterans as well as National Guard and members of the Reserve from employment discrimination on the basis of their service, current membership, or even an expressed intent to join the military. In addition, USERRA provides veterans and Reserve component members with reemployment and other rights following completion of qualifying service. Our field staff investigates all complaints under USERRA. The field staff is also capable of reviewing the operations of other VETS programs affecting veterans.

Whether in the area of employment or enforcement, VETS' skilled personnel are available to your staff when a veteran or member of the Reserve or National Guard comes to your office for assistance. The names and locations of our state directors and headquarters staff may be found on the Department of Labor's Internet Web Site at www.dol.gov/dol/vets.

Several brochures about the services VETS provides and the laws it enforces are enclosed. Additional copies can be provided to you and to your local offices.

I would be glad to discuss how VETS can continue to serve the veterans you represent with you or a member of your staff. Thank you for your continued support of America's veterans.

Sincerely,



Espiridion (Al) Borrego

Enclosures

Thank you for your strong and continuous support for veterans.

**STATEMENT OF RICHARD B. STANDEFER,
ACTING CHAIRMAN, BOARD OF VETERANS' APPEALS**

BEFORE THE

**SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES**

June 10, 1998

Good morning, Mr. Chairman. It is a pleasure to be with you and other Subcommittee members and staff to discuss the operations of the Board of Veterans' Appeals.

In preparing for this hearing, I had occasion to review the Board's testimony before this Subcommittee in February 1994, a little over four years ago. We were testifying then in connection with our budget request.

At that time, Mr. Chairman, the Board's average response time was on its way to 781 days. We decided only 22,000 cases. We were still deciding those cases with three-member panels. Our backlog of cases stood at 47,000, and was on its way to 60,000. We were losing our most experienced Board members at an alarming rate to Administrative Law Judge positions.

I recall that former Chairman Slattery asked us in early 1994 what it would take to return in three years to the "good old days" of 1992, when the response time was 240 days. Frankly, Mr. Chairman, that seemed a nearly unreachable goal.

But today, I'm pleased to report that the Board's response time is down to around 250 days. Our backlog is less than 30,000 cases. We are retaining our Board members.

What's behind this remarkable success? A number of remarkable people.

- o This Subcommittee has been outstanding in its support of the appellate rights of veterans and their families. You gave us the legislative tools we desperately needed, particularly the authority to have decisions made by single members, the authority to conduct hearings by electronics means, and the restoration of pay equity between Board members and

administrative law judges. You championed the Board in budget negotiations, enabling us to increase the number of decision-makers.

- o Our partners in the veterans service organizations provided the Board with unparalleled support. As you know, Mr. Chairman, 85% of our appellants are represented by VSOs. As our decision-making capability increased—doubling from 1994 to 1997—these dedicated men and women have matched us step for step.
- o Our VA leadership ensured that dealing with the backlog at the Board was a top priority. At the Board itself, we reorganized so that we could take advantage of our new authority. We greatly increased the use of technology to improve our productivity, including videoconferencing to provide timely hearings for veterans, and we emphasized training to produce more and better decisions.
- o But most of all, we have been fortunate to have an extraordinary group of women and men—Board members, counsel, administrative support personnel—who spend every working day of their lives assisting veterans and their families in the appellate process. The pressure and responsibility on these individuals has been enormous. And they have responded magnificently. The average number of decisions per employee has increased by 75% since 1994, while the cost per case has actually declined by 25%.

So we have a success story, Mr. Chairman: All of the stakeholders in this process working together to achieve a goal that none of us could have done on our own.

Before I discuss some of the challenges facing the Board, I'd like to outline some specific things we've been doing recently.

- o As you know, VA recently published proposed regulations to implement Public Law 105-111, which provides for review of prior Board decisions on the grounds of clear and unmistakable error. It's been a very complex task. We are grateful to the Office of the General Counsel for its expert assistance and to this Subcommittee for its patience. We've done our best to get it right, and look forward to thoughtful comments from all quarters.
- o We have continued to strengthen our partnership with the Veterans Benefits Administration, both through cooperation at the Central Office level and with frequent contact between our geographically-oriented Decision Teams at the Board and the regional offices.

- o We have instituted new quality-review procedures to evaluate Board decisions, and are using information gathered in that process to institute appropriate training.
- o We have implemented special quality-review activities to monitor the cases remanded from the Court of Veterans Appeals. Even though those 657 cases in 1997 represent about 3 percent of the Board's appealable decisions in 1996, we are committed to quality and want to ensure the fairest result for all appellants.

But we know we have more to do.

In our view, Mr. Chairman, the challenge facing the Board at this point is this: Although we have reduced the time it takes for a veteran to have his or her appeal adjudicated at the Board, we need to reduce the "total system processing time," in other words, the time beginning with the filing of an appeal and ending with a *final* Board decision. Not a remand to the regional office to develop more evidence, but an allowance or disallowance of the appeal.

In 1992—before VA really began to feel the effects of judicial review—the average processing time for final decisions was 512 days. What that means is that, on the average, a veteran could expect an allowance or denial about a year and a half after filing the substantive appeal. By 1995, that number had doubled, and today stands at 1,032 days—close to three years.

We are very proud of what we've accomplished at the Board. And this Subcommittee should be proud as well. Working together, we have managed to reduce by two-thirds the time a veteran must wait for the Board to adjudicate his or her appeal. But the fact is that more than 40% of those adjudications continue to be remands: cases returned to the regional office, typically to gather and evaluate more evidence. Those are not final decisions. And unless the regional office grants all the benefits sought—something that happens about 25% of the time—the case comes back to us to be worked again.

So remands cause two difficulties:

First, they mean that the veteran has to wait, in essence, through another appeal cycle, which means, on the average, more than 700 additional days. The regional office must gather the evidence, evaluate it, and make a new decision. Three out of four times, that new decision will either deny the claim again, or grant less than what the veteran sought. That means the regional office must

prepare a supplemental statement of the case, allow the veteran time to respond, and then send the case back to the Board.

Second, when the remand rate is very high, as it has been for a number of years, remands become a major factor in the backlog. For example, in FY 1997, the Board remanded about 19,600 cases. We expect to see about 14,700—75%—of those cases again. In other words, if the Board receives 40,000 cases for adjudication, more than 35% of those cases would be remands returned from the regional offices. Not original appeals, but cases that have already been through the entire system at least once.

What we want to do, Mr. Chairman, is reduce the number of remands. We believe that if we can accomplish that, we can give the veteran—who sees “VA,” not the regional office and the Board—a quality decision which is more timely.

Reducing the number of remands—just as reducing the response time at the Board—is going to require cooperation by all our stakeholders: this subcommittee, the VSOs, VA leadership, the Veterans Benefits Administration, and the Board itself.

- o We need to increase training within the Board to improve quality. For example, where there are alternatives to remand—such as requesting a medical opinion from the Veterans Health Administration—or where a closer review of the record may obviate the need for a remand, we need to employ those alternatives or make that closer review. We intend to continue using our quality review processes as our chief guide to training needs.
- o We need to capitalize on our business partnership with VBA—the regional offices—by continuing to share some of the experience we have gained as VA’s final arbiter of veterans’ claims and VA’s closest contact with the jurisprudence of the Court of Veterans Appeals. Our experience so far suggests that when we invest the time to establish effective dialogues with individual regional offices and share our experience directly with them, remand rates decrease.

At the same time, we know that reducing the number of remands could have effects that may, on the surface, be perceived as negative consequences—

- o It will probably result in some reduction in the total number of decisions we make annually, simply because it takes longer to draft a final decision—subject to judicial review—than it does to draft a remand.

- o Reducing the number of remands will mean an increase in the number of allowed cases. But it will also mean an increase in the number of disallowed cases.

We are going to need the understanding of our stakeholders during any such transition.

In conclusion, Mr. Chairman, I think it's clear that there is much to be proud of in the Board's current performance, and many who share in the credit for that performance. As I've indicated, we do not intend to rest, but to seek out new ways to fulfill our statutory mandate of providing timely *final* decisions. We think that reducing the number of remands will make the appellate system even better for veterans and their families.

I would be pleased to answer any questions you or your colleagues might have.

Statement of Nora Egan
Deputy Under Secretary for Management
Veterans Benefits Administration
Department of Veterans Affairs
Before the
House Committee on Veterans' Affairs
Subcommittee on Benefits
June 18, 1998

Mr. Chairman and Members of the Subcommittee, I am pleased to be here this morning to provide the views of the Department of Veterans Affairs (VA) on a draft bill to provide a cost-of-living adjustment in rates of compensation paid to veterans with service-connected disabilities and to make various improvements in education, housing, cemetery, and other programs benefiting veterans.

Title I - Compensation Cost-of-Living Adjustment (COLA)

Section 101 of the draft bill would direct the Secretary of Veterans Affairs to increase administratively, effective December 1, 1998, the rates of compensation for service-disabled veterans and of dependency and indemnity compensation (DIC) for the survivors of veterans whose deaths are service related. The rate of increase would be the same as the COLA that will be provided under cur-

rent law to veterans' pension and Social Security recipients. In determining the new rates, the Secretary would be required to round any fractional dollar amounts to the next lower whole dollar. We believe this proposed COLA is necessary and appropriate in order to protect the benefits of these very deserving recipients from the eroding effects of inflation. Accordingly, VA strongly supports this provision.

Title II - Education Benefits

Title II of the draft bill would make several amendments to improve VA's educational assistance programs. In general, we support these provisions.

Section 201 of the draft bill would make an adjustment to the manner in which VA calculates the reporting fees it pays to educational institutions and training establishments as compensation for reports and certifications they are required by law to submit to VA. Currently, the reporting fees paid to these entities are computed for each calendar year based upon the number of veterans receiving VA educational assistance who are enrolled on October 31st of that year. This amendment would provide for the reporting fee to be calculated based on the veteran enrollment during the entire year. Many educational institutions now offer courses during accelerated or nonstandard terms. This amendment would allow educational institutions to be reimbursed for each veteran they certify to VA instead of being reimbursed only for those veterans enrolled on October 31. This provision would allow VA to make its reporting fee

payments on a more equitable basis. This section also would make the reporting fees mandatory. Currently, these fees are paid from the general operating expenses discretionary account. Thus, this proposal would increase direct spending. Preliminary estimates indicate that this proposal would cost approximately \$4 million each year, starting in Fiscal Year (FY) 2000.

Section 202 of the draft bill would allow advance payments under VA's work-study program to be at the option of the individual receiving the payment. Under current law, VA contracts for the services of certain individuals who are pursuing VA vocational rehabilitation, education, or training programs to work in various areas such as VA outreach or preparing and processing documents at educational institutions or VA regional offices. For these services, VA pays the individuals in the program an additional educational assistance allowance consisting of pay at the minimum wage for each hour worked. Current law directs that VA make an advance payment of this work-study allowance to the individual in an amount equal to 40 percent of the total amount agreed upon under the work-study contract. The individual then would work without further compensation until the advance is paid off.

A number of individuals in the work-study program have indicated that they do not want to receive an advance payment of their allowance. They would prefer reimbursement for work as it is performed so they may receive payment on a regular basis and, thus, avoid periods during which they receive no work-study allowance under the current system. This section would allow the individual the option of receiving the advance payment of work-study allowance.

Section 203 of the draft bill would amend the Montgomery GI Bill (MGIB)-Active Duty program (chapter 30) eligibility requirements to allow veterans who successfully complete or are granted academic credit for the equivalent of 12 or more semester hours to participate in that program. Generally, under current law, an individual must, among other requirements for entitlement to chapter 30 education assistance, have completed the requirements of a high school diploma (or its equivalent) or have completed 12 standard college degree credits. (This requirement must be met either before the individual's completion of the initial obligated period of active duty or before applying for benefits, depending on the qualifying criteria applicable to the individual.) Today, however, many institutions of higher learning will admit students without a high school diploma and grant credit toward a degree for an individual's knowledge and life experience. This practice particularly affects veterans and servicemembers who gain considerable life experience in their military careers.

This section would allow an individual to satisfy the prior education requirement when the individual has been granted 12 or more credits toward a standard college degree based on the individual's knowledge and previous life experience. VA supports this change, believing that an individual who has acquired collegiate credit through such means has manifested a level of knowledge, maturity, and ability that is necessary to successfully pursue postsecondary education and is at least equal to that of individuals who otherwise qualify for benefits under the current eligibility requirements. Our preliminary estimates indicate that there would be some small costs associated with this proposal.

Section 204 of the draft bill would amend the flight training provisions of the MGIB to clarify the criteria for complying with that program's medical requirements. Under current law, VA education benefits may be paid for flight training, provided that, among other things, the individual continuously meets the medical requirements for a commercial pilot's license during the course of flight training. This section would require that the individual submit evidence at the beginning of training showing that he or she meets the medical requirements for the license sought. We see this change as beneficial to program operation since it would reduce the administrative burden on trainees and schools while still providing adequate assurance that trainees can qualify for the objective for which they are training.

Section 205 would provide, in addition to the current advance payment opportunity, a new accelerated payment option for veterans and eligible persons under the chapter 32 contributory GI Bill, the MGIB, and the chapter 35 Dependents' and Survivors' Educational Assistance programs. The individual would have the choice of receiving either an advance payment for the beginning and subsequent months of the enrollment period or an accelerated payment consisting of two times the rate of monthly allowance payable during the enrollment period, with entitlement charged accordingly. The accelerated payment would be subject to the same terms and conditions on eligibility, application, and delivery as currently apply to advance payments. This change seems conceptually consistent with comments received from VA focus groups which have indicated that, due to increased educational costs, more "up front" money is needed to pay tui-

tion. Preliminary estimates indicate that this proposal would increase direct spending by approximately \$2 million over the period FY 1999 - FY 2003.

Section 206 of the draft bill would exempt Federal, state, and local government training establishments from meeting the incremental wage increase requirements currently in place for approval of on-job training for veterans. Under current law, to receive approval for a training program, a training establishment must certify that, among other criteria, wages paid to a trainee will be regularly increased until they equal not less than 85 percent of the full wage ordinarily paid for the job before the end of the training program. We have been advised by many State Approving Agencies (SAAs), which approve programs of job training for VA, that some worthwhile programs run by State or local governments, such as those leading to a career in law enforcement, health, or public safety, cannot be approved because the trainee, in accordance with Federal, State, or local civil service regulations, does not receive the first pay increase until after the training program is completed. This provision would allow approval, for VA education benefit purposes, of such beneficial government-operated training programs. Preliminary estimates indicate that this proposal would increase direct spending by approximately \$2.5 million in FY 1999, and almost \$13 million during FYs 1999-2003.

Section 207 of the draft bill would promote improved education outreach to servicemembers who have elected to participate in the MGIB by providing for the distribution of information concerning benefits, limitations, requirements, and procedures to those individuals as soon as possible after they have met their

\$1,200-basic-pay-reduction-eligibility requirement. It would also provide for the distribution of like materials to educational institutions, training establishments, and military education personnel.

MGIB usage rates are currently lower than VA would like to see. It has come to our attention that many individuals do not fully understand the MGIB eligibility requirements that must be satisfied to receive their education benefits under that program, such as the requirement for obtaining a secondary school diploma or its equivalent within a specified timeframe (a requirement that section 203 of this draft bill would modify). Still others believe they will receive a lump sum to defray the cost of their education rather than the monthly allowance that they actually receive.

Placing this outreach provision within chapter 30 obviously would focus such efforts on MGIB participants. Moreover, by expanding chapter 30 outreach to include active-duty MGIB participants, the provision would promote early dissemination of information to them about the MGIB benefits available, including pertinent requirements and limitations. This also likely would encourage servicemembers to seek further information and assistance to better prepare them to maximize the benefits of the MGIB to meet their educational or vocational goals. We believe this provision, if enacted, would have a beneficial impact on MGIB participants. Preliminary estimates indicate that this proposal would increase direct spending by approximately \$1.2 million over the period FY 1999 – FY 2003.

Section 208 of the draft bill would amend sections 3011 and 3012 of

title 38, United States Code, to require that the Department of Defense (DOD) inform each member of the Armed Forces who indicates an intent to request early discharge or release from his or her initial obligated active duty period, for the convenience of the Government, of the minimum active duty service required for entitlement to educational assistance under the MGIB-Active Duty program. Apparently, this section would seek to assure that members are aware that their early discharge or release possibly may affect MGIB entitlement. A report describing the effect of the new information requirements imposed by this section must be submitted to Congress within 18 months of the date of enactment of this provision. Since DOD would be responsible for administering this provision, we would defer to that Department's views on its merits.

Title III - Other Matters

Section 301 of the draft bill would subject contracts for goods and services with respect to properties VA acquires under the housing loan program to the Federal contracting requirements in title III of the Federal Property and Administrative Services Act of 1949. This section is similar to H.R. 2887, 105th Congress, which is also on today's agenda.

In most instances where a VA guaranteed loan is foreclosed, the loan holder has a statutory election to convey the property to the Secretary. If VA forecloses a loan that it made or acquired, then VA would normally acquire the property at the foreclosure sale. In either event, VA then sells the property to the

general public in an effort to recoup a portion of the Government's loss on the loan termination. VA's goal is to be able to sell each property as quickly as possible for the most favorable price.

Before selling a property, VA often contracts for a variety of goods or services with respect to the property, such as: routine maintenance, repairs necessary for safety or structural soundness, and other minor repairs VA determines to be necessary in order for the property to compare favorably with similar properties on the market. VA may also contract for property management and legal services. Most contracts are relatively small. As of November 1997, VA's average expenditure for contractual services per property was \$2,553. This sum may represent several contracts per property; i.e., painting, cutting the grass, repairing the furnace or plumbing, and replacing the carpeting.

Current law authorizes the Secretary to exercise the powers granted by section 3720 of title 38 regarding VA-owned properties without regard to any other law governing the expenditure of public funds. That section, however, requires VA to comply with the advertising requirements of section 5 of title 41, United States Code, with regard to contracts in excess of \$25,000.

When Congress exempted VA acquired properties from other Federal laws relating to contracting more than 50 years ago, Congress apparently recognized the unique nature of these properties. They are not Federal facilities. Rather, they are single-family residences that are sold as quickly as possible to return money to the loan fund and reduce the loss to the Treasury on the loan transaction.

Nevertheless, VA strives to let contracts in a fair and competitive manner, and regional offices follow procedures for obtaining goods and services for our acquired properties that very closely mirror the FAR. Therefore, in most cases, section 301 of the draft bill would not have a significant impact on VA.

We are concerned, however, that some sales could be adversely impacted. Any delay in a sale may increase the loss through vandalism to the property. In addition, we are concerned about the adverse impact our vacant properties have on the surrounding neighborhood.

