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1st Session }

SENATE

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105-23

LEGISLATIVE AND OVERSIGHT ACTIVITIES
DURING THE 104TH CONGRESS BY THE
SENATE COMMITTEE ON
VETERANS' AFFAIRS

SPECIAL REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
COMMITTEE ACTIVITIES



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[104TH CONGRESS]

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[105TH CONGRESS]

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CONTENTS

	Page
I. Introduction	1
Hearings	1
A. First session	1
B. Second session	1
Legislation	2
A. First session	2
B. Second session	2
Nominations	2
A. First session	2
B. Second session	3
II. Budget on veterans programs	3
A. First session	3
B. Second session	5
III. Service-connected compensation and related programs	6
A. Overview	6
B. First session	7
1. Gardner decision	7
2. Compensation cost-of-living adjustment	7
3. Other compensation issues	8
C. Second session	8
1. Compensation cost-of-living adjustment	8
2. Other compensation issues	8
3. Monetary allowances for Vietnam veterans' children born with spina bifida	9
4. The offsetting of separation pay from VA compensation	10
Background	10
National Defense Authorization Act for Fiscal Year 1997	10
IV. Pension programs	11
A. Overview	11
B. First session	11
C. Second session	11
V. Health care	12
A. Overview	12
B. First session	13
1. Oversight hearings	13
2. Legislation to extend expiring legal authorities	13
3. Other health care legislation	14
4. Construction authorization	15
C. Second session	16
1. Legislation to extend expiring legal authorities	16
2. Eligibility reform	16
3. Vietnam veterans' eligibility for medical care services	18
4. Health care benefits for Vietnam veterans' children born with spina bifida	19
5. Other medical care and medical administration matters	19
6. Construction authorization and property management	21
VI. Readjustment, educational assistance, and vocational rehabilitation benefits	22
A. Overview	22
B. First session	23
1. Oversight	23
2. Proposed legislation	23
C. Second session	24
1. Vocational rehabilitation program	24

IV

	Page
C. Second session—Continued	
2. Educational assistance benefits	24
3. Administration of educational assistance benefits programs	25
4. Vocational training and job placement benefits for Vietnam veterans' children born with spina bifida	25
5. Commission on service members and veterans transition assistance	26
VII. Employment	26
A. Overview	26
B. First session	27
C. Second session	27
1. USERRA amendments and VETS organizational issues	27
2. Commission on service members and veterans transition assistance	29
VIII. Home loan guaranty program	29
A. Overview	29
B. First session	29
1. Legislation to extend expiring legal authorities	29
2. Other legislation	30
C. Second session	30
1. Legislation to extend expiring legal authorities	30
2. Other legislation	31
IX. Claims adjudication and judicial review	31
A. Overview	31
B. First session	32
C. Second session	32
X. Burial benefits and memorial affairs	33
A. Overview	33
B. First session	34
C. Second session	34
XI. Insurance	34
A. Overview	34
B. First session	35
C. Second session	35
XII. Homeless veterans	35
A. Overview	35
B. First session	35
C. Second session	36
XIII. Miscellaneous	37
A. First session	37
B. Second session	39

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

REPORT

Pursuant to paragraph 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs (Committee) submits its report on legislative and oversight activities during the 104th Congress.

I. INTRODUCTION

Hearings

A. FIRST SESSION

During the First Session of the 104th Congress, the Committee held ten days of hearings on legislative and oversight matters, on a nomination to the Department of Veterans Affairs (VA), and on the legislative recommendations of veterans service organizations (VSOs). Among those were two days of hearings on VA health care programs and related matters; one day of hearings on VA compensation, pension, and vocational rehabilitation programs and related matters; two days of hearings on the Administration-proposed budget for veterans programs for fiscal year 1996 and options for implementing budget reconciliation instructions; and five days of hearings on the legislative recommendations of the veterans service organizations.

B. SECOND SESSION

During the Second Session of the 104th Congress, the Committee held ten days of hearings on legislative and oversight matters, and on VSOs' legislative recommendations. Among those were two days of hearings on proposals to reform standards for eligibility for health care services provided by VA; one day of hearings on compensation issues related to Vietnam veterans' exposures to Agent

Orange; one day of hearings (held jointly with the Select Committee on Intelligence) on illnesses suffered by Persian Gulf War veterans; one day of hearings on the Administration-proposed budget for veterans programs for fiscal year 1997; one day of hearings on pending legislation relating to both VA health care and benefits programs; and five days of hearings on VSOs' legislative recommendations.

Legislation

A. FIRST SESSION

During the First Session of the 104th Congress, the Committee met in open session one time to consider legislation, and reported three bills to the Senate. One of those reported bills, with modifications, was enacted during the First Session. That public law was:

The "Veterans' Compensation Cost-of-Living Act of 1995" (Public Law 104-57), signed November 22, 1995.

Provisions derived from one other bill reported by the Committee during the First Session were enacted into one public law (Public Law 104-110, below) during the Second Session.

B. SECOND SESSION

During the Second Session, one public law was enacted which incorporated provisions derived from a bill which was reported during the First Session. That public law was:

An act to amend title 38, United States Code, to extend certain expiring authorities of the Department of Veterans Affairs relating to delivery of health and medical care, and for other purposes (Public Law 104-110), signed February 13, 1996.

In addition, the Committee met in open session one time to consider legislation, and reported five bills, which incorporated original provisions and provisions derived from 21 bills, to the Senate. These five reported bills, with modifications, were consolidated into three bills and enacted into four public laws during the Second Session. These four public laws were:

1. An act to rename the VA medical center in Jackson, Mississippi, the "G.V. (Sonny) Montgomery Department of Veterans Affairs Medical Center" (Public Law 104-202), signed September 24, 1996;

2. The "Veterans' Health Care Eligibility Reform Act of 1996" (Public Law 104-262), signed October 9, 1996;

3. The "Veterans' Compensation Cost-of-Living Adjustment Act of 1996" (Public Law 104-263), signed October 9, 1996; and

4. The "Veterans' Benefits Improvements Act of 1996" (Public Law 104-275), signed October 9, 1996.

Nominations

A. FIRST SESSION

During the First Session of the 104th Congress, the Committee met in open session one time to consider a nomination, and reported one nomination to the Senate. The following table portrays the Committee's and the Senate's actions regarding this nomination.

DEPARTMENT OF VETERANS AFFAIRS NOMINATIONS

Name and Position	Date of Nomina- tion	Date of Hearing	Date Reported	Date Confirmed
Dennis M. Duffy, Assistant Secretary for Policy and Planning.	January 5, 1995	March 9, 1995	April 6, 1995 ...	April 7, 1995

B. SECOND SESSION

During the Second Session of the 104th Congress, no nominations were referred to the Committee.

II. BUDGET ON VETERANS PROGRAMS

A. FIRST SESSION

On March 9, 1995, the Committee held a hearing on the Administration's proposed budget for veterans' programs for fiscal year 1996. Testimony was received from the Secretary of Veterans Affairs and other VA officials, the Chief Judge, United States Court of Veterans Appeals (CVA), the Assistant Secretary of Labor for Veterans' Employment and Training, and various VSOs.

On April 3, 1995, pursuant to the requirements of section 301(d) of the Congressional Budget Act of 1974, and with the approval of all of the members of the Committee, the Committee submitted a letter reflecting its views and estimates on the proposed fiscal year 1996 veterans' programs budget to the Budget Committee. The Committee's report expressed reservations on VA's proposed allocations of discretionary funding, questioning particularly VA's request for authorization to build two new inpatient hospitals. The report did not, however, recommend reductions in requested funding for discretionary spending. Nor did it recommend that such funding be increased over requested levels.

With respect to proposed mandatory account spending, the Committee noted the existence of Federal deficits, and bipartisan consensus that unrestrained entitlements spending is a major factor in such deficits. The report emphasized, however, that growth in veterans' entitlements spending is not a cause of deficits, noting that entitlements spending on veterans' programs was expected to grow at a rate of less than one-half of one percent. Nonetheless, the Committee reported veterans' support of certain measures to contribute to deficit reduction, and suggested that careful consideration would be given to statutory amendments to modify statutes construed in the U.S. Supreme Court's decision in *Gardner v. Brown, infra*, discussed in section III, below.

On June 26, 1995, the Senate and House Committees on the Budget issued a conference report (H. Rept. 104-159) approving a budget resolution (H. Con. Res. 67) which included targets for savings on veterans' programs. On June 29, 1995, the Senate adopted the concurrent resolution. Section 105 of the resolution directed the Committee to report changes in laws within the Committee's jurisdiction sufficient to reduce outlays for veterans' programs by \$274 million in fiscal year 1996, \$3.614 billion in fiscal years 1996 through 2000, and \$6.392 billion in fiscal years 1996 through 2002.

On July 11, 1995, the Committee held a hearing on options for meeting the outlay-reduction targets specified in the concurrent

resolution. Testimony was received from the Secretary of Veterans Affairs and other VA officials, the Department of Defense, and various VSOs.

On September 20, 1995, the Committee met in open session to consider, among other things, measures for complying with the outlay-reduction targets specified in the concurrent resolution. By unanimous vote, the Committee approved measures that would:

1. Extend through fiscal year 2002 certain cost-saving provisions which had been approved in previously enacted budget reconciliation acts and which were scheduled to expire on September 30, 1998;

2. Limit cost-of-living adjustments (COLAs) to compensation, dependency and indemnity compensation (DIC), and other veterans' benefits during fiscal years 1996 through 2002 by requiring that the adjusted dollar amounts paid monthly be rounded down to the nearest dollar in all cases;

3. Limit the cost-of-living adjustment in educational assistance benefits paid under 38 U.S.C. Chapter 30 to one-half of the COLA made to compensation, DIC, and other veterans benefits;

4. For fiscal year 1996, increase from \$100 per month for 12 months to \$133.34 per month for 12 months the monthly reduction in pay contributed by service personnel as a condition to eligibility for educational assistance benefits under 38 U.S.C. Chapter 30; and for fiscal years 1997 through 2002, increase that monthly reduction in pay by the same cost-of-living adjustment percentage that educational assistance benefits are increased; and

5. Amend 38 U.S.C. §1151, the statute construed in *Gardner v. Brown, infra*, to require prospectively that compensation would be paid for disabilities or deaths occurring during VA medical treatment only if the disability or death resulted from VA negligence or fault.

On October 5, 1995, measures approved by the Committee were submitted to the Committee on the Budget. That filing included proposed legislative language reflecting the Committee's reconciliation recommendations; proposed report language outlining the Committee's recommendations; and a cost estimate prepared by the Congressional Budget Office (CBO) indicating that the Committee's recommendations, if enacted, would result in outlay savings of \$150 million in fiscal year 1996, \$3.750 billion in fiscal years 1996 through 2000, and \$6.659 billion in fiscal years 1996 through 2002.

