

## Calendar No. 316

108TH CONGRESS }  
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SENATE

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### VETERANS' BENEFITS ENHANCEMENTS ACT OF 2003

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OCTOBER 21, 2003.—Ordered to be printed

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

### R E P O R T

[To accompany S. 1132]

The Committee on Veterans' Affairs, to which was referred the bill (S. 1132), to amend title 38, United States Code, to improve and enhance certain benefits for survivors of veterans, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

#### INTRODUCTION

On May 22, 2003, Committee Chairman Arlen Specter introduced S. 1132, a bill to improve and enhance certain benefits for survivors of veterans. Committee Members Jim Bunning and Lindsey Graham are original cosponsors of S. 1132.

On January 30, 2003, Senator Bill Nelson introduced S. 257, a bill to clarify the applicability of the prohibition on assignment of veterans' benefits to agreements regarding future receipt of compensation, pension, or dependency and indemnity compensation, and for other purposes. Committee Member Ben Nelson and Senators John McCain, Jeff Sessions, Daniel K. Inouye, Carl Levin, Jeff Bingaman, John F. Kerry, John B. Breaux, Kent Conrad, Tim Johnson, and Mary Landrieu are original cosponsors of S. 257. Senators Judd Gregg, Gordon Smith, Harry M. Reid, and Joseph I. Lieberman were later added as cosponsors.

On March 5, 2003, Committee Member Patty Murray introduced S. 517, a bill to provide improved benefits to veterans who are former prisoners of war. Senators Maria Cantwell, Ron Wyden, Barbara A. Mikulski, Mark Dayton, and Richard J. Durbin were later added as cosponsors of S. 517.

On May 22, 2003, Chairman Specter introduced S. 1131, a bill to increase, effective as of December 1, 2003, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (hereinafter, "DIC") for the survivors of certain disabled veterans. Committee Member Bunning is an original cosponsor of S. 1131. Committee Member Rockefeller was later added as a cosponsor.

On May 22, 2003, Chairman Specter introduced, at the request of the Administration, S. 1133, a bill to improve the authorities of the Department of Veterans Affairs (hereinafter, "VA") relating to compensation, dependency and indemnity compensation, pension, education benefits, life insurance benefits, and memorial benefits, to improve the administration of benefits for veterans, and for other purposes.

On May 23, 2003, Chairman Specter introduced S. 1156, a bill to improve and enhance the provision of long-term health care for veterans by VA, to enhance and improve authorities relating to the administration of personnel of VA, and for other purposes.

On June 5, 2003, Committee Member Murray introduced S. 1188, a bill to repeal the two-year limitation on the payment of accrued benefits that are due and unpaid by the Secretary of Veterans Affairs upon the death of a veteran or other beneficiary under laws administered by the Secretary, to allow for substitution of parties in the case of a claim for benefits provided by the Secretary when the applicant for such benefits dies while the claim is pending, and for other purposes.

On June 9, 2003, Chairman Specter introduced, at the request of the Administration, S. 1213, a bill to enhance the ability of VA to improve benefits for Filipino veterans of World War II and survivors of such veterans, and for other purposes. Committee Member John E. Ensign and Senators George Allen, Maria Cantwell, and Charles E. Schumer were later added as cosponsors of S. 1213.

On June 11, 2003, Committee Member Craig introduced S. 1239, a bill to provide special compensation for former prisoners of war, and for other purposes.

On June 18, 2003, Committee Ranking Member Bob Graham introduced S. 1281, a bill to presume additional diseases of former prisoners of war to be service-connected for compensation purposes, to enhance the Dose Reconstruction Program of the Department of Defense, to enhance and fund certain other epidemiological studies, and for other purposes. Committee Member Rockefeller was later added as a cosponsor of S. 1281.

On June 26, 2003, Committee Ranking Member Graham introduced S. 1360, a bill to clarify the requirements for notices of disagreement for appellate review of Department of Veterans Affairs activities. Committee Member Rockefeller was later added as a cosponsor.

#### COMMITTEE HEARINGS

On July 10, 2003, the Committee held a hearing on, among other bills, S. 257, S. 517, S. 1131, S. 1132, S. 1133, S. 1188, S. 1199, S. 1213, S. 1239, S. 1281, and S. 1360. Testimony was heard from: The Honorable Daniel L. Cooper, Under Secretary for Benefits, Department of Veterans Affairs; Mr. Craig W. Duehring, Principal Deputy Assistant Secretary of Defense for Reserve Affairs, Depart-

ment of Defense; Mr. Phillip R. Wilkerson, Deputy Manager of Operations and Training, Veterans Affairs and Rehabilitation Division, The American Legion; Mr. Dennis Cullinan, Director, National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Rick Surratt, Deputy National Legislative Director, Disabled American Veterans; Mr. Carl Blake, Associate Legislative Director, Paralyzed Veterans of America; and Mr. Richard Jones, National Legislative Director, AMVETS.

On July 29, 2003, the Committee held a hearing on, among other bills, S. 1156 and S. 1213. Testimony was heard from: The Honorable Tim S. McClain, General Counsel, Department of Veterans Affairs; Ms. Cathleen C. Wiblemo, Deputy Director of Health Care, The American Legion; Mr. Paul A. Hayden, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Adrian M. Atizado, Associate National Legislative Director, Disabled American Veterans; Mr. Carl Blake, Associate Legislative Director, Paralyzed Veterans of America; and Mr. Richard Jones, National Legislative Director, AMVETS.

#### COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearings, the Committee met in open session on September 30, 2003, and voted by unanimous voice vote to report favorably S. 1132, as amended to include provisions from S. 257, S. 517, S. 1132 as introduced, S. 1133, S. 1156, S. 1188, S. 1213, S. 1239, S. 1281, S. 1360, and several original provisions.

#### SUMMARY OF THE COMMITTEE BILL AS REPORTED

S. 1132 as reported (hereinafter, "the Committee bill") contains various amendments to title 38 of U.S. Code and other freestanding provisions that would:

- (a) Provide monetary, health care, and vocational benefits for spina bifida-afflicted children born of veterans who served in or near the Korean demilitarized zone in the late 1960's;
- (b) Permit VA to make payment of proceeds from National Service Life Insurance and United States Government Life Insurance policies to alternate beneficiaries should a primary beneficiary not be located;
- (c) Extend the period for eligibility for veterans' survivors' education benefits to survivors who are called to duty under title 32, U.S. Code, while serving in the National Guard;
- (d) Increase monthly educational benefits for spouses and dependent children of veterans who have severe disabilities or who have died as a result of service-related causes;
- (e) Repeal the two-year limitation on accrued benefits;
- (f) Permit States to receive burial plot allowances for burial of all eligible veterans;
- (g) Allow remarried surviving spouses to be buried in national cemeteries;
- (h) Make permanent the State Cemetery Grants Program;
- (i) Permit VA to provide headstones or markers for graves which already have a private marker for veterans whose deaths occurred on or after November 1, 1990;

- (j) Extend for two years the requirement to round down to the nearest dollar compensation cost-of-living increases;
- (k) Liberalize the internment threshold for former prisoners-of-war seeking compensation on a presumptive basis, and add cirrhosis of the liver to the list of diseases presumed to be caused by a prisoner of war's internment;
- (l) Repeal the 90-day minimum internment threshold for former prisoners-of-war seeking outpatient dental treatment;
- (m) Round down to the nearest dollar annual education cost-of-living adjustments to educational assistance benefits;
- (n) Terminate the education loan program;
- (o) Terminate the manufactured housing loan program;
- (p) Temporarily increase the fee charged for "subsequent use" home loans guaranteed by VA;
- (q) Reinststate the VA vendee loan program;
- (r) Remove the funding cap limiting loans made in fiscal year 2003 under the Native American Veteran Housing Loan Program;
- (s) Make clarifying amendments relating to the Veterans' Claims Assistance Act;
- (t) Clarify the current prohibition on the assignment of veterans' benefits;
- (u) Extend for two years the authority of VA to gain access to Internal Revenue Service records to verify the incomes of VA beneficiaries who have applied for "means-tested" benefits;
- (v) Require the forfeiture of benefits if beneficiaries are convicted of certain subversive activities;
- (w) Clarify notice of disagreement requirements for claimants who desire to initiate the VA claims appellate process;
- (x) Increase compensation and DIC payment rates to Filipino veterans of World War II, and their eligible survivors, residing in the United States;
- (y) Increase burial benefit rates to eligible survivors of new Philippine Scouts residing in the United States, and make new Philippine Scouts eligible for national cemetery burial;
- (z) Extend the authority of VA to operate a regional office in Manila, the Philippines;
- (aa) Require independent oversight of the Department of Defense (hereinafter, "DoD") radiation dose reconstruction program;
- (bb) Require an independent study on the disposition of the Air Force Health Study on "Operation Ranch Hand" veterans;
- (cc) Authorize additional funding for the Institute of Medicine's Medical Follow-Up Agency;
- (dd) Extend for four years VA's Advisory Committee on Minority Veterans;
- (ee) Extend through 2013 VA's Advisory Committee on Education;
- (ff) Authorize a nationwide, five-year contract medical examination pilot program; and
- (gg) Make certain technical amendments.

## DISCUSSION

*Section 101: Benefits for children with spina bifida of veterans of certain service in Korea**Background*

Between 1962 and 1971, the U.S. military sprayed almost 19 million gallons of herbicides over Vietnam. Those herbicides cleared dense foliage which helped conceal enemy forces and cleared the perimeters of U.S. base camps. A chemical preparation known as Agent Orange was used in the majority of the spraying. Its use was suspended in 1970 after a scientific report concluded that chemical components of Agent Orange could cause birth defects in laboratory animals. A 1996 report, *Veterans and Agent Orange Update 1996*, published by the Institute of Medicine's National Academy of Sciences (hereinafter, "NAS") analyzed associations between exposure to Agent Orange and the long-term health effects in exposed veterans and their offspring. The report concluded that "[t]here is limited/suggestive evidence of an association between exposure to the herbicides considered in this report and spina bifida [in the offspring of exposed veterans]." Relying on that NAS report, Congress enacted section 421 of Public Law 104-204 to provide special benefits to certain children of Vietnam veterans who were born with spina bifida. The benefits provided through VA include monetary payments based on the severity of disability, health care, and vocational training and rehabilitation.