We are also concerned that occasional bid protests for relatively small procurements could cause additional delays. In certain situations agencies are required to stay contract award or performance until resolution of a protest. If VA's decision to buy carpeting or a refrigerator for a home were protested by a losing bidder, VA's ability to market that property could be delayed for several months while the bid protest was being considered. Meanwhile, that property would sit vacant.

VA believes the current law, which requires reasonable advertising for larger procurements, and under which VA's actions voluntarily mirror FAR requirements, has been fair and adequate for over 50 years. From all indications we have received, contractors and potential contractors are generally satisfied with the manner in which VA obtains goods and services for our properties. We appreciate the concerns of the Committee, but based on past performance, VA questions the need for this amendment. However, if the Committee believes this

provision is in the best interest of the VA housing loan program, VA would not oppose section 301.

Section 302 of the draft bill would make permanent the housing loan entitlement currently given to persons whose only service was in the Reserves, including the National Guard.

Prior to 1992, only persons who had served on active duty, other than active duty for training, (and certain spouses or surviving spouses of POW/MIAs and persons who died from a service-connected cause) qualified for VA housing loan benefits. Public Law 102-547, enacted October 28, 1992, granted loan entitlement to persons who had at least 6 years of honorable service in the Selected Reserve. Entitlement for Reservists expires October 27, 1999.

Reservists pay a loan fee that is generally 75 basis points higher than other veterans. For example, on a no-downpayment loan which is the veteran's first use of VA housing loan entitlement, most veterans would pay a fee equal to 2 percent of the loan amount. Reservists would pay a fee of 2.75 percent of the loan amount for the same loan.

The Armed Forces continue to rely heavily on the Reserve Components, including the National Guard. They are asked to perform a number of duties and are given assignments that were previously conducted only by active duty personnel. VA has noticed, so far, that loans made to Reservists have a lower default rate than loans made to veterans with active duty. Further, 67.2 percent of Reservists who obtained VA guaranteed loans were first-time homebuyers.

We believe it is important to recognize the valuable contributions of members of the Selected Reserve. However, since the current authority does not expire until October 28, 1999, the Department would like to defer comment on this provision.

Section 303, which was recently added to the draft bill, would amend section 2301 of title 38, United States Code, to require the Secretary to furnish a burial flag for a deceased member or former member of the Selected Reserve who is not otherwise eligible for a burial flag, and who: (1) completed at least one enlistment as a member of the Selected Reserve, or in the case of an officer, completed the period of initial obligated service as a member of the Selected Reserve; (2) was discharged before completion of the person's initial enlistment as a member of the Selected Reserve, or in the case of an officer, the initial period of obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in line of duty; or (3) died while a member of the Selected Reserve. A flag would not be furnished in the case of a person whose last discharge from service in the Armed Forces was "under conditions less favorable than honorable."

At this time, the Department wishes to defer comment on this provision. While we believe it is important to recognize the valuable contributions members of the Selected Reserve have made to insure the security of this Nation, we need additional time to assess the impact of this proposal, including its fiscal implications. We would be pleased to work with the subcommittee staff to fully address this matter.

Section 304(a) of the draft bill would amend section 2408(b) of title 38, United States Code, to make state cemetery grants more attractive to States. We view the State Cemetery Grants Program as a complement to, and not a replacement for, the construction of new national cemeteries. VA supports the provisions of the proposal to enhance that program.

Section 2408(b) authorizes the Secretary to make grants to States to assist them in establishing, expanding, or improving State veterans' cemeteries. Currently, the amount of a State cemetery grant is limited to 50 percent of the total of the value of the land to be acquired or dedicated for a cemetery and the cost of improvements to be made on the land. The remaining amount of the cost must be contributed by the State receiving the grant. Pursuant to the amendments proposed in this section, the amount of a State cemetery grant could not exceed, in the case of the establishment of a new cemetery, the total of the cost of improvements to be made on land to be converted into a cemetery and the initial cost of equipment necessary to operate the cemetery. In the case of the expansion or improvement of an existing cemetery, the amount of the grant could not exceed the total of the cost of improvements to be made on any land to be added to the cemetery combined with the cost of improvements to be made to the existing cemetery. If the amount of a grant should, for any reason, be less than the amount of those costs, the State receiving the grant would be required to contribute the remaining amount, in addition to providing any land necessary for the cemetery project.

Also, under current law, if at the time of a grant the State receiving the grant dedicates for the cemetery land which it already owns, the value of the land may constitute up to 50 percent of the State's contribution. Once that land value is so used, it may not constitute part of the State's contribution for any subsequent grant under section 2408. Under the amendments proposed in section 304(a) of this draft bill, a State would be responsible for providing any land required for a cemetery project, since the grant amount would no longer be based partly on the value of land to be acquired or dedicated for a cemetery.

We believe that excluding the value of land to be acquired for a cemetery from the basis of a grant would not discourage States from participating in the State Cemetery Grants Program. In our experience, in every case, the State has dedicated land that was donated or transferred for that purpose, or land that it already owned. Further, any reduction of the basis from which a grant is calculated may be offset by an increase from 50 percent to up to 100 percent in the proportion of the amount of a project's cost that could be assumed by the Federal Government. Moreover, since, under the proposal, a grant may cover the entire cost of improvements (and initial cost of equipment in certain cases), a State may not have to contribute cash toward the initial cost of a project.

Another feature that would make grants more attractive to States is the inclusion in the basis of a grant of the initial cost of equipment necessary to operate the cemetery. Providing funds to acquire the equipment necessary to operate a cemetery will, we believe, be a critical financial incentive to encourage States to establish new cemeteries. Such equipment is as essential to the es-

establishment of an operational cemetery as are the land and the improvements made on it. However, because the proposed amendment includes only the *initial* cost of equipment for the *establishment* of a cemetery, the State would retain the responsibility for long-term maintenance and operation of the cemetery, including costs associated with the acquisition of replacement equipment. Each Federal grant would assist in the establishment and activation of new veterans' cemeteries, or in the expansion or improvement of existing cemeteries, but the States would bear the costs of continuing operation and long-term maintenance.

VA wishes to provide every eligible veteran with the option of burial in a veterans' cemetery. Statistics indicate that about 80 percent of veterans interred in national cemeteries resided within 75 miles of the cemetery closest to them. We believe it is not practicable for VA to build and operate national cemeteries in sufficient numbers to ensure that all eligible veterans reside within 75 miles of a national cemetery. Increasing the number and size of State veterans' cemeteries would foster an enhanced partnership with the States in satisfying our Nation's obligations to those who served. VA supports section 304 (a), which is similar to legislation proposed by this Department.

Section 304(b) would authorize "no-year" appropriations for the State Cemetery Grants Program. Under 38 U.S.C. § 2408(e), funds appropriated for State cemetery grants remain available only until the end of the second fiscal year following the fiscal year for which they are appropriated. However, in Public Law 104-204, Congress appropriated funds for State cemetery grants, "to remain

available until expended." Section 304(b) would amend section 2408(e) to reflect this no-year-funding policy, which VA supports.

Finally, section 304(c) would authorize to be appropriated \$10 million for each of the next six fiscal years (FY 1999 - 2004) to fund the State Cemetery Grants Program. VA supports this authorization.

Section 305 of the draft bill would amend subsection 4103A(a)(1) of title 38, United States Code, to revise the formula for determining the number of disabled veterans' outreach program specialists to be appointed pursuant to that subsection in support of the Disabled Veterans' Outreach Program. That program is administered by the Department of Labor (DOL). Accordingly, VA defers to DOL's views on this provision.

Section 306 of the draft bill would amend section 5503(a)(1)(B) of title 38, United States Code, effective October 1, 1997, to make permanent VA's authority to deposit into VA medical facility revolving funds amounts of pension that are not paid to veterans as the result of payment limitations that apply to certain veterans being furnished nursing home care by VA. Section 5503(a)(1)(B) provides that where any veteran having neither spouse nor child is being furnished nursing home care by VA, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. In 1992 Congress amended this section to provide that, through September 30, 1997, any amount in excess of \$90 per month that is not payable to a veteran shall be deposited into a revolving fund at the VA medical facility which furnished the veteran nursing home care.

These funds are then available without fiscal year limitation to help defray the operating expenses of the particular facility. VA supports this provision.

Section 307 of the draft bill would amend pertinent provisions in chapter 71 of title 38, United States Code, to: (1) provide that Board of Veterans' Appeals (Board) members (other than the Chairman) also be known as "veterans administrative law judges;" (2) require that members of the Board be members in good standing of the bar of any State; and (3) clarify that Board members who were civil-service attorneys prior to appointment to the Board, and whose appointments are not continued, may, at their option, "revert" to attorney status with the Board, if qualified. VA supports each of these amendments.

Under chapter 71 of title 38, United States Code, persons making determinations in proceedings before the Board, other than the Chairman and the Vice Chairman, are known only as "members" of the Board. Section 307(a) would amend section 7101(a) of title 38 to provide that members of the Board shall also be known as veterans administrative law judges. Individuals deciding appeals at the administrative level in many other Federal agencies who perform essentially the same functions as members of the Board are known as "administrative law judges," or, in some cases, "administrative judges." The draft bill would more accurately convey a Board member's function to veterans than the term "member." In addition, the change would enhance the confidence of veterans in the administrative appellate process by providing recognition that appeals in the VA system are adjudicated by legal professionals, as are benefit appeals in other administrative systems.

Chapter 71 of title 38 does not currently specify qualifications for members of the Board. Section 307(b) would amend 38 U.S.C. § 7101A to provide that all members of the Board shall be members in good standing of the bar of a State.

Historically, members of the Board were either licensed attorneys or physicians. In *Colvin v. Derwinski*, the United States Court of Veterans Appeals held that the Board may only consider independent medical evidence to support its findings and that Board members may not use their own unsubstantiated medical opinion in deciding appeals. Because of the growing legal emphasis in the adjudication of appeals for veterans' benefits, it is essential that Board members be trained in the law.

Section 307(c) would amend 38 U.S.C. § 7101A to clarify the "reversion" rights for Board members who are not recertified. Section 7101A of title 38, added by Pub. L. No. 103-446, provides that members of the Board must be periodically recertified in their positions. Section 7101A(d)(2) provides that a member who is noncertified shall revert to the civil service grade and series he or she held before appointment as a Board member, provided that the member was a "career or career conditional employee in the civil service" prior to commencement of service as a Board member.

Attorneys in the Federal civil service are not "career or career-conditional employees." Rather, they hold what are referred to as "excepted service" appointments. Almost all members of the Board were appointed to that position while serving as attorneys for the Board. Virtually all Board members were

serving as attorneys in the Federal civil service at the time of their appointment. Most Board members have spent their entire civil service careers as attorneys.

In supporting passage of what became section 7101A, it was the Department's intention that Board members who were noncertified under 38 U.S.C. § 7101A(d)(1), and who had previously served as Board attorneys, would revert to Board attorney status. On September 20, 1996, VA's General Counsel opined that only Board members who had held career or career-conditional positions would be entitled to reversion under section 7101A(d)(2). Because most Board members have spent their entire careers in the "excepted," or "non-career" service, they would not benefit from the current reversion provision.

This legislation would further what we believe was the original intent of section 7101A(d)(2) by providing that a noncertified Board member who previously served as an attorney in the Federal civil service shall be appointed to an attorney position at the Board, with grade and step protection for those whose immediate prior position was as an attorney at the Board. VA has no objection to the provision that the Secretary is not required to appoint a noncertified member to an attorney position if the individual is not qualified.

We do note that, although many provisions aimed at improving veterans benefits are included in this bill, our proposal in the President's FY 1999 Budget to merge "H" policyholders into the larger National Service Life Insurance fund's "V" program is not included. We think this proposal is worthy of your consideration for inclusion in this bill and would be glad to provide you the required bill language.

Mr. Chairman, this concludes my prepared testimony on this draft legislation.

VIEW OF THE UNITED STATES COURT OF VETERANS APPEALS

The Chief Judge of the United States Court of Veterans Appeals submitted the following justification for changes to authorizing legislation pertaining to the Court and its operations.

FOR RELEASE ON DELIVERY
Expected at 10:00 A.M. EDT
June 10, 1998

STATEMENT OF
HONORABLE FRANK Q. NEBEKER
CHIEF JUDGE, U.S. COURT OF VETERANS APPEALS
FOR PRESENTATION BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
JUNE 10, 1998

MISTER CHAIRMAN AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE:

On behalf of the Court, I appreciate the opportunity to provide this statement on H.R. 3212, a bill to revise provisions of law relating to the judges on the Court, and for other purposes. The proposed legislation would make the retirement and survivors' annuity plan for Court of Veterans Appeals judges comparable to that available to other federal judges, ensure institutional continuity by providing for staggered retirement for judges who meet certain eligibility criteria, institute a mechanism which would permit the recall of any retired judge in the event of a caseload crisis, and rename the Court as the "United States Court of Appeals for Veterans Claims." I will briefly set out the rationale for the major provisions of these legislative changes.

First, I believe that the proposed legislation is required to place Court of Veterans Appeals judges on a comparable footing in relation to the judges of other federal courts, as concerns a retirement and survivors' annuity plan. In so doing, this legislation would carry out the intent

expressed by Congress when it established the Court, which is that the Court function as a part of the federal judiciary.

The Court was created nearly ten years ago under Article I of the U.S. Constitution, and it is beyond dispute that Congress intended the Court to function as an independent judicial entity. That intent is reflected in the language of the Veterans' Judicial Review Act of 1988 (VJRA) and subsequent amendments. Furthermore, both the House and Senate reports accompanying the compromise bill that became the VJRA, as well as statements on the floor of both Houses on that bill, demonstrate clear legislative intent to establish the Court of Veterans Appeals as "a truly independent [A]rticle I, specialty court." 134 Cong. Rec. 31,461 (1988) (floor statement of Sen. Cranston on compromise measure that became VJRA)); *see also* 134 Cong. Reg. 31,465-66 (statement of Sen. Cranston containing further references to Court as "independent entity" and "independent tribunal"); 134 Cong. Rec. 31,770 (1988) (statement of Rep. Montgomery on compromise measure stating that bill, as crafted, "will allow an independent review by a court"); 134 Cong. Rec. 31,788 (1988) (statement of Rep. Edwards concerning nature and powers of Court of Veterans Appeals). In short, the Court has judicial powers and its judges have judicial responsibilities, comparable to those throughout the federal judiciary.

Furthermore, the stated intent of Congress was that, commensurate with these powers and responsibilities, a retirement and survivors' annuity plan be established "comparable to that available to other Federal judges" (House Committee Report), which would place the new Court "on a comparable footing in this regard in relation to other Federal courts" (Senate Committee

Report). See H.R. Rep. No. 189, 101st Cong., 1st Sess. 4 (1989); S. Rep. No. 86, 101st Cong., 1st Sess. 23 (1989). The proposed legislation would achieve that goal. The legislation, while not selecting the most favorable elements of the various plans, would permit the Court's judges to achieve parity with Bankruptcy and Magistrate Judges.

For example, the changes to the Court's survivors' annuity program would make it comparable to the Joint Survivors' Annuity System (JSAS) available to the judges of four different courts, including Bankruptcy and Magistrate Judges. None of the changes, including that relating to the contributions required of judges, would make the Court's survivors' annuity program more favorable than JSAS. Because the Court's present system provides too few benefits at too much cost, only one judge has ever elected participation and only upon the unfortunate circumstance of learning, before his death in 1996, that he had a short-term terminal illness. In only such a circumstance, where a judge's survivor could receive benefits after just a brief period of participation, does enrollment make sense. Besides encouraging enrollment by other judges of the Court, enactment of section 104 of H.R. 3212 would be of particular benefit to the widow of the deceased judge because it would rectify the disparity between her survivor annuity and the annuities of survivors of other federal judges, including Bankruptcy and Magistrate Judges.

I will turn now to the reason for the staggered retirement provision contained in section 201 of H.R. 3212. I think it was well expressed by my newest colleague, Judge William Greene, in a talk he gave a few days ago to the Veterans Law Section of the Federal Bar Association. The Section's members had expressed an interest in hearing him talk about his

confirmation process. He outlined its steps and noted that the process of filling the vacancy created by Judge Hart Mankin's death had taken eighteen months. He then commented that the five other associate judges and the Chief Judge would all have terms that expired at about the same time. He said that he could envision a day, sometime in 2005, when he would walk into the Court, look around, and realize that he was there all by himself.

He got a chuckle from his audience, but he was not speaking for comic effect. In fact, my fifteen-year term and those of five of the Court's associate judges all expire within approximately fifteen months of each other, between May 2004 and August 2005. I want to state first that I intend to complete my term. Assuming that all of these judges complete their terms, and that none of the three judges who will be under age 65 at that time is reappointed, the Court could have at least five and very possibly six simultaneous vacancies during 2005. Given the length of time likely to be involved in the nomination and confirmation process, and the fact that 2004 is a presidential election year, the vacancies could be lengthy.

There are several other possible scenarios that could occur. I will outline the most likely. Assuming the application of the "Rule of 80" (age plus years of service equals 80; this is the general standard governing retirement of federal judges), and no reappointments, four associate judges would retire within 11 months of each other, between September 2004 and August 2005. (The fifth associate judge will be eligible for retirement under the Rule of 80 in November 2002.) Put another way, three of the Court's judgeships would be vacated in 2004 (my term and those of two associate judges), and two additional associate judgeships would be vacated during the first

8 months of 2005. Thus, under this assumption, it is quite possible that the Court would have five simultaneous vacancies in 2005.

Alternatively, assuming the reappointment of the three judges who will not be 65 years of age at the expiration of their 15-year terms, under the application of the Rule of 80, they would be eligible to retire between May 2006 and July 2007, thus likely creating three simultaneous vacancies.

The provisions of title II of H.R. 3212 would permit staggered retirement and provide a practical incentive to judges who became eligible to exercise that option. Under the provisions of H.R. 3212, eligibility would be staggered. Precedent exists in three other Article I Courts for retirement based on completion of less than the full statutory term of service, and there are a number of other provisions applicable to Article III and to other Article I courts that permit retirement where less than a full judicial term has been completed. The staggered retirement of associate judges presently participating in the Court's retirement system would create an estimated actuarially accrued liability of approximately \$270,000 in the judges' retirement fund, amortizable under actuarial methodology at approximately \$24,000 per year over 20 years.

Moreover, the provision permitting recall would allow me to call upon retired judges, with their consent, when need arose. With the Court's increasing caseload and the potential problems surrounding near simultaneous retirements of judges, such as would be more likely without the proposed legislation, this provision makes sense. All Article III and Article I judges, except

Bankruptcy and Magistrate Judges and this Court's judges, have specific provisions for both senior status and postretirement judicial service. Bankruptcy and Magistrate Judges, as is the case with judges of the U.S. Court of Appeals for the Armed Forces, have a specific provision for recall upon consent. This provision would be both a further step toward the goal of comparability that Congress intended, and an option that would enable me or any future Chief Judge to deal expeditiously with a temporary spike in caseload.