On September 28, 1995, the House Committee on Veterans' Affairs approved a series of budget reconciliation measures which differed from those approved by the Committee. Conferees were appointed on November 13, 1995, to reconcile the differences, and on November 14, 1995, the conferees reached an agreement. Under that agreement, the following provisions of the Committee-reported recommendations were approved: extension through September 30, 2002, of previously approved reconciliation measures scheduled to expire on September 30, 1998; the cost-of-living adjustment round-down provision; and the provision requiring a finding of VA fault before compensation will be paid under 38 U.S.C. §1151. In lieu, however, of Committee-approved measures relating to educational assistance benefits under 38 U.S.C. Chapter 30, the conferees agreed to:

1. Increase copayments paid by veterans receiving prescription drugs in connection with treatment for non-service-connected disabilities from \$2 per prescription per 30-day supply to \$4, and repeal VA's authority to waive the copayment requirement;
2. Equalize the dollar amount of cost-of-living adjustments to be received by all recipients of dependency and indemnity compensation;
3. Authorize the withholding from Federal salaries and tax refunds debts owed to VA by veterans who had defaulted on VA-guaranteed mortgage loans;
4. Extend through fiscal year 2002 a measure due to expire in fiscal year 1997 granting VA flexibility in disposing of a property when a home financed by a VA-guaranteed mortgage loan goes into foreclosure; and
5. Extend through fiscal year 2002 expired authority for VA to guarantee the timely payment of principal and interest to purchasers of real estate mortgage investment conduits (REMICs), securities by which VA markets "bundled" VA direct loan notes from purchasers of VA-acquired real estate, in order to enhance the value of REMIC securities.

According to CBO, these recommendations, if enacted, would have resulted in outlay savings of \$275 million in fiscal year 1996, \$3.846 billion in fiscal years 1996 through 2000, and \$6.673 billion in fiscal years 1996 through 2002.

The Senate-House compromise was included as Title X, "Veterans and Related Provisions," of the conference report on H.R. 2491 (H. Rept. 104-350). The House agreed to the conference report on November 17, 1995, and on that date, the Senate concurred with a further amendment. On November 20, 1995, the House agreed to the Senate amendment, clearing the measure for the President. On November 30, 1995, H.R. 2491, the "Balanced Budget Act of 1995" was presented to the President. On December 6, 1995, the President vetoed H.R. 2491.

No further action was taken on provisions contained in Title X of the "Balanced Budget Act of 1995" in the First Session.

B. SECOND SESSION

On April 24, 1996, the Committee held a hearing on the budget for veterans' programs for fiscal year 1997. Testimony was received from the Secretary of Veterans Affairs and other VA officials, a representative of the United States Court of Veterans Appeals, the Assistant Secretary of Labor for Veterans' Employment and Training, and various VSOs.

On May 7, 1996, pursuant to the requirements of section 301(d) of the Congressional Budget Act of 1974 and with the approval of all of the members of the Committee on Veterans' Affairs, the Committee submitted a letter reflecting its budget views and estimates on the proposed fiscal year 1997 budget for veterans' programs to the Budget Committee. The Committee's report noted that the Administration had proposed decreases in VA medical care spending beyond fiscal year 1997, but that it had submitted no plan indicating how necessary medical care would be provided during the two years under such a funding plan. The Committee's report, therefore, expressed no support for the Administration's out-year spend-

ing proposal, and stated that the proposed cuts in medical care spending were not necessary to achieve the goal of a balanced Federal budget.

On the issue of proposed VA construction spending, the Committee noted that 83 per cent of VA's proposed construction budget had been earmarked for inpatient facility construction. The report questioned that priority.

With respect to mandatory spending on veterans' programs, the Committee repeated a theme expressed in its 1995 report: that unrestrained growth in entitlements spending is the cause of the deficit, and that mandatory spending for veterans' programs is not unrestrained and is not, therefore, a significant contributing factor to Federal deficits. The report noted further, however, that the Administration's budget proposal recommended enactment of all but two of the deficit-reduction measures approved by the Committee as Title X of the "Balanced Budget Act of 1995."

III. SERVICE-CONNECTED COMPENSATION AND RELATED PROGRAMS

A. OVERVIEW

VA's disability compensation program provides monthly payments to veterans who have impairments to earning capacity because of service-connected disabilities. The amount paid depends on the nature of the veteran's disability or combination of disabilities, and the extent to which earning capacity is deemed to have been impaired. Compensation is paid for so long as the service-connected disability persists and the veteran is alive; when a veteran receiving compensation dies, VA discontinues payments effective on the last day of the month before death. As of the end of calendar year 1996, an estimated 2.253 million veterans were receiving compensation benefits.

VA pays dependency and indemnity compensation (DIC) benefits to surviving spouses, children, and dependent parents of veterans who die during active duty or as a result of a service-connected condition. This benefit is intended to compensate for the loss of family income. At the end of calendar year 1996, an estimated 330,531 survivors were receiving benefits under the DIC program.

Congress also has established programs to meet certain specific needs of service-connected veterans, including grants for specially adapted housing, grants for adaptive automotive equipment, and clothing allowances for service-connected veterans who use prosthetic or orthopedic appliances which wear or tear clothing, or medications which irreparably damage outer garments.

The Committee is concerned that benefits be adjusted appropriately to keep pace with inflation. The Committee is also concerned that compensation be paid in all cases in which the veteran's death or disability was, in fact, incurred or aggravated during the veteran's service, and that the system for adjudicating claims for compensation benefits be both fair and efficient.

B. FIRST SESSION

1. GARDNER Decision

On June 8, 1995, the Committee held an oversight hearing on, among other things, a U.S. Supreme Court decision, *Gardner v. Brown*, 115 S. Ct. 552 (1994), upholding a Court of Veterans Appeals ruling that persons who suffer negative medical outcomes while being treated in VA medical facilities are entitled to VA compensation without a showing of VA fault. The Committee inquired into the effect that *Gardner* was having on care provided at VA medical facilities, and on VA efforts to uncover similar areas of potential legal exposure. Testimony was received from VA's General Counsel.

As is discussed in section II.A., above, the Committee approved, as part of the "Balanced Budget Act of 1995," a provision to modify the statute, 38 U.S.C. §1151, that *Gardner* construed in order to impose a requirement of VA fault before compensation could be awarded. The "Balanced Budget Act of 1995" was vetoed by the President on December 6, 1995. No further action was taken on the issue during the First Session.

2. Compensation Cost-of-Living Adjustment

On June 29, 1995, Senator Alan K. Simpson, the Committee's Chairman, introduced S. 992, the proposed "Veterans' Compensation Cost-of-Living Adjustment Act of 1995." S. 992 would have increased the rates of compensation for veterans with service-connected disabilities and the rates of DIC for survivors of certain deceased disabled veterans. Prior to the introduction of that bill, on March 9, 1995, the Committee held a hearing on, among other issues, VA's proposed budget for fiscal year 1996 and, during that hearing, the Committee considered projected cost-of-living adjustments to compensation and DIC for 1996. The Committee received testimony from VA and various veterans service organizations at the March 9 hearing. In addition, the Committee held a hearing on July 11, 1995, to consider options for complying with reconciliation instructions, as discussed above. During the course of that hearing, the Committee considered adjustments to projected cost-of-living increases for 1996. The Committee received testimony from VA and various veterans service organizations at the July 11 hearing.

On September 20, 1995, the Committee met in open session to consider, among other things, S. 992. On that date, the Committee voted to report S. 992 favorably to the Senate without written report. On October 10, 1995, the House passed a companion bill, H.R. 2394.

On November 9, 1995, the Senate took up H.R. 2394, and approved an amendment in the nature of a substitute. The substitute incorporated the text of S. 992 into H.R. 2394. The Senate then passed H.R. 2394, as amended, by voice vote. On November 10, 1995, the House agreed to the Senate amendment. On November 22, 1995, the President signed H.R. 2394 into law as Public Law 104-57, the "Veterans' Compensation Cost-of-Living Adjustment Act of 1995."

3. *Other Compensation Issues*

On November 15, 1995, Senator Kay Bailey Hutchison introduced S. 1414, a bill to assure the payment during fiscal year 1996 of veterans' benefits, including compensation and DIC benefits, notwithstanding any Federal government "shutdown." As introduced, S. 1414 would have authorized such payments and appropriated funds for the purpose of making such payments. The bill was referred to the Committee on November 15, 1995. No action was taken on the bill during the 104th Congress.

C. SECOND SESSION

1. *Compensation Cost-of-Living Adjustment*

On May 22, 1996, Chairman Simpson introduced S. 1791, the proposed "Veterans' Compensation Cost-of-Living Adjustment Act of 1996." S. 1791 would have increased the rates of compensation for veterans with service-connected disabilities and the rates of DIC for survivors of certain deceased disabled veterans. On May 23, 1996, the Committee held a hearing on S. 1791 and other pending legislation. The Committee received testimony from VA and various veterans service organizations on S. 1791 at the May 23 hearing. On July 24, 1996, the Committee met in open session to consider, among other things, S. 1791. On that date, the Committee voted to report S. 1791 favorably to the Senate, and on September 9, 1996, the bill was reported (S. Rept. 104-367).

On July 16, 1996, the House passed a companion measure, H.R. 3458, and referred that bill to the Senate. On September 26, 1996, the Senate took up H.R. 3458 and amended it to substitute the text of S. 1791. The Senate then passed H.R. 3458, as so amended, by voice vote. On September 28, 1996, the House agreed to the Senate amendment. On October 9, 1996, the President signed H.R. 3458 into law as Public Law 104-263, the "Veterans' Compensation Cost-of-Living Adjustment Act of 1996."

2. *Other Compensation Issues*

On June 29, 1995, Chairman Simpson introduced S. 995, at VA's request, the proposed "Veterans Benefits Reform Act of 1995." As introduced, S. 995 would have, among other things, eliminated the clothing allowance paid to otherwise-eligible veterans who had been incarcerated. On May 23, 1996, the Committee held a hearing on S. 995 and other pending legislation. The Committee received testimony from VA and various veterans service organizations on S. 995 at the May 23 hearing.

On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711 (discussed in detail in section VI.C.5, below), which incorporated provisions derived from S. 995 relating to the clothing allowance. The Committee voted to report S. 1711, as amended, favorably to the Senate, and on September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute retained provisions of S. 1711, as reported, relating to the clothing allowance. The substitute also incorporated a provision derived from H.R. 3674, passed by the House on July 16, 1996. As passed

by the House, H.R. 3674 would have amended the provision of law which discontinues compensation effective the last day of the month preceding the veteran's death in order to permit the surviving spouse of a deceased veteran to retain the last month's compensation payment prorated to the date of death. As modified in the substitute, the H.R. 3674-derived provision allowed the surviving spouse to retain the entirety of the last month's compensation payment. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104-275.

On September 19, 1996, the Committee held an oversight hearing on VA compensation to Vietnam veterans. The hearing focused particularly on compensation for diseases presumed to be caused by a Vietnam veteran's presumed exposure to defoliants in Vietnam. The Committee received testimony from the Secretary of Veterans Affairs and other VA officials and from two panels of distinguished scientists.

On September 26, 1996, the Committee and the Select Committee on Intelligence held a joint oversight hearing on reports of releases of chemical warfare agents in Iraq during the Persian Gulf War and the possible connection between such releases and undiagnosed illnesses suffered by some Persian Gulf War veterans. The Committee received testimony from officials from the Central Intelligence Agency, the Department of Defense, and VA.