Agent Orange was also used to clear foliage during the late 1960's near the Korean demilitarized zone. It is estimated that 12,056 military personnel were exposed.

Under current law, if VA determines that a veteran was exposed to Agent Orange outside of Vietnam, and if that same veteran has a disease on the list of diseases presumed to be caused by herbicide exposure specified in 38 CFR §3.309(e), VA will presume service-connection, thus entitling the veteran to disability compensation and other VA benefits. However, VA has no authority to provide benefits to children of veterans exposed to herbicides outside of Vietnam who are born with spina bifida.

*Committee bill*

Section 101 would extend the benefits provided to children of Vietnam veterans born with spina bifida to the spina bifida-afflicted children born of veterans who served in or near the Korea demilitarized zone between January 1, 1967, and December 31, 1969, and who are determined by VA to have been exposed to herbicides.

*Section 102: Alternate beneficiaries for National Service Life Insurance and United States Government Life Insurance**Background*

Section 1917 of title 38, United States Code, gives veterans insured under the VA's National Service Life Insurance (hereinafter, "NSLI") program the right to designate the beneficiary or beneficiaries of insurance policies maturing on or after August 1, 1946. It also specifies the modes of payment to beneficiaries when an insured dies, and sets forth the procedure to be followed when a ben-

eficiary has not been designated or dies before the insured. Section 1949 of title 38 gives veterans insured under the United States Government Life Insurance (hereinafter, "USGLI") program the right to change beneficiaries, and sections 1950 through 1952 of title 38 set out the modes of payment to designated beneficiaries and sets forth the procedure to be followed when a beneficiary either has not been designated or dies before the insured.

For these two programs, the law does not specify the course of action VA is to take when no beneficiary can be found. At the Committee's July 10, 2003, hearing, VA Under Secretary for Benefits Daniel L. Cooper testified that there are approximately 4,000 existing NSLI and USGLI policies in which payment has not been made because VA cannot locate the primary beneficiary.

*Committee bill*

Section 102 would authorize the payment of NSLI and USGLI to alternate beneficiaries, in order of precedence and as designated by the insured veteran, if no claim is made by the primary beneficiary within two years of the insured veteran's death. If four years have elapsed since the death of the insured and no claim has been filed by a person designated by the insured as a beneficiary, section 102 would authorize VA to make payment to a person VA determines to be equitably entitled to such payment.

*Section 103: Applicability to certain members of the National Guard of authority for extension of eligibility for Survivors' and Dependents' Educational Assistance*

*Background*

In general, beneficiaries of the Survivors' and Dependents' Educational Assistance program (hereinafter, "DEA") have 10 years (if the beneficiary is a surviving spouse), and 8 years (if the beneficiary is a surviving child), in which to use their education benefits. Section 3512(h) of title 38, United States Code, permits persons eligible for DEA benefits who are called to active duty service under various provisions of title 10 (which deal with retired military and reserve component activation in times of war, national emergencies, or other exigencies) to have these "delimiting periods" extended by the length of time such persons are called to active duty, plus an additional four months. This protection is in place so that DEA beneficiaries whose pursuit, or planned pursuit, of educational opportunities was interrupted due to service to the Nation not be penalized. DEA beneficiaries who are members of the National Guard and who are called to service under section 502(f) of title 32 (which deals with National Guard activation for training or other purposes) do not have the same delimiting period protections.

*Committee bill*

Section 103 would extend to persons ordered to full-time National Guard duty under section 502(f) of title 32 the same delimiting period extensions that exist for DEA beneficiaries called to active duty under title 10.

*Section 104: Increase in rates of Survivors' and Dependents' Educational Assistance*

*Background*

The Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103, raised DEA monthly benefits from \$588 to \$670 (for full-time study), from \$441 to \$503 (for three-quarter-time study), and from \$294 to \$335 (for half-time study). Similar percentage increases were made to benefits paid to eligible persons—generally, spouses and dependents of veterans with total and permanent service-connected ratings, of veterans who died as a result of service-related injuries, or of service members who died while on active duty—pursuing a program of education on a less than half-time basis through institutional courses, farm cooperative programs, by correspondence courses, or by special restorative training or a program of apprenticeship or other approved on-the-job training programs. In addition, section 3511(a)(1) of title 38, United States Code, limits the total entitlement of DEA to 45 months (or the equivalent thereof in part-time training). Thus, multiplying the current full-time rate (\$680 after a 2002 cost-of-living increase) by the 45 months maximum entitlement yields a current, maximum aggregate benefit of \$30,600.

Despite this recent increase, DEA benefits have not kept pace with increases made to Montgomery GI Bill (hereinafter, “MGIB”), educational assistance benefits paid to active duty service members and eligible veterans. On October 1, 2003, the maximum monthly benefit under MGIB will be \$985 and the aggregate benefit will be \$35,460, almost \$5,000 more than the DEA aggregate. VA’s Under Secretary for Benefits, Daniel L. Cooper, testified at the July 10, 2003, Committee hearing that DEA benefits once equaled and, for a time, exceeded education benefits for veterans. Further, VA’s Deputy Secretary, Dr. Leo Mackay, in connection with a Committee hearing on June 28, 2001, stated that VA “believe[s] it is only fair that these benefits should be at the same level as those provided to veterans.”

*Committee bill*

In combination with a planned cost-of-living increase expected at the end of 2003, section 104 would raise monthly survivors’ and dependents’ educational assistance benefits by 15.8 percent over current levels. The new rates would be set at \$788 for full-time study, \$592 for three-quarter time study, and \$394 for half-time study. A 15.8 percent increase would also be made to benefits paid to eligible persons pursuing a program of education on a less than half-time basis, through institutional courses, farm cooperative programs, by correspondence courses, or by special restorative training or a program of apprenticeship or other approved on-the-job training programs. The increases would take effect on July 1, 2004, and would result in the aggregate DEA benefit for full-time study equalling the aggregate MGIB benefit of \$35,460.

*Section 105: Repeal of two-year limitation on payment of accrued benefits at death*

*Background*

Section 5121 of title 38, United States Code, provides that VA monetary benefits to which an individual was entitled at death under existing ratings or decisions, or those based on evidence on file at the date of death, and due and unpaid for, at most, two years upon the date of death (so-called “accrued benefits”), shall be payable to the claimant’s eligible survivor(s). An application for accrued benefits must be filed within one year after the date of a claimant’s death.

Before the United States Court of Appeals for Veterans Claims (hereinafter, “CAVC”) issued its decision in *Bonny v. Principi*, 16 Vet. App. 504 (2002), VA interpreted section 5121 to limit the payment of accrued benefits to two years irrespective of whether the payment was based on an existing rating or decision or based on evidence on file at the date of death. In *Bonny*, however, the Court ruled that the limitation applies only to accrued benefits based on evidence in the file at the date of death and not to accrued benefits due under an individual’s existing rating or decisions. In the latter case, then, the two-year limitation does not apply; under *Bonny*, such individuals are entitled to accrued benefits without regard to that limit.

At the Committee’s hearing on July 10, 2003, Under Secretary Cooper commented as follows: “The distinction the *Bonny* decision draws between the two categories of claimants—those whose claims had been approved and those whose entitlement had yet to be recognized when they died—is really one without a difference. In either case, a claimant’s estate is deprived of the value of benefits to which the claimant was, in life, entitled.”

Chapter 18 of title 38 authorizes monthly monetary allowances, vocational rehabilitation services, and health care, to children born of Vietnam veterans who are suffering from spina bifida and, in the case of children born of women Vietnam veterans, other covered birth defects. Currently, parents are not authorized to file claims for accrued benefits under section 5121 which are due to children eligible for benefits under Chapter 18 of title 38.

*Committee bill*

Section 105 would remove the two-year limitation on accrued benefits. It would also authorize parents to file claims for accrued benefits due to children eligible for benefits under Chapter 18 of title 38.

*Section 201: Burial Plot Allowance*

*Background*

Veterans who are discharged from active service as a result of a service-connected disability, veterans who are entitled to disability compensation or VA pension, and veterans who die in a VA facility, are eligible for a \$300 VA “plot allowance” if they are not buried in a national cemetery. Section 2303(b)(1) of title 38, United States Code, allows State cemeteries to receive the \$300 plot allowance payment for the interment of such veterans, and the interment of

veterans of any war, if the cemeteries are used solely for the burial of veterans. However, states may not receive a plot allowance for burial of veterans who die as a result of a service-connected disability and whose survivors seek reimbursement of funeral expenses under section 2307 of title 38 (which currently authorizes a \$2,000 funeral expense benefit).

The State Cemetery Grants Program, designed to complement VA's national cemetery system, was established in 1978 to assist States in meeting costs associated with building, expanding, or improving State cemeteries. Generally speaking, States provide the land where State cemeteries will be located, and they are responsible for funding the administration and maintenance of State cemeteries. VA assists, by making grants, in the construction of cemetery facilities on the State-provided land. States typically use plot allowance money to help defray some of their administrative and maintenance costs.

*Committee bill*

Section 201 would expand existing law to allow States to receive the \$300 plot allowance for the interment of veterans who did not serve during a wartime period and for the interment of veterans who died as a result of service-connected disabilities and whose survivors sought reimbursement of funeral expenses under section 2307 of title 38.

*Section 202: Eligibility of surviving spouses who remarry for burial in national cemeteries*

*Background*

Section 2402(5) of title 38, United States Code, authorizes a veteran's spouse, surviving spouse, and eligible child to be buried along with the veteran in a national cemetery. If, however, a surviving spouse dies while he or she is remarried, there is no provision in law which grants that spouse the same national cemetery burial entitlement. In such cases, families must request a waiver from VA.

*Committee bill*

Section 202 would extend national cemetery burial eligibility to surviving spouses who have remarried.

*Section 203: Permanent authority for State Cemetery Grants Program*

*Background*

Section 2408(a) of title 38, United States Code, authorizes VA to make grants to any State to assist in establishing, expanding, or improving State veterans' cemeteries. The Secretary's authority to make such grants expires on Oct. 1, 2004.