Finally, I will briefly address the provisions of Title III, which would rename the Court as the United States Court of Appeals for Veterans Claims. The name change, I believe, would give full voice to the express intent of Congress by making it crystal clear that the Court is an independent judicial entity, completely separate from the Department of Veterans Affairs. Misconceptions concerning the Court's nature are still widespread, as was emphasized during a recent oral argument before the U.S. Court of Appeals for the Federal Circuit where the three-judge panel seemed to be proceeding on the assumption that this Court is an entity within the Department of Veterans Affairs.

In conclusion, I appreciate this opportunity to present the Court's testimony on H.R. 3212. On behalf of the Court's judges and staff, I thank you for your past support. I, or those with me, will be pleased to answer any questions you may have.



**United States
Court of Veterans Appeals**

Chambers of
Chief Judge Frank G. Nebeker

June 16, 1997

625 Indiana Avenue, N.W., Suite 900
Washington, D.C. 20004
202-501-5662

Honorable Bob Stump
Chairman
Committee on Veterans' Affairs
333 Cannon House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to submit to you a legislative proposal that replaces the one I sent you in June 1996. As I indicated in my letter of February 4, 1997, the Court had experienced a substantial change in case filings for the prior 10 months. With a monthly average of new case filings of over 160 during the past year, I am convinced that the downsizing proposal transmitted last June is no longer advisable.

For the reasons stated in my February 4, 1997, letter, and as set forth in my budget testimony in the last several months, the Court now anticipates that case filings in fiscal year 1997 will be over 1900 -- a figure that could increase further if the Board of Veterans' Appeals continues to increase its output of final, appealable decisions. Moreover, the workload in each of the judge's chambers will increase if the long delays in case processing, due to numerous filing extensions granted to the Secretary, occasioned by the staffing difficulties in Group VII of the Department's General Counsel's office, are reduced; this matter has recently received considerable attention by the Court and the General Counsel herself. In that regard, I am enclosing an April 8, 1997, letter (with attachment) to me from the General Counsel that addresses this problem.

Against this background of a substantial caseload increase, I am submitting a new, single legislative proposal that incorporates as Title I the provisions of Title II from last year's proposal. These provisions are designed to provide comparability in a number of respects between the retirement/survivor annuity programs available for this Court's judges and those applicable to judges of other Article I Courts. Enactment of section 104 will be of particular benefit to the widow of Judge Hart Mankin, who died last year, because section 104 would rectify the disparity between her survivor annuity and the annuities of survivors of deceased Article I Judges under the Joint Survivors' Annuity System.

The Court's new legislative proposal adds a new Title II to deal with a serious problem of judge turnover, the magnitude of which the Court had not previously appreciated. As I indicated in my February 4, 1997, letter, the Court was created in 1988 without any antecedent structure and with no judges in place (Veterans' Judicial Review Act, Pub. L. No. 100-687, Div. A., 102 Stat. 4105 (Nov. 18, 1988)). All 6 of the Court's original associate judges assumed office within a period of approximately 1 year of each other. The 15-year terms of the Court's remaining 5 original associate judges will expire within a period of approximately 1 year of each other. Even assuming the application of the Rule of 80 under 38 U.S.C. § 7296(b)(1) (and assuming no reappointments under 38 U.S.C. § 7296(2)), 4 of 5 of the court's original associate judges will retire within 11 months of each other, beginning in September 2004.

Given the length of time likely to be involved in the nomination and confirmation process, especially considering the election of a President in November 2004, 3 of the Court's judgeships are very likely to be simultaneously vacant during a substantial part of 2005, and it is quite possible that a majority of the judgeships could be simultaneously vacant during part of that year and possibly thereafter. Then, even after the judgeships are filled, there could well be considerable lack of experience among the majority of the Court's judges. This situation would almost certainly dramatically increase the Court's backlog -- initially during the vacancies and continuing during the startup period for the replacement judges. As well, during the vacancy period the Court could be in a situation where two or three judges might be able to overrule prior Court precedent. In order to preclude such problems, the enclosed legislative proposal includes, as section 201, a provision to create a staggered-retirement option designed to encourage the sequencing of associate judge retirements starting in 1999. It is important to bear in mind, when considering the staggered-retirement provision, that the formula for an early retirement annuity must provide sufficient financial incentive for an associate judge to elect to forego the full retirement benefit that would be available upon completion of the 15-year term or satisfaction of the Rule of 80. There is no sense whatsoever in legislating a formula that will not produce the early retirements that are essential to avoid the serious adverse consequences that would result for the Court from having 3-4 simultaneous judicial vacancies for an extended period of time.

Moreover, as I also indicated in my February 4, 1997, letter, implementation of this proposed Title II may be achievable without seeking additional appropriations for this purpose. In this regard, subsection (d) of the proposed section 201 would permit the Court to utilize 38 U.S.C § 7298(e)(2)(A) in anticipation of a payment that may have to be made from the Court's retirement fund. It should be noted that, even absent

staggered retirement, the proposed subsection (d) would allow the Court to provide for much better management of a judge's anticipated entry, under 38 U.S.C. § 7296(d)(1)(A), into the Court's retirement system.

In addition, in order to provide for recall of retired judges in the event of judicial vacancies or increased workload, included in the legislative proposal as section 202 is the same basic provision that was included in last year's proposal as section 102. In order to help with the simultaneous vacancy problem described above, the provision has been revised to make specific reference to a voluntary recall in the event of a vacancy in an associate judge position. However, this recall provision could not itself prevent the simultaneous vacancies that section 201 is designed to forestall.

Finally, for completeness sake, the proposal includes, as Title III, a provision to change the Court's name to the United States Court of Appeals for Veterans Claims, which I proposed in my February 4, 1997, letter and which passed the House on April 16, 1997, in section 201 of H.R. 1092. Title III differs from section 201 only so as to accommodate the former to the style of the rest of the proposal.

Enclosed, for your information, is an overview, a cost estimate, a draft bill, and a detailed section-by-section summary and explanation.

Thank you for your assistance. I urge that you and the Committee give favorable consideration to the enclosed legislative proposal to reform the Court's judicial retirement provisions and provide for a staggered-retirement option designed to avoid the impact of simultaneous judicial vacancies. I am sending the same letter and enclosures to Chairman Specter, and Ranking Minority Members Rockefeller and Evans.

Sincerely,



Frank Q. Nebeker
Chief Judge

Enclosures

OVERVIEW OF
COURT OF VETERANS APPEALS
AMENDMENTS OF 1997

- The Title I provisions provide comparability in a number of respects between the retirement/survivor programs applicable to the Court's judges and those programs applicable to judges of other Article I Courts. The Title II provisions provide mechanisms to preclude the situation in which the Court will otherwise experience 3-4 simultaneous vacancies in 2005, and to permit recall of retired judges in the event of judicial vacancies or workload demand. The Title III provision provides for the renaming of the Court as the United States Court of Appeals for Veterans Claims in order clearly to identify the Court as a judicial, rather than an administrative, tribunal.

TITLE I

- Section 101 would permit the Court to prescribe rules and regulations applicable to subchapters III and V of title 38, U.S. Code.
- Section 102 would provide that a fractional year of judicial service would be rounded up to one if six full months or more, and rounded down to zero if less than six months.
- Section 103 would cap retirement COLA so that retired pay could not exceed pay of an active judge.
- Section 104 would provide the judges with the same survivor annuity system as that provided for Article III, Claims, and Bankruptcy and Magistrate Judges.
- Section 105 would preclude sequestration of the Court's retirement fund.
- Section 106 would prohibit retired judges from practicing veterans law.

TITLE II

- Section 201 would permit staggered retirement of one associate judge each year from 1999 through 2003.
- Section 202 would permit recall of retired judges.

TITLE III

- Section 301 would rename the Court as the United States Court of Appeals for Veterans Claims.

**COST ESTIMATE OF
COURT OF VETERAN APPEALS
AMENDMENTS OF 1997**

TITLE I

Section 101: Authority to Prescribe Rules and Regulations

No cost impact.

Section 102: Calculation of Years of Service as a Judge

No cost impact. Prior annual actuarial valuations, upon which Court contributions to the retirement fund are based, included this assumption.

Section 103: Limitation on Cost-of-Living Adjustment to Retired Pay

No cost impact. The calendar year 1995 annual actuarial valuation, upon which the Court's FY 1997 contributions to the retirement fund are based, included this as an assumption.

Section 104: Survivor Annuities

Based on actual present participation, which is the basis for the annual actuarial valuation, the cost impact is actuarially insignificant. The annual actuarial normal cost as a percentage of payroll, which determines the Court's annual contribution to the retirement fund, does not change with this provision.

Section 105: Exemption of Retirement Fund from Sequestration Orders

No impact on Court budget authority.

Section 106: Limitation on Activities of Retired Judges

No cost impact.

TITLE II**Section 201: Staggered Retirement**

Based on actuarial estimate, the retirement of associate judges presently participating in the Court's retirement system, as they become eligible under section 201, should not require an annual appropriation for judges retirement in excess of the appropriation for that purpose in present fiscal year, 1997. Such an appropriation would also be sufficient to cover an estimated actuarial accrued liability of \$269,880 in the judges retirement plan, amortizable, pursuant to actuarial methodology to develop a recommended contribution to the judges retirement fund, at \$23,808 per year over 20 years. This liability could be reduced or eliminated by utilization of 38 U.S.C. § 7298(e)(2)(A), as would be permitted by the amendment that would be made by section 201(d)(2) of the proposed legislation to title 38, U.S. Code, by adding subparagraph (C) to present section 7298(e)(2).

Section 202: Recall of Retired Judges

This would be an unbudgeted item in the fiscal year in which the salary cost for a recalled judge is incurred.

TITLE III**Section 301: Renaming of the Court of Veterans Appeals**

The Congressional Budget Office estimates no significant cost. See H.R. Rep. No. 105-47 (accompanying H.R. 1092), 105th Cong., 1st Sess. 6 (1997). H.R. 1092 was passed by the House on April 16, 1997.

SUMMARY AND EXPLANATION OF
COURT OF VETERANS APPEALS AMENDMENTS OF 1997

Section 1: Short Title .

Summary: Section 1 would provide that the short title of the proposed legislation [hereinafter "the Proposal"] is the "Court of Veterans Appeals Amendments of 1997".

Explanation: Self-explanatory.

TITLE I -- COMPARABILITY

Title I contains provisions designed to provide comparability in a number of respects between the retirement/survivor program applicable to judges of the U.S. Court of Veterans Appeals (to be renamed by section 301 of the Proposal as the U.S. Court of Appeals for Veterans Claims) [hereinafter "this Court" or "the Court"] and the program applicable to judges of other Article I courts. The explanation that follows each section in this title sets forth the comparable provisions that form the basis for the provision in the Proposal. Full comparability is not being proposed with other federal courts because the Court is not requesting elimination of the judge's contribution for participation in the Court retirement program.

Section-by-Section Analysis

Section 101: Authority to Prescribe Rules and Regulations.

Summary: Section 101 would provide to the Court the express authority to prescribe rules and regulations necessary or appropriate to carry out the provisions of subchapters III and V of chapter 72 of title 38, pertaining to the Court's administration and retirement/survivor system. Any rules and regulations prescribed would be required to be consistent with chapter 72 and all other applicable provisions of law.

Explanation: The Director of the Administrative Office of the United States Courts (Director) has express authority, subject to the supervision of the Judicial Conference of the United States, to regulate a wide range of activities that pertain to Article III, U.S. Court of Federal Claims (Claims), and U. S. Bankruptcy and Magistrate (B & M) Judges.¹ The Judicial Conference of the United States also has express authority to promulgate rules and regulations.² The U.S. Court of Appeals for the Armed Forces, formerly the U.S. Court of Military Appeals (COMA) [hereinafter so referenced to coordinate with references to "COMA" in Dennis W. Snook & Jennifer A. Neisner, CONGRESSIONAL RESEARCH SERVICE

¹ See 28 U.S.C. § 604.

² See, e.g., *infra* note 41.

REPORT FOR CONGRESS, INCOME PROTECTION FOR JUDGES OF SELECTED FEDERAL COURTS, dated December 29, 1993, (CRS REPORT)] is located for administrative purposes in the Department of Defense.³ Unlike these courts, this Court is a freestanding court in the judicial branch that is independently responsible for its own administration but that presently has no express statutory authority to prescribe rules and regulations.

Section 102: Calculation of Years of Service As a Judge.

Summary: Section 102 would provide that a fractional year of judicial service of less than 6 months would not be credited toward judicial service and that a fractional year of 6 months or more of judicial service would be calculated as a full year of service.

Explanation: This proposal would bring this Court's Judges in line with Claims and U.S. Tax Court (Tax) Judges and is similar to how fractional years are credited for COMA Judges.⁴

³ See 10 U.S.C. § 941.

⁴ For Claims Judges, see 28 U.S.C. § 178(g); see also *Pub. L. No. 101-650, § 306(a)(1), 104 Stat. 5107; for Tax Judges, see 26 U.S.C. § 7447(d)(2)(B); for COMA Judges, see 10 U.S.C. § 942(b)(2); see also National Defense Authorization Act for Fiscal Years 1990 and 1991, *Pub. L. 101-189, § 1301(c), (g), 103 Stat. 1352, 1570, 1575-76 (Nov. 29, 1989). [Note: Starred references (*) were enacted in the same year as, or subsequent to, enactment of the Veterans' Judicial Review Act, Pub. L. No. 100-687, Div. A., 102 Stat. 4105 (1988).]

Section 103: Limitation on Cost-of-Living Adjustment to Retired Pay.

Summary: Section 103 would provide for a cap on a cost-of-living adjustment (COLA) to this Court's judicial retired pay so that it may not exceed active pay.

Explanation: Article III and Article I Judges who have retired, as well as other federal retirees, have provisions for postretirement increases in their annuities.⁵ The B & M provision is the only existing provision that specifically prohibits an adjusted annuity from exceeding active pay. Section 103 adopts this restriction.⁶ Although section 103 would permit COLA to accrue, the accrued COLA could not be paid unless the level of active pay permitted it.⁷

⁵For CSRS/FERS retirees, see 5 U.S.C. §§ 8340, 8462; for Article III Judges, see CRS REPORT at 17; 28 U.S.C. § 371(b); for Claims Judges, see CRS REPORT at 17; 28 U.S.C. § 178(a), (b); see also *Pub. L. 101-650, § 306, 104 Stat. at 5105-12; for Tax Judges, see CRS REPORT at 17; 26 U.S.C. § 7447(d)(1); for COMA Judges, see CRS REPORT at 17; 10 U.S.C. § 945(e); see also *Pub. L. No. 101-189, § 1301(c), 103 Stat. at 1577; for B & M Judges, see CRS REPORT at 8, 17; Memorandum, CVA Committee on Legislative Matters, Nov. 14, 1994, item 6; 28 U.S.C. § 377(e); see also Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, *Pub. L. No. 100-659, § 2(a), 102 Stat. 3910, 3911 (Nov. 15, 1988); for D.C. Judges, see 11 D.C. CODE ANN. § 1571(a) (1981).

⁶ Ibid.

⁷ Ibid.

Section 104: Survivor Annuities.

Summary: Section 104 would revise this Court's survivor annuity system to incorporate certain provisions applicable under the Joint Survivors' Annuity System (JSAS), the system applicable to Article III, Claims, and B & M Judges, as follows:

- a. Expand the period to elect participation while in office (38 U.S.C. § 7297(b)) to permit a retired judge who marries to elect participation within 6 months after marriage, as provided for by JSAS.⁸
- b. Reduce, effective the first day of the first pay period beginning on or after January 1, 1995, the contributions of judges in active service and on recall from 3.5 percent (38 U.S.C. § 7297(c)) to 2.2 percent of salary and retired pay, respectively, the JSAS levels.⁹
- c. Exclude from the 3-percent per annum interest payment requirement (38 U.S.C. § 7297(d)) any period during which a

⁸ For JSAS, see CRS REPORT at 22; 28 U.S.C. § 376(a)(1)(ii); for Claims Judges, see also *Pub. L. No. 101-650, § 306(b), 104 Stat. at 5109-10; for B & M Judges, see also *Pub. L. No. 100-659, § 3(a), 102 Stat. at 3917-18.

⁹ For JSAS, see 28 U.S.C. § 376(b)(1); see also *Pub. L. No. 102-572, § 201(b), 106 Stat. at 4508-09.

judge was separated from certain previous service (as a judge, a judicial official under section 376(a)(1) of title 28, a Member of Congress, or a congressional employee) and was not receiving a retirement annuity based on service as a judge or judicial official, since such interest payment is not required by JSAS.¹⁰

d. Reduce the minimum period of civilian service needed for purposes of eligibility for a survivor annuity from 5 years (38 U.S.C. § 7297(f)(1), (h)(1)) to 18 months,¹¹ and provide for an exemption from the 18-month requirement where the judge has been assassinated¹², both as provided for in JSAS.

e. Eliminate the requirement that the surviving spouse be at least 50 years of age in order to receive a survivor annuity (38 U.S.C. § 7297(f)(1)(A)) since no minimum age is provided for in JSAS.¹³

¹⁰ For JSAS, see 28 U.S.C. § 376(d); for Claims Judges, see also *Pub. L. No. 101-650, § 306(b), 104 Stat. at 5109-10; for B & M Judges, see also *Pub. L. No. 100-659, § 3(a), 102 Stat. at 3917-3918.

¹¹ For JSAS, see CRS REPORT at 12; 28 U.S.C. § 376(o)(1)(A), (B); for Claims Judges, see also *Pub. L. No. 101-650, § 306(b), 104 Stat. at 5109-10; for B & M Judges, see also *Pub. L. No. 100-659, § 3(a), 102 Stat. at 3917-18.

¹² For JSAS, see 28 U.S.C. § 376(o)(2); see also *Pub. L. No. 101-650, § 322(e)(4), 104 Stat. 5119.

¹³ For JSAS, see CRS REPORT at 12; 28 U.S.C. § 376(h)(1)(i); for Claims Judges, see also *Pub. L. No. 101-650, § 306(b), 104 Stat. at 5109-10; for B & M Judges, see also *Pub. L.

f. Substitute the same COLA as provided under JSAS for the COLA presently in place (38 U.S.C. § 7297(o) provides for a fractional COLA only when the cost of living rises by 5 percent or more in any 1 year).¹⁴

Explanation: These changes would bring the survivors' annuity program for this Court into line with that for Article III, Claims, and B & M Judges, all of whom are covered by JSAS.

Section 105: Gramm-Rudman Exemption.

Summary: Section 105 would exempt this Court's Retirement Fund from possible Gramm-Rudman sequestration.

Explanation: This proposal would bring this Court's judicial retirement program into line with the retirement programs for Article III, Claims, Tax, COMA, and B & M Judges.¹⁵

No. 100-659, § 3(a), 102 Stat. at 3917-18.