3. Monetary Allowances for Vietnam Veterans' Children Born with Spina Bifida

On July 31, 1996, Senate Minority Leader Thomas A. Daschle introduced S. 2008, the proposed "Agent Orange Benefits Act of 1996." S. 2008 would have provided the following benefits to children of Vietnam veterans who are born with spina bifida:

1. Payment of a monthly monetary allowance, varying by degree of disability suffered by the child;
2. Health care for any disability associated with the person's spina bifida; and
3. Vocational training, job placement and post-job-placement services.

On September 5, 1996, Senator Daschle offered an amendment to H.R. 3666, a bill to make fiscal year 1997 appropriations for VA and other agencies. Senator Daschle's amendment contained the provisions of S. 2008 providing monetary allowances, and health care and vocational training services to children of Vietnam veterans stricken with spina bifida and, in addition, contained a provision to modify 38 U.S.C. §1151, the statute which had been construed by the *Gardner* court. The amendment's provision to modify section 1151 of title 38 was the same provision which, as discussed in sections II.A. and III.B.1., above, the Committee had approved on September 20, 1995, as part of the vetoed "Balanced Budget Act of 1995." Senator Christopher S. Bond, Chairman of the Appropriations Committee, raised a point of order with respect to the amendment, contending that it was not germane to the bill. By roll call vote, the Senate determined that the amendment was germane

and, by voice vote, the Senate approved the amendment on September 5, 1996.

On September 5, 1996, the Senate insisted on its amendments to H.R. 3666, requested a conference, and appointed conferees. On September 11, 1996, the House disagreed to Senate amendments, agreed to a conference, and appointed conferees. On September 20, 1996, the conferees issued a report (H. Rept. 104-812) which included the Daschle amendment. On September 24, 1996, the House agreed to the conference report, and on September 25, 1996, the Senate agreed to the conference report, clearing the measure for the President. On September 26, 1996, the President signed H.R. 3666 into law as Public Law 104-204.

On September 27, 1996, Chairman Simpson introduced S. 2152, at VA's request. S. 2152 contained the same provisions contained in the Daschle amendment approved by the Senate on September 5, 1996, and contained in Public Law 104-204.

4. The Offsetting of Separation Pay from VA Compensation

Background

Members of the armed services who are involuntarily discharged or released, like other veterans, are entitled to VA disability compensation. However, section 1174(h)(2) of title 10, United States Code, specifies that in cases where the former service member has received separation, severance, or readjustment pay, the full amount of such pay will be deducted from VA compensation. Separation, severance, or readjustment pay are subject to income taxation; VA compensation is not.

Legislation relating to the "offset" of separation pay from VA compensation is within the jurisdiction of the Armed Services Committee. Accordingly, no legislation on the issue was referred to the Committee in the 104th Congress. Since, however, changes in the law relating to the offsetting of such pay (or military retirement pay, which is also offset against VA compensation) directly affect VA expenditures for compensation benefits, the Committee monitors such legislation closely.

National Defense Authorization Act for Fiscal Year 1997

On May 15, 1996, the House passed H.R. 3230, a bill to authorize appropriations for the national defense for fiscal year 1997. As passed by the House, H.R. 3230 contained no provision relating to the offset issue.

On July 10, 1996, the Senate took up H.R. 3230 and approved an amendment in the nature of a substitute. The substitute contained a provision to amend 10 U.S.C. § 1174(h)(2) to specify that the amount of VA compensation offset would equal the full amount of separation, severance, or readjustment pay less the amount of Federal income tax withheld from such pay. On July 10, 1996, Senate conferees were appointed, and on July 17, 1996, House conferees were appointed. The Conference Report (H. Rept. 104-724) adopted the Senate-approved provision on the offsetting of separation, severance, or readjustment pay from VA compensation, and the House and Senate agreed to the conference report on August 1, 1996, and September 9, 1996, respectively, clearing the measure

for the President. The President signed H.R. 3230 into law as Public Law 104-201 on September 23, 1996.

IV. PENSION PROGRAMS

A. OVERVIEW

VA pension programs provide needs-based income security benefits to wartime veterans who are totally and permanently disabled from non-service-connected causes or who have become unemployable, and to the needy surviving spouses and children of wartime veterans. When a veteran receiving pension dies, pension benefits to the veteran are discontinued effective the last day of the month before the death occurs.

As of the end of calendar year 1996, an estimated 415,592 veterans, 307,421 surviving spouses, and 33,697 surviving children were in receipt of VA pension.

B. FIRST SESSION

On January 26, 1995, Senator Alfonse M. D'Amato introduced S. 281. S. 281 would have changed the beginning date of the Vietnam era from August 5, 1964, to December 22, 1961, and thus would have expanded the period of qualifying Vietnam "wartime" service for purposes of eligibility for VA pension.

On June 29, 1995, Chairman Simpson introduced S. 995, the proposed "Veterans Benefits Reform Act of 1995," at VA's request. S. 995 would have, among other things, amended the definition of "permanently and totally disabled" for purposes of VA pension to include veterans who are 65 years of age or older and are patients in nursing homes.

As discussed above, on November 15, 1995, Senator Hutchison introduced S. 1414, a bill to assure the payment during fiscal year 1996 of veterans' benefits, including pension benefits, notwithstanding any Federal government "shutdown."

No action was taken on S. 281 or S. 995 during the First Session. No action was taken on S. 1414 during the 104th Congress.

C. SECOND SESSION

On May 23, 1996, the Committee held a hearing on S. 281, S. 995 and other pending legislation. The Committee received testimony from VA and various VSOs.

On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711 (discussed in detail in section VI.C.5., below). The Committee Print incorporated various bills, including S. 281, as amended to (1) modify the time frame, as introduced, of the redefined "Vietnam era," and (2) to limit the applicability of the proposed new definition to veterans who actually served in the Vietnam theater during the proposed time period. The Committee Print also incorporated provisions derived from S. 995 relating to the definition of "permanently and totally disabled." The Committee voted to report S. 1711, as amended, favorably to the Senate. On September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute

retained provisions of S. 1711, as reported, relating to the definitions of “Vietnam era” and “permanently and totally disabled.” In addition, the substitute incorporated, among other things, a provision derived from H.R. 3674, as passed by the House on July 16, 1996. As passed by the House, H.R. 3674 would have permitted the surviving spouse of a deceased veteran who had been receiving VA pension at the time of death to retain the last month’s pension payment prorated to the day of the death (rather than discontinuing pension effective the last day of the month preceding death). As modified in the substitute, the H.R. 3674-derived provision would have allowed the surviving spouse to retain the entirety of the last month’s pension payment. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the “Veterans’ Benefits Improvements Act of 1996,” into law as Public Law 104–275.

V. HEALTH CARE

A. OVERVIEW

VA administers a national health care network which provides complete medical, hospital, and rehabilitative services for the care and treatment of eligible veterans. The VA health care system is a national system of teaching hospitals, general and specialty clinics, research centers, nursing homes, readjustment counseling centers, and other facilities, providing a broad range of inpatient and outpatient health care services to eligible veterans.

In fiscal year 1996, VA provided health care through 173 hospitals, 398 outpatient clinics, 133 nursing home units, and 40 domiciliary care facilities. As part of its national health care network, the VA health care system also provides mental health services to eligible veterans through 206 readjustment counseling centers (Vet Centers). In fiscal year 1996, VA provided inpatient care to 960,524 patients, and conducted 30.055 million outpatient visits, in VA and contract facilities.

In addition, CHAMPVA—the Civilian Health and Medical Program of the Department of Veterans Affairs—provided reimbursements for the cost of health care services, or furnished such care, to spouses and dependent children of veterans who have permanent and total service-connected disabilities and to the survivors of veterans who either died as a result of service-connected disabilities or at the time of death had a permanent and total service-connected disability. In fiscal year 1996, VA provided inpatient care to 150 persons, and 822,637 outpatient visits, under CHAMPVA.

Finally, section 8104(a)(2) of title 38, United States Code, provides that no funds may be appropriated for any fiscal year, and the Secretary of Veterans Affairs may not obligate or expend funds (other than for advance planning or design), for any major medical facility project or any major medical facility lease, unless funds for that project or lease have been specifically authorized by law.

B. FIRST SESSION

1. Oversight Hearings

On May 11, 1995, the Committee held an oversight hearing on a VA administrative proposal to reorganize its medical centers, clinics, and other health care-related facilities into 22 Veterans Integrated Service Networks (“VISNs”), and VA’s views on provisions of 38 U.S.C. § 510(b) which allow VA to proceed with certain “administrative reorganizations” only after a statutory “notice and wait” period has elapsed. Testimony was received from VA’s Under Secretary for Health and other VA officials.

As outlined in section III.B., above, the Committee held an oversight hearing on June 8, 1995, on, among other things, the U.S. Supreme Court’s decision in *Gardner v. Brown, supra*. Testimony was received from VA’s General Counsel and other VA officials on a number of topics, among them the effect that *Gardner* was having on medical care provided at VA facilities. As outlined in section II, above, the Committee approved legislation to amend the statute construed by the *Gardner* court on September 20, 1995, but the “Balanced Budget Act of 1995,” which incorporated that legislation, was vetoed by the President on December 6, 1995.

2. Legislation to Extend Expiring Legal Authorities

On February 2, 1995, Senator Daschle introduced S. 338, a bill which would have (1) extended the period of eligibility for inpatient care for veterans exposed to toxic substances, radiation, or environmental hazards; (2) extended the period of eligibility for outpatient care for veterans exposed to such substances or hazards during service in the Persian Gulf; and (3) expanded the eligibility of veterans exposed to toxic substances or radiation for outpatient care.

On April 25, 1995, the Committee’s Ranking Minority Member, Senator John D. Rockefeller IV, introduced S. 725, the proposed “Veterans Community-Based Care Act of 1995.” As introduced, S. 725 would have, among other things, extended until December 31, 2000, VA’s authority under 38 U.S.C. § 1720A(e) to provide drug and alcohol abuse and dependence treatment and rehabilitation services, and would have extended until December 31, 2000, VA’s authority under 38 U.S.C. § 1720C(a) to provide non-institutional alternatives to nursing home care.

On June 29, 1995, Chairman Simpson introduced, at VA’s request, S. 991. S. 991, as introduced, contained provisions which would have:

1. Extended until December 31, 1996, VA’s authority under 38 U.S.C. § 1710(e)(3) to provide priority health care services based on a veteran’s service in the Republic of Vietnam and presumed exposure to defoliants there;

2. Extended until September 30, 1997, VA’s authority under 38 U.S.C. § 1710(e)(3) to provide priority health care services based on a veteran’s service in the Southwest Asia theater of operations during the Persian Gulf War and presumed exposure to toxic substances or environmental hazards there;

3. Extended until September 10, 1997, VA’s authority under 38 U.S.C. § 1712(a)(1)(D) to provide outpatient health care services to Persian Gulf veterans;

4. Extended until December 31, 1997, VA's authority under 38 U.S.C. § 1720A(e) to provide drug and alcohol abuse and dependence treatment and rehabilitation services;

5. Extended until September 30, 1996, VA's authority under 38 U.S.C. § 1720C(a) to provide, on a pilot program basis, non-institutional alternatives to nursing home care;

6. Extended until December 31, 1999, VA's authority under 38 U.S.C. § 7451(d)(3)(C)(iii) to refer to labor-market area data to determine compensation for certain registered nurse anesthetists;

7. Extended until December 31, 1999, VA's authority under 38 U.S.C. § 7618 to operate a health professional scholarship program; and

8. Authorized the major medical construction projects and facility leases requested in the President's proposed budget for fiscal year 1996, and authorized appropriations of \$224,800,000 for major medical construction and \$2,790,000 for major medical facility leases.