The State Cemetery Grants Program has proven to be an important asset in helping VA meet the burial needs of veterans. The program has helped to fund 49 operational state cemeteries, and six more are now under construction. VA indicates that demand for grants under the program is high, and that permanently extending the program would assist in long-term planning.

*Committee bill*

Section 203 would permanently authorize the State Cemetery Grants Program.

*Section 204: Provision of markers for privately marked graves**Background*

Section 502 of Public Law 107–103, the Veterans Education and Benefits Expansion Act of 2001, authorized VA to furnish a government headstone or marker for the grave of an eligible veteran buried in a non-veterans' cemetery irrespective of whether the grave was already marked with a private marker. The law applied to veterans whose deaths occurred on or after December 27, 2001. Public Law 107–330 extended this authority to include deaths occurring on or after September 11, 2001.

From October 18, 1979, until November 1, 1990, VA paid a headstone or marker allowance to families who purchased a private headstone or marker in lieu of a Government headstone or marker. Thus, those families, like families of veterans who died on or after September 11, 2001, have had the opportunity to benefit from the VA-marker program regardless of whether a veteran's grave was previously marked. Only the families of veterans who died between November 1, 1990, and September 11, 2001, have had no such opportunity.

*Committee bill*

Section 204 would amend the Veterans Education and Benefits Expansion Act of 2001 to authorize VA to furnish a government headstone or marker for the grave of an eligible veteran buried in a private cemetery, irrespective of whether the grave was already marked with a private marker, for deaths occurring on or after November 1, 1990.

*Section 301: Two-year extension of round-down requirement for compensation cost-of-living adjustments**Background*

Sections 1104(a) and 1303(a) of title 38, United States Code, mandate that yearly cost-of-living adjustments made to rates of compensation and DIC be rounded down to the nearest whole dollar amount. This authority expires on September 30, 2011.

*Committee bill*

Section 301 would extend the round down authority under sections 1104(a) and 1303(a) through fiscal year 2013.

*Section 302: Presumptions of service-connection relating to diseases and disabilities of former prisoners of war**Background*

For purposes of establishing entitlement to disability compensation, section 1112(b) of title 38, United States Code, contains a list of 15 disabilities and diseases which are presumed to have been caused by the internment or detainment of former prisoners of war (hereinafter, "POWs"), so long as such detainment or interment was for a period of 30 days or more. This presumptive list includes

mental and physical diseases or disabilities which, based on available scientific evidence, are reasonably expected to manifest if POWs are traumatized, malnourished, or kept in unsanitary conditions for extended periods of time.

POWs are often subjected to brutal treatment by their captors while interned. But even if they are treated humanely, they suffer extreme mental anguish. As Rick Jones of AMVETS testified at the Committee's July 10, 2003, hearing: "The traumatic experience of meeting an enemy face-to-face, not knowing what is going to happen next, is sufficient stress even though a long period of incarceration does not follow." Thus, the 30-day minimum internment requirement for purposes of presumptive service-connection may be too restrictive for certain conditions. Under Secretary of Benefits Cooper concurred when he testified at the same hearing that "[r]ecent experience has indicated, however, that, despite the shorter duration [of POW internments], the conditions of detention or internment may be such that these former POWs may suffer from many of the same diseases for which a presumption of service-connection is available. \* \* \*"

On July 18, 2003, VA published a final rule adding cirrhosis of the liver to the list of diseases for which entitlement to service-connection is presumed for former POWs. VA took this action on the strength of an Institute of Medicine study which found a significantly higher risk of cirrhosis and cirrhosis mortality among former World War II POWs compared with control groups. The study found that alcohol consumption did not provide an explanation for the higher levels of cirrhosis mortality.

#### *Committee bill*

Section 302 would divide the current presumptive list of diseases for former POWs into two lists, and apply a different minimum internment threshold for each. The first presumptive list would require no minimum internment period and would include diseases associated with mental trauma, or acute physical trauma, which could plausibly be caused by even a single day of captivity. The first list would include psychosis, any of the anxiety states, dysthymic disorder (or depressive neurosis), organic residuals of frostbite (if the Secretary determines that a veteran was interned in conditions consistent with the occurrence of frostbite), and post-traumatic osteoarthritis. Recognizing that the remaining diseases on the current presumptive list would more likely manifest after a prolonged internment, the second list retains the 30-day minimum internment requirement, but adds cirrhosis of the liver to that list. With the addition of cirrhosis of the liver, the second list would include avitaminosis, beriberi, chronic dysentery, helminthiasis, malnutrition, pellagra, any other nutritional deficiency, cirrhosis of the liver, peripheral neuropathy, irritable bowel syndrome, and peptic ulcer disease. The Committee notes that VA will establish a Workgroup on Medical Presumptive Conditions in Former POWs to establish procedures, guidelines, and standards to determine whether additional diseases should be added to the presumptive lists. The Committee expects that VA will continue to monitor research on the health effects of POW internment and, as with cirrhosis of the liver, make amendments to the presumptive list, as appropriate.

*Section 303: Repeal of requirement for minimum period of internment of prisoners of war for dental care*

*Background*

Section 1712(a)(1)(F) of title 38, United States Code, authorizes free outpatient dental services to POWs interned for 90 days or more.

*Committee bill*

In recognition of the sacrifices made by POWs, and without regard to whether a dental condition resulted from internment, section 303 would eliminate the 90-day internment period required for POW entitlement to outpatient dental services.

*Section 304: Rounding down of certain cost-of-living adjustments on education assistance*

*Background*

Sections 3015(h) and 3564 of title 38, United States Code, provide for annual cost-of-living adjustments to both the Montgomery GI Bill and Survivors and Dependents Educational Assistance programs. Each section specifies that percentage increases be “rounded to the nearest dollar.”

*Committee bill*

Section 304 would require annual percentage adjustments under sections 3015(h) and 3564 to be rounded down to the nearest dollar. This section would first apply to adjustments made at the start of fiscal year 2005.

*Section 305: Termination of education loan program*

*Background*

VA administers an education loan program, in effect since January 1, 1975, which makes loans of up to \$2,500 per academic year to veterans’ spouses and surviving spouses who have remaining entitlement to Survivors and Dependents Educational Assistance benefits but who are past the “delimiting period” for eligibility. No loan has been issued under this program for several years. There are currently 20 loans outstanding with a total pending balance of less than \$15,000 collectively. It costs VA \$70,000 per year to administer the program.

*Committee bill*

Section 305 would repeal the education loan program and waive any existing repayment obligations.

*Section 306: Termination of authority to guarantee loans to purchase manufactured homes and lots*

*Background*

Section 3712 of title 38, United States Code, authorizes VA to guarantee loans for the purchase of a manufactured home and a lot on which it is sited. Only three loans have been guaranteed under this program since fiscal year 1995. Due to the low loan volume, lender interest in using the VA manufactured loan program is al-

most non-existent. In addition, of the loans VA has guaranteed under the program, 38.7 percent have gone to foreclosure over the past 30 years.

*Committee bill*

Section 306 would eliminate the authority of VA to guarantee loans to purchase a manufactured home and the lot on which it is sited. VA would continue servicing existing loans and pay claims on those loans. The Committee notes that VA would retain the ability to guarantee loans on manufactured homes under the authority of section 3710(a)(9) of title 38.

*Section 307: Increase in loan fee for subsequent loans closed before October 1, 2011*

*Background*

Under VA's home loan guaranty program, VA may guaranty a portion of a loan made to eligible service members, veterans, reservists, and certain unmarried surviving spouses for the purchase (or refinancing) of houses, condominiums, and manufactured homes. Section 3729(b)(2) of title 38, United States Code, sets forth a loan fee table which lists funding fees (expressed as a percentage of the loan amount) for different types of loans. The funding fee for a beneficiary's initial home loan varies according to the amount of down-payment paid by the beneficiary. The funding fee for the use of VA's loan guaranty on loans subsequent to the beneficiary's first such loan is currently set at three percent for all beneficiaries. On October 1, 2011, the funding fee will be reduced to one and one-quarter percent for veterans, service members, and surviving spouses, and reduced to two percent for reservists.

*Committee bill*

Section 307 would increase, effective October 1, 2004, the funding fee for subsequent use loans to three and one-half percent for all eligible beneficiaries. On October 1, 2011, the funding fee on subsequent use loans would still be reduced to one and one-quarter percent for veterans, service members, and surviving spouses, and two percent for reservists.

*Section 308: Reinstatement of minimum requirements for sale of vendee loans*

*Background*

Section 3733(a) of title 38, United States Code, authorizes VA to finance the purchase of properties it has acquired, as guarantor, as a result of foreclosure. Until recently, this so-called "vendee loan" authority was used as a tool to dispose of properties quickly at the highest possible return to the government.

In its fiscal year 2003 budget submission, VA announced that it would administratively terminate the vendee loan program effective January 31, 2003. Before the termination of the program, VA financed approximately 60 percent of its property sales using vendee loan financing.

The utility of vendee loans in selling properties quickly was validated by a March 28, 2000, report to VA by the consulting firm of Booz Allen & Hamilton. The Booz Allen report concluded that

vendee financing enables VA to get a higher return on its properties than it could secure using “cash-only” sales alone. The report stated that “the comparison of revenues and expenses for properties and loans over the life cycle of VA’s interest and liability indicates that properties sold via seller financing (term sales) achieve a higher net value to VA than do properties sold for cash (cash sales),” and thus concluded that vendee financing “has merit as an option for the sale of VA property.”

*Committee bill*

Section 308 would reinstate the vendee loan program as a property management tool, and would require VA to dispose of between 50 and 85 percent of acquired properties using vendee loans.

*Section 309: Operation of Native American veteran housing loan program*

*Background*

Subchapter V of chapter 37 of title 38, United States Code, directs VA to establish and implement a pilot program under which VA makes direct housing loans to Native American veterans. Under the Native American Veteran Direct Loan Program (hereinafter, “NAVDLP”), loans are available for the purchase, construction, or improvements of homes on Native American trust lands, and for the refinancing of existing loans. A total of 289 loans have been made under the program from its inception in 1993 to September 30, 2002. The program is scheduled to expire on December 31, 2005.