¹⁴ For JSAS, see CRS REPORT at 12, 26; 28 U.S.C. § 376(m); see also Judicial Improvements and Access to Justice Act, *Pub. L. No. 100-702, § 1017(a), 102 Stat. 4642, 4670 (Nov. 19, 1988).

¹⁵ For Article III, Claims, Tax, COMA, and B & M Judges, see 2 U.S.C. § 905(g)(1)(B); for Claims and B & M Judges, see also Federal Courts Administration Act of 1992, *Pub. L. No. 102-572, § 601(a), 106 Stat. 4506, 4514 (Oct. 29, 1992).

Section 106: Limitation on Activities of Retired Judges.

Summary: Section 106 would provide that a Judge retired from this Court would forfeit that judge's retirement annuity, upon practicing law involving representation of any client in a federal claim for veterans' benefits, during the period in which the judge engages in the proscribed activity and for one year immediately following the cessation of such activity.

Explanation: Claims, Tax, and B & M Judges who have retired from active service are subject to statutory provisions that significantly restrict such judges from the practice of law in the representation of clients in the subject areas that came before their respective courts.¹⁶ In addition to the proposed section 106, this Court's judges in active service are presently subject to the Code of Conduct for United States Judges¹⁷ and, upon enactment of section 202, also will be subject to that Code under certain circumstances during retirement, including when in recall status. The Code of Conduct imposes prohibitions and restrictions on the

¹⁶ For Claims Judges, see CRS REPORT at 20; 28 U.S.C. § 178(j)(1), (4)); see also *Pub. L. No. 101-650, § 306(a), 104 Stat. at 5107; for Tax Judges, see CRS REPORT at 20; 26 U.S.C. § 7447(f)(2), (4); for B & M Judges, see CRS REPORT at 20; 28 U.S.C. § 377(m)(1)); see also *Pub. L. No. 100-659, § 2, 102 Stat. at 3913.

¹⁷ See GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. 2, ch. 1, I-46, § C (1994).

activities of judges subject to that Code beyond those imposed by statute.

TITLE II - STAGGERED RETIREMENT AND RECALL

Title II contains a provision to address the looming problem of having as many as four simultaneous associate judgeship vacancies on the Court in 2005 by creating a staggered retirement option designed to encourage the sequencing of associate judge retirements starting in 1999. It also contains a provision to provide for recall of retired judges in the event of judicial vacancies or increased workload.

Section 201: Staggered Retirement

Summary: Section 201 would provide a mechanism, in a transitional provision, to permit the early retirement of one associate judge per year starting in the year 1999 and ending in the year 2003. In order to be eligible, each retiring judge would need at least ten years of service on this Court; be a participant in this Court's retirement system; have at least 20 years of federal service allowable under 38 U.S.C. § 7297(1); be at least 55 years of age; have years of age, years of service creditable under 38 U.S.C. § 7296, and years of service allowable under 38 U.S.C. § 7297(1) not creditable under section 7296, that total at least 80; and have the greatest seniority as a judge of this Court among this Court's

judges who provide notification of intent to seek early retirement in the fiscal year in question. (The combination of 10 years of service on this Court and the ending year of 2003 would restrict this provision's availability to the Court's original associate judges.) Written notification will be provided to the President and Chief Judge not later than April 1 of years 1999 through 2003, specifying a retirement date not earlier than 90 days thereafter nor later than the end (September 30) of the fiscal year in which notification is provided. Notification shall be irrevocable once provided. Retired pay of an early retiring judge will be based upon a modified rule of 80 in which the rate described in 38 U.S.C. § 7296(c)(1) is reduced proportionally in accordance with the extent to which the retiring judge's combined years of service as a CVA judge and age do not reach 80.

Section 201 would further provide that 38 U.S.C. § 7298(e)(2), which can presently be used with respect to funding actuarially determined present value of all benefits payable from the Court's Retirement Fund, be amended to permit the Court to use that provision also with respect to benefits that may be paid from the Retirement Fund within the contemplation of existing law.

Explanation: Section 201 would provide a mechanism to deal with a serious problem of judge turnover, the magnitude of which the Court has not previously appreciated. The Court was created in 1988 without any antecedent structure and with no judges in place

(Veterans' Judicial Review Act, Pub. L. No. 100-687, Div. A., 102 Stat. 4105 (Nov. 18, 1988)). All 6 of the Court's original associate judges assumed office within a period of approximately 1 year of each other. The 15-year terms of the Court's remaining 5 original associate judges will expire within a period of approximately 1 year of each other. Even assuming the application of the Rule of 80 under 38 U.S.C. § 7296(b)(1) (and assuming no reappointments under 38 U.S.C. § 7296(2)), 4 of 5 of the court's original associate judges will retire within 11 months of each other, beginning in September 2004 (two in September 2004, one in January 2005, and one in August 2005; the fifth associate judge would be eligible for retirement under the Rule of 80 in November 2002).

Given the length of time likely to be involved in the nomination and confirmation process, especially considering the election of a President in November 2004, 3 of the Court's judgeships are very likely to be simultaneously vacant during a substantial part of 2005, and it is quite possible that a majority of the judgeships could be simultaneously vacant during part of that year and possibly thereafter. Then, even after the judgeships are filled, there could well be considerable lack of experience among the majority of the Court's judges. This situation would almost certainly dramatically increase the Court's backlog -- initially during the vacancies and continuing during the startup period for the replacement judges. As well, during the vacancy period the

Court could be in a situation where two or three judges might be able to overrule prior Court precedent.

In order to preclude such problems, section 201 creates a staggered-retirement option designed to encourage the sequencing of associate judge retirements starting in 1999. It is important to bear in mind when considering the staggered-retirement provision that the formula for an early-retirement annuity must provide sufficient financial incentive for an associate judge to elect to forego the full retirement benefit that would be available upon completion of the 15-year term or satisfaction of the Rule of 80. There is no sense whatsoever in legislating a formula that will not produce the early retirements that are essential to avoid the serious adverse consequences that would result for the Court from having 3-4 simultaneous judicial vacancies in 2005 and possibly beyond.

Implementation of section 201 may be achievable without seeking additional appropriations for this purpose. In this regard, subsection (d)(2) of the proposed section 201 would add a subparagraph (C) to permit the Court to utilize 38 U.S.C. § 7298(2)(A) in anticipation of a payment that may have to be made from the Court's Retirement Fund. It should be noted that, even absent staggered retirement, the proposed subparagraph (C) would allow the Court to provide for much better

management of a judge's anticipated entry, under 38 U.S.C. § 7296(d)(1)(A), into the Court's retirement system.

Precedent exists in 3 other Article I courts for fractional retirement based on completion of less than a full statutory term of service. In 2 of these 3 courts, as described below, the fractional retirement annuity may be enhanced by either a CSRS/Federal Employees Retirement System (FERS) annuity or by an additional component of court retirement calculated under CSRS, respectively.

When COMA was enlarged in 1989 from 3 to 5 active judges, one of the new judgeships was for a term of 13 years and the other for a term of 7 years.¹⁸ The COMA Judges appointed to 7- and 13-year terms are eligible, upon completion of those terms, for immediate special annuities calculated by multiplying the last salary prior to retirement by a fraction based on a numerator of years of service and a denominator of 15.¹⁹

B & M Judges who have served at least 8 years are each entitled to a Judicial Retirement System (JRS) annuity, upon reaching age 65, calculated by multiplying the last salary prior to retirement by a

¹⁸ See *Pub. L. No. 101-189, § 1301(d), 103 Stat. at 1574 (found at 10 U.S.C. § 942 note).

¹⁹ See *Pub. L. No. 101-189, § 1301(e)(3), 103 Stat. at 1575 (found at 10 U.S.C. § 942 note).

fraction based on a numerator of years of service and a denominator of 14 (the number of years of a full term). This annuity is reduced by 2 percent for each year the annuitant was under age 65 at the time the annuitant left office not to exceed a 20-percent reduction.²⁰ The reduction is not applicable if a B & M Judge fails to be reappointed after serving a full term.²¹ An alternative hybrid JRS annuity is available, in a transitional provision, to each full-time B & M Judge who was in office on November 15, 1988, regardless of the number of years of judicial service, calculated in the same manner as a regular JRS annuity for those years of judicial service designated by such judge for the period on or after October 1, 1979, plus a CSRS or FERS annuity for federal service prior to the designation.²²

District of Columbia courts (D.C.) Judges are eligible for retirement upon completion of 10 years of judicial service, with retirement salary beginning at age 50, if they have 20 or more years of judicial service, or at age 60 if they have less than 20 years of such service, or at a reduced salary if they are between

²⁰ See CRS REPORT at 16; 28 U.S.C. § 377(c); see also *Pub. L. No. 100-659, § 2(a), 102 Stat. at 3910-11.

²¹ See CRS REPORT at 16; 28 U.S.C. § 377(b); see also *Pub. L. No. 100-659, § 2(a), 102 Stat. at 3910.

²² See CRS REPORT at 7, *Eligibility and Choices*; see also *Pub. L. No. 100-59, § 2(c)(1), 102 Stat. at 3916-17.

ages 55 and 60.²³ The retirement salary is the amount determined by multiplying the last judicial salary by that fraction where the numerator is total years of judicial service and the denominator is 30.²⁴ Provision is also made for an add-on to retirement salary, based on qualifying federal civilian and military service, generally computed on the basis of CSRS law. Two unique features of the add-on are that the deposit by the retiring judge in the D.C. Judges' Retirement Fund²⁵ is 3.5 percent of the salary earned for civilian service plus interest and that average pay for purposes of CSRS service is the last pre-retirement salary of the judge.²⁶ The total retirement salary, upon retirement, may not exceed 80 percent of the last judicial salary.²⁷ A judge who retires between ages 55 and 60 who has less than 20 years of judicial service and elects a reduced retirement salary shall have that salary reduced by 1/12th of 1 percent for each month the judge is under the age of 60 at the time of retirement.²⁸ In the case of a judge described in the preceding sentence whose calculation of retirement salary benefits, based on both fractional judicial service and CSRS law, results in an amount exceeding the 80% cap,

²³ See 11 D.C. CODE ANN. § 1562 (1981). D.C. Judges have a term of 15 years. See 11 D.C. Code Ann. § 1502 (1981).

²⁴ See 11 D.C. CODE ANN. § 1564(a) (1981).

²⁵ See 11 D.C. CODE ANN. § 1564(c), (d)(1) (1981).

²⁶ See 11 D.C. CODE ANN. § 1564(c) (1981).

²⁷ See 11 D.C. CODE ANN. § 1564(a) (1981).

²⁸ *Ibid.*

the reduction based on age will be made to such calculation to the extent of the difference between such calculation and such cap.

In addition to the fractional retirement provisions noted above with respect to COMA, B & M, and D.C. Judges, there are a number of other provisions that permit full retirement where less than a full judicial term has been completed. A disabled Article III Judge, Claims Judge, or Tax Judge, with 10 years of judicial service on such judge's court, is entitled to the salary of an active judge.²⁹ A disabled Judge on this Court with 10 years of judicial service is entitled to the retired pay that he or she would have received had he or she completed his or her term.³⁰ In certain cases involving misconduct or disability, length-of-service requirements can be waived for Article III, Claims, and this Court's Judges.³¹

Finally, three other provisions should be noted. Claims and B & M Judges may retire under CSRS at age 60 with 10 years of judicial service. COMA Judges may retire under CSRS at any time without regard to age-and-service requirements, with a reduction in

²⁹ For disabled Article III, Claims, and Tax Judges, see CRS REPORT at 20; 28 U.S.C. § 178(c)(2) (Article III); 28 U.S.C. § 372(a) (Claims); 26 U.S.C. § 7447(d)(2)(A) (Tax); for Claims Judges, see also *Pub. L. No. 101-650, § 306(a)(1), 104 Stat. at 5105-09.

³⁰ See CRS REPORT at 11, 38 U.S.C. § 7296(b)(3), (c)(2).

³¹ For Article III Judges, see 28 U.S.C. § 372(c)(6)(B)(iii); for Claims Judges, see 28 U.S.C. § 372(c)(18); for CVA Judges, see 38 U.S.C. § 7253(g)(1).

the annuity of a judge retiring under age 60. Retired Article III Judges are permitted separate annuities, without offset, one for judicial service, and one for nonjudicial service that qualifies for a CSRS/FERS annuity.³²

Section 202: Recall of Retired Judges.

Summary: Section 202 would provide that a retired judge of the Court would be eligible for recall, by providing the chief judge with written notification to that effect. Recall of such a judge, in the event of judicial vacancy or otherwise to meet case workload, would occur when the chief judge certifies that substantial service is expected to be performed by such retired judge, for such period as the chief judge determines to be necessary, and such retired judge agrees to such certification. During the period of recall service, the retired judge would receive, in addition to the judge's retired pay, the difference between that pay and pay of an active judge of the Court.

Explanation: All Article III and Article I Judges, except B & M and this Court's Judges, have specific provisions for both senior

³² For Claims and B & M Judges, see CRS REPORT at 9, *Special Early Retirement*; 5 U.S.C. § 8336(k); see also *Pub. L. 101-650, § 306(c)(3), 104 Stat. at 5110; for COMA Judges, see CRS REPORT at 11, *Special Early Retirement*; 5 U.S.C. § 8336(b); for Article III Judges, see CRS REPORT at 6, *Contributions*; 28 U.S.C. § 371.

status and postretirement judicial service.³³ B & M Judges have specific provision for postretirement judicial service.³⁴ Only this Court's Judges have no specific provision for either.

Article III, Claims, Tax, and COMA Judges automatically receive senior status upon retirement, and D.C. Judges may be appointed to such status subsequent to retirement and upon favorable recommendation of the District of Columbia Commission on Judicial Disabilities and Tenure.³⁵ Retired Article III Judges who perform the equivalent of the average 3-month workload of an active judge, and retired Claims and Tax Judges who make themselves available for work not to exceed 90 days per year receive pay of the office.³⁶ Those retired Article III Judges who perform service only upon their consent, and all retired COMA and B & M Judges, who may be recalled only upon their consent, receive their respective retirement annuities plus a cost-of-living adjustment (COLA).³⁷

³³ For Article III and Article I Judges, see CRS REPORT at 16-17, 19; 11 D.C. CODE ANN. § 1504(a), (b); for Claims Judges, see also *Pub. L. No. 101-650, § 306(a), 104 Stat. at 5106.

³⁴ See CRS REPORT at 19; 28 U.S.C. § 155(b), 375(b), 636(h); see also *Pub. L. No. 100-659, § 4, 102 Stat. at 3918.

³⁵ For Article III, Claims, Tax, and COMA Judges, see CRS REPORT at 16, 17, 19; for Claims Judges, see also *Pub. L. No. 100-659, § 4, 102 Stat. at 3918; for D.C. Judges, see 11 D.C. CODE ANN. § 1504 (1981).

³⁶ For Article III, Claims, and Tax Judges, see CRS REPORT at 17, 19; for Claims Judges, see also *Pub. L. No. 101-650, § 306(a), 104 Stat. at 5106.

³⁷ See *infra* note 41.

Retired senior D.C. Judges may be recalled only upon their consent.³⁸ Both retired senior and nonsenior D.C. Judges receive their annuities plus COLA.³⁹ Recalled COMA Judges receive pay of the office in lieu of retirement annuities.⁴⁰ Recalled B & M Judges and D.C. Judges receive, in addition to retirement annuities, an amount equal to the difference between annuity and pay of the office.⁴¹

As is the case with B & M Judges, section 202 would provide only for recall service, but would not provide for senior status. The

³⁸ See 11 D.C. CODE ANN. § 1504(a)(1) (1981).

³⁹ See 11 D.C. Code § 1571.

⁴⁰ See CRS REPORT at 19; 10 U.S.C. § 942(e)(1), (2).

⁴¹ For B & M Judges, see CRS REPORT at 19; 28 U.S.C. § 155(b) (generic recall for Bankruptcy Judges); Regulations of the Judicial Conference of the United States Governing the Recall of Retired Bankruptcy Judges, sec. 5, Period of Service (1987) (appearing in ADMINISTRATIVE OFFICE OF THE U.S. COURTS, RETIREMENT BENEFITS FOR BANKRUPTCY JUDGES AND MAGISTRATE JUDGES (1995) [hereinafter B & M RETIREMENT BENEFITS], App. E) (providing for 1-year renewable recall terms); *Regulations of the Judicial Conference of the United States Governing the Extended Recall Service of Retired Bankruptcy Judges, sec. 7, Period of Service (1987) (appearing in B & M RETIREMENT BENEFITS, App. F) (providing for 3-year renewable recall terms); 28 U.S.C. § 636(h) (generic recall for Magistrate Judges); Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges, sec. 5, Period of Service (1987) (appearing in B & M RETIREMENT BENEFITS App. D) (providing for 1-year renewable recall terms); see CRS REPORT at 19; 28 U.S.C. § 375(a)(1) (providing for 5-year renewable recall terms for B & M Judges); not implemented by regulation (B & M RETIREMENT BENEFITS, sec. 8.A.); for D.C. Judges, see 11 D.C. CODE ANN. § 1565 (1981); for B & M Judges, see also *Pub. L. No. 101-659, § 4, 102 Stat. at 3918.

latter generally involves substantially higher costs for judicial pay, space for chambers, and support staff.

TITLE III - RENAMING PROVISION

Section 301: Renaming of the Court of Veterans Appeals.

Summary: Section 301 renames the United States Court of Veterans Appeals as the United States Court of Appeals for Veterans Claims.

Explanation: Section 301 is virtually identical to section 201 of H.R. 1092, 105th Cong., 1st Sess., which was passed by the House on April 16, 1997, and provides for the renaming of the Court. House Report No. 105-97, which accompanied the House-passed bill, states on page 3:

The bill would amend section 7251 of title 38, United States Code, to rename the United States Court of Veterans Appeals ("the Court") as the United States Court of Appeals for Veterans Claims. According to Chief Judge Frank Q. Nebeker, many veterans and attorneys believe that the Court is an administrative tribunal of the Department of Veterans Affairs rather than an independent judicial entity.

Moreover, the Court's common acronym "CVA" is not readily distinguishable from "BVA", an acronym for the Board of Veterans' Appeals which is an administrative tribunal of the Department of Veterans Affairs. Adoption of the name "United States Court of Appeals for Veterans Claims" would also be consistent with recent name changes in other courts established by Congress under Article I of the United States Constitution. In 1994, the United States Court of Military Appeals was renamed the United States Court of Appeals for the Armed Forces. In 1992, the United States Court of Claims was renamed the United States Court of Federal Claims.

105TH CONGRESS
1ST SESSION

• _____

IN THE _____ OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____.