On September 20, 1995, the Committee met in open session to consider, among other things, a Committee Print of S. 991, as amended. In amended form, S. 991 contained provisions which would have:

1. Extended until December 31, 1996, VA's authority under 38 U.S.C. § 1710(e)(3) to provide priority health care services based on exposures to defoliants in the Republic of Vietnam, based on exposures to ionizing radiation during the occupation of Japan after World War II or due to nuclear device testing, and based on exposures to toxic substances or environmental hazards in the Southwest Asia theater of operations during the Persian Gulf War;

2. Extended until December 31, 1996, VA's authority under 38 U.S.C. § 1712(a)(1)(D) to provide outpatient health care services;

3. Extended until December 31, 1997, VA's authority under 38 U.S.C. § 1720A(e) to provide drug and alcohol abuse and dependence treatment and rehabilitation services;

4. Extended until December 31, 1996, VA's authority under 38 U.S.C. § 1720C(a) to provide, on a pilot program basis, non-institutional alternatives to nursing home care;

5. Extended until December 31, 1999, VA's authority under 38 U.S.C. § 7451(d)(3)(C)(iii) to refer to labor-market area data to determine compensation for certain registered nurse anesthetists; and

6. Extended until December 31, 1996 VA's authority under 38 U.S.C. § 7618 to operate a health professional scholarship program.

The Committee voted to report S. 991, as amended, favorably to the Senate without written report. On December 12, 1995, S. 991 was reported. There was no further action on this legislation during the First Session.

3. Other Health Care Legislation

On January 30, 1995, Senator Kent Conrad introduced S. 293, a bill to authorize the payment to States of per diem for veterans receiving adult day health care in State facilities.

On February 14, 1995, Committee member Daniel K. Akaka introduced S. 403, the proposed "Readjustment Counseling Service Amendments of 1995." S. 403 would have modified authorities re-

lating to the organization and administration of VA's Readjustment Counseling Service, and would have modified eligibility for readjustment counseling services.

On February 15, 1995, Ranking Minority Member Rockefeller introduced S. 425, a bill to require the establishment in VA of mental illness research, education, and clinical centers.

On March 14, 1995, Ranking Minority Member Rockefeller introduced S. 548, a bill to require VA to adopt quality standards for mammography services provided by VA.

On March 24, 1995, Ranking Minority Member Rockefeller introduced S. 612, the proposed "Veterans' Hospice Care Services Act of 1995." As introduced, S. 612 would have established in VA a pilot program to provide hospice care services to terminally ill veterans.

On March 29, 1995, Committee member Ben Nighthorse Campbell introduced S. 644, a bill to reinstate expired authority for the establishment of research corporations at VA medical centers.

On October 19, 1995, Chairman Simpson introduced S. 1345, the proposed "Department of Veterans Affairs Improvement and Re-invention Act of 1995," at VA's request. S. 1345 would have, among other things: reformed standards for eligibility for VA health care benefits; modified VA standards for determining priority eligibility for health care services based on a veteran's inability to defray the expenses of necessary care; and authorized VA to retain 25 per cent of funds collected over a baseline amount from health insurance carriers and other third-party payers.

On October 24, 1995, Chairman Simpson introduced S. 1359, the proposed "Veterans Health Care Management and Contracting Flexibility Act of 1995." S. 1359 would have revised authorities relating to VA health care management and contracting (1) to allow VA to reorganize operations after the expiration of a shortened notice and wait period, and (2) to contract out certain health care functions. The bill also would have expanded VA's authority to share health care resources with community providers and to purchase such health care and other resources from community providers.

On October 25, 1995, the Committee held a hearing on pending legislation including S. 293, S. 403, S. 425, S. 548, S. 612, S. 644, and S. 1359. The Committee received testimony from VA's Under Secretary for Health and other VA officials, and various VSOs. No further action was taken with respect to these bills during the First Session.

4. Construction Authorization

On March 9, 1995, the Committee held a hearing on VA's proposed budget, including its construction priorities, for fiscal year 1996. On May 11, 1995, the Committee held a hearing on, among other topics, VA's proposal to reorganize its medical centers, clinics, and other health care-related facilities into 22 Veterans Integrated Service Networks. In the course of that hearing, the Committee focused extensively on how the proposed VISN structure would affect VA construction planning. No further action was taken on the issue of VA's construction authorization during the First Session.

C. SECOND SESSION

1. Legislation to Extend Expiring Legal Authorities

On January 5, 1996, the Senate took up S. 991 and approved an amendment in the nature of a substitute and an amendment to the title. The substitute left unchanged Committee-reported provisions relating to: (1) the provision of health care services based on exposures to defoliants in Vietnam, ionizing radiation in Japan or elsewhere, and toxic substances or environmental hazards in the Persian Gulf; (2) the provision of outpatient health care services; and (3) the provision of drug and alcohol abuse and dependence treatment and rehabilitation services. It modified, however, the Committee-reported extension of VA's authority under 38 U.S.C. § 1720C(a) to provide, on a pilot basis, non-institutional alternatives to nursing home care, extending it until December 31, 1997, rather than through 1999 as specified in the reported bill. The substitute also modified provisions of the reported bill extending VA authority under 38 U.S.C. § 7451(d)(3)(C)(iii) to refer to labor-market area data to determine compensation for certain registered nurse anesthetists, and VA's authority under 38 U.S.C. § 7618 to operate a health professional scholarship program. In both cases, the substitute extended these authorities through December 31, 1997, rather than through December 31, 1999, and December 31, 1996 respectively, as specified in the reported bill.

The Senate then took up H.R. 2353 and substituted the text of S. 991, as amended, into H.R. 2353, and passed H.R. 2353 by voice vote. On January 25, 1996, the House amended H.R. 2353, as amended by the Senate on January 5, 1996, to require, among other things, (1) VA reports on the potential consolidation of drug and alcohol treatment and rehabilitation programs authorized under section 38 U.S.C. § 1720A; (2) VA reports on VA's program for community-based residential care to homeless chronically mentally ill veterans under section 115 of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 1712 note); and (3) VA reports on VA's demonstration program for compensated work therapy and therapeutic transitional housing under section 7 of Public Law 102-54 (38 U.S.C. § 1718 note). On January 30, 1996, the Senate agreed to the House amendments to H.R. 2353, as amended. On February 13, 1996, the President signed H.R. 2353, as amended, into law as Public Law 104-110.

2. Eligibility Reform

On February 7, 1996, Chairman Simpson and Ranking Minority Member Rockefeller introduced S. 1563, at the request of certain veterans service organizations. S. 1563 would have revised standards for eligibility for VA medical care and would have:

1. Granted to all "Category A" veterans—veterans who have priority access to hospital, nursing home, and domiciliary care under 38 U.S.C. § 1710—priority access to ambulatory or outpatient care services;
2. Granted to "Category A" veterans priority access to nursing home care, domiciliary care, and long-term care;
3. Modified the definition of "Category A" veterans to include catastrophically disabled veterans, and required VA to maintain its

capacity to provide specialized treatment and rehabilitative services to certain categories of veterans;

4. Included primary health care services and preventive health services among the “medical services” to which “Category A” veterans would be granted priority access, and authorized VA to contract for such services;

5. Authorized VA to provide hospital and nursing home care to a veteran’s adult dependents, subject to payment for such care;

6. Revised VA contracting authority with respect to prosthetic appliances;

7. Authorized VA to retain all funds collected over a baseline amount from health insurance carriers and other third-party payers; and

8. Authorized VA to collect reimbursement from Medicare for services provided to Medicare-eligible veterans for non-service-connected care and to Medicare-eligible non-veterans.

On March 20, 1996, the Committee held a hearing on S. 1345, S. 1359, S. 1563, and other proposals relating to eligibility reform. The Committee received testimony from the General Accounting Office and various VSOs. On May 8, 1996, the Committee held a second hearing on S. 1345, S. 1359, S. 1563, and other proposals relating to the issue of eligibility reform. The Committee received testimony from VA’s Under Secretary for Health and other VA officials, and the Congressional Budget Office.

On July 24, 1996, the Committee met in open session to consider, among other things, an original bill to amend the standards for eligibility for VA health care services. The original bill would have:

1. Authorized VA, on a “shall furnish” basis, to furnish hospital care and medical services—both inpatient and outpatient care services—to service-connected veterans for their service-connected conditions, and to veterans with service-connected disabilities rated at 50% or above, former prisoners of war, and World War I and Mexican Border veterans, for all conditions;

2. Authorized VA, on a “shall furnish” basis, to provide hospital care services to all veterans with compensable service-connected disabilities for their service-connected disabilities;

3. Authorized VA to provide, as permitted by resource availability, outpatient care services to compensable service-connected veterans for non-service-connected conditions;

4. Authorized VA to provide, as permitted by resource availability, hospital care and medical services to other “Category A” veterans for any condition;

5. Established an enrollment system for eligibility for VA care; and

6. Authorized appropriations for VA health care not exceeding certain limits, as specified.

The Committee voted to report the original bill favorably to the Senate.

On September 28, 1996, the Senate took up H.R. 3118, the “Veterans’ Health Care Eligibility Reform Act of 1996,” which had been approved by the House on July 30, 1996. The Senate approved an amendment to H.R. 3118 in the nature of a substitute. Title I of the substitute incorporated provisions related to eligibility reform, the “Veterans Health Care Eligibility Reform Act of 1996,” which:

1. Authorized VA, on a “shall furnish” basis (but only to the extent of, and as provided in advance by, appropriations), to furnish hospital care and medical services to all service-connected veterans for their service-connected conditions;

2. Authorized VA, on a “shall furnish” basis (but only to the extent of, and as provided in advance by, appropriations), to furnish hospital care and medical services to veterans with service-connected disabilities rated at 50% or above for all conditions;

3. Authorized VA, on a “may furnish” basis, to furnish nursing home care to all veterans for service-connected disabilities, and to veterans with service-connected disabilities rated at 50% or greater for any disability;

4. Authorized VA, on a “shall furnish” basis (but only to the extent of, and as provided in advance by, appropriations), to furnish hospital care and medical services to: veterans with service-connected disabilities rated at less than 50%; to veterans whose discharge from service was due to compensable disability incurred or aggravated in the line of duty; to veterans receiving (or entitled to receive) compensation for disabilities incurred while receiving medical care from VA; to former prisoners of war; to veterans of the Mexican border period or World War I; to veterans exposed to toxic substances, radiation, or environmental hazards; and to veterans unable to defray the expenses of care as determined under 38 U.S.C. §1722(a);

5. Authorized VA, on a “may furnish” basis, to furnish nursing home care to the veterans listed immediately above;

6. Authorized VA to provide hospital care, medical services, and nursing home care to other veterans to the extent resources and facilities are available, and subject to the requirement that the veteran make payments as specified in 38 U.S.C. §1710(f) and (g);

7. Established an enrollment system for eligibility for VA care;

8. Authorized appropriations for VA health care not to exceed \$17.25 billion for fiscal year 1997, and \$17.9 billion for fiscal year 1998; and

9. Required VA to establish a system to assess the implementation and operation of reformed eligibility standards.

The Senate then passed H.R. 3118, as amended. On September 28, 1996, the House agreed to the Senate amendments to H.R. 3118, as amended. On October 9, 1996, the President signed H.R. 3118 into law as Public Law 104–262.