In a letter to Chairman Specter dated June 11, 2003, Under Secretary for Benefits Cooper wrote that VA was compelled to cease making loans under the NAVDLP pursuant to a statutory limitation, placed by Public Law 108–7, on the dollar value of new loans placed on the program. Title I of Division K of Section 3 of that statute, the Consolidated Appropriations Resolution of 2003, states that “no new loans in excess of \$5,000,000 may be made in fiscal year 2003.” According to Under Secretary Cooper, the loan limitation was imposed due to technical budget requirements that require a loan level ceiling when a loan program has a negative subsidy rate. Fiscal Year 2003 was the first time the NAVDLP had a negative subsidy rate. Because of historically low interest rates driving demand for loan refinances, VA quickly exceeded the loan limit, and has had to suspend loan payments to Native American veterans.

*Committee bill*

Section 309 would eliminate the cap on the statutory limitation on the dollar value of new loans placed on the NAVDLP during fiscal year 2003.

*Section 310: Time limitations on receipt of claim information pursuant to requests of Department of Veterans Affairs*

*Background*

Section 5102(b) of title 38, United States Code, requires that VA, in cases where it receives an application for benefits that is not complete, notify the applicant of the information that is necessary

to complete the application for benefits. Similarly, section 5103(a) of title 38 requires that VA, when it receives a complete or a substantially complete application for benefits, notify the applicant of any information or evidence necessary to substantiate the claim. Section 5103(b) states that if information or evidence requested under section 5103(a) is not received within one year of the date of such notification, then no benefits may be paid by reason of that application for benefits.

Prior to the enactment of the Veterans Claims Assistance Act of 2000 (hereinafter, "VCAA"), Public Law 106-475, a one-year time window was afforded to claimants for providing information and evidence necessary to complete an application for benefits. VCAA created a new one-year limitation with respect to the time claimants have to submit evidence necessary to substantiate claims, but the statute omitted to restate the one-year time limitation with respect to completion of an initial application for benefits. VA has informed the Committee that the omission could be construed to prohibit VA from ever closing an application as abandoned.

VA has also expressed concern that VCAA's one-year time limitation on substantiating a claim might be construed to prohibit VA from issuing an initial decision on a claim prior to the lapse of a one-year period beginning with the date VA sent notice to a claimant requesting necessary information and evidence. Under such a construction, if VA were to have sufficient evidence to grant benefits, but it still lacked a particular piece of evidence requested of the claimant and previously thought necessary to substantiate the claim, VA would be required to wait a full year from the date the evidence was requested before it would award benefits. Such an interpretation would not advance the interests of VA claimants. Nor would it be consistent with VA's legitimate interests in timely adjudicating claims and reducing claims backlogs.

#### *Committee bill*

Section 310 would require that claimants who have submitted an incomplete application under section 5102(b) of title 38 and who have been notified that information is required to complete the application submit the information within one year of the date of notification or else no benefit would be paid by reason of the application. It would also clarify section 5103(b) by stating that that subsection would not be construed to prohibit VA from making a decision on a claim before the expiration of the one-year period. The Committee emphasizes that, in cases where VA has notified claimants of information or evidence necessary to substantiate their claims and no information or evidence is received within a reasonable period, VA may still, under the Committee Bill language, make a decision on the claim. In such cases, the one-year time period would still enable a claimant to submit the requested information or evidence and if benefits are granted on readjudication, assign an effective date of award as if VA had not made the initial decision.

*Section 311: Clarification of applicability of prohibition on assignment of veterans benefits to agreements on future receipt of certain benefits*

*Background*

Section 5301 of title 38, United States Code, prohibits the assignment of VA benefits and exempts such benefits from taxation and from the claims of creditors. Despite this prohibition, the Committee is informed that some companies offer up-front cash payments in return for future payments of veterans' disability compensation. Worse, Senator Bill Nelson testified at the Committee's July 10, 2003, hearing that such "up-front" payments typically amount to pennies-on-the-dollar compared to forfeited compensation payments. The National Consumer Law Center, in a report highlighting consumer scams targeted at veterans, concluded that such arrangements are illegal under existing law. Nonetheless, they apparently persist.

*Committee bill*

Section 311 would clarify current statutory language prohibiting the assignment of benefits and specify that any agreement under which a VA beneficiary might purport to transfer to another person or entity the right to receive direct or indirect payments of compensation, pension, or DIC benefits shall be deemed to be a prohibited assignment. Section 311 would also make it clear, however, that such prohibitory language would not bar loans to VA beneficiaries which might be repaid with funds derived from VA so long as each periodic payment made under the loan is separately and voluntarily executed by the beneficiary at the time the payment is made. This language is intended to make clear that the reach of section 311 is limited, and does not hamper veterans' access to credit from legitimate sources. The Committee expects that VA will continue its outreach efforts to notify veterans that benefit assignment schemes are not only inadvisable, they are legally unenforceable.

*Section 312: Three-year extension of income verification authority*

*Background*

Section 5317 of title 38, United States Code, directs VA to notify applicants for needs-based VA benefits—e.g., VA pension—that information collected from the applicants may be compared with income-related information obtained by VA from the Internal Revenue Service and the Department of Health and Human Services. The authority of the VA Secretary to obtain such information expires on September 30, 2008.

Section 6103(l)(7)(D)(viii) of the Internal Revenue Code authorizes the release of income information by the Internal Revenue Service to VA. This authority expires on September 30, 2008.

*Committee bill*

Section 312 would extend until September 30, 2011, the authority of the VA Secretary to obtain income information under section 5317 of title 38, and the authority of the Internal Revenue Service

to share income information under section 6103(l)(7)(D)(viii) of the Internal Revenue Code.

*Section 313: Forfeiture of benefits for subversive activities*

*Background*

Section 6105 of title 38, United States Code, provides that individuals convicted of any of several enumerated offenses relating to subversive activities shall forfeit their claims to VA benefits.

*Committee bill*

Section 313 would expand the listing of criminal activities in section 6105 which would give rise to the forfeiture of VA benefits. Included would be offenses involving the use of biological or chemical weapons, offenses involving transactions in nuclear materials, and genocide, the use of weapons of mass destruction, and acts of terrorism transcending national boundaries.

*Section 314: Clarification of notice of disagreement for appellate review of Department of Veterans Affairs activities*

*Background*

Claimants for VA benefits who disagree with an initial decision rendered by VA may initiate an appeals process by submitting a written notice of disagreement (hereinafter, "NOD") within one year after the claimant was notified of the initial decision. Section 7105(b) of title 38, United States Code, states that an NOD "must be in writing and filed with the activity which entered the determination with which disagreement is expressed." Upon the timely filing of an NOD, the VA is required to provide appellate review of its initial benefits rating decision.

VA has promulgated regulations to implement section 7105 which state that "while special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with the determination and desire for appellate review." 38 CFR §20.201 (2002). In 2000, the U.S. Court of Appeals for Veterans' Claims held in *Gallegos v. Gober*, 14 Vet. App. 50 (2000), that VA's regulation was invalid because it required more of the claimant than was required by statute. However, the U.S. Court of Appeals for the Federal Circuit reversed CVAC's decision, see *Gallegos v. Principi*, 283 F.3d 1309 (Fed. Cir. 2002), finding that VA was entitled to deference in promulgating this regulation because Congressional intent was unclear.

*Committee bill*

Section 314 would clarify section 7105(b) by requiring that VA deem any written document which expresses disagreement with a VA decision to be an NOD unless VA finds that the claimant has disavowed a desire for appellate review. This section would be effective with respect to documents filed on or after the date of enactment, and with respect to documents filed before the date of enactment and not treated by the VA as an NOD pursuant to part 20.201 of title 38, Code of Federal Regulations. Furthermore, a document filed as an NOD after March 15, 2002, and rejected by the Secretary as insufficient would, at VA motion or at the request of a claimant within one year of enactment, be deemed to be an NOD

if the document expresses disagreement with a decision and VA finds that the claimant has not disavowed a desire for appellate review.

*Section 321: Rate of payment of benefits for certain Filipino veterans and their survivors residing in the United States*

*Background*

Section 107 of title 38, United States Code, specifies that World War II service by Filipinos in the organized military forces of the Commonwealth of the Philippines (the so-called Philippine Commonwealth Army), including service in organized guerilla forces under U.S. command, shall be considered to be active service in U.S. forces for purposes of eligibility for veterans benefits, but only as provided by law. Similarly, that statute specifies that service as a so-called new Philippine Scout under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 will be considered to be active service in U.S. forces for purposes of veterans benefits, but only as specified by law. Under the terms of section 107, WWII veterans of the Philippine Commonwealth Army and recognized guerilla forces (and their spouses and dependent children) are eligible for, among other benefits, VA disability compensation and VA dependency and indemnity compensation. For Commonwealth Army veterans residing outside the United States, such benefits are payable at the rate of \$.50 for each dollar of benefit that would otherwise be paid. For Commonwealth Army veterans (or their spouses and dependent children) legally residing in the United States, however, compensation is payable at the full dollar rate, but DIC benefits are only payable at the \$.50-on-the-dollar rate. Veterans of the new Philippine Scouts (or their spouses and dependent children) are also eligible for compensation and DIC benefits under section 107, but both benefits are paid on a \$.50-on-the-dollar basis whether the former new Philippine Scout resides in the United States or elsewhere.

By letter dated May 12, 2003, VA Secretary Anthony J. Principi proposed legislation (S. 1213) on behalf of the Administration to modify the above-summarized statute, stating as follows:

These limitations on benefit payments to certain Filipino beneficiaries were intended to reflect the differing economic conditions in the Philippines and the United States.  
\* \* \* Through the years, numerous Filipino veterans and their dependents and survivors have emigrated to this country, and many have become permanent residents or citizens. It became evident that the policy considerations underlying the restrictions on payment of compensation and DIC to the affected individuals are no longer relevant in the case of those who reside in the United States.

*Committee bill*

Sections 321 would make Commonwealth Army veteran spouses and dependent children who are legally residing in the United States eligible for DIC at the full dollar rate. It would also make new Philippine Scout veterans (and their spouses and dependent children) who are legally residing in the United States eligible for compensation and DIC at the full dollar rate.