A BILL

To amend chapter 72 of title 38, United States Code, to reform the retirement provisions relating to the Court's judicial component, to provide for a staggered judicial retirement option to avoid the large case backlog increase that would arise in the event of simultaneous judicial vacancies, to rename the United States Court of Veterans Appeals as the United States Court of Appeals for Veterans Claims, and for other purposes.

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

3 **SEC. 1. SHORT TITLE.**

4 This Act may be cited as the "Court of Veterans Appeals
5 Amendments of 1997".

1 TITLE I — COMPARABILITY
 2 **SEC. 101. AUTHORITY TO PRESCRIBE RULES AND**
 3 **REGULATIONS.**

4 Section 7254 of title 38, United States Code, is amended by adding
 5 at the end thereof the following new subsection:

6 "(f) The Court shall have the authority to prescribe rules and
 7 regulations that are necessary or appropriate to carry out the provisions of
 8 subchapters III and V of chapter 72 of this title and that are consistent with
 9 such chapter and any other applicable provision of law."

10 **SEC. 102. CALCULATION OF YEARS OF SERVICE AS A JUDGE.**

11 Section 7296(b) of title 38, United States Code, is amended by adding
 12 at the end thereof the following new paragraph:

13 "(4) For purposes of calculating the years of service of an individual
 14 under this subsection and subsection (c), only those years of service as a
 15 judge of the Court shall be credited, and that portion of the aggregate number
 16 of years of such service that is a fractional part of 1 year shall not be credited
 17 if it is less than 6 months, and shall be credited if it is 6 months or more."

18 **SEC. 103. LIMITATION ON COST-OF-LIVING ADJUSTMENT TO**
 19 **RETIRED PAY.**

20 Section 7296 of title 38, United States Code, is amended by adding
 21 at the end thereof the following new subsection:

22 "(I) Notwithstanding any other provision of law, cost-of-living
 23 adjustments made or accruing to any retired pay that is paid under this
 24 section shall not result in such retired pay exceeding the rate of pay in effect
 25 under section 7253(e) of this title for a judge performing active service."

26 **SEC. 104. SURVIVOR ANNUITIES.**

27 (a) **ELECTION TO PARTICIPATE.**— Section 7297(b) of title 38, United
 28 States Code, is amended in the first sentence by inserting before the period
 29 "or within 6 months after the date on which the judge marries if the judge has
 30 retired under section 7296 of this title".

1 (b) REDUCTION OF CONTRIBUTIONS OF ACTIVE JUDGES.— (1) Section
 2 7297(c) of title 38, United States Code, is amended by striking out "3.5
 3 percent of the judge's pay" and inserting in lieu thereof "2.2 percent of the
 4 judge's salary received under section 7253(e) of this title, 3.5 percent of the
 5 judge's retired pay received under section 7296 of this title when the judge
 6 is not serving in recall status under section 7257 of this title, and 2.2 percent
 7 of the judge's retired pay received under such section 7296 when the judge
 8 is serving in recall status under such section 7257".

9 (2) The amendment made by this subsection shall take effect on the
 10 first day of the first pay period beginning on or after January 1, 1995.

11 (c) INTEREST PAYMENTS.— Section 7297(d) of title 38, United States
 12 Code, is amended—

13 (1) by inserting "(1)" after "(d)"; and

14 (2) by adding at the end thereof the following new paragraph:

15 "(2) If a judge has previously performed a period of service as a
 16 judge, or has performed service as a judicial official as defined under section
 17 376(a)(1) of title 28, a Member of Congress, or a congressional employee,
 18 the interest required under the first sentence of paragraph (1) shall not be
 19 required for any period—

20 "(A) during which a judge was separated from all such
 21 service; and

22 "(B) during which the judge was not receiving retired pay or
 23 a retirement annuity based on service as a judge or as a judicial
 24 official."

25 (d) SERVICE ELIGIBILITY.— (1) Section 7297(f) of title 38, United
 26 States Code, is amended—

27 (A) in paragraph (1) in the matter preceding subparagraph
 28 (A)—

29 (i) by striking out "at least 5 years" and inserting in
 30 lieu thereof "at least 18 months"; and

1 (ii) by striking out "last 5 years" and inserting in lieu
2 thereof "last 18 months"; and

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

4 "(5) If a judge dies as a result of an assassination and leaves a
5 survivor or survivors who are entitled to receive annuity benefits under this
6 section, the matter in paragraph (1) preceding subparagraph (A) shall not
7 apply."

8 (2) Section 7297(a) of title 38, United States Code, is amended—

9 (A) by inserting "who is in active service or who has retired
10 under section 7296 of this title" after "Court" in paragraph (2);

11 (B) by striking "(c)" in paragraph (3);

12 (C) by redesignating paragraphs (1) through (3) as paragraphs
13 (2) through (4), respectively; and

14 (D) by inserting before paragraph (2) (as redesignated by
15 clause (C) of this paragraph) the following new paragraph:

16 "(1) The term 'assassination' means the killing of a judge that is
17 motivated by the performance by that judge of the judge's official duties."

18 (e) AGE REQUIREMENT OF SURVIVING SPOUSE.— Section
19 7297(f)(1)(A) of title 38, United States Code, is further amended by striking
20 out "or following the surviving spouse's attainment of the age of 50 years,
21 whichever is later".

22 (f) COLA FOR SURVIVOR ANNUITIES.— Section 7297(o) of title 38,
23 United States Code, is amended to read as follows:

24 "(o) Each survivor annuity payable from the retirement fund shall be
25 increased at the same time as, and by the same percentage by which,
26 annuities payable from the Judicial Survivors' Annuities Fund are increased
27 pursuant to section 376(m) of title 28."

1 **SEC. 105. EXEMPTION OF RETIREMENT FUND FROM**
 2 **SEQUESTRATION ORDERS.**

3 Section 7298 of title 38, United States Code, is amended by adding
 4 at the end the following new subsection:

5 “(g) For purpose of section 255(g)(1)(B) of the Balanced
 6 Budget and Emergency Deficit Control Act of 1985 (2 U.S.C.
 7 § 905(g)(1)(B)), the retirement fund shall be treated in the same
 8 manner as the Court of Federal Claims Judges’ Retirement Fund.”.

9 **SEC. 106. LIMITATION ON ACTIVITIES OF RETIRED JUDGES.**

10 (a) **IN GENERAL.**— Chapter 72 of title 38, United States Code (as
 11 amended by this Act), is further amended by adding at the end thereof the
 12 following new section:

13 **“§ 7299. Limitation on activities of retired judges**

14 “Any judge of the Court of Appeals for Veterans Claims who retires
 15 from the Court under section 7296 of this title or under chapter 83 or 84 of
 16 title 5 and who thereafter in the practice of law represents (or supervises or
 17 directs the representation of) a client in making any civil claim relating to
 18 veterans’ benefits against the United States or any agency thereof shall forfeit
 19 all rights to retired pay under such provisions for any period during which the
 20 judge engages in any such activity and for one year immediately following
 21 the cessation of such activity.”

22 (b) **TECHNICAL AND CONFORMING AMENDMENT.**— The table of
 23 sections for chapter 72 of title 38, United States Code, is amended by adding
 24 at the end thereof the following:

25 “7299. Limitation on activities of retired judges.”.

26 **TITLE II — STAGGERED RETIREMENT AND RECALL PROVISIONS**

27 **SEC. 201. STAGGERED RETIREMENT.**

28 (a) **ELIGIBILITY.**— One individual each year shall be eligible to retire
 29 under this section starting in the year 1999 and ending in the year 2003. An

1 individual is eligible to retire under this section, if the individual, at the time
2 of retirement,

3 (1) is an associate judge of the United States Court of Appeals
4 for Veterans Claims (as renamed by Title III of this Act) who has at
5 least 10 years of service creditable under section 7296 of title 38,
6 United States Code;

7 (2) has made an election to receive retired pay under section
8 7296 of such title;

9 (3) has at least 20 years of service allowable under section
10 7297(l) of such title;

11 (4) is at least fifty-five years of age;

12 (5) has years of age, years of service creditable under section
13 7296 of such title, and years of service allowable under section 7297(l) of
14 such title not creditable under section 7296 of such title, that total at least 80;
15 and

16 (6) has the greatest seniority as a judge of the United States
17 Court of Appeals for Veterans Claims (as renamed by Title III of this Act)
18 of the judges who provide notification in accordance with subsection (b).

19 (b) NOTIFICATION.— A judge who desires to retire under
20 subsection (c) shall provide the President of the United States and the chief
21 judge of the United States Court of Appeals for Veterans Claims (as
22 renamed by Title III of this Act) with written notification to that effect not
23 later than April 1 of any year specified in subsection (a). Such notification
24 shall specify the retirement date in accordance with subsection (c).
25 Notification provided under this subsection shall be irrevocable.

26 (c) RETIREMENT.— A judge who is eligible to retire under subsection
27 (a) shall retire during the fiscal year in which notification is provided
28 pursuant to subsection (b), but, in no event, earlier than 90 days after such
29 notification is provided. Notwithstanding any other provision of law, such
30 judge shall be deemed, for all purposes, to be retiring under section

1 7296(b)(1) of title 38, United States Code, except that, the rate of retired pay
 2 for a judge retiring under this section shall, on the date of such judge's
 3 separation from service, be equal to the rate described in section 7296(c)(1)
 4 of such title multiplied by the percentage represented by the fraction in which
 5 the numerator is the sum of the number represented by years of service as a
 6 judge of the United States Court of Appeals for Veterans Claims (as renamed
 7 by Title III of this Act) creditable under section 7296 of such title and the age
 8 of such judge, and the denominator is 80.

9 (d) DUTY OF ACTUARY.— Section 7298(e)(2) of title 38,
 10 United States Code, is amended —

11 (1) by redesignating subparagraph (C) as subparagraph (D);

12 and

13 (2) by adding the following new subparagraph:

14 "(C) For purposes of subparagraph (B) of this
 15 paragraph, notwithstanding any other provision of law,
 16 'present value' includes a value determined by an actuary
 17 with respect to a payment that may be made under subsection
 18 (b) from the retirement fund within the contemplation of
 19 law."

20 **SEC. 202. RECALL OF RETIRED JUDGES.**

21 (a) IN GENERAL.— Chapter 72 of title 38, United States Code (as
 22 amended by section 102 of this Act), is further amended by inserting after
 23 section 7256 the following new section:

24 **"§ 7257. Recall of retired judges of the Court of Appeals for Veterans
 25 Claims**

26 "(a) A judge of the Court of Appeals for Veterans Claims who has
 27 retired from the Court under the provisions of section 7296 of this title or the
 28 provisions of chapter 83 or 84 of title 5 shall be eligible for recall upon
 29 providing the chief judge of the Court of Appeals for Veterans Claims with
 30 written notification to that effect. In the event of a vacancy in the position of

1 section or other provision, the reference shall be considered to be made to a
2 section or other provision of title 38, United States Code.

3 **SEC. 301. RENAMING OF THE COURT OF VETERANS APPEALS.**

4 (a) IN GENERAL.—(1) The United States Court of Veterans Appeals
5 shall hereafter be known and designated as the United States Court of
6 Appeals for Veterans Claims.

7 (2) Section 7251 is amended by striking out "United States
8 Court of Veterans Appeals" and inserting in lieu thereof "United States Court
9 of Appeals for Veterans Claims".

10 (b) CONFORMING AMENDMENTS.—

11 (1) The following sections are amended by striking out "Court
12 of Veterans Appeals" each place it appears and inserting in lieu thereof
13 "Court of Appeals for Veterans Claims": sections 5904, 7101(b), 7252(a),
14 7253, 7254, 7255, 7256, 7261, 7262, 7263, 7264, 7266(a)(1), 7267(a),
15 7268(a), 7269, 7281(a), 7282(a), 7283, 7284, 7285(a), 7286, 7291, 7292,
16 7296, 7297, and 7298.

17 (2)(A)(i) The heading of section 7286 is amended to read as
18 follows:

19 **"§ 7286. Judicial Conference of the Court of Appeals for Veterans
20 Claims".**

21 (ii) The item relating to section 7286 in the table of sections
22 at the beginning of chapter 72 (as amended by sections 106(b) and 202(b) of
23 this Act) is further amended to read as follows:

24 "7286. Judicial Conference of the Court of Appeals for Veterans Claims."

25 (B)(i) The heading of section 7291 is amended to read as
26 follows:

27 **"§ 7291. Date when Court of Appeals for Veterans Claims decision
28 becomes final".**

29 (ii) The item relating to section 7291 in the table of sections
30 at the beginning of chapter 72 (as amended by sections 106(b), 202(b), and

1 subsection (b)(2)(A)(ii) of this section) is further amended to read as follows:

2 "7291. Date when Court of Appeals for Veterans Claims decision becomes final."

3 (C)(i) The heading of section 7298 is amended to read as
4 follows:

5 "**§ 7298. Court of Appeals for Veterans Claims Retirement Fund**".

6 (ii) The item relating to section 7298 in the table of sections
7 at the beginning of chapter 72 (as amended by sections 106(b), 202(b), and
8 subsection (b)(2)(A)(ii) and (B)(ii) of this section) is further amended to read
9 as follows:

10 "7298. Court of Appeals for Veterans Claims Retirement Fund."

11 (3)The item relating to chapter 72 in the table of chapters at
12 the beginning of title 38 and the item relating to such chapter in the table of
13 chapters at the beginning of part V are amended to read as follows:

14 "72. United States Court of Appeals for Veterans Claims 7251."

15 (c) CONFORMING AMENDMENTS TO OTHER LAWS.—

16 (1) The following provisions of law are amended by striking
17 out "Court of Veterans Appeals" each place it appears and inserting in lieu
18 thereof "Court of Appeals for Veterans Claims":

19 (A) Section 8440d of title 5, United States Code.

20 (B) Section 2412 of title 28, United States Code.

21 (C) Section 906 of title 44, United States Code.

22 (D) Section 109 of the Ethics in Government Act of 1978
23 (5 U.S.C. App.).

24 (2)(A) The heading of section 8440d of title 5, United States
25 Code, is amended to read as follows:

26 "**§ 8440d. Judges of the United States Court of Appeals for Veterans
27 Claims**".

28 (B) The item relating to such section in the table of sections
29 at the beginning of chapter 84 of such title is amended to read as follows:

30 "8440d. Judges of the United States Court of Appeals for Veterans Claims."

31 (d) OTHER LEGAL REFERENCES.—Any reference in a law, regulation,
32 document, paper, or other record of the United States to the United States

- 1 Court of Veterans Appeals shall be deemed to be a reference to the United
- 2 States Court of Appeals for Veterans Claims.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:



CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

June E. O'Neill
Director

July 14, 1998

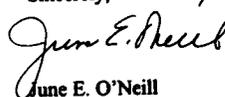
Honorable Bob Stump
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Congressional Budget Office (CBO) has prepared the enclosed cost estimate for H.R. 4110, the Veterans Benefits Improvement Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Valerie Barton, who can be reached at 226-2840.

Sincerely,



June E. O'Neill

Enclosure

cc: Honorable Lane Evans
Ranking Democratic Member



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 14, 1998

H.R. 4110
Veterans Benefits Improvement Act of 1998

As ordered reported by the House Committee on Veterans' Affairs on June 24, 1998

SUMMARY

H.R. 4110 would affect several veterans' programs, including readjustment benefits, housing, and disability compensation. CBO estimates that enacting the bill would increase direct spending by about \$8 million in 1999 and \$36 million over the 1999-2003 period. Because the bill would affect direct spending and revenues, pay-as-you-go procedures would apply. In addition, H.R. 4110 would increase spending subject to appropriation by about \$18 million a year. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not have any significant effects on the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the bill is shown in Table 1. The costs of this legislation fall within budget function 700 (veterans affairs), except as noted.

Direct Spending and Revenues

The bill would affect direct spending in veterans' programs for readjustment benefits, housing, pension, burial benefits, and disability compensation. It would also make changes to the retirement program for judges on the Court of Veterans' Appeals; those changes would affect both direct spending and revenues.

TABLE 1. BUDGETARY IMPACT OF H.R. 4110, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS' AFFAIRS

	By Fiscal Year, in Millions of Dollars					
	1998	1999	2000	2001	2002	2003
DIRECT SPENDING						
Proposed Changes						
Estimated Budget Authority	0	8	6	6	6	10
Estimated Outlays	0	8	6	6	6	10
REVENUES						
Proposed Changes	0	a	a	a	a	a
SPENDING SUBJECT TO APPROPRIATION						
Proposed Changes						
Estimated Authorization Level	0	20	18	18	18	18
Estimated Outlays	0	9	13	16	18	18
<p>a. Increase of less than \$15,000.</p>						

Readjustment Benefits. The bill would make four changes to laws governing veterans' readjustment benefits (see Table 2).

Reporting Fees. Under current law, VA pays a nominal reporting fee from discretionary funds to institutions attended by veterans, based on enrollment as of October 31 of each year. Section 201 would make these fees mandatory and cover students who are enrolled at other times of the year. Direct spending would increase by \$3 million a year, of which \$2 million would stem from the change in the source of funding and \$1 million would be traceable to the expanded coverage. (Spending subject to appropriation would decline by \$2 million a year under this provision.)

On-The-Job-Training. Section 205 would expand on-the-job-training (OJT) opportunities for beneficiaries of the Montgomery GI Bill (MGIB). Current law requires regular pay increases for student veterans in OJT programs and prohibits participation in programs where trainees do not receive their first pay increase until after completing the program. The bill would allow veterans to receive benefits from participating in certain programs operated by federal, state, or local governments. CBO estimates that this provision would increase the number of trainees by about 10 percent, resulting in increased outlays of about \$2 million a year over the 1999-2003 period.

TABLE 2. DIRECT SPENDING IN H.R. 4110, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS' AFFAIRS

	By Fiscal Year, Outlays in Millions of Dollars					
	1998	1999	2000	2001	2002	2003
VETERANS' READJUSTMENT BENEFITS						
Spending Under Current law	1,163	1,175	1,191	1,190	1,223	1,248
Proposed Changes						
Reporting Fees	0	0	3	3	3	3
On-The-Job Training	0	2	2	2	2	2
Work-Study Benefits	0	a	a	a	a	a
Education Credits	0	b	b	b	b	b
Subtotal	0	2	5	5	5	5
Spending Under the Bill	1,163	1,177	1,196	1,195	1,228	1,253
VETERANS' HOUSING						
Spending Under Current law	617	112	117	118	118	289
Proposed Changes	0	0	-3	-3	-3	3
Spending Under the Bill	617	112	114	115	115	292
VETERANS' PENSION						
Spending Under Current law	3,037	3,047	3,107	3,138	3,182	3,706
Proposed Changes	0	4	2	2	2	0
Spending Under the Bill	3,037	3,051	3,109	3,140	3,184	3,706
BURIAL BENEFITS						
Spending Under Current law	133	123	123	125	128	131
Proposed Changes	0	2	2	2	2	2
Spending Under the Bill	133	125	125	127	130	133
TOTAL						
Proposed Changes	0	8	6	6	6	10
a. Savings of less than \$500,000. b. Costs of less than \$500,000.						