3. Vietnam Veterans’ Eligibility for Medical Care Services

As outlined in section III.2.C., above, the Senate and the House approved S. 1711 on September 28, 1996, and the President signed S. 1711, the “Veterans’ Benefits Improvements Act of 1996,” into law as Public Law 104–275. Public Law 104–275 included, among other things, a provision which amends the definition of “Vietnam era” for various purposes, including for purposes of eligibility for medical care based on service in Vietnam and presumed exposure to dioxin and other defoliants there. Under Public Law 104–275, a “Vietnam era” veteran is eligible for medical care based on such service if he or she served in the Republic of Vietnam between January 9, 1962, and May 7, 1975.

4. *Health Care Benefits for Vietnam Veterans' Children Born with Spina Bifida*

As outlined in section III.C.3., above, on July 31, 1996, Senator Daschle introduced S. 2008, a bill to provide the following benefits for children of Vietnam veterans who are born with spina bifida:

1. A monthly monetary allowance, varying by degree of disability suffered by the child;
2. Health care for disabilities associated with the person's spina bifida; and
3. Vocational training, and job placement and post-job-placement services.

The provisions of S. 2008, accompanied by amendments to 38 U.S.C. §1151, were enacted as part of Public Law 104-204, fiscal year 1997 appropriations for VA and other agencies.

5. *Other Medical Care and Medical Administration Matters*

On May 13, 1996, Chairman Simpson introduced S. 1748, at VA's request. S. 1748 would have facilitated the reorganization of the Veterans Health Administration's headquarters office by eliminating statutory mandates that certain offices be created, and eliminating certain qualifications for positions mandated by statute.

On May 13, 1996, Chairman Simpson introduced S. 1750, at VA's request. S. 1750 would have modified authorities under which physicians-in-training who work at VA health care facilities are paid and under which responsibility for compensation is shared by VA and an affiliated medical school.

On May 13, 1996, Chairman Simpson introduced S. 1752, at VA's request. S. 1752 would have exempted full-time registered nurses, physician assistants, and expanded-function dental auxiliaries from restrictions on remunerated outside professional activities.

On May 13, 1996, Chairman Simpson introduced S. 1753, at VA's request. S. 1753 would have authorized VA to suspend the requirements of special pay agreements under which physicians and dentists are compensated in order to allow physicians and dentists to enter residency training programs without penalty.

On May 23, 1996, the Committee held a hearing on, among other things, S. 1748, S. 1750, S. 1752, and S. 1753. Testimony on these bills was received from the Chairman, Board of Veterans' Appeals, and other VA officials, various VSOs, and other organizations.

On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1359, as amended. As amended, the Committee Print incorporated provisions derived from S. 293, S. 403, S. 425, S. 548, S. 612, S. 644, S. 1359, S. 1750, S. 1752, S. 1753, and two original provisions. The two original provisions would have extended until December 31, 1998, VA's authority, under 38 U.S.C. § 8111 note, to provide medical care on a reimbursed basis to persons entitled to care from the Department of Defense, and would have extended until December 31, 1998, VA's authority under 38 U.S.C. § 1117 note, to evaluate the medical status of the spouses and children of Persian Gulf War veterans. The Committee voted to report S. 1359, as amended, favorably to the Senate. On September 26, 1996, S. 1359, as amended, was reported (S. Rept. 104-372).

On September 28, 1996, the Senate took up H.R. 3118, the “Veterans’ Health Care Eligibility Reform Act of 1996” which had been approved by the House on July 30, 1996, and approved an amendment to H.R. 3118 in the nature of a substitute. Title III of the substitute incorporated provisions derived from S. 1359, as reported (including provisions originally derived from S. 293, S. 403, S. 425, S. 548, S. 612, S. 644, S. 1359, S. 1748, S. 1750, S. 1752, and S. 1753) by including provisions which:

1. Expanded VA authority to enter into sharing agreements;
2. Extended VA authority to provide health care services, on a reimbursable basis, to persons entitled to care from the Department of Defense;
3. Modified the waiting period specified in 38 U.S.C. § 510 which must expire before VA may implement certain reorganizations;
4. Repealed restrictions on contracting specified in 38 U.S.C. § 8110(c);
5. Required VA to adopt standards for the provision of mammography services;
6. Modified standards for eligibility to receive readjustment counseling service benefits;
7. Required VA to establish mental illness research, education, and clinical centers;
8. Required VA to undertake a study on the desirability of establishing a hospice care program;
9. Authorized VA to make per diem payments to assist States in providing adult day health care services in State homes;
10. Reinstated expired authority for the establishment of research corporations at VA medical centers;
11. Expanded the authority of the Veterans Health Administration to reorganize its headquarters office;
12. Modified authorities under which physicians-in-training who work at VA health care facilities are paid;
13. Authorized VA to suspend physicians’ and dentists’ special pay agreements to facilitate residency training;
14. Repealed restrictions on health care professionals’ remunerated outside employment; and
15. Extended VA authority to evaluate the health status of the spouses and children of Persian Gulf War veterans.

The substitute also incorporated provisions derived from House-passed legislation which:

1. Required VA to identify and report annually on deficiencies in VA facilities relating to the privacy concerns of women patients, and VA plans to resolve these concerns;
2. Required VA to assess and report on care provided to women veterans;
3. Required VA to establish a Committee on Care of Chronically Mentally Ill Veterans; and
4. Required VA to report on health care needs of veterans in East Central Florida.

The Senate then passed H.R. 3118, as amended. On September 28, 1996, the House agreed to the Senate amendments to H.R. 3118. On October 9, 1996, the President signed H.R. 3118 into law as Public Law 104–262.

6. *Construction Authorization and Property Management*

On April 15, 1996, the Majority Leader of the Senate, Senator Trent Lott, introduced S. 1669, a bill to rename the VA medical center in Jackson, Mississippi, the “G. V. (Sonny) Montgomery Department of Veterans Affairs Medical Center.”

On May 13, 1996, Chairman Simpson introduced S. 1749, at VA’s request. S. 1749 would have modified certain statutes relating to construction management by deleting statutory references to “working drawings” and “preliminary plans” and substituting the words “construction documents” and “design development” respectively.

As outlined in section II.B., above, on April 24, 1996, the Committee held a hearing on VA’s proposed budget, including construction priorities, for fiscal year 1997. In addition, the Committee’s hearings on March 3, 1996, and May 8, 1996, relating to eligibility reform, focused extensively on how modified standards for eligibility for VA health care services might affect VA construction planning. Finally, the Committee’s hearing on May 23, 1996, included within its agenda S. 1749.

As outlined in section V.C.1., above, on January 5, 1996, the Senate took up S. 991, approved an amendment in the nature of a substitute, then substituted S. 991, as amended, into H.R. 2353 and passed H.R. 2353 by voice vote. On January 25, 1996, the House amended H.R. 2353, as amended by the Senate on January 5, 1996. Among the amendments added by the House was an amendment that (1) authorized VA’s Audie L. Murphy Memorial Hospital in San Antonio, Texas, to enter into a contract with the local electric utility to allow the construction of a power plant on hospital property; (2) authorized VA capital contributions for construction; and (3) authorized the purchase of power by VA under contract not to exceed the term of 35 years. On January 30, 1996, the Senate agreed to the House amendments to H.R. 2353, as amended. On February 13, 1996, the President signed H.R. 2353, as amended, into law as Public Law 104–110.

On July 24, 1996, the Committee met in open session to consider, among other things, an original bill to authorize certain inpatient and outpatient facility construction, certain outpatient facility leases, and one parking facility lease. The original bill also incorporated language derived from S. 1669 and S. 1749 and, in addition, incorporated original language authorizing the City of Cheyenne, Wyoming, to transfer land previously owned by VA, notwithstanding a covenant restricting its resale. The Committee voted to report the original bill favorably to the Senate.

On September 10, 1996, S. 1669 was discharged from the Committee, and passed by the Senate by unanimous consent. On September 11, 1996, S. 1669 was called up by the House and approved, clearing the measure for the President. On September 24, 1996, S. 1669 was signed into law by the President as Public Law 104–202.

On September 28, 1996, the Senate took up H.R. 3118, the “Veterans’ Health Care Eligibility Reform Act of 1996,” which had been approved by the House on July 30, 1996, and approved an amendment to H.R. 3118 in the nature of a substitute. Title II of the substitute incorporated provisions related to construction and property management, including:

1. The authorization of specified major medical facility construction and seismic correction projects;
2. The authorization of certain environmental improvement projects;
3. The authorization of major medical facility leases;
4. Modifications to requirements imposed on VA with respect to strategic planning, prospectus preparation, and advance planning spending, and a modification to the definition of construction projects which require prior authorization; and
5. Provisions derived from S. 1749 relating to construction documentation.

In addition, Title III of the substitute included provisions derived from H.R. 3118, approved by the House on July 30, 1996, which renamed the VA medical center in Johnson City, Tennessee, the "James H. Quillen Department of Veterans Affairs Medical Center".

Title III of the substitute also included a provision derived from the Committee-approved original bill authorizing the City of Cheyenne, Wyoming, to transfer land previously owned by VA, notwithstanding a covenant restricting its sale, and a similar provision authorizing the City of Milwaukee, Wisconsin, to transfer land previously owned by VA, notwithstanding a covenant restricting its sale. The Senate then passed H.R. 3118, as amended. On September 28, 1996, the House agreed to the Senate amendments to H.R. 3118. On October 9, 1996, the President signed H.R. 3118 into law as Public Law 104-262.

VI. READJUSTMENT, EDUCATIONAL ASSISTANCE, AND VOCATIONAL REHABILITATION BENEFITS

A. OVERVIEW

VA readjustment benefits consist of various types of assistance for eligible veterans, dependents, and survivors. The main purposes of such assistance are to help the veteran readjust to civilian life in a productive capacity, to compensate for the loss of educational or vocational opportunities during the veteran's period of service, to provide incentives for military service, and to provide vocational rehabilitation opportunities to those whose ability to obtain employment has been impaired as a result of service-connected disability.

Vocational rehabilitation opportunities are provided under chapter 31 of title 38, United States Code, to service-connected disabled veterans. Educational assistance is also provided by VA, under chapter 35 of title 38, to dependents of those veterans having permanent and total service-connected disabilities, and to the survivors of veterans whose deaths were service-connected. Such assistance is intended to compensate for service-connected impairment of the veteran's ability to bear the cost of education for his or her family members and, in the case of the veteran's death, to assist the surviving spouse in attaining economic self-sufficiency.