*Section 322: Burial benefits for new Philippine Scouts residing in the United States*

*Background*

As is discussed above, WWII veterans of the Philippine Commonwealth Army, recognized guerilla forces, and former new Philippine Scouts are eligible for some—but not all—VA benefits. Commonwealth Army and guerilla force veterans are eligible for burial in VA national cemeteries; former new Philippine Scouts are not. Similarly, Commonwealth Army and guerilla force veterans are eligible for VA monetary burial benefits (at a full dollar rate if they were residing, at death, in the U.S.; otherwise, at a \$.50-on-the-dollar rate); former new Philippine Scouts are not.

*Committee bill*

Section 322 would grant to former new Philippine Scouts who are residents of the United States at death eligibility for national cemetery burial. In addition, it would grant to former new Philippine Scouts who legally reside in the United States eligibility for cash burial benefits at the full dollar rate.

*Section 323: Extension of authority to operate regional office in the Philippines*

*Background*

Section 315(b) of title 38, United States Code, authorizes VA to maintain a regional office in the Republic of the Philippines until December 31, 2003. VA has determined that it would be more costly, and less effective, to administer veterans' assistance activities in the Philippines through a Federal Benefits Unit attached to the Department of State than to maintain a VA regional office.

*Committee bill*

Section 323 would authorize VA to maintain a regional office in the Republic of the Philippines until December 31, 2008.

*Section 331: Dose reconstruction program of Department of Defense*

*Background*

Section 3.311 of title 38, Code of Federal Regulations, sets out procedures for the adjudication of claims by VA for benefits premised on a veteran's exposure to ionizing radiation in service. For veterans who claim radiation exposure due to participation in nuclear atmospheric testing from 1945 through 1962, or due to occupation duty in Hiroshima and Nagasaki prior to July 1, 1946, dose data are requested from DoD. DoD's Defense Threat Reduction Agency (hereinafter, "DTRA") pays a private contractor to estimate radiation exposure through a process called radiation dose reconstruction. VA relies on radiation dose reconstruction estimates to determine whether diseases suffered by radiation-exposed veterans are plausibly related to given levels of radiation exposure.

Section 305 of Public Law 106-419 mandated that the Secretary of Defense contract for a report from the NAS to assess the accuracy of dose reconstruction estimates provided by DTRA and the overall validity of the radiation dose reconstruction process. The report, released on May 8, 2003, concluded that the radiation dose re-

construction program often underestimates exposure due to faulty or questionable assumptions about troop location and average dose readings contained on film badges. The report also determined that the contractor which provides the estimates for DTRA could benefit from the implementation of a quality control program. Finally, the report recommended the creation of an independent oversight system in order to monitor the radiation dose reconstruction program.

*Committee bill*

Section 331 would require VA and DoD to review, and report on, the mission, procedures, and administration of the radiation dose reconstruction program. It would also require VA and DoD to establish an advisory board to oversee the program. It is not the Committee's intent that VA and DoD duplicate the work of the NAS study. It does intend, however, that the agencies implement corrective actions recommended by the NAS report, and put into place an ongoing oversight and review program.

*Section 332: Study on disposition of Air Force Health Study*

*Background*

In the late 1970's, Congress urged the DoD to conduct an epidemiologic study of veterans of "Operation Ranch Hand," the activity responsible for aerial spraying of herbicides during the Vietnam War. In response, the Air Force Health Study (hereinafter, "AFHS") was initiated in 1982 to examine the effects of herbicide exposure and health, mortality, and reproductive outcomes in veterans of Operation Ranch Hand. The study will conclude in 2006.

Over the course of Operation Ranch Hand study, numerous medical documents, biological samples, and computer records have been collected on Ranch Hand participants and their family members. It is anticipated that these records and samples will no longer be maintained once the study is concluded.

*Committee bill*

Section 332 would direct VA to enter into an agreement with NAS under which NAS would report on the following: (1) the scientific merit of retaining AFHS data after the Ranch Hand study is terminated; (2) obstacles to retaining the AFHS data which may exist; (3) the advisability of providing independent oversight of the data; (4) the advisability and prospective costs of extending the study, and the identity of an entity which would be suited to continue the study; and (5) the advisability of making lab specimens from the study available for independent research.

*Section 333: Funding of Medical Follow-Up Agency of Institute of Medicine of National Academy of Sciences for Epidemiological Research on members of the Armed Forces and Veterans*

*Background*

The Medical Follow-Up Agency (hereinafter, "MFUA") is a panel of the Institute of Medicine which researches military health issues. MFUA studies are relied upon by VA to evaluate whether specific environmental exposures during service might have long-term health effects, and whether such effects might suggest a need for veterans' benefits, new treatments, or further research. Public

Law 102–585 requires that VA and DoD each contribute \$250,000 in annual core funding to MFUA for a period of 10 years.

At the Committee’s July 10, 2003, hearing, VA Under Secretary Cooper was very direct about the importance of MFUA’s studies to VA and veterans. He stated as follows: “In short, the MFUA is a critical asset for VA.”

*Committee bill*

Section 333 would mandate VA and DoD funding for MFUA, at current levels, from fiscal year 2004 through 2013.

*Section 341: Four-year extension of advisory Committee on Minority Veterans*

*Background*

Section 544 of title 38, United States Code, mandates that VA establish an Advisory Committee on Minority Veterans. The VA Secretary must, on a regular basis, consult with and seek the advice of the Advisory Committee with respect to issues relating to the administration of benefits for minority group veterans. The Secretary must also consult with and seek the advice of the Committee with respect to reports and studies pertaining to such veterans, and the needs of such veterans for compensation, health care, rehabilitation, outreach, and other benefits and programs administered by the VA. The Advisory Committee is required to submit an annual report providing its assessment of the needs of minority veterans, VA programs designed to meet those needs, and any recommendations the Advisory Committee considers appropriate. The authorization for the Advisory Committee expires on December 31, 2003.

*Committee bill*

Section 341 would extend the authorization of the Advisory Committee on Minority Veterans until December 31, 2007.

*Section 342: Veterans’ Advisory Committee on Education*

*Background*

Section 3692 of title 38, United States Code, authorizes the establishment in VA of the Veterans’ Advisory Committee on Education, and specifies that Advisory Committee members shall include veterans representative of each war and peacetime era beginning with World War II. The authorization for the Advisory Committee is scheduled to expire on December 31, 2003.

*Committee bill*

Section 342 would extend the Advisory Committee’s authorization through the year 2013. Section 342 would also maintain the existing requirement that the Advisory Committee’s membership include veteran-representatives drawn from each war and peacetime era, but only as practicable.

*Section 343: Temporary authority for performance of medical disabilities examinations by contract physicians*

*Background*

In order that VA might determine the type and severity of disabilities of veterans filing for VA compensation or pension benefits, VA often requires thorough medical disability examinations. Because these exams form the basis of disability ratings, their accurate and timely completion is essential. The majority of the approximately 400,000 disability exams requested yearly are performed by staff of VA's Veterans Health Administration (hereinafter, "VHA").

In order that the effectiveness of the private sector's ability to perform specialized disability examinations might be gauged, section 504 of Public Law 104-275 authorized a contract disability examination pilot program to be carried out through ten VA regional offices. Currently, one contractor—QTC Management, Inc.—performs all of the examinations under the pilot program. About half of the examinations performed at the ten regional offices are performed by contract physicians; the other half are performed by VHA staff.

The pilot program has been judged a successful complement to VHA-provided examinations. The 2001 report issued by the VA Claims Processing Task Force entitled VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs (October 2001), gave high marks to the contractor's performance and recommended that the contract disability examination pilot program be expanded. The report stated as follows: "The quality of QTC Management exams has been reported to exceed a 99 percent adequacy rate, and the Task Force found high approval from Regional Office employees. Reported medical examination timeliness was within contract compliance with positive feedback in customer service surveys." *Id.* at 70.

Veterans groups are also pleased with the program's performance. The Independent Budget for Fiscal Year 2004, a product of four major veterans' service organizations—AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars—stated the following regarding the pilot program:

Experience gained from a pilot project and a contract authorized by Public Law 104-275 demonstrates that a private contractor can economically provide adequate and timely disability examinations to veterans at locations near their homes with a high level of veteran satisfaction. Authority for contract examinations at all its regional offices would allow VA to improve claims processing nationwide.

The Independent Budget for Fiscal Year 2004: A Comprehensive Budget and Policy Document Created by Veterans for Veterans (2003) at 27. The American Legion, in testimony given by Ms. Cathleen Wiblemo at the Committee's hearing on July 28, 2003, also expressed its desire to see the contract medical examination authority expanded and made permanent.

*Committee bill*

Section 343 would authorize VA, using funds subject to appropriation, to contract for disability examinations from non-VA providers at all VA regional offices. Such examinations would be conducted pursuant to contracts entered into and administered by the Under Secretary for Benefits. The Secretary's authority under this section would expire on December 31, 2009. No later than four years after the section's enactment, the Secretary would be required to submit a report assessing the cost, timeliness, and thoroughness of disability examinations performed under this section. VA's existing authority to contract for medical exams at ten regional offices, paid out of the compensation and pension account, would continue in force notwithstanding the enactment of section 343.

The Committee expects that the expanded contract authority specified in this provision would serve as a complement to, and not a substitute for, examinations performed by VHA staff. The Committee is aware of the tremendous backlog of patients seeking medical care at many VA medical centers and clinics and views the expanded contract authority provided by this section, if used judiciously, as one way VA may free VHA resources to focus on the provision of direct medical care to veterans.

*Section 344: Technical amendment**Background*

Section 403 of the Homeland Security Act of 2002, Public Law 107-296, transferred the functions, personnel, assets, and liabilities of the United States Coast Guard from the Department of the Transportation to the newly-created Department of Homeland Security.

Section 1974(a)(5) of title 38, United States Code, specifies the officials who shall be members of VA's Advisory Council on Servicemembers' Group Life Insurance. Among the officials listed is the Secretary of Transportation. As was stated in H. Report No. 91-1025 at 3 accompanying the legislation, Public Law 91-291 (1970), which added The Department of Transportation to the listing of agencies specified in section 1974, "the Secretary of Transportation [is added] to the Advisory Council of SGLI since that official now has responsibility for the Coast Guard."