Work-Study Benefits. Under current law, veterans in work-study programs receive 40 percent of their wages for a semester when it begins. Section 202 would permit them to receive their wages as they are earned. This provision would result in savings in the first year, but in succeeding years the provision would have little or no net effect. CBO estimates that the provision would lower annual spending by less than \$500,000.

Education Credits. Section 203 would allow a veteran who does not have a high school diploma or equivalent before being discharged from service to receive benefits under the MGIB. The veteran would have to make the servicemembers' contribution of \$1,200, establish that an institution of higher learning is willing to grant 12 semester hour credits for military or other experiences, and earn a high school diploma before enrolling in the institution. Based on information from VA, CBO estimates that this provision would affect about 30 veterans a year and would entail an insignificant cost over the 1999-2003 period.

Home Loans for Reservists. Section 402 would permanently extend home loan benefits for reservists. Under current law, these benefits expire on October 27, 1999. CBO estimates that this provision would increase VA loan guarantees by roughly 7,000 each year. Because origination fees would more than offset the subsidy cost of additional loan guarantees, CBO estimates that the provision would lower net spending by about \$3 million annually through 2002. Starting in 2003, however, this provision would cost \$3 million a year because certain fees will expire under current law.

Pension Recipients in VA Nursing Homes. Section 406 would permanently authorize payments from veterans' pensions (a mandatory account) to the Medical Facilities Revolving Fund, which could spend the receipts. The transfers would equal the difference between the standard monthly pension payments for some veterans and the \$90 monthly payment they receive under provisions scheduled to expire in 2002. CBO estimates that this section would increase spending by about \$4 million in 1999 and about \$10 million over the 1999-2003 period.

Burial Flags. Under section 403, VA would furnish burial flags on behalf of certain deceased members and former members of the Selected Reserve. Under current law, VA provides a flag to drape the casket of certain other deceased veterans. In 1997, VA spent \$16 million on approximately 458,000 flags. CBO estimates that the costs of implementing this provision would be \$2 million annually over the 1999-2003 period.

Court of Veterans' Appeals. Title III of the bill would make a number of changes to the retirement system for judges on the Court of Veterans' Appeals (CVA). Most important, the bill would allow as many as five of the CVA's judges to retire early.

The CVA was created in 1989 to review decisions of the Board of Veterans' Appeals on matters dealing with veterans' benefits. Because the court is relatively new, all of the initial appointees are still serving, and the CVA's Retirement Fund does not currently pay any benefits. CBO assumed for this estimate that under current law all of the judges would complete their 15-year terms and that the Retirement Fund would not pay any benefits before fiscal year 2004 at the earliest.

All of the CVA's judges will finish their terms in 2004 or 2005. Turnover in those two years could thus be very high and disrupt the court's operations. H.R. 4110 would avoid this problem by allowing one judge to retire early each year between 1999 and 2003. This would stagger judges' terms and help ensure greater continuity.

Early retirement would only be available to associate judges who have served 10 years on the Court, are at least 55 years old, and meet certain other requirements. Judges retiring early would also face a reduction in their annuity of about 10 to 15 percent. Information from the CVA indicates that at least five judges would be eligible for early retirement. CBO assumed that three judges would accept early retirement, with one judge retiring early in 1999, 2001, and 2003. These early retirements would increase direct spending on retirement benefits by about \$60,000 in 1999 and \$340,000 in 2003.

H.R. 4110 would make a number of additional changes to the CVA's retirement system, such as clarifying the definition of creditable service, limiting cost-of-living adjustments in certain situations, and prohibiting retired judges from collecting benefits while representing an individual seeking veterans' benefits. These provisions would not have a significant budgetary impact.

Title III would increase retirement contributions from CVA judges who participate in the court's survivor annuity program. Under this plan, both active and retired judges contribute 3.5 percent of their salary or retired pay. Assuming that judges who retire early are replaced, the total number of judges contributing would be higher under H.R. 4110 than under current law. CBO estimates that any revenue increase would be less than \$15,000 annually.

National Service Life Insurance. Section 408 would merge the insurance policies of approximately 1,200 veterans currently enrolled in a small part of the National Service Life Insurance (NSLI) program with a larger pool of policies in other NSLI programs. The "H" program consists of policies that were issued between 1946 and 1949 to veterans with service-connected disabilities. This provision would cap premiums and pay dividends to policyholders in that program. CBO estimates that the costs of implementing this provision would be insignificant over the 1999-2003 period.

Disability Compensation. Section 101 would increase the amounts paid to veterans for disability compensation and to their survivors for dependency and indemnity compensation by the same cost-of-living adjustment (COLA) payable to Social Security recipients. The increase would take effect on December 1, 1998, and the results of the adjustment would be rounded to the next lower dollar. However, the COLA is assumed in the budget resolution baseline, pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act, and savings from rounding it down were achieved by the Balanced Budget Act of 1997 (Public Law 105-33). As a result, these provisions would have no budgetary effect relative to the baseline.

Spending Subject to Appropriation

The bill contains several provisions that would affect spending subject to appropriation, but only the reporting fee and two other provisions would have a significant impact (see Table 3).

Disabled Veterans Outreach Program. Section 405 of the bill would amend the authorization for the Disabled Veterans Outreach Program (DVOP) to provide for a greater number of outreach program specialists. DVOP is administered by the Department of Labor (DOL) and provides grants to states to hire individuals to serve the employment needs of disabled veterans. Current law calls for one DVOP specialist in a state for each 6,900 veterans in the state, who are veterans of the Vietnam era, first entered active duty as a member of the armed forces after May 7, 1975, or are disabled. According to a 1997 report by the General Accounting Office, this formula would cover about 13.9 million veterans nationwide. For 1998, information from DOL indicates that the current formula would call for 2,039 specialists. However, appropriations for DVOP in fiscal year 1998 are \$80 million, or an amount sufficient for about 73 percent of the authorized positions. In years when appropriations are not sufficient to support the number of authorized positions, each state's allocation is reduced proportionately.

H.R. 4110 would change the formula to provide one specialist for every 7,400 veterans residing in the state who are between the ages of 20 and 64. According to a recent report on veteran population, there are about 16.4 million veterans in this age group. Thus, this section would authorize an increase of roughly 200 specialists nationwide, at an average cost of about \$51,500 per specialist, for a total increase in authorizations of about \$10 million in 1999 and about \$50 million over the 1999-2003 period. The costs of this section fall under budget function 500 (education, employment, training, and social services).

TABLE 3. SPENDING SUBJECT TO APPROPRIATIONS IN H.R. 4110, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS' AFFAIRS

	By Fiscal Year, in Millions of Dollars					
	1998	1999	2000	2001	2002	2003
DISABLED VETERANS OUTREACH PROGRAM						
Spending Under Current Law for the Disabled Veterans Outreach Program						
Estimated Authorization Level*	80	104	104	104	104	104
Estimated Outlays	80	102	104	104	104	104
Proposed Changes						
Estimated Authorization Level	0	10	10	10	10	10
Estimated Outlays	0	9	10	10	10	10
Spending Under H.R. 4110 for the Disabled Veterans Outreach Program						
Estimated Authorization Level*	80	114	114	114	114	114
Estimated Outlays	80	111	114	114	114	114
STATE CEMETERY GRANTS						
Spending Under Current Law for State Cemetery Grants						
Authorization Level*	10	0	0	0	0	0
Estimated Outlays	2	5	3	3	0	0
Proposed Changes						
Estimated Authorization Level	0	10	10	10	10	10
Estimated Outlays	0	0	5	8	10	10
Spending Under H.R. 4110 for State Cemetery Grants						
Estimated Authorization Level*	10	10	10	10	10	10
Estimated Outlays	2	5	8	11	10	10
REPORTING FEE FOR EDUCATION BENEFITS*						
Spending Under Current Law for General Operating Expenses						
Estimated Authorization Level*	786	786	786	786	786	786
Estimated Outlays	790	786	786	786	786	786
Proposed Changes						
Estimated Authorization Level	0	0	-2	-2	-2	-2
Estimated Outlays	0	0	-2	-2	-2	-2

(Continued)

TABLE 3. CONTINUED

	By Fiscal Year, in Millions of Dollars					
	1998	1999	2000	2001	2002	2003
Spending Under H.R. 4110 for						
General Operating Expenses						
Estimated Authorization Level ^a	786	786	784	784	784	784
Estimated Outlays	790	786	784	784	784	784
TOTAL						
Proposed Changes						
Estimated Authorization Level	0	20	18	18	18	18
Estimated Outlays	0	9	13	16	18	18

- a. The 1998 level is the amount appropriated for that year. Funding for fiscal years 1999-2003 are subject to appropriation. The amounts shown here represent authorized levels, assuming no adjustments for inflation.
- b. See the section on direct spending for the basis of this estimate.

State Cemetery Grant Program. VA provides grants to states for establishing, expanding, or improving state veterans cemeteries that are part of the National Cemetery System. Section 404 would increase the maximum federal share of the costs of state cemetery construction from 50 percent to 100 percent and would permit federal funding for up to 100 percent of the cost of initial equipment for cemetery operations. This section would also authorize the appropriation of \$10 million without fiscal year limitation for fiscal year 1999 and for each succeeding fiscal year through 2004. CBO estimates outlays for this provision based on historical spending patterns.

Other Provisions. Other provisions would have little or no impact on spending subject to appropriation.

Requirements for Commercial Pilot's Licenses. Section 204 would change the eligibility criteria for veterans who train for commercial pilot's licenses. Under current law, trainees must qualify for a private pilot's license in order to receive MGIB benefits. Some trainees allow their licenses to expire during training because they do not realize that it makes them ineligible for benefits, which must then be refunded to VA. Once licenses are renewed, however, VA reimburses the veteran. By allowing veterans to present their licenses at the beginning and end of training, CBO estimates that section 204 would result in negligible savings in administrative costs.

Procurement Procedures for Foreclosed Homes. Section 401 would change administrative procedures for awarding contracts to manage properties VA obtains from foreclosed loans. When a veteran defaults on a mortgage guaranteed by VA, the department will often acquire the property and hire a contractor to repair and manage it before it can be resold. Under current law, VA is required to advertise proposed contracts; although it is not required to follow a competitive process for reviewing and awarding contracts, VA does this as a matter of practice. The bill would formalize the procurement process by requiring VA to follow competitive procedures at all stages. Thus, the bill would deny VA some flexibility but not substantially change its current practices.

Notices Related to Education Benefits. Two provisions would require VA to provide certain information to participants in MGIB. Section 206 would require VA to inform servicemembers of their educational benefits after they make the required contribution but before they leave military service. Section 207 would require VA to inform servicemembers of the minimum service necessary to receive education benefits when they are about to leave service even if they do not meet those requirements. Currently, a servicemember must serve three years on active duty or six years in the Selected Reserve in order to qualify for MGIB benefits.

Board of Veterans' Appeals. Section 407 would require that members of the Board of Veterans' Appeals be attorneys. Under this provision, the Secretary of Veterans' Affairs could also appoint certain members to attorney positions after they are removed from the board.

Court of Veterans' Appeals. Title III would allow the chief judge of the Court of Veterans Appeals (CVA) to recall retired judges to active duty as the court's workload requires. The chief judge would also be required to submit a report to Congress on the feasibility of merging the court's retirement and survivor annuity plans with those of other federal judges. These provisions could result in increased administrative expenses for the court, but the amount of the increase should be insignificant. The bill would also change the CVA's name to the Court of Appeals for Veterans Claims.

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	8	6	6	6	10	10	10	10	10	10
Changes in receipts	Not applicable										

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 4110 contains no intergovernmental mandates as defined in the UMRA. The bill would amend the State Cemetery Grants Program to encourage additional participation in the program by states. The bill would not have any other significant effects on the budgets of state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

The bill would impose no new private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATE

On February 3, 1998, CBO prepared an estimate for H.R. 2887 as introduced. H.R. 2887 and section 401 of H.R. 4110 are identical and would not have a significant budgetary impact.

ESTIMATE PREPARED BY:

Federal Costs: Valerie Barton (readjustment benefits), Sunita D'Monte (housing), and Charles Riemann (income security) can be reached at 226-2840. Christina Hawley Sadoti (disabled veterans outreach program) and Eric Rollins (Court of Veterans' Appeals) can be reached at 226-2820.

Impact on State, Local, and Tribal Governments: Marc Nicole (225-3220)

Impact on the Private Sector: Rachel Schmidt (226-2900)

ESTIMATE APPROVED BY:

Paul N. Van de Water
Assistant Director for Budget Analysis

INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The reported bill would not be applicable to the legislative branch under the Congressional Accountability Act, Public Law 104-1, because the bill would only affect certain Department of Veterans Affairs, Department of Labor, and U.S. Court of Veterans Appeals programs and beneficiaries.

STATEMENT OF FEDERAL MANDATES

The reported bill would not establish a federal mandate under the Unfunded Mandates Reform Act, Public Law 104-4.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defence and general Welfare of the United States".

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART II—GENERAL BENEFITS

* * * * *

CHAPTER 19—INSURANCE

* * * * *

SUBCHAPTER I—NATIONAL SERVICE LIFE INSURANCE

* * * * *

§ 1919. National Service Life Insurance appropriation

(a) * * *

(b) All premiums heretofore and hereafter paid on insurance issued or reinstated under [sections 602(c)(2) and] *section* 602(v)(1) of the National Service Life Insurance Act of 1940 where the requirement of good health was waived under such [sections] *section* because of a service-incurred injury or disability shall be credited directly to the National Service Life Insurance appropriation and

any payments of benefits heretofore and hereafter made on such insurance shall be made directly from such appropriation.

* * * * *

CHAPTER 23—BURIAL BENEFITS

* * * * *

§ 2301. Flags

(a) * * *

* * * * *

(f)(1) The Secretary shall furnish a flag to drape the casket of each deceased member or former member of the Selected Reserve (as described in section 10143 of title 10) who is not otherwise eligible for a flag under this section or section 1482(a) of title 10—

(A) who completed at least one enlistment as a member of the Selected Reserve or, in the case of an officer, completed the period of initial obligated service as a member of the Selected Reserve;

(B) who was discharged before completion of the person's initial enlistment as a member of the Selected Reserve or, in the case of an officer, period of initial obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in line of duty; or

(C) who died while a member of the Selected Reserve.

(2) A flag may not be furnished under subparagraphs (A) or (B) of paragraph (1) in the case of a person whose last discharge from service in the Armed Forces was under conditions less favorable than honorable.

(3) After the burial, a flag furnished under paragraph (1) shall be given to the next of kin or to such other person as the Secretary considers appropriate.

* * * * *

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

* * * * *

§ 2408. Aid to States for establishment, expansion, and improvement of veterans' cemeteries

(a)(1) * * *

[(2) There is authorized to be appropriated \$5,000,000 for fiscal year 1980 and for each of the four succeeding fiscal years, and such sums as may be necessary for fiscal year 1985 and for each of the fourteen succeeding fiscal years, for the purpose of making grants under paragraph (1) of this subsection.]

(2) There is authorized to be appropriated \$10,000,000 for fiscal year 1999 and for each succeeding fiscal year through fiscal year 2004 for the purpose of making grants under paragraph (1).

(b) Grants under this section shall be subject to the following conditions:

[(1) The amount of any grant under this section may not exceed an amount equal to 50 percent of the total of the value of the land to be acquired or dedicated for the cemetery and

the cost of the improvements to be made on such land, with the remaining amount to be contributed by the State receiving the grant.

[(2) If at the time of a grant under this section the State receiving the grant dedicates for the purposes of the cemetery involved land already owned by the State, the value of such land may be considered in determining the amount of the State's contribution under paragraph (1) of this subsection, but the value of such land may not be used for more than an amount equal to 50 percent of the amount of such contribution and may not be used as part of such State's contribution for any subsequent grant under this section.]

(1) *The amount of a grant under this section may not exceed—*

(A) in the case of the establishment of a new cemetery, the sum of (i) the cost of improvements to be made on the land to be converted into a cemetery, and (ii) the cost of initial equipment necessary to operate the cemetery; and

(B) in the case of the expansion or improvement of an existing cemetery, the sum of (i) the cost of improvements to be made on any land to be added to the cemetery, and (ii) the cost of any improvements to be made to the existing cemetery.

(2) *If the amount of a grant under this section is less than the amount of costs referred to in subparagraph (A) or (B) of paragraph (1), the State receiving the grant shall contribute the excess of such costs over the grant. Costs of land acquired or dedicated by the State for such cemetery shall not be taken into account for purposes of the preceding sentence.*

* * * * *

(e) Sums appropriated under subsection (a) of this section [shall remain available until the end of the second fiscal year following the fiscal year for which they are appropriated] *shall remain available until expended.* If all funds from a grant under this section have not been utilized by a State for the purpose for which the grant was made within three years after such grant is made, the United States shall be entitled to recover any such unused grant funds from such State.

* * * * *

PART III—READJUSTMENT AND RELATED BENEFITS

* * * * *

CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

* * * * *

SUBCHAPTER II—BASIC EDUCATIONAL ASSISTANCE

§ 3011. Basic educational assistance entitlement for service on active duty

(a) Except as provided in subsection (c) of this section, each individual—

(1) * * *

(2) who, except as provided in subsection (e) of this section, completed the requirements of a secondary school diploma (or equivalency certificate) not later than—

(A) * * *

* * * * *

except that (i) an individual described in clause (1)(B) of this subsection may meet the requirement of this clause by having **[successfully completed]** *successfully completed (or otherwise received academic credit for)* the equivalent of 12 semester hours in a program of education leading to a standard college degree, and (ii) an individual described in clause (1)(A) of this subsection may meet such requirement by having **[successfully completed]** *successfully completed (or otherwise received academic credit for)* the equivalent of such 12 semester hours before the end of the individual's initial obligated period of active duty; and

* * * * *

(i) The Secretary concerned shall inform any member of the Armed Forces, who has not completed that member's initial obligated period of active duty (as described in subsection (a)(1)(A)) and who indicates the intent to be discharged or released from such duty for the convenience of the Government, of the minimum active duty requirements for entitlement to educational assistance benefits under this chapter. Such information shall be provided to the member in a timely manner.