Under chapter 30 of title 38, educational assistance is provided to members of the All-Volunteer Force who first entered active duty after June 30, 1985, and did not choose to decline to participate in this program. The rate of basic pay of those who participate in this

program, commonly referred to as the Montgomery GI Bill, is reduced by \$100 for each of the first 12 months of the service member's active-duty service. Post-Vietnam-era veterans (those who entered the service after December 31, 1986, and are otherwise eligible) are entitled to participate in the Veterans Education Assistance Program (VEAP) specified in chapter 32 of title 38. Under VEAP, participants contribute up to \$2,300 to an education account, and these contributions are matched by the Department of Defense on a two-for-one basis when the veteran enrolls in an approved course of education. Until its expiration on December 31, 1989, educational assistance was provided under chapter 34 of title 38 to eligible Vietnam-era veterans, and to other veterans and service members who served between February 1, 1955 and December 31, 1976, and who were otherwise eligible. Finally, VA administers a program for the educational assistance of members of the selected reserve under chapter 106 of title 10. That program is funded by the Departments of Defense and Transportation.

In fiscal year 1996, approximately 280,520 All-Volunteer Force service members and veterans received benefits under chapter 30; 86,196 reservists received benefits under chapter 106 of title 10; 51,721 service-connected disabled veterans enrolled in rehabilitation under chapter 31; 40,654 spouses, surviving spouses, and children received benefits under chapter 35; and 12,092 post-Vietnam-era veterans and 1,910 service members participated in training under chapter 32.

B. FIRST SESSION

1. Oversight

On June 8, 1995, the Committee held an oversight hearing on, among other things, a Court of Veterans Appeals ruling, *Davenport v. Brown*, 7 Vet. App. 476 (1995). *Davenport* held that persons who have a service-connected disability are, under the terms of statute, eligible for vocational rehabilitation benefits even if there is no nexus between the service-connected disability and the veteran's employment handicap. Prior to the *Davenport* ruling, VA had required, by regulation, that there be a causal link between a veteran's service-connected disability and the employment handicap to be overcome through the veteran's participation in the vocational rehabilitation program. Testimony was received from VA's General Counsel, accompanied by other VA officials.

2. Proposed Legislation

On October 19, 1995, Chairman Simpson introduced S. 1345, the proposed "Department of Veterans Affairs Improvement and Re-invention Act of 1995," at VA's request. Title II of S. 1345 contained two provisions relating to education programs. The first would have authorized VA to recognize the validity of electronic signatures on documents submitted to VA by claimants, accreditors, and institutions. The second would have authorized VA to make educational assistance payments by electronic fund transfers.

No action was taken on these measures during the 104th Congress.

C. SECOND SESSION

1. Vocational Rehabilitation Program

Other than S. 2008 and S. 2152, relating to benefits to children of Vietnam veterans stricken with spina bifida, there were no bills introduced in the Senate during the 104th Congress pertaining directly to vocational rehabilitation benefits. However, as discussed above, the Committee voted on July 24, 1996, to report S. 1711, as amended, favorably to the Senate, and on September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute incorporated, among other things, a provision derived from H.R. 3674, as passed by the House on July 16, 1996. The H.R. 3674-derived provision would have restored the requirement, previously in force by regulation but declared invalid by *Davenport v. Brown, supra*, that, as a condition to receipt of vocational rehabilitation benefits, there be a causal link between a veteran's service-connected disability and his or her employment handicap. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104-275.

2. Educational Assistance Benefits

Other than the two provisions of S. 1345 relating to electronic signatures and electronic fund transfers, there were no bills introduced in the Senate during the 104th Congress pertaining directly to educational assistance benefits. However, as discussed above, the Committee voted on July 24, 1996, to report S. 1711 favorably to the Senate, as amended. As amended, S. 1711 included, among other things, an original provision extending from September 30, 1996 until December 31, 1998, a pilot program authorizing VA to treat State-approved alternative teacher certification programs as educational institutions for purposes of a participant's eligibility for educational assistance benefits. On September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute incorporated, among other things, a number of provisions relating to educational assistance benefits derived from H.R. 3673 and H.R. 3674, as passed by the House on July 16, 1996. The provision in S. 1711, as reported, extending for two years VA's authority to treat State-approved alternative teacher certification programs as educational institutions would have been made permanent by H.R. 3674. Provisions derived from H.R. 3673 which were incorporated into the substitute amendment to S. 1711:

1. Removed a restriction to receipt of educational assistance which had specified that, even with respect to degree-granting institutions and their branches, benefits could only be paid for a veteran's participation in a course of study after the institution/branch and course had been in operation for two years;

2. Authorized VA to approve educational assistance benefits to veterans taking courses offered on or through military bases under contract with DOD;

3. Clarified the requirements under which State Approving Agencies approve courses of study;

4. Eliminated the requirement that, as a condition to receipt of educational assistance benefits for participation in open circuit television instruction, the veteran be concurrently enrolled in an in-residence course of instruction; and

5. Authorized veterans enrolled in cooperative training programs—in-residence class work combined with work experience at a job site—to receive full monthly educational benefits (rather than 80 per cent of full benefits, as previously specified).

In addition to the alternative teaching certification provision derived from H.R. 3674 discussed above, H.R. 3674-derived provisions incorporated into the substitute amendment to S. 1711:

1. Authorized service members who had contributed and had funds “on account” under VEAP to transfer to participation in the “Montgomery GI Bill;” and

2. Authorized certain current and former active duty members of the Army and Air National Guard who had served between June 30, 1985, and November 29, 1989, who were not eligible for any educational assistance benefits, to participate in the “Montgomery GI Bill.”

The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the “Veterans’ Benefits Improvements Act of 1996,” into law as Public Law 104–275.

3. Administration of Educational Assistance Benefits Programs

There were no bills introduced in the Senate during the 104th Congress pertaining to the administration of educational assistance benefits. However, the Committee voted on July 24, 1996, to report S. 1711, as amended, favorably to the Senate, and on September 24, 1996, S. 1711 was reported (S. Rept. 104–371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute incorporated, among other things, a provision derived from H.R. 3673 which delayed until January 1, 1998, implementation of a VA proposal to move the offices of VA’s Education Service from Washington, D.C. to St. Louis, Missouri. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the “Veterans’ Benefits Improvements Act of 1996,” into law as Public Law 104–275.

4. Vocational Training and Job Placement Benefits for Vietnam Veterans’ Children Born with Spina Bifida

As outlined in section III.C.3., above, on July 31, 1996, Senator Daschle introduced S. 2008, a bill to provide the following benefits for children of Vietnam veterans who are born with spina bifida:

1. A monthly monetary allowance, varying by degree of disability suffered by the child;

2. Health care for disabilities associated with the person's spina bifida; and

3. Vocational training, and job placement and post-job-placement services.

The provisions of S. 2008, accompanied by amendments to 38 U.S.C. §1151, were enacted as part of Public Law 104-204, fiscal year 1997 appropriations for VA and other agencies.

5. *Commission on Service Members and Veterans Transition Assistance*

On April 29, 1996, Senate Majority Leader Robert Dole introduced S. 1711, a bill to establish a 12-member Commission on Service Members and Veterans Transition Assistance. S. 1711 would have required the Commission to review the effectiveness and appropriateness of veterans' transition and assistance programs, and to make recommendations to Congress on ways to improve the programs and ensure their continued utility.

On May 23, 1996, the Committee held a hearing on S. 1711 and other pending legislation, and received testimony from VA and various veterans service organizations on S. 1711.

On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711. The Committee Print contained the provisions of S. 1711, with modifications, and also contained original provisions and provisions derived from S. 281, S. 749, S. 994, S. 995, S. 1342, S. 1751, and Title III of H.R. 2289, passed by the House on December 12, 1995. The Committee voted to report S. 1711, as amended, favorably to the Senate. On September 24, 1996, S. 1711, as amended, was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute, among other things, modified provisions of S. 1711, as reported, relating to the Commission on Service Members and Veterans Transition Assistance to clarify the duties of the Commission and to make other perfecting amendments. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711. On October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104-275.

VII. EMPLOYMENT

A. OVERVIEW

The Department of Labor, Veterans' Employment and Training Service (VETS), has primary responsibility for the implementation of statutory provisions relating to veterans' employment. Section 4102 of title 38 states Congressional intent with respect to veterans' employment programs as follows: "The Congress declares as its intent that there shall be an effective (1) job and job training counseling program, (2) employment placement service program, and (3) job training placement service program for eligible veterans and eligible persons. . . ."

Chapter 42 of title 38 provides for the employment and training of disabled and Vietnam-era veterans. Section 4212 requires that

certain Federal contractors and subcontractors take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. Section 4214 provides for Veterans' Readjustment Appointments (VRAs) within the Federal Government to assist Vietnam veterans, service-disabled Vietnam-era veterans, and veterans who served after the Vietnam era, by (1) making it possible for them to be hired into Federal service noncompetitively, and (2) helping them develop additional skills through a program combining education and training with a regular career appointment.

Chapter 43 of title 38 provides reemployment protection to certain veterans and reservists. Chapter 43 was recodified in 1994 as the "Uniformed Services Employment and Reemployment Rights Act of 1994" (USERRA), Public Law 103-353.

The Office of Personnel Management is responsible for implementing policies to promote maximum employment and job advancement opportunities within Federal service for qualified disabled and Vietnam era veterans.

B. FIRST SESSION

There were no bills introduced in the Senate, during the 104th Congress, relating directly to employment programs. However, Title II of H.R. 2289, which was approved by the House on December 12, 1995, and referred to the Committee on December 13, 1995, contained proposed provisions relating to the organization of VETS, and Title III of H.R. 2289 contained proposed technical and clarifying amendments to USERRA. No action was taken on the bill during the First Session.

C. SECOND SESSION

1. *USERRA Amendments and VETS Organizational Issues*

On May 23, 1996, the Committee held a hearing on pending legislation, including the provisions of Titles II and III of H.R. 2289. The Committee received testimony from veterans service organizations on H.R. 2289 at the May 23 hearing. On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711 (discussed in section VI.C.5., above), which incorporated various provisions, including Title III of H.R. 2289 relating to USERRA, as amended. The Committee voted to report S. 1711, as amended, favorably to the Senate. On September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute retained provisions of S. 1711, as reported, relating to technical and clarifying amendments to USERRA, with amendments of a perfecting nature. Those provisions:

1. Clarified the character of service that is a necessary prerequisite to the applicability of rights specified in USERRA;
2. Clarified the definition of "uniformed services";
3. Clarified the burden of proof applicable to alleged acts of reprisal and discrimination;

4. Clarified that time away from employment subject to the protections of USERRA includes preparation and travel time prior to service;

5. Clarified the status of persons ordered to, or retained on, active duty because of a war or a national emergency for purposes of USERRA's 5-year cumulative length of absence limitation;

6. Clarified an employer's duty to rehire a person who occupied a position which was not for a brief, nonrecurrent period of time;

7. Clarified that reemployed persons who are not qualified to re-assume their prior positions, or are not qualified to assume the positions they would have occupied had their employment not been interrupted because of reasons other than for disability incurred while in service, shall be placed in positions that most nearly approximate such positions;

8. Clarified that employers may not require a person whose employment is interrupted by service to use vacation, annual, or similar leave during such service;

9. Clarified that the maximum time allowed for persons to make employee contributions to pension benefit plans shall be 5 years;

10. Made technical corrections relating to enforcement of employment or reemployment rights and the duty of the Department of Labor to attempt to resolve complaints of USERRA violations;

11. Made a technical correction relating to notification requirements with respect to unresolved complaints against a Federal executive agency;

12. Made technical corrections relating to enforcement of rights against a State or private employer, to remove superfluous language, and to correct an erroneous cross reference;

13. Made a technical correction relating to referrals of complaints to the Office of Special Counsel;

14. Made technical corrections to clarify enforcement rights against Federal agencies, to correct an erroneous cross reference, and to make other technical corrections;

15. Clarified that the Department of Labor is not required to provide information to Federal employees concerning alternative Federal employment;

16. Clarified that for purposes of enforcing USERRA, the Department of Labor shall have subpoena authority over persons as well as documents;

17. Clarified transition rules; and

18. Clarified certain effective dates.

The substitute also incorporated certain provisions of Title II of H.R. 2289, relating to VETS organizational issues, which were not in the Committee-reported bill. The provisions included in the substitute authorized an expansion in the duties of certain clerical employees, and authorized a pilot program within VETS to test new methods of service delivery to veterans. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104-275.