*Committee bill*

Section 344 of the Committee bill substitutes "Secretary of Homeland Security" for "Secretary of Transportation" in 38 U.S.C. §1974(a)(5). The Secretary of Homeland Security now has responsibility for the Coast Guard.

## COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (hereinafter, "CBO"), estimates that enactment of the Committee bill would reduce direct spending for veterans programs by \$346 million in 2004, increase direct spending by \$2 million over the 2004-2008 period, and reduce direct spending by \$7 million over the 2004-2013 period. In addition,

CBO estimates that implementing the Committee bill would cost \$129 million in 2004 and almost \$1.4 billion over the 2004–2008 period, assuming appropriation of necessary amounts. Enactment of the Committee bill would not affect the budgets of state, local, or tribal governments.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 16, 2003.*

Hon. ARLEN SPECTER,  
*Chairman, Committee on Veterans' Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has prepared the enclosed cost estimate for S. 1132, the Veterans' Benefits Enhancements Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*Veterans' Benefits Enhancements Act of 2003*

Summary: S. 1132 would affect several veterans programs, including housing, readjustment benefits, compensation, pensions, burial, and health care. CBO estimates that enacting this legislation would reduce direct spending for veterans programs by \$46 million in 2004, increase direct spending by \$2 million over the 2004–2008 period, and reduce direct spending by \$7 million over the 2004–2013 period. In addition, CBO estimates that implementing S. 1132 would cost \$129 million in 2004 and almost \$1.4 billion over the 2004–2008 period, assuming appropriation of the necessary amounts.

S. 1132 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1132 is shown in Table 1. This estimate assumes that the legislation will be enacted by the end of calendar year 2003. The costs of this legislation fall within budget functions 700 (veterans benefits and services), and 050 (national defense).

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 1132

[By fiscal year, in millions of dollars]

	2004	2005	2006	2007	2008
CHANGES IN DIRECT SPENDING <sup>1</sup>					
Estimated Budget Authority .....	– 46	*	18	22	7
Estimated Outlays .....	– 46	*	18	22	7
CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>1</sup>					
Estimated Authorization Level .....	130	300	312	325	334
Estimated Outlays .....	130	282	303	323	333

<sup>1</sup> Five-year costs in the text differ slightly from a summation of the annual costs listed here because of rounding.

Note.—\* = Savings of less than \$500,000.

Basis of estimate: S. 1132 would increase direct spending by \$2 million over the next five years, and would cost about \$1.4 billion in new discretionary spending, assuming appropriation of the necessary amounts.

*Direct spending—summary*

S. 1132 would affect direct spending in veterans' programs for housing, readjustment benefits, compensation, pensions, and burial. Table 2 summarizes those effects, and the individual provisions that would affect direct spending are described below. In total, CBO estimates that enacting this legislation would reduce direct spending for veterans programs by \$46 million in 2004, increase direct spending by \$2 million over the 2004–2008 period, and reduce direct spending by \$7 million over the 2004–2013 period.

*Direct spending—housing*

Three sections of the bill would affect direct spending on veterans' housing programs. Together, CBO estimates that enacting these provisions would lower direct spending by \$68 million in 2004, \$257 million over the 2004–2008 period, and \$480 million over the 2004–2013 period. (Higher savings would occur in 2004 than in later years because of lower interest rate assumptions for that year compared to those projected for the 2005–2013 period.) In preparing this estimate, CBO accounted for the interactions between the individual provisions; savings could be lower if only one or two of these provisions were enacted. Costs or savings for each individual provision, estimated as if they were enacted alone, are described below.

TABLE 2.—ESTIMATED CHANGES IN DIRECT SPENDING UNDER S. 1132

[By fiscal year, outlays in millions of dollars]

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
HOUSING										
Spending Under Current Law .....	567	552	535	547	560	572	588	601	917	938
Proposed Changes .....	–68	–54	–42	–45	–48	–50	–50	–53	–34	–36
Spending Under S. 1132 .....	499	498	493	502	512	522	538	548	883	902
VETERANS' READJUSTMENT BENEFITS										
Spending Under Current Law .....	2,575	2,749	2,923	3,100	3,259	3,406	3,543	3,696	3,820	3,947
Proposed Changes .....	10	42	48	49	49	50	50	50	50	51
Spending Under S. 1132 .....	2,585	2,791	2,971	3,149	3,308	3,456	3,593	3,746	3,870	3,998
COMPENSATION, PENSION, AND BURIAL BENEFITS <sup>1</sup>										
Spending Under Current Law .....	29,796	34,353	32,288	29,992	33,121	33,621	34,170	37,661	33,048	36,743
Proposed Changes .....	12	12	12	18	6	6	–3	–7	–9	–27
Spending Under S. 1132 .....	29,808	34,365	32,300	30,010	33,127	33,627	34,167	37,654	33,039	36,716
Total Proposed Changes <sup>1</sup> .....	–46	*	18	22	7	6	–3	–10	7	–12

<sup>1</sup> Five- and 10-year costs in the text differ slightly from a summation of the annual costs shown here because of rounding.  
Note.—\* = Savings of less than \$500,000.

**Reinstatement of Vendee Home Loan Program.** Section 308 would reinstate the vendee home loan program which was discontinued by the Department of Veterans Affairs (VA) on January 31, 2003. Before that date, when a veteran defaulted on his mortgage and the home went into foreclosure, VA often acquired the property and issued a new direct loan when the property was sold. These loans are called vendee loans. CBO estimates that reinstating the program would save VA \$357 million over the 2004–2013 period,

or roughly \$35 million a year. The bill also would require VA to finance between 50 percent and 85 percent of such sales through the vendee loan program. Before the program was terminated, VA financed roughly 60 percent of such sales with vendee financing and CBO estimates that it would continue to do so under the bill. The estimated savings for this provision is the net effect of three individual program effects (two with savings and one with costs), as explained below.

Based on historical data, CBO estimates that under the bill roughly 14,000 vendee loans would be made each year with an average loan amount of \$98,000. Vendee loans lower the subsidy cost of the VA home loan program in two ways. First, VA receives more money for homes sold with vendee financing than those sold with other financing (16 percent more in 2002). Since the proceeds from these home sales are considered recoveries of losses from the guaranteed loans that were foreclosed, enacting this section would increase recoveries and therefore lower subsidy costs in the guaranteed loan portfolio. CBO estimates that VA would save an average of \$68 million a year in guaranteed loan subsidies over the 2004–2013 period. Second, because vendee loans have lower prepayment and default rates than other direct loans made by VA, this provision also would lower subsidy costs for direct loans by an average of \$28 million a year over the 2004–2013 period. Finally, before the program was terminated in 2003, VA sold most vendee loans on the secondary mortgage market and guaranteed their timely repayment; CBO estimates that it would continue to do so under the bill. Based on historical data, CBO estimates that VA would sell an average of \$1.2 billion in vendee loans annually, at a subsidy cost of roughly \$60 million a year.

**Increases in Loan Fees.** Section 307 would increase the fee charged for repeated use of the home loan benefit (when a veteran uses the benefit more than once) by 50 basis points for the 2005–2011 period. CBO estimates that this provision would reduce direct spending by \$20 million in 2005 and \$139 million over the 2005–2011 period.

**Loans for Manufactured Homes and Lots.** Under current law, VA has the authority to guarantee loans for the purchase of manufactured homes or for the purchase of lots for existing or new manufactured homes. Section 306 would terminate this authority on December 31, 2003. In the last five years, VA has guaranteed only one loan for a manufactured home at a subsidy cost of a few hundred dollars. CBO estimates this provision would reduce direct spending by less than \$500,000 a year over the 2004–2013 period.

*Direct spending—veterans' readjustment benefits*

S. 1132 contains several provisions that would affect direct spending for education benefits for veterans and their survivors and dependents, and for other readjustment benefits (see Table 3). Together these provisions would increase direct spending by about \$10 million in 2004, \$200 million over the 2004–2008 period, and \$450 million over the 2004–2013 period.

TABLE 3.—ESTIMATED CHANGES IN DIRECT SPENDING FOR VETERANS' READJUSTMENT BENEFITS UNDER S. 1132

[By fiscal year, outlays in millions of dollars]

Description of provisions	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Survivors' and Dependents' Education Assistance .....	10	43	50	53	55	57	59	61	63	65
Education Cost-of-Living Adjustments .....	0	-1	-2	-4	-6	-7	-9	-11	-13	-14
Other Provisions .....	*	*	*	*	*	*	*	*	*	*
<b>Total Changes in Veterans' Readjustment Benefits .....</b>	<b>10</b>	<b>42</b>	<b>48</b>	<b>49</b>	<b>49</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>51</b>

Note.—\* = Less than \$500,000.

**Survivors' and Dependents' Education Assistance.** Effective July 1, 2004, section 104 would increase the survivors' and dependents' education benefit to \$788 a month, an increase of 13 percent over the current rate. Based on our analysis of the effects of previous benefit increases, CBO assumes this hike in the benefit level would increase the number of beneficiaries from an average of 53,000 a year over the 2004–2013 period to 54,000, and would enable more of these students to attend school full time rather than part time. CBO estimates enacting this provision would increase direct spending for readjustment benefits by \$10 million in 2004, \$211 million over the 2004–2008 period, and \$516 million over the 2004–2013 period.

**Education Cost-of-Living Adjustments (COLA).** Section 304 would reduce outlays for education benefits by changing the method for calculating the monthly stipends paid under the Montgomery GI Bill and Survivors' and Dependents' Education Assistance programs. Under current law, the benefit amounts are rounded to the nearest dollar. Under section 304, after calculating the annual COLA increase, the monthly rates would each be rounded down to the next lower whole dollar. There would be no savings in 2004, as the benefit rates for this year have already been set. Based on our projections of the number of beneficiaries and the number of payments made each year, CBO estimates that enacting this section would result in direct spending savings of \$13 million over the 2005–2008 period and \$67 million over the 2005–2013 period.