§ 3012. Basic educational assistance entitlement for service in the Selected Reserve

(a)(1) * * *

(2) who, except as provided in subsection (f) of this section, before completion of the service described in clause (1) of this subsection, has completed the requirements of a secondary school diploma (or an equivalency certificate), except that (i) an individual described in clause (1)(B) of this subsection may meet the requirement of this clause by having **[successfully completed]** *successfully completed (or otherwise received academic credit for)* the equivalent of 12 semester hours in a program of education leading to a standard college degree, and (ii) an individual described in clause (1)(A) of this subsection may meet such requirement by having **[successfully completed]** *successfully completed (or otherwise received academic credit for)* the equivalent of such 12 semester hours before the end of the individual's initial obligated period of active duty; and

* * * * *

(g)(1) The Secretary concerned shall inform any member of the Armed Forces, who has not completed that member's initial service

(as described in paragraph (2)) and who indicates the intent to be discharged or released from such service for the convenience of the Government, of the minimum service requirements for entitlement to educational assistance benefits under this chapter. Such information shall be provided to the member in a timely manner.

(2) The initial service referred to in paragraph (1) is the initial obligated period of active duty (described in subparagraphs (A)(i) or (B)(i) of subsection (a)(1)) or the period of service in the Selected Reserve (described in subparagraphs (A)(ii) or (B)(ii) of subsection (a)(1)).

* * * * *

§ 3018. Opportunity for certain active-duty personnel to withdraw election not to enroll

(a) * * *

(b) An individual described in clauses (1) through (3) of subsection (a) of this section who made an election under section 3011(c)(1) or 3012(d)(1) of this title and who—

(1) * * *

* * * * *

(4) before completing such obligated period of service (i) has completed the requirements of a secondary school diploma (or an equivalency certificate), or (ii) has **successfully completed** *successfully completed (or otherwise received academic credit for)* the equivalent of 12 semester hours in a program of education leading to a standard college degree; and

* * * * *

§ 3018A. Opportunity for certain active-duty personnel to enroll before being involuntarily separated from service

(a) Notwithstanding any other provision of law, an individual who—

(1) * * *

(2) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or equivalency certificate) or has **successfully completed** *successfully completed (or otherwise received academic credit for)* the equivalent of 12 semester hours in a program of education leading to a standard college degree;

* * * * *

§ 3018B. Opportunity for certain persons to enroll

(a) Notwithstanding any other provision of law—

(1) the Secretary of Defense shall, subject to the availability of appropriations, allow an individual who—

(A) * * *

(B) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or equivalency certificate) or has **successfully completed** *successfully completed (or otherwise received academic*

credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree;

* * * * *

(2) the Secretary, in consultation with the Secretary of Defense, shall, subject to the availability of appropriations, allow an individual who—

(A) * * *

(B) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or equivalency certificate) or has **successfully completed** *successfully completed (or otherwise received academic credit for)* the equivalent of 12 semester hours in a program of education leading to a standard college degree;

* * * * *

§ 3018C. Opportunity for certain VEAP participants to enroll

(a) Notwithstanding any other provision of law, an individual who—

(1) * * *

* * * * *

(3) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or equivalency certificate) or has **successfully completed** *successfully completed (or otherwise received academic credit for)* the equivalent of 12 semester hours in a program of education leading to a standard college degree;

* * * * *

§ 3034. Program administration

(a) * * *

* * * * *

(d) The Secretary may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of this title) by an individual entitled to basic educational assistance under this chapter if—

(1) * * *

(2) the individual possesses a valid private **pilot's license** *pilot certificate* and meets, *on the day the individual begins a course of flight training*, the medical requirements necessary for a commercial **pilot's license** *pilot certificate*; and

* * * * *

(e)(1) In the case of a member of the Armed Forces who participates in basic educational assistance under this chapter, the Secretary shall furnish the information described in paragraph (2) to each such member, as soon as practicable after the basic pay of the member has been reduced by \$1,200 in accordance with sections 3011(b) and 3102(c) of this title. The Secretary shall furnish such information to each such member at such additional times as the Secretary determines appropriate.

(2) The information referred to in paragraph (1) is information with respect to the benefits, limitations, procedures, eligibility re-

quirements (including time-in-service requirements), and other important aspects of the basic educational assistance program under this chapter, including application forms for such basic educational assistance under section 5102 of this title.

(3) The Secretary shall furnish the forms described in paragraph (2) and other educational materials to educational institutions, training establishments, and military education personnel, as the Secretary determines appropriate.

(4) The Secretary shall use amounts appropriated for readjustment benefits to carry out this subsection and section 5102 of this title with respect to application forms under that section for basic educational assistance under this chapter.

* * * * *

§ 3036. Reporting requirement

(a) * * *

(b) The Secretary of Defense shall include in each report submitted under this section—

(1) information indicating (A) the extent to which the benefit levels provided under this chapter are adequate to achieve the purposes of inducing individuals to enter and remain in the Armed Forces and of providing an adequate level of financial assistance to help meet the cost of pursuing a program of education, [and] (B) whether it is necessary for the purposes of maintaining adequate levels of well-qualified active-duty personnel in the Armed Forces to continue to offer the opportunity for educational assistance under this chapter to individuals who have not yet entered active-duty service, and (C) describing the efforts under sections 3011(i) and 3012(g) of this title to inform members of the Armed Forces of the minimum service requirements for entitlement to educational assistance benefits under this chapter and the results from such efforts; and

* * * * *

CHAPTER 32—POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

* * * * *

SUBCHAPTER IV—ADMINISTRATION

§ 3241. Requirements

(a) * * *

(b) The Secretary may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of this title) by an individual entitled to basic educational assistance under this chapter if—

(1) * * *

(2) the individual possesses a valid [pilot's license] *pilot certificate* and meets, on the day the individual begins a course of flight training, the medical requirements necessary for a commercial [pilot's license] *pilot certificate*; and

* * * * *

CHAPTER 34—VETERANS’ EDUCATIONAL ASSISTANCE

* * * * *

**SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS;
VETERAN–STUDENT SERVICES**

* * * * *

§ 3485. Work-study allowance

(a)(1) Individuals utilized under the authority of subsection (b) of this section shall be paid an additional educational assistance allowance (hereafter referred to as “work-study allowance”). Such work-study allowance shall be paid in an amount equal to the applicable hourly minimum wage times the number of hours worked during the applicable period, in return for such individual’s agreement to perform services, during or between periods of enrollment, aggregating not more than a number of hours equal to 25 times the number of weeks in the semester or other applicable enrollment period, required in connection with (A) the outreach services program under subchapter II of chapter 77 of this title as carried out under the supervision of a Department of Veterans Affairs employee, (B) the preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Department of Veterans Affairs, (C) the provision of hospital and domiciliary care and medical treatment under chapter 17 of this title, (D) any other activity of the Department of Veterans Affairs as the Secretary shall determine appropriate, or (E) in the case of an individual who is receiving educational assistance under chapter 106 of title 10, activities relating to the administration of such chapter at Department of Defense, Coast Guard, or National Guard facilities. **[An individual shall be paid in advance]** *An individual may elect, in a manner prescribed by the Secretary, to be paid in advance* an amount equal to 40 percent of the total amount of the work-study allowance agreed to be paid under the agreement in return for the individual’s agreement to perform the number of hours of work specified in the agreement (but not more than an amount equal to 50 times the applicable hourly minimum wage).

* * * * *

**CHAPTER 36—ADMINISTRATION OF EDUCATIONAL
BENEFITS**

* * * * *

SUBCHAPTER I—STATE APPROVING AGENCIES

* * * * *

§ 3677. Approval of training on the job

(a) * * *

(b)(1) The training establishment offering training which is desired to be approved for the purposes of this chapter must submit to the appropriate State approving agency a written application for approval which, in addition to furnishing such information as is re-

quired by the State approving agency, contains a certification that—

[(1)] (A) the wages to be paid the eligible veteran or person [(A)] (i) upon entrance into training, are not less than wages paid nonveterans in the same training position and are at least 50 per centum of the wages paid for the job for which the veteran or person is to be trained, and [(B)] (ii) such wages will be increased in regular periodic increments until, not later than the last full month of the training period, they will be at least 85 per centum of the wages paid for the job for which such eligible veteran or person is being trained; and

[(2)] (B) there is reasonable certainty that the job for which the eligible veteran or person is to be trained will be available to the veteran or person at the end of the training period.

(2) *The requirement under paragraph (1)(A)(ii) shall not apply with respect to a training establishment operated by the United States or by a State or local government.*

* * * * *

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

* * * * *

§ 3684. Reports by veterans, eligible persons, and institutions; reporting fee

(a) * * *

* * * * *

(c) The Secretary may pay to any educational institution, or to any joint apprenticeship training committee acting as a training establishment, furnishing education or training under either this chapter or chapter 31, 34 or 35 of this title, a reporting fee which will be in lieu of any other compensation or reimbursement for reports or certifications which such educational institution or joint apprenticeship training committee is required to submit to the Secretary by law or regulation. Such reporting fee shall be computed for each calendar year by multiplying \$7 by the number of eligible veterans or eligible persons enrolled under this chapter or chapter 31, 34 or 35 of this title, or \$11 in the case of those eligible veterans and eligible persons whose educational assistance checks are directed in care of each institution for temporary custody and delivery and are delivered at the time of registration as provided under section 3680(d)(4) of this title[, on October 31 of that year; except that the Secretary may, where it is established by such educational institution or joint apprenticeship training committee that eligible veteran plus eligible person enrollment on such date varies more than 15 percent from the peak eligible veteran enrollment plus eligible person enrollment in such educational institution or joint apprenticeship training committee during such calendar year, establish such other date as representative of the peak enrollment as may be justified for such educational institution or joint apprenticeship training committee] *during the calender year*. The reporting fee shall be paid to such educational institution or joint apprenticeship training committee as soon as feasible after the end of the calendar year for which it is applicable. No reporting fee payable to

an educational institution under this subsection shall be subject to offset by the Secretary against any liability of such institution for any overpayment for which such institution may be administratively determined to be liable under section 3685 of this title unless such liability is not contested by such institution or has been upheld by a final decree of a court of appropriate jurisdiction. *The reporting fee payable under this subsection shall be paid from amounts appropriated for readjustment benefits.*

* * * * *

CHAPTER 37—HOUSING AND SMALL BUSINESS LOANS

* * * * *

SUBCHAPTER I—GENERAL

* * * * *

§ 3702. Basic entitlement

(a)(1) * * *

(2) The veterans referred to in the first sentence of paragraph (1) of this subsection are the following:

(A) * * *

* * * * *

(E) **【**For the period beginning on October 28, 1992, and ending on October 27, 1999, each veteran**】** *Each veteran* described in section 3701(b)(5) of this title.

* * * * *

SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

§ 3720. Powers of Secretary

(a) * * *

(b) The powers granted by this section may be exercised by the Secretary without regard to any other provision of law not enacted expressly in limitation of this section, which otherwise would govern the expenditure of public funds**【**; however, section 3709 of the Revised Statutes (41 U.S.C. 5) shall apply to any contract for services or supplies on account of any property acquired pursuant to this section if the amount of such contract exceeds the amount prescribed in clause (1) of the first sentence of such section.**】** *except that title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) shall apply to any contract for services or supplies on account of any property acquired pursuant to this section.*

* * * * *

CHAPTER 41—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICE FOR VETERANS

* * * * *

§ 4103A. Disabled veterans' outreach program

(a)(1) The amount of funds made available for use in a State under section 4102A(b)(5)(A)(i) of this title shall be sufficient to support the appointment of one disabled veterans' outreach program specialist [for each 6,900 veterans residing in such State who are either veterans of the Vietnam era, veterans who first entered on active duty as a member of the Armed Forces after May 7, 1975, or disabled veterans.] *for each 7,400 veterans who are between the ages of 20 and 64 residing in such State.* Each such specialist shall be a qualified veteran. Preference shall be given in the appointment of such specialists to qualified disabled veterans [of the Vietnam era. If the Secretary finds that a qualified disabled veteran of the Vietnam era is not available for any such appointment, preference for such appointment shall be given to other qualified disabled veterans]. If the Secretary finds that no qualified disabled veteran is available for such appointment, such appointment may be given to any qualified veteran. Each such specialist shall be compensated at rates comparable to those paid other professionals performing essentially similar duties in the State government of the State concerned.

* * * * *

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

* * * * *

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

* * * * *

§ 5503. Hospitalized veterans and estates of incompetent institutionalized veterans

(a)(1)(A) * * *

(B) Except as provided in subparagraph (D) of this paragraph, where any veteran having neither spouse nor child is being furnished nursing home care by the Department, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. [Effective through September 30, 1997, any] *Any* amount in excess of \$90 per month to which the veteran would be entitled but for the application of the preceding sentence shall be deposited in a revolving fund at the Department medical facility which furnished the veteran nursing care, and such amount shall be available for obligation without fiscal year limitation to help defray operating expenses of that facility.

* * * * *

CHAPTER 59—AGENTS AND ATTORNEYS

* * * * *

§ 5904. Recognition of agents and attorneys generally

(a) * * *

* * * * *

(c)(1) * * *

(2) A person who, acting as agent or attorney in a case referred to in paragraph (1) of the subsection, represents a person before the Department or the Board of Veterans' Appeals after the Board first makes a final decision in the case shall file a copy of any fee agreement between them with the Board at such time as may be specified by the Board. The Board, upon its own motion or the request of either party, may review such a fee agreement and may order a reduction in the fee called for in the agreement if the Board finds that the fee is excessive or unreasonable. A finding or order of the Board under the preceding sentence may be reviewed by the United States **[Court of Veterans Appeals]** *Court of Appeals for Veterans Claims* under section 7263(d) of this title.

(d)(1) * * *

* * * * *

(3) To the extent that past-due benefits are awarded in any proceeding before the Secretary, the Board of Veterans' Appeals, or the United States Court of Veterans Appeals, the Secretary may direct that payment of any attorneys' fee under a fee arrangement described in paragraph (1) of this subsection be made out of such past-due benefits. In no event may the Secretary withhold for the purpose of such payment any portion of benefits payable for a period after the date of the final decision of the Secretary, the Board of Veterans' Appeals, or **[Court of Veterans Appeals]** *Court of Appeals for Veterans Claims* making (or ordering the making of) the award.

* * * * *

PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER	Sec.
71. Board of Veterans' Appeals	7101
[72. United States Court of Veterans Appeals	7251]
72. <i>United States Court of Appeals for Veterans Claims</i> ...	7251

* * * * *

CHAPTER 71—BOARD OF VETERANS' APPEALS

* * * * *

§ 7101. Composition of Board of Veterans' Appeals

(a)(1) There is in the Department a Board of Veterans' Appeals (hereafter in this chapter referred to as the "Board"). The Board is under the administrative control and supervision of a chairman directly responsible to the Secretary. The Board shall consist of a Chairman, a Vice Chairman, and such number of members as may be found necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. *Members of the*

Board (other than the Chairman) shall also be known as “veterans administrative law judges”.

(2) The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals properly before the Board. The Board shall have sufficient personnel under the preceding sentence to enable the Board to conduct hearings and consider and dispose of appeals properly before the Board in a timely manner.

(b)(1) The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, for a term of six years. The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in political activities as apply to judges of the United States [Court of Veterans Appeals] *Court of Appeals for Veterans Claims*.

* * * * *

§ 7101A. Members of Board: appointment; pay; performance review

(a)(1) The members of the Board of Veterans’ Appeals other than the Chairman (and including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman.

(2) *Each member of the Board shall be a member in good standing of the bar of a State.*

* * * * *

(d)(1) * * *

[(2) Upon removal from the Board under paragraph (1), a member of the Board (other than the Chairman) who was a career or career-conditional employee in the civil service before commencement of service as a member of the Board shall revert to the civil service grade and series held by the member immediately before the appointment of the member to the Board.]

(2)(A) *Upon removal from the Board under paragraph (1) of a member of the Board who before appointment to the Board served as an attorney in the civil service, the Secretary shall appoint that member to an attorney position at the Board, if the removed member so requests. If the removed member served in an attorney position at the Board immediately before appointment to the Board, appointment to an attorney position under this paragraph shall be in the grade and step held by the removed member immediately before such appointment to the Board.*

(B) *The Secretary is not required to make an appointment to an attorney position under this paragraph if the Secretary determines that the member of the Board removed under paragraph (1) is not qualified for the position.*

* * * * *

[CHAPTER 72—UNITED STATES COURT OF VETERANS APPEALS]

CHAPTER 72—UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SUBCHAPTER I—ORGANIZATION AND JURISDICTION

Sec.							
7251.	Status.	*	*	*	*	*	*
7257.	<i>Recall of retired judges.</i>	*	*	*	*	*	*

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

7281.	Employees.	*	*	*	*	*	*
[7286.]	Judicial Conference of the Court of Veterans Appeals.]						
7286.	<i>Judicial Conference of the Court.</i>						

SUBCHAPTER IV—DECISIONS AND REVIEW

[7291.]	Date when United States Court of Veterans Appeals decision becomes final.]						
7291.	<i>Date when Court decision becomes final.</i>	*	*	*	*	*	*

SUBCHAPTER V—RETIREMENT AND SURVIVORS ANNUITIES

7296.	Retirement of judges.	*	*	*	*	*	*
[7298.]	Court of Veterans Appeals Retirement Fund.]						
7298.	<i>Retirement Fund.</i>						
7299.	<i>Limitation on activities of retired judges.</i>						

SUBCHAPTER I—ORGANIZATION AND JURISDICTION

§ 7251. Status

There is hereby established, under Article I of the Constitution of the United States, a court of record to be known as the **[United States Court of Veterans Appeals]** *United States Court of Appeals for Veterans Claims*.

§ 7252. Jurisdiction; finality of decisions

(a) The **[Court of Veterans Appeals]** *Court of Appeals for Veterans Claims* shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Secretary may not seek review of any such decision. The Court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.

* * * * *

§ 7253. Composition

(a) The **[Court of Veterans Appeals]** *Court of Appeals for Veterans Claims* shall be composed of a chief judge and at least two and not more than six associate judges.

* * * * *

(c) The term of office of the judges of the **[Court of Veterans Appeals]** *Court of Appeals for Veterans Claims* shall be 15 years. A

judge who is nominated by the President for appointment to an additional term on the Court without a break in service and whose term of office expires while that nomination is pending before the Senate may continue in office for up to one year while that nomination is pending.

* * * * *

§ 7254. Organization

(a) The **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* shall have a seal which shall be judicially noticed.

* * * * *

(f) *The Court may prescribe rules and regulations to carry out this chapter.*

* * * * *

§ 7255. Offices

The principal office of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* shall be in the District of Columbia, but the Court may sit at any place within the United States.

§ 7256. Times and places of sessions

The times and places of sessions of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* shall be prescribed by the chief judge.