2. *Commission on Service Members and Veterans Transition Assistance*

As outlined above, S. 1711 was introduced by Senator Dole on April 29, 1996, to establish a Commission on Service Members and Veterans Transition Assistance to review transition and assistance programs—including employment programs—to assist members of the Armed Services in adjusting to civilian life upon separation. S. 1711, as amended, was enacted into law as the “Veterans’ Benefits Improvements Act of 1996,” Public Law 104–275.

VIII. HOME LOAN GUARANTY PROGRAM

A. OVERVIEW

The VA Home Loan Guaranty Program is designed to encourage and facilitate the extension of favorable credit terms by private lenders to veterans, and to the surviving spouses of those who die from service-connected causes, for the purchase, construction, or improvement of homes. The program operates by substituting the Federal Government’s guaranty of a portion of the loan for down payments required under conventional mortgages. Eligible veterans are thereby able to purchase a home even if they lack down payment funds.

Most veterans pay a fee to VA for the guaranty. Service-disabled veterans and certain surviving spouses are exempt from paying the fee. For loans of up to \$45,000, VA guarantees up to 50 percent of the loan amount; for loans between \$45,000 and \$144,000, VA guarantees up to 40 percent, with a maximum guaranty of \$36,000; and for loans of more than \$144,000, VA guarantees 25 percent, with a maximum guaranty of \$50,750.

When a lender forecloses on a VA-guaranteed loan, VA uses a formula, known as the “no-bid” formula, to determine whether it would be to VA’s advantage to pay the guaranty amount or, alternatively, to acquire, then resell, the property. When VA resells properties it acquires through foreclosure, it typically finances purchasers through arrangements known as “vendee loans.” Such loans are either retained as VA “portfolio loans,” or are pooled and sold as mortgage-backed securities, known as real estate mortgage investment conduits or “REMICs.”

Under a 5-year pilot program established by Public Law 102–547, VA makes direct loans to Native American veterans to finance the purchase or construction of housing on native lands. VA makes direct loans for such purchases since commercial lenders cannot take title to trust lands and so will not finance such purchases, even with a VA guarantee. Like vendee loans which are not sold as REMICs, such loans are held by VA as portfolio loans.

B. FIRST SESSION

1. *Legislation to Extend Expiring Legal Authorities*

On June 29, 1995, Chairman Simpson introduced, at VA’s request, S. 991. S. 991 contained no provisions relating to the home loan guaranty program.

On September 20, 1995, the Committee met in open session to consider, among other things, a Committee Print of S. 991, as

amended. In amended form, S. 991 contained provisions which would have extended until September 30, 1997, VA's authority under 38 U.S.C. § 3707(a) to guarantee, on a demonstration project basis, adjustable rate home mortgage loans. The Committee voted to report S. 991, as amended, favorably to the Senate without written report. On December 12, 1995, S. 991 was reported with an amendment in the nature of a substitute and an amendment to the title. There was no further action on this legislation during the first session.

2. Other Legislation

On October 19, 1995, Committee member Akaka introduced S. 1342, a bill to authorize VA to make direct loans to refinance direct loans previously made to veterans to finance home purchases or construction on Native lands under the Native American Veterans Direct Loan Program. No action was taken on the bill during the First Session.

On October 19, 1995, Chairman Simpson introduced S. 1345, the proposed "Department of Veterans Affairs Improvement and Re-invention Act of 1995," at VA's request. Title II of S. 1345 contained three provisions relating to the home loan guaranty program. The first would have terminated VA's program of guaranteeing loans for the purchase of manufactured homes. The second would have modified statutory VA loan fee schedules to delete references to fees for loans for manufactured housing. The third would have authorized VA to contract, for a term of 15 years, with a private firm to manage its portfolio loans. No action was taken on these measures during the 104th Congress.

C. SECOND SESSION

1. Legislation to Extend Expiring Legal Authorities

On January 5, 1996, the Senate took up S. 991 and approved an amendment in the nature of a substitute. The substitute excised provisions which would have extended VA's authority to guarantee adjustable rate home mortgage loans. The substitute also added provisions to: (1) extend until December 31, 1997, VA's authority under 38 U.S.C. § 3703(c)(4)(A) to guarantee home mortgage loans having negotiated interest rates; (2) extend until December 31, 1997, VA's authority under 38 U.S.C. § 3710(d)(7) to guarantee energy efficiency mortgages; (3) extend until December 31, 1996, VA's enhanced loan asset sale authority as specified in 38 U.S.C. § 3720(h)(2); and (4) extend until December 31, 1997, the authority under 38 U.S.C. § 3731(f)(3) for lenders of automatically guaranteed loans to review appraisals. The Senate then took up H.R. 2353 and substituted the text of S. 991, as amended, and passed H.R. 2353 by voice vote. On January 25, 1996, the House amended H.R. 2353, as amended by the Senate, to provide for, among other things, a permanent authorization for VA to guarantee home mortgage loans having negotiated interest rates. The House's January 25 amendments also required VA to report on: loans made to veterans whose only qualifying service was in the Selected Reserves; interest rates and "points" charged by lenders under VA's authority to guarantee home mortgage loans having negotiated interest rates; lenders' de-

terminations of reasonable value under 38 U.S.C. § 3731(f); energy efficiency mortgages guaranteed by VA; and direct loans made to finance home purchases or construction on Native American lands. On January 30, 1996, the Senate agreed to the House amendments to H.R. 2353, as amended. On February 13, 1996, the President signed H.R. 2353, as amended, into law as Public Law 104–110.

2. OTHER LEGISLATION

On May 23, 1996, the Committee held a hearing on pending legislation, including S. 1342. The Committee received testimony from VA and various veterans service organizations on S. 1342 at the May 23 hearing. On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711 (discussed in section VI.C.5., above), which incorporated various provisions, including S. 1342. The Committee voted to report S. 1711, as amended, favorably to the Senate. On September 24, 1996, S. 1711 was reported (S. Rept. 104–371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute retained the provisions of S. 1342 contained in S. 1711, as reported. It also added provisions derived from H.R. 3673, which passed the House on July 16, 1996, to extend through December 31, 1997, VA's authority under 38 U.S.C. § 3720(h) to guarantee the timely payment of principal and interest to purchasers of REMICs in order to enhance their value in the securities markets. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104–275.

On September 5, 1996, Senator Warner introduced S. 2057, a bill to amend title 38, United States Code, to make permanent the authority of VA to guarantee adjustable rate mortgage loans. As noted above, S. 991, as approved by the Committee on September 20, 1995, contained a provisions which would have extended that authority until September 30, 1997. However, Public Law 104–110, by which provisions contained in S. 991 were enacted, did not contain the Committee-approved extension. No action was taken on S. 2057 during the Second Session.

IX. CLAIMS ADJUDICATION AND JUDICIAL REVIEW

A. OVERVIEW

In Public Law 100–687, Congress established the United States Court of Veterans Appeals (CVA), and provided for judicial review of denials of claims for veterans' benefits through the Court. The Court has exclusive jurisdiction to review final decisions of the Board of Veterans' Appeals (BVA) in cases in which a notice of disagreement was filed on or after November 18, 1988, the date of enactment of Public Law 100–687. In cases of individual claims for benefits, the Court's review is based on the record of proceedings before the BVA, and only a person adversely affected by the BVA decision—but not the Secretary—may appeal to the Court. Decisions of the Court are subject to appellate review in the United States Court of Appeals for the Federal Circuit, and decisions of

the United States Court of Appeals for the Federal Circuit are subject to appellate review in the United States Supreme Court.

The decisions of CVA have had a significant impact on VA's adjudication system, including the operation of the BVA.

B. FIRST SESSION

On June 8, 1995, the Committee held an oversight hearing on two significant judicial rulings, *Gardner v. Brown, supra*, and *Davenport v. Brown, supra*. In *Gardner*, the U.S. Supreme Court upheld a CVA ruling, affirmed by the U.S. Court of Appeals for the Federal Circuit, that persons who suffer negative medical outcomes while being treated in VA medical facilities are, under the terms of statute, entitled to VA compensation without a showing of VA fault. In *Davenport*, CVA held that persons who have a service-connected disability are, under the terms of statute, eligible for vocational rehabilitation benefits even if there is no nexus between the service-connected disability and the veteran's employment handicap. Both cases hinged on issues of statutory construction; in both cases, the Courts affirmed that claimants who meet benefits eligibility standards set forth in statute are entitled to benefits, and that VA has no authority to restrict such standards by regulations which are narrower than statute. Concomitantly, the Courts held that adjudication decisions that rely on VA regulation will be overturned if the regulation is found to be legally faulty.

Testimony was received at the June 8, 1995, hearing from VA's General Counsel and other VA officials. The Committee requested the General Counsel's views on the merits of the *Gardner* and *Davenport* decisions, on whether VA recommended that eligibility restrictions previously imposed by VA regulation should be codified by statute, on the effect that *Gardner* and *Davenport* were having on adjudications of eligibility, and on whether VA had undertaken a review to determine whether other VA regulations governing eligibility for benefits would likely be challenged under the same legal theory advanced in *Gardner* and *Davenport*.

C. SECOND SESSION

On May 13, 1996, Chairman Simpson introduced S. 1751, at VA's request. S. 1751 would have revised procedures for providing claimants and their representatives copies of BVA decisions. The bill also would have modified statutes pertaining to the rights of claimants to appoint VSOs as their representatives in claims before VA.

On May 23, 1996, the Committee held a hearing on pending legislation, including S. 1751. The Committee received testimony on S. 1751 from VA, various veterans service organizations, and other interested organizations.

On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711 (discussed in section VI.C.5., above) which incorporated various provisions, including S. 1751. Those provisions:

1. Authorized BVA to send decisions to claimants' representatives by any means (including hand-delivery) reasonably calculated to provide a decision within the time frame a decision sent by first-class mail would be expected to be delivered; and

2. Authorized BVA, in cases where a claimant has designated a service officer employed by a VSO as his or her representative, to treat a claimant's power of attorney as an appointment of the entire VSO (rather than an individual service officer only) unless a contrary intent is expressed by the claimant, and to thereby effect service of process by notifications to the VSO rather than to the individual service officer.