**Other Provisions.** The following provisions would have an insignificant budgetary impact on direct spending for readjustment benefits:

- Section 103 would extend the period of eligibility for survivors and dependents education benefits for those members of the National Guard who are ordered involuntarily to full-time National Guard duty under section 502(f) of Title 32 of the U.S. Code. This expanded eligibility would be retroactive to September 11, 2001. Based on information from VA and Department of Defense (DoD), CBO estimates that very few National Guard members would be affected by this change and that the cost would be less than \$500,000 over the 2004–2013 period.

Section 305 would repeal the Education Loan Program and forgive any remaining debts owed to the fund. No loans have been made through this fund in 10 years and the currently outstanding debt is about \$100,000. Forgiving the remaining debt would constitute a loan modification, which would increase direct spending by less than \$100,000 (in fiscal year 2004, the assumed year of enactment).

*Direct spending—compensation, pensions, and burial benefits*

Several sections of the bill would affect spending for veterans' disability compensation, pensions, and burial benefits (see Table 4). Some provisions affecting burial benefits or disability compensation would increase direct spending while other provisions would reduce such spending. On balance, CBO estimates that enacting those provisions would increase direct spending by \$12 million in 2004, \$61 million over the 2004–2008 period, and \$24 million over the 2004–2013 period.

**Extension of Provision to Round-Down COLA.** Section 301 would extend through 2013 a provision of law that requires the increased monthly rates due to the COLA to be rounded down to the next lower whole dollar. This provision of law applies to both disability compensation and dependency and indemnity compensation payments. These provisions are currently due to expire at the end of 2011. Based on projections of the number of beneficiaries and number of payments made each year, CBO estimates that this section would result in direct spending savings of \$50 million over the 2012–2013 period.

**Disability Benefits for Filipino Veterans.** Section 321 would expand benefits for Filipino veterans who served in the Philippine Commonwealth Army and the New Philippine Scouts, and their survivors. In sum, CBO estimates that enacting section 321 would cost \$4 million in 2004, \$20 million over the 2004–2008 period, and \$44 million over the 2004–2013 period.

**Dependency and Indemnity Compensation (DIC).** Under current law, surviving spouses and dependents of Filipino veterans who served in the Philippine Commonwealth Army or the New Philippine Scouts during World War II and live in the United States are eligible to receive half the amount of the DIC payment that survivors of veterans of the U.S. armed forces receive. Section 321 of the bill would require that these survivors be paid at the full DIC rate.

TABLE 4.—ESTIMATED CHANGES IN DIRECT SPENDING FOR VETERANS' COMPENSATION, PENSIONS, AND BURIAL BENEFITS UNDER S. 1132

[By fiscal year, outlays in millions of dollars]

Description of provisions	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Extension of Provision to Round Down Cost-of-Living Adjustments .....	0	0	0	0	0	0	0	0	-16	-34
Disability Benefits for Filipino Veterans .....	4	4	4	4	4	4	5	5	5	5
Extension of Income Verification .....	0	0	0	0	0	-5	-10	-14	0	0
Alternate Beneficiaries .....	0	0	0	11	1	6	1	1	1	1
Markers for Privately Marked Graves .....	7	7	7	2	0	0	0	0	0	0
Repeal of Limitation on Payments of Accrued Benefits .....	1	1	1	1	1	1	1	1	1	1
Burial Plot Allowance .....	*	*	*	*	*	*	*	*	*	*
Spina Bifida Benefits .....	*	*	*	*	*	*	*	*	*	*
Disability Benefits for Former Prisoners of War .....	*	*	*	*	*	*	*	*	*	*
<b>Total Changes in Compensation, Pensions, and Burial Benefits*</b> .....	<b>12</b>	<b>12</b>	<b>12</b>	<b>18</b>	<b>6</b>	<b>6</b>	<b>-3</b>	<b>-7</b>	<b>-9</b>	<b>-27</b>

<sup>1</sup> Five- and 10-year costs in the text differ slightly from a summation of the annual costs shown here because of rounding.

Note.—\* = Less than \$500,000.

Based on information provided by VA, CBO estimates that about 420 survivors of Filipino veterans who served in the Philippine

Commonwealth Army or the New Philippine Scouts currently receive DIC payments at the 50 percent rate and that about 120 additional survivors would become eligible for these payments over the 2004–2013 period. CBO assumes that the survivors of these Filipino veterans received about half of the average DIC payment in fiscal year 2002. (The average DIC payment in fiscal year 2002 was \$12,244.) After adjusting for cost-of-living increases, CBO estimates that, under the bill, the average DIC payment to these survivors would be \$15,157 for 2004, an increase of \$7,578. After accounting for the expected mortality of these veterans and their eligible survivors, CBO estimates that enacting this provision would raise direct spending for DIC by about \$3 million in 2004, \$18 million over the 2004–2008 period, and about \$40 million over the 2004–2013 period.

*Disability Compensation Benefits.* Under current law, former New Philippine Scouts residing in the United States are eligible to receive half the amount of disability compensation currently available to veterans of the U.S. armed forces. Section 321 would increase disability compensation for these veterans to the full rate. Based on information provided by VA, CBO estimates that there are currently about 100 former New Philippine Scouts residing in the United States today. In fiscal year 2002, the average disability compensation payment was \$7,334. CBO assumes that eligible former New Philippine Scouts received about half that amount. After adjusting for cost-of-living increases, CBO estimates that the average disability compensation payment to these veterans would total \$8,531 for fiscal year 2004, an increase of \$4,265 from what they would receive under current law. After accounting for expected mortality rates, CBO estimates that enacting this provision would increase direct spending for veterans' disability compensation by less than \$500,000 in 2004, about \$2 million over the 2004–2008 period, and about \$3 million over the 2004–2013 period.

*Extension of Income Verification.* Section 312 would extend authorities under current law that allow VA to acquire information on income reported to the Internal Revenue Service (IRS) to verify income reported by recipients of VA pension benefits. The authorization allowing the IRS to provide income information to VA is scheduled to expire on September 30, 2008, and the authorization allowing VA to acquire the information is also scheduled to expire on that date. Section 312 would extend these authorities through September 30, 2011, for both the IRS and VA.

According to VA, the department saved approximately \$4 million in pension benefit overpayments from verifying veterans' incomes in 2002 and an average of \$5 million over the 1997–2002 period. Using that information, CBO estimates that enacting section 312 would result in direct spending savings of \$29 million over the 2009–2011 period.

*Alternate Beneficiaries.* Section 102 would allow payments of proceeds to alternate beneficiaries of certain VA life insurance policies. U.S. Government Life Insurance (USGLI) and National Service Life Insurance (NSLI) are programs that were established during World War I and World War II to provide life insurance coverage to servicemembers, many of whom could not afford the high premiums associated with commercial policies. Under current law, there is no time limitation within which a named beneficiary is re-

quired to file a claim. Because these policies are old, VA sometimes has great difficulty finding the individuals to whom the proceeds should be paid. Moreover, an alternate beneficiary cannot be paid unless VA determines that the principal beneficiary died before the policyholder. VA is required to hold the unclaimed funds indefinitely as a liability to honor any possible future claims.

Section 102 would allow VA to pay USGLI or NSLI proceeds to a named alternate beneficiary if the principal beneficiary has not made a claim within two years after the death of the policyholder or October 1, 2004, whichever is later. If no claim has been made by any named beneficiary within four years of the policyholder's death or bill enactment, the Secretary may pay the proceeds to any person deemed entitled to the funds.

VA estimates there are currently about 4,000 policies with no locatable primary beneficiary. VA also predicts that an additional 200 policies will require settlement each year where the primary beneficiaries cannot be found. According to VA, the current policies have an average face value of \$5,750 and new policies would have an average face value of \$9,600. CBO assumes that VA will be able to find another beneficiary for two-thirds of the policies and that two-thirds of these will be paid after two years with the other third paid after four years. CBO estimates the cost of section 102 would be \$11 million in 2007, \$12 million over the 2007–2008 period, and \$22 million over the 2007–2013 period. (CBO also estimates that implementing this section would increase spending subject to appropriation by less than \$100,000 a year over the 2004–2008 period, assuming appropriation of the estimated amounts. CBO's estimate of those costs is discussed below under the heading of "Spending Subject to Appropriation.")

Markers for Privately Marked Graves. Under current law, veterans buried in a private cemetery may receive a second commemorative headstone or marker from VA if the veteran died on or after September 11, 2001. Veterans buried in national or state veterans' cemeteries automatically receive a commemorative headstone or marker. Under current law, this provision would expire on December 31, 2006. Section 204 would allow veterans who died on or after November 1, 1990, and are buried in a private cemetery, to receive a second commemorative headstone or marker from VA.

Based on data from VA regarding the number of veterans who died between November 1, 1990, and September 11, 2001 (about 6.4 million veterans), and the estimated number of veterans who receive casket burials (almost 67 percent), CBO estimates that about 230,000 requests for markers would be made over the next five years. The estimate reflects information from a VA study that showed only 27 percent of private cemeteries allow second markers and an assumption that only 20 percent of those eligible would request a marker. With an average cost of about \$100 for each marker, CBO estimates that this provision would increase direct spending for burial benefits by \$7 million in 2004 and \$23 million over the 2004–2007 period.

Repeal of Limitation on Payment of Accrued Benefits. Under current law, when an individual applies for benefits administered by VA, any benefits that are awarded are paid retroactive to the date of application. If the applicant dies before receiving his or her retroactive benefits, certain survivors can apply to receive up to two

years' worth of the unpaid benefits. VA refers to these benefits that are due but unpaid to deceased applicants as "accrued benefits."

Before December 2002, VA applied the two-year limit on accrued benefits to all cases in which the applicant died before receiving payment. On December 10, 2002, the United States Court of Appeals for Veterans Claims (CAVC) decided in *Bonny v. Principi* that the two-year limit applies differently to the following two groups:

- Applicants who die before VA makes the final decision on the application, and
- Applicants who die after VA makes the final decision on the application but before receiving payment.

CAVC ruled that if the applicant dies before receiving payment but after VA approves the claim, eligible survivors should receive the entire amount of the award due to the applicant. Survivors of applicants who die during the processing of the claim but before VA makes a final decision, however, are eligible for only two years of accrued benefits.