§ 7257. Recall of retired judges

(a)(1) *A retired judge of the Court may be recalled for further service on the Court in accordance with this section. To be eligible to be recalled for such service, a retired judge must at the time of the judge’s retirement provide to the chief judge of the Court (or, in the case of the chief judge, to the clerk of the Court) notice in writing that the retired judge is available for further service on the Court in accordance with this section and is willing to be recalled under this section. Such a notice provided by a retired judge is irrevocable.*

(2) *For the purposes of this section—*

(A) *a retired judge is a judge of the Court of Veterans Appeals who retires from the Court under section 7296 of this title or under chapter 83 or 84 of title 5; and*

(B) *a recall-eligible retired judge is a retired judge who has provided a notice under paragraph (1).*

(b)(1) *The chief judge may recall for further service on the court a recall-eligible retired judge in accordance with this section. Such a recall shall be made upon written certification by the chief judge that substantial service is expected to be performed by the retired judge for such period, not to exceed 90 days (or the equivalent), as determined by the chief judge to be necessary to meet the needs of the Court.*

(2) *A recall-eligible retired judge may not be recalled for more than 90 days (or the equivalent) during any calendar year without the judge’s consent or for more than a total of 180 days (or the equivalent) during any calendar year.*

(3) *If a recall-eligible retired judge is recalled by the chief judge in accordance with this section and (other than in the case of a judge who has previously during that calendar year served at least 90 days (or the equivalent) of recalled service on the court) declines (other than by reason of disability) to perform the service to which recalled, the chief judge shall remove that retired judge from the status of a recall-eligible judge.*

(4) *A recall-eligible retired judge who becomes permanently disabled and as a result of that disability is unable to perform further service on the court shall be removed from the status of a recall-eligible judge. Determination of such a disability shall be made in the same manner as is applicable to judges of the United States under section 371 of title 28.*

(c) *A retired judge who is recalled under this section may exercise all of the powers and duties of the office of a judge in active service.*

(d)(1) *The pay of a recall-eligible retired judge who retired under section 7296 of this title is specified in subsection (c) of that section.*

(2) *A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge's annuity under the applicable provisions of chapter 83 or 84 of title 5.*

(e)(1) *Except as provided in subsection (d), a judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be considered to be a reemployed annuitant under that chapter.*

(2) *Nothing in this section affects the right of a judge who retired under chapter 83 or 84 of title 5 to serve as a reemployed annuitant in accordance with the provisions of title 5.*

* * * * *

SUBCHAPTER II—PROCEDURE

§ 7261. Scope of review

(a) In any action brought under this chapter, the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims*, to the extent necessary to its decision and when presented, shall—

(1) * * *

* * * * *

§ 7262. Fee for filing appeals

(a) The **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* may impose a fee of not more than \$50 for the filing of any appeal with the Court. The Court shall establish procedures under which such a fee may be waived in the case of an appeal filed by or on behalf of a person who demonstrates that the requirement that such fee be paid will impose a hardship on that person. A decision as to such a waiver is final and may not be reviewed in any other court.

* * * * *

§ 7263. Representation of parties; fee agreements

(a) The Secretary shall be represented before the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* by the General Counsel of the Department.

* * * * *

§ 7264. Rules of practice and procedure

(a) The proceedings of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* shall be conducted in accordance with such rules of practice and procedure as the Court prescribes.

* * * * *

§ 7266. Notice of appeal

(a)(1) In order to obtain review by the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* of a final decision of the Board of Veterans' Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.

* * * * *

§ 7267. Decisions

(a) A decision upon a proceeding before the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* shall be made as quickly as practicable. In a case heard by a panel of the Court, the decision shall be made by a majority vote of the panel in accordance with the rules of the Court. The decision of the judge or panel hearing the case so made shall be the decision of the Court.

* * * * *

§ 7268. Availability of proceedings

(a) Except as provided in subsection (b) of this section, all decisions of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* and all briefs, motions, documents, and exhibits received by the Court (including a transcript of the stenographic report of the hearings) shall be public records open to the inspection of the public.

* * * * *

§ 7269. Publication of decisions

(a) The [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* shall provide for the publication of decisions of the Court in such form and manner as may be best adapted for public information and use. The Court may make such exceptions, or may authorize the chief judge to make such exceptions, to the requirement for publication in the preceding sentence as may be appropriate.

(b) Such authorized publication shall be competent evidence of the decisions of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* therein contained in all courts of the United

States and of the several States without any further proof or authentication thereof.

* * * * *

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 7281. Employees

(a) The [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* may appoint a clerk without regard to the provisions of title 5 governing appointments in the competitive service. The clerk shall serve at the pleasure of the Court.

* * * * *

§ 7282. Budget and expenditures

(a) The budget of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* as submitted by the Court for inclusion in the budget of the President for any fiscal year shall be included in that budget without review within the executive branch.

* * * * *

§ 7283. Disposition of fees

Except for amounts received pursuant to section 7285 of this title, all fees received by the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* shall be covered into the Treasury as miscellaneous receipts.

§ 7284. Fee for transcript of record

The [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* may fix a fee, not in excess of the fee authorized by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record of any proceeding before the Court, or for copying any record, entry, or other paper and the comparison and certification thereof.

§ 7285. Practice fee

(a) The [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* may impose a periodic registration fee on persons admitted to practice before the Court. The frequency and amount of such fee shall be determined by the Court, except that such amount may not exceed \$30 per year.

* * * * *

[§ 7286. Judicial Conference of the Court of Veterans Appeals]

§ 7286. *Judicial Conference of the Court*

The Chief Judge of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* may summon the judges of the Court to an annual judicial conference, at a time and place that the Chief Judge designates, for the purpose of considering the business of the Court and recommending means of improving the administration of

justice within the Court's jurisdiction. The Court shall provide by its rules for representation and active participation at such conference by persons admitted to practice before the Court and by other persons active in the legal profession.

SUBCHAPTER IV—DECISIONS AND REVIEW

【§ 7291. Date when United States Court of Veterans Appeals decision becomes final】

§ 7291. Date when Court decision becomes final

(a) A decision of the United States **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* shall become final upon the expiration of the time allowed for filing, under section 7292 of this title, a notice of appeal from such decision, if no such notice is duly filed within such time. If such a notice is filed within such time, such a decision shall become final—

(1) upon the expiration of the time allowed for filing a petition for certiorari with the Supreme Court of the United States, if the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* is affirmed or the appeal is dismissed by the United States Court of Appeals for the Federal Circuit and no petition for certiorari is duly filed;

(2) upon the denial of a petition for certiorari, if the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* is affirmed or the appeal is dismissed by the United States Court of Appeals for the Federal Circuit; or

(3) upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if that Court directs that the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* be affirmed or the appeal dismissed.

(b)(1) If the Supreme Court directs that the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* be modified or reversed, the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* shall become final when so corrected.

(2) If the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* is modified or reversed by the United States Court of Appeals for the Federal Circuit and if—

(A) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court, then the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* rendered in accordance with the mandate of the United States Court of Appeals for the Federal Circuit shall become final upon the expiration of 30 days from the time such decision of the **【Court of Veterans Appeals】** *Court of Appeals for Vet-*

erans Claims was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* shall become final when so corrected.

(c) If the Supreme Court orders a rehearing, or if the case is remanded by the United States Court of Appeals for the Federal Circuit to the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* for a rehearing, and if—

(1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(2) the petition for certiorari has been denied, or

(3) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court, then the decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* rendered upon such rehearing shall become final in the same manner as though no prior decision of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* had been rendered.

* * * * *

§ 7292. Review by United States Court of Appeals for the Federal Circuit

(a) After a decision of the United States **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* is entered in a case, any party to the case may obtain a review of the decision with respect to the validity of any statute or regulation (other than a refusal to review the schedule of ratings for disabilities adopted under section 1155 of this title) or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the Court in making the decision. Such a review shall be obtained by filing a notice of appeal with the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* within the time and in the manner prescribed for appeal to United States courts of appeals for United States district courts.

(b)(1) When a judge or panel of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims*, in making an order not otherwise appealable under this section, determines that a controlling question of law is involved with respect to which there is in fact a disagreement between the appellant and the Secretary with respect to that question of law and that the ultimate termination of the case may be materially advanced by the immediate consideration of that question, the judge or panel shall notify the chief judge of that determination. Upon receiving such a notification, the chief judge shall certify that such a question is presented, and any party to the case may then petition the Court of Appeals for the Federal Circuit to decide the question. That court may permit an interlocutory appeal to be taken on that question if such a petition is filed with it within 10 days after the certification by the chief judge of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims*. Neither the application for, nor the granting of, an appeal under this paragraph shall stay proceedings in the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims*, unless

a stay is ordered by a judge of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* or by the Court of Appeals for the Federal Circuit.

(2) For purposes of subsections (d) and (e) of this section, an order described in this paragraph shall be treated as a decision of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims*.

* * * * *

(d)(1) The Court of Appeals for the Federal Circuit shall decide all relevant questions of law, including interpreting constitutional and statutory provisions. The court shall hold unlawful and set aside any regulation or any interpretation thereof (other than a determination as to a factual matter) that was relied upon in the decision of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* that the Court of Appeals for the Federal Circuit finds to be—

(A) * * *

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(e)(1) Upon such review, the Court of Appeals for the Federal Circuit shall have power to affirm or, if the decision of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* is not in accordance with law, to modify or reverse the decision of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* or to remand the matter, as appropriate.

(2) Rules for review of decisions of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* shall be those prescribed by the Supreme Court under section 2072 of title 28.

* * * * *

SUBCHAPTER V—RETIREMENT AND SURVIVORS ANNUITIES

§ 7296. Retirement of judges

(a) For purposes of this section:

(1) The term “Court” means the United States [Court of Veterans Appeals] *Court of Appeals for Veterans Claims*.

* * * * *

(b)(1) * * *

* * * * *

(4) For purposes of calculating the years of service of an individual under this subsection and subsection (c), only those years of service as a judge of the Court shall be credited. In determining the number of years of such service, that portion of the aggregate number of years of such service that is a fractional part of one year shall be disregarded if less than 183 days and shall be credited as a full year if 183 days or more.

(c)(1) An individual who retires under subsection (b) of this section and elects under subsection (d) of this section to receive retired pay under this subsection shall (except as provided in paragraph (2) of this subsection) receive retired pay [at the rate of pay in effect at the time of retirement.] as follows:

(A) *In the case of a judge who is a recall-eligible retired judge under section 7257 of this title or who was a recall-eligible retired judge under that section and was removed from recall status under subsection (b)(4) of that section by reason of disability, the retired pay of the judge shall be the pay of a judge of the court (or of the chief judge, if the individual retired from service as chief judge).*

(B) *In the case of a judge who at the time of retirement did not provide notice under section 7257 of this title of availability for service in a recalled status, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.*

(C) *In the case of a judge who was a recall-eligible retired judge under section 7257 of this title and was removed from recall status under subsection (b)(3) of that section, the retired pay of the judge shall be the pay of the judge at the time of the removal from recall status.*

* * * * *

(f)(1) * * *

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(3)(A) *A cost-of-living adjustment provided by law in annuities payable under civil service retirement laws shall apply to retired pay under this section only in the case of retired pay computed under paragraph (2) of subsection (c).*

(B)(i) *If such a cost-of-living adjustment would (but for this subparagraph) result in the retired pay of a retired chief judge being in excess of the annual rate of pay in effect for the chief judge of the court as provided in section 7253(e)(1) of this title, such adjustment may be made in the retired pay of that retired chief judge only in such amount as results in the retired pay of the retired chief judge being equal to that annual rate of pay (as in effect on the effective date of such adjustment).*

(ii) *If such a cost-of-living adjustment would (but for this subparagraph) result in the retired pay of a retired judge (other than a retired chief judge) being in excess of the annual rate of pay in effect for judges of the court as provided in section 7253(e)(2) of this title, such adjustment may be made only in such amount as results in the retired pay of the retired judge being equal to that annual rate of pay (as in effect on the effective date of such adjustment).*

* * * * *

(i)(1) Beginning with the next pay period after the Director of the Office of Personnel Management receives a notice under subsection (d) of this section that a judge has elected to receive retired pay under this section, the Director shall deduct and withhold 1 percent of the salary of such judge. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the [Court of Veterans Appeals] *Court of Appeals for Veterans Claims* Judges Retirement Fund. Deductions under this subsection from the salary of a judge shall terminate upon the retirement of the judge or upon the completion of 15 years of service for which either deductions under

this subsection or a deposit under subsection (j) of this section has been made, whichever occurs first.

* * * * *

(k) The amounts deducted and withheld under subsection (i) of this section, and the amounts deposited under subsection (j) of this section, shall be deposited in the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* Retirement Fund for credit to individual accounts in the name of each judge from who such amounts are received.

§ 7297. Survivor annuities

(a) For purposes of this section:

(1) The term “Court” means the United States **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims*.

* * * * *

(4) The term “retirement fund” means the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* Retirement Fund established under section 7298 of this title.

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【(o) Whenever the salaries of judges paid under section 7253(e) of this title are increased, each annuity payable from the retirement fund which is based, in whole or in part, upon a deceased judge having rendered some portion of that judge’s final 18 months of service as a judge of the Court, shall also be increased. The amount of the increase in the annuity shall be determined by multiplying the amount of the annuity on the date on which the increase in salaries become effective by 3 percent for each full 5 percent by which those salaries were increased.】

(o) Each survivor annuity payable from the retirement fund shall be increased at the same time as, and by the same percentage by which, annuities payable from the Judicial Survivors’ Annuities Fund are increased pursuant to section 376(m) of title 28.

【§ 7298. Court of Veterans Appeals Retirement Fund】

§ 7298. Retirement Fund

(a) There is established in the Treasury a fund known as the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* Retirement Fund.

* * * * *

(d) The chief judge of the **【Court of Veterans Appeals】** *Court of Appeals for Veterans Claims* shall submit to the President an annual estimate of the expenditures and appropriations necessary for the maintenance and operation of the fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law.

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(e)(1) * * *
(2)(A) * * *

* * * * *

(C) For purposes of subparagraph (B), the term “present value” includes a value determined by an actuary with respect to a payment that may be made under subsection (b) from the retirement fund within the contemplation of law.

[(C)] (D) Amounts deposited in the retirement fund under this paragraph shall not be credited to the account of any individual.

* * * * *

(g) For purpose of section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)), the retirement fund shall be treated in the same manner as the Claims Judges’ Retirement Fund.

§ 7299. Limitation on activities of retired judges

If a retired judge of the Court in the practice of law represents (or supervises or directs the representation of) a client in making any claim relating to veterans’ benefits against the United States or any agency thereof, the retired judge shall forfeit all rights to retired pay under section 7296 of this title or under chapter 83 or 84 of title 5 for the period beginning on the date on which the representation begins and ending one year after the date on which the representation ends.

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CHAPTER 77—VETERANS BENEFITS ADMINISTRATION

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SUBCHAPTER II—VETERANS OUTREACH SERVICES PROGRAM

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§ 7722. Outreach services

(a) * * *

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(c) [The Secretary] Except as provided in section 3034(e) of this title, the Secretary shall distribute full information to eligible veterans and eligible dependents regarding all benefits and services to which they may be entitled under laws administered by the Department and may, to the extent feasible, distribute information on other governmental programs (including manpower and training programs) which the Secretary determines would be beneficial to veterans.

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SECTION 16136 OF TITLE 10, UNITED STATES CODE

§ 16136. Administration of program

(a) * * *

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(c)(1) The Secretary of Veterans Affairs may approve the pursuit of flight training (in addition to a course of flight training that may

be approved under section 3680A(b) of title 38) by an individual entitled to educational assistance under this chapter if—

(A) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

(B) the individual possesses a valid private **[pilot's license]** *pilot certificate* and meets, *on the day the individual begins a course of flight training*, the medical requirements necessary for a commercial **[pilot's license]** *pilot certificate*; and

(C) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

(2) This subsection shall not apply to a course of flight training that commences on or after October 1, 1994.

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CHAPTER 84 OF TITLE 5, UNITED STATES CODE

CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

SUBCHAPTER I—GENERAL PROVISIONS

Sec. 8401. Definitions.
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SUBCHAPTER III—THRIFT SAVINGS PLAN

8432. Contributions.
* * * * *

[8440d. Judges of the United States Court of Veterans Appeals.]
8440d. *Judges of the United States Court of Appeals for Veterans Claims.*
* * * * *

SUBCHAPTER III—THRIFT SAVINGS PLAN

* * * * *

[§ 8440d. Judges of the United States Court of Veterans Appeals]

§ 8440d. Judges of the United States Court of Appeals for Veterans Claims

(a)(1) A judge of the United States **[Court of Veterans Appeals]** *Court of Appeals for Veterans Claims* may elect to contribute to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) of this title for individuals subject to chapter 84 of this title.

(b)(1) * * * * *

(5) Section 8433(b) of this title applies in the case of a judge who elects to make contributions to the Thrift Savings Fund and thereafter ceases to serve as a judge of the United States **[Court of Vet-**

erans Appeals] *Court of Appeals for Veterans Claims* but does not retire under section 7296(b) of title 38.

(6) The provisions of section 8351(b)(7) of this title shall apply with respect to a judge who has elected to contribute to the Thrift Savings Fund under this section.

SECTION 2412 OF TITLE 28, UNITED STATES CODE

§ 2412. Costs and fees

(a) * * *

* * * * *

(d)(1) * * *

(2) For the purposes of this subsection—

(A) * * *

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(F) “court” includes the United States Court of Federal Claims and the United States [Court of Veterans Appeals] *Court of Appeals for Veterans Claims*;

* * * * *

SECTION 906 OF TITLE 44, UNITED STATES CODE

§ 906. Congressional Record: gratuitous copies; delivery

The Public Printer shall furnish the Congressional Record only as follows:

of the bound edition—

to the Senate Service Department five copies for the Vice President and each Senator;

* * * * *

to each United States circuit and district judge, and to the chief judge and each associate judge of the United States Court of Federal Claims, the United States Court of International Trade, the Tax Court of the United States, the United States [Court of Veterans Appeals] *Court of Appeals for Veterans Claims*, and the United States Court of Appeals for the Armed Forces, upon request to a member of Congress and notification by the Member to the Public Printer, one copy of the daily, in addition to those authorized to be furnished to Members of Congress under the preceding provisions of this section;

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to the library of each United States Court of Appeals, each United States District Court, the United States Court of Federal Claims, the United States Court of International Trade, the Tax Court of the United States, the United States [Court of Veterans Appeals] *Court of Appeals for Veterans Claims*, and the United States Court of Appeals for the Armed Forces,

upon request to the Public Printer, one copy of the daily, one semimonthly copy, and one bound copy;

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SECTION 109 OF THE ETHICS IN GOVERNMENT ACT

DEFINITIONS

SEC. 109. For the purposes of this title, the term—

(1) * * *

* * * * *

(8) “judicial employee” means any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Claims Court, of the **[Court of Veterans Appeals]** *Court of Appeals for Veterans Claims*, or of the United States Court of Appeals for the Armed Forces, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule;

(9) “Judicial Conference” means the Judicial Conference of the United States;

(10) “judicial officer” means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in the Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Claims Court, **[Court of Veterans Appeals]** *Court of Appeals for Veterans Claims*, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior;

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