The Committee voted to report S. 1711, as amended, favorably to the Senate. On September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute retained provisions of S. 1711, as reported, relating to BVA procedures. The substitute also incorporated provisions derived from H.R. 3673 and H.R. 3674, as passed the House on July 16, 1996. As amended, those provisions:

1. Authorized the Veterans Benefits Administration to use contract physicians (rather than VA physicians, as otherwise required) for disability examinations at up to 10 VBA regional offices;

2. Authorized VA, in cases where a claimant dies while his or her claim is being adjudicated, to pay 2 years' (rather than 1 year's) accrued benefits to the claimant's survivors if the claim is ultimately approved; and

3. Authorized an extension in the deadline for the Veterans' Claims Adjudication Commission, established by section 402 of the Veterans' Benefits Improvements Act of 1994, Public Law 103-446, to issue its final report concerning VA procedures for adjudicating and reviewing VA benefits claims.

The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104-275.

X. BURIAL BENEFITS AND MEMORIAL AFFAIRS

A. OVERVIEW

VA operates and maintains the National Cemetery System and provides a range of burial benefits for eligible veterans. Among the benefits offered, in addition to burial in a national cemetery, are burial allowances to help defray burial and funeral expenses; plot allowances; flags for draping over the caskets of eligible deceased veterans; and headstones or markers for the graves of veterans and their eligible dependents.

The National Cemetery System is comprised of 115 cemeteries (not including Arlington National Cemetery, which is maintained by the U.S. Army) and 34 soldiers lots, plots, and monument sites. Veterans and certain dependents of veterans may be interred in such cemeteries. In addition, VA operates a program of grants to States to assist in the construction of State veterans cemeteries.

The American Battle Monuments Commission (ABMC) maintains overseas monuments for service members who died in foreign conflicts.

B. FIRST SESSION

On June 29, 1995, Chairman Simpson introduced S. 994, at VA's request. S. 994 would have clarified the definition of "minor child" for purposes of eligibility of a deceased veteran's minor child family members for burial with the veteran in a national cemetery, and included within that definition children up to age 23 if they had been students at the time of death. No action was taken on the bill during the First Session.

C. SECOND SESSION

On May 23, 1996, the Committee held a hearing on pending legislation, including S. 994. The Committee received testimony on S. 994 from VA and various veterans service organizations.

On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711 (discussed in section VI.C.5., above), which incorporated various provisions, including S. 994. The Committee Print also incorporated an original provision authorizing VA to provide to veterans interred in the national cemeteries "outer burial receptacles"—either grave liners or, at the option of the deceased veteran or his or her survivors, burial vaults—but only if the veteran or survivors paid the extra cost incurred by VA in securing a more expensive burial vault. The Committee voted to report S. 1711, as amended, favorably to the Senate. On September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute retained provisions of S. 1711, as reported, relating to the definition of "minor child" and relating to outer burial receptacles. The substitute also incorporated provisions derived from H.R. 3673, passed by the House on July 16, 1996, which (1) authorized VA to provide burial benefits, and transportation to the place of burial, for veterans who die in State veterans' homes; and (2) authorized ABMC to accept monetary donations for the maintenance of overseas memorials and required ABMC to adopt systems for reporting on, and accounting for, such donations. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104-275.

XI. INSURANCE

A. OVERVIEW

VA administers six life insurance programs, and supervises the administration of two additional programs, for the benefit of service members and veterans and their beneficiaries. Over 4.9 million policies are in force having a total value of over \$560 billion, making VA the Nation's fourth largest life insurer.

B. FIRST SESSION

On June 29, 1995, Chairman Simpson introduced S. 996, the proposed "Veterans' Insurance Reform Act of 1995," at VA's request. S. 996 would have:

1. Changed the name of Servicemen's Group Life Insurance to Servicemembers' Group Life Insurance;
2. Merged the Retired Reservists' Servicemembers' Group Life Insurance program into the Veterans' Group Life Insurance program;
3. Extended Veterans' Group Life Insurance coverage to members of the Ready Reserve of a uniformed service who retire with less than 20 years of service;
4. Permitted an insured to convert a Veterans' Group Life Insurance policy into an individual policy of life insurance with a commercial insurance company at any time; and
5. Permitted an insured to convert a Servicemembers' Group Life Insurance policy to an individual policy of life insurance with a commercial company upon separation from service.

No action was taken on the bill during the First Session.

C. SECOND SESSION

On May 23, 1996, the Committee held a hearing on pending legislation, including S. 996. The Committee received testimony on S. 996 from VA and various VSOs.

On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711 (discussed in section VI.C.5., above), which incorporated various provisions, including S. 996. The Committee voted to report S. 1711, as amended, favorably to the Senate. On September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute retained provisions of S. 996 but added a provision derived from H.R. 3373, passed by the House on May 21, 1996, requiring that service members be provided general information about life insurance options. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104-275.

XII. HOMELESS VETERANS

A. OVERVIEW

VA and the Department of Labor administer several programs designed to assist homeless veterans, including outreach and contracting services, domiciliary care, work therapy, job training, and grants to community-based organizations that serve homeless veterans.

B. FIRST SESSION

On June 29, 1995, Chairman Simpson introduced S. 991, at VA's request. Among other things, S. 991 would have:

1. Extended until December 31, 1997, VA's authority under 38 U.S.C. § 3735(c) to enter into agreements for housing assistance services to homeless veterans;

2. Extended until December 31, 1997, VA's authority under section 115(d) of the Veterans Benefits and Services Act of 1988 (38 U.S.C. § 1712 note) to secure community-based residential care for homeless chronically mentally ill veterans; and

3. Extended until December 31, 1998 VA's authority under section 7(a) of Public Law 102-54 (38 U.S.C. § 1718 note) to conduct a demonstration program for compensated work therapy and therapeutic transitional housing.

On September 20, 1995, the Committee met in open session to consider, among other things, a Committee Print of S. 991, as amended. In amended form, S. 991 contained provisions which would have:

1. Extended until December 31, 1997, VA's authority under 38 U.S.C. § 3735(c) to enter into agreements for housing assistance services to homeless veterans;

2. Extended until December 31, 1997, VA's authority under section 115(d) of the Veterans Benefits and Services Act of 1988 (38 U.S.C. § 1712 note) to secure community-based residential care for homeless chronically mentally ill veterans;

3. Extended until December 31, 1997, VA's authority under section 7(a) of Public Law 102-54 (38 U.S.C. § 1718 note) to conduct a demonstration program for compensated work therapy and therapeutic transitional housing; and

4. Extended until September 30, 1997, VA's authority under sections 3(a) and 12 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 U.S.C. § 7721 note) to make grants for assistance in furnishing services and assistance to homeless veterans.

The Committee voted to report S. 991, as amended, favorably to the Senate without written report. On December 12, 1995, S. 991 was reported. There was no further action on this legislation during the First Session.

C. SECOND SESSION

On January 5, 1996, the Senate took up S. 991 and approved an amendment in the nature of a substitute. The substitute contained all the extensions outlined above and added a provision to extend authority under section 741 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. § 11450) for the support of Homeless Veterans' Reintegration Projects, and to authorize appropriations of \$10,000,000 for fiscal years 1996 and 1997 respectively for the support of such programs. The Senate then took up H.R. 2353 and substituted S. 991, as amended, and passed H.R. 2353 by voice vote.

On January 25, 1996, the House amended H.R. 2353, as amended by the Senate on January 5, 1996, to require VA reports on: (1) the potential consolidation of drug and alcohol treatment and rehabilitation programs authorized under section 38 U.S.C. § 1720A; (2) the program for community-based residential care to homeless chronically mentally ill veterans under section 115 of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 1712 note); and (3) the demonstration program for compensated work therapy and

therapeutic transitional housing under section 7 of Public Law 102-54 (38 U.S.C. § 1718 note). The House amendment also authorized appropriations of \$10,000,000 under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. § 11450) for the support of Homeless Veterans' Reintegration Projects for fiscal year 1996 only. On January 30, 1996, the Senate agreed to the House amendments to H.R. 2353, as amended. On February 13, 1996, the President signed H.R. 2353, as amended, into law as Public Law 104-110.

On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711 (discussed in section VI.C.5., above). The Committee Print incorporated two original provisions relating to programs to assist homeless veterans: one extended until December 31, 1998, VA's authority under section 115(d) of the Veterans Benefits and Services Act of 1988 (38 U.S.C. § 1712 note) to secure community-based residential care for homeless chronically mentally ill veterans; the other extended authority under section 741 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. § 11450) for the support of Homeless Veterans' Reintegration Projects, and authorized appropriations of \$10,000,000 for fiscal years 1996 and 1997 respectively for the support of such programs. The Committee voted to report S. 1711, as amended, favorably to the Senate. On September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute retained provisions of S. 1711, as reported, relating to programs to assist the homeless. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104-275.

XIII. MISCELLANEOUS

A. FIRST SESSION

On January 31, 1995, Chairman Simpson introduced S.J. Res. 26, a resolution to designate April 9, 1995, and April 9, 1996, as "National Former Prisoner of War Recognition Day." The bill was referred to the Committee on the Judiciary. No further action was taken on this measure during the 104th Congress.

On June 29, 1995, Chairman Simpson introduced S. 991, at VA's request. S. 991 contained provisions which would have extended until December 31, 1997, VA's authority under 38 U.S.C. § 8169 to enter into enhanced-use leases of real property.

On September 20, 1995, the Committee met in open session to consider, among other things, a Committee Print of S. 991, as amended. In amended form, S. 991 contained provisions which would have extended until December 31, 1997, VA's authority to enter into enhanced-use leases. The Committee voted to report S. 991, as amended, favorably to the Senate without written report. On December 12, 1995, S. 991 was reported. There was no further action on this legislation during the First Session.

On May 3, 1995, Senator Akaka introduced S. 749, a bill to revise authorities relating to VA's Centers for Minority Veterans and Women Veterans. S. 749 would have: defined the term "minority";

authorized that Directors of the Centers for Minority Veterans and Women Veterans be career or non-career employees; and directed that the Center for Minority Veterans monitor minority-focused medical research. No action was taken on this legislation during the First Session.

B. SECOND SESSION

On January 5, 1996, the Senate took up S. 991 and approved an amendment in the nature of a substitute. The substitute left unchanged the Committee-reported provision relating to enhanced-use leases of real property. The Senate then took up H.R. 2353 and substituted S. 991, as amended, and passed H.R. 2353 by voice vote. On January 25, 1996, the House amended H.R. 2353 to provide that, among other things, VA issue certain reports on its use of enhanced-use leasing authority. On January 30, 1996, the Senate agreed to the House amendments to H.R. 2353. On February 13, 1996, the President signed H.R. 2353, as amended, into law as Public Law 104-110.

On May 23, 1996, the Committee held a hearing on pending legislation, including S. 749. The Committee received testimony on S. 749 from VA and various veterans service organizations. On July 24, 1996, the Committee met in open session to consider, among other things, a Committee Print of S. 1711 (discussed in section VI.C.5., above), which incorporated various provisions, including S. 749. The Committee voted to report S. 1711, as amended, favorably to the Senate. On September 24, 1996, S. 1711 was reported (S. Rept. 104-371).

On September 28, 1996, the Senate took up S. 1711 and approved an amendment in the nature of a substitute. The substitute retained provisions of S. 1711, as reported, relating to VA's Centers for Minority Veterans and Women Veterans. The Senate then passed S. 1711, as amended. On September 28, 1996, the House passed S. 1711, and on October 9, 1996, the President signed S. 1711, the "Veterans' Benefits Improvements Act of 1996," into law as Public Law 104-275.