Section 105 would add surviving parents of children with spina bifida who claimed benefits according to definitions set forth in chapter 18 of Title 38, to the list of eligible survivors and would eliminate the two-year limit on accrued benefits for all eligible survivors, regardless of whether VA has made a final decision on the claim. Based on information provided by VA, CBO estimates that VA awards accrued benefits payments to about 3,700 survivors a year and that, under current law (reflecting the *Bonny* decision), about 18 percent or 670 of these cases would be paid the full amount. Based on information provided by VA, CBO estimates that no more than 10 percent of the roughly 3,000 remaining accrued benefits payments would reflect more than two years of unpaid benefits.

VA only tracks data on the number of claims processed for accrued benefits payments and is unable to identify the number of claims it approves, the type of benefit approved, or the amount of the average payment. Absent this information, CBO assumes that all accrued benefits payments would be for veterans disability compensation because the majority of applications for VA benefits are for such payments. We also assume that all accrued benefits would be paid at an average disability rating of 30 percent, consistent with average benefit payments for new compensation cases, and that, on average, each of these 300 cases would receive an extra six months worth of payments.

According to data provided by VA, in 2002 the average annual compensation payment for a disability rating of 30 percent was \$4,092. Such payments are adjusted annually for increases in the cost of living. Thus, CBO estimates that enacting section 105 would increase direct spending by about \$1 million in 2004, \$3 million over the 2004–2008 period, and \$7 million over the 2004–2013 period.

**Burial Plot Allowance.** Section 201 would extend eligibility for up to a \$300 burial plot allowance to veterans who are buried in state-owned cemeteries and served in the military during peacetime and veterans who were discharged from active military, naval, or air service for a service-connected disability. Under current law, veterans are eligible for this benefit if the veteran:

- Dies in a VA facility,
- Is eligible for compensation or pension payments when he or she dies,
- Was discharged from active duty for an injury incurred or aggravated on duty,
- Has no reachable next of kin or resources to provide for burial, or
- Is a veteran of any war.

According to VA, the department paid a burial plot allowance for about 11,000 veterans who were buried in state-owned cemeteries in 2002. Using information from VA on the projected number of veteran deaths over the 2004–2013 period and the number of veterans buried in state-owned cemeteries who did not qualify for this benefit under current law, CBO estimates that an additional 1,400 veterans on average would qualify for the benefit under section 201. Thus, CBO estimates that enacting this section would increase in direct spending by less than \$500,000 in 2004, about \$2 million over the 2004–2008 period, and about \$4 million over the 2004–2013 period.

**Spina Bifida Benefits.** Exposure to certain herbicides used by DoD during the Vietnam War from 1962 to 1971 has been associated with a range of diseases from cancer to birth defects. Under current law, children with spina bifida who were born to veterans of the Vietnam War are entitled to monetary allowances, vocational rehabilitation benefits, and medical benefits administered by VA. Section 101 would expand eligibility for these benefits to children with spina bifida who were born to veterans who served in the demilitarized zone (DMZ) in the Republic of Korea between January 1, 1967, and December 31, 1969.

According to DoD, herbicides were used in the DMZ in Korea in those years. DoD estimates that up to 78,000 veterans may have served in the demilitarized zone during that time period, but that the number of veterans exposed could be much lower.

According to VA, under current law the department provides benefits to about 1,100 children born to Vietnam veterans out of a total of about 3.1 million veterans who served within the borders of Vietnam. In 2002, the costs of benefits provided by VA to children with spina bifida born to Vietnam veterans ranged, depending on the severity of the disease, from \$2,736 to \$16,248 a year per child for disability compensation and, on average, about \$11,300 a year per child for medical benefits.

Based on VA's experience with benefits for children with spina bifida born to Vietnam veterans, CBO estimates that less than 15 children with spina bifida born to veterans who served in the DMZ between January 1, 1967, and December 31, 1969, would begin to receive benefits under section 101. CBO estimates that the increase in direct spending resulting from enacting section 101 would be less than \$200,000 in 2004, about \$1 million over the 2004–2008 period, and about \$2 million over the 2004–2013 period. (CBO estimates that implementing this section also would increase spending subject to appropriation by about \$1 million over the 2004–2008 period, assuming appropriation of the estimated amounts. CBO's estimate of those costs is discussed below under the heading of "Spending Subject to Appropriation.")

Disability Benefits for Former Prisoners of War (POWs). Under current law, VA generally deems a disability or disease to be service-connected for the purposes of disability compensation based on military medical records and physical examinations. Prior to July 18, 2003, for former POWs who were held captive for 30 days or more, VA followed a list of 15 diseases and disabilities that the department assumed were service-connected. Military medical records do not cover periods of captivity and may not provide adequate documentation for eligibility for disability compensation benefits. On July 18, 2003, VA issued a regulation amending Part 3 of Title 38 of the Code of Federal Regulations to include cirrhosis of the liver to the list of diseases for which entitlement to service-connection is presumed for former POWs.

Section 302 also would add cirrhosis of the liver to the list of presumed service-connected disabilities for former POWs who were held captive for 30 days or more. Since the regulation has already taken effect, this portion of the provision would have no cost.

Section 302 also would eliminate the requirement that a POW be held prisoner for 30 days or more to qualify for presumed service-connection for five of the 16 presumed service-connected disabilities included under current law—specifically, psychosis, any of the anxiety states, dysthymic disorder (or depressive neurosis), organic residuals of frostbite, and post-traumatic osteoarthritis. Based on information provided by VA, CBO estimates that of the 39,000 living former POWs, no more than 400 were held captive for less than 30 days. About 70 percent, or around 280, of these former POWs are already receiving disability compensation based on their eligibility as a veteran. Due to the small number of former POWs who would become eligible for the new benefit and the fact that many are already receiving disability compensation, CBO estimates that the increase in direct spending from eliminating the 30-day requirement for these five disabilities would be less than \$100,000 a year over the 2004–2013 period.

Clarification of Notice of Disagreement. Section 314 would clarify that a notice of disagreement for appellate review of VA activities must be filed within one year of when VA mailed the notification of the results of its initial review or determination to the veteran and must satisfy two requirements—the notice must be in writing and filed with the agency of original jurisdiction; and the notice must be filed by the claimant, the claimant's legal guardian, or legal representative. CBO cannot estimate the savings associated with enacting this provision because we have no basis on which to predict the number of veterans that might become ineligible to file for appellate review under this provision.

Other Provisions Affecting Spending for Compensation, Pension, and Burial Benefits. The following provisions would have an insignificant budgetary impact on direct spending for compensation, pension, and burial benefits:

- Section 310 would allow VA to close claims after a year if the veteran had not cooperated in providing needed information to continue a claim after being given notification by VA of incomplete or missing information. This provision would be effective as if enacted on November 9, 2000. CBO estimates that any savings in direct spending that would result from closing claims early would be insignificant.

- Under current law, a veteran who commits certain criminal acts loses eligibility for veterans' benefits that he or she would otherwise be due. Section 313 would include additional criminal acts to the list of crimes that would cause a veteran to lose eligibility for veterans' benefits—specifically, criminal acts involving chemical, biological, or nuclear weapons, genocide, and the murder of U.S. citizens outside of the United States. CBO estimates that any savings in direct spending that would result from not paying veterans who commit these crimes would be insignificant.

- Under current law, veterans who die of service-connected disabilities are eligible for a \$2,000 burial benefit. Veterans who receive compensation or pension benefits but die of a nonservice-connected condition are eligible for a \$300 burial and funeral expenses benefit and another \$300 allowance if the veteran is not interred in a cemetery that is under U.S. government jurisdiction. Veterans of the New Philippine Scouts are currently eligible for half of the burial benefit amounts provided to veterans of the U.S. armed forces. Under section 322, veterans of the New Philippine Scouts would receive burial and plot allowances at the full rate if they are naturalized U.S. citizens living in the United States. Based on information provided by VA, CBO estimates that only a handful of these veterans would become eligible for the increase in burial benefits each year. Thus, CBO estimates that enacting section 322 would have no significant effect on direct spending over the 2004–2013 period.

#### *Spending subject to appropriation*

Table 5 shows the estimated effects of S. 1132 on discretionary spending for veterans' programs. CBO estimates that implementing S. 1132 would increase discretionary spending for veterans benefits by \$130 million in 2004 and almost \$1.4 billion over the 2004–2008 period, assuming appropriation of the necessary amounts.

TABLE 5.—ESTIMATED CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 1132  
[By fiscal year, in millions of dollars]

Description of provisions	2004	2005	2006	2007	2008
<b>Examinations by Contract Physicians:</b>					
Estimated Authorization Level .....	125	261	272	284	296
Estimated Outlays .....	125	261	272	284	296
<b>State Cemetery Grants:</b>					
Estimated Authorization Level .....	0	33	34	35	35
Estimated Outlays .....	0	15	25	33	34
<b>Regional Office in Manila, Philippines:</b>					
Estimated Authorization Level .....	3	4	4	4	1
Estimated Outlays .....	3	4	4	4	1
<b>Spina Bifida Benefits:</b>					
Estimated Authorization Level .....	*	*	*	*	*
Estimated Outlays .....	*	*	*	*	*
<b>Other Provisions:</b>					
Estimated Authorization Level .....	1	1	1	1	1
Estimated Outlays .....	1	1	1	1	1
<b>Total Changes <sup>1</sup>:</b>					
Estimated Authorization Level .....	130	300	312	325	334
Estimated Outlays .....	130	282	303	323	333

<sup>1</sup> Five-year costs in the text differ slightly from a summation of the annual costs shown here because of rounding.

Note.—\* = Less than \$500,000.

**Examinations by Contract Physicians.** Section 342 would temporarily allow VA to contract with non-VA physicians to conduct examinations to determine the medical disabilities of veterans applying for compensation benefits. The authority would expire on December 31, 2009. Under current law, VA has the authority to contract with non-VA physicians to conduct these examinations at 10 benefit centers and VA expects to spend about \$50 million in 2003 for these examinations. The spending under current law for those examinations is considered direct spending.

Under the bill, VA would be allowed to contract with non-VA physicians for these exams at all of the 47 remaining centers, but all spending for these new contracts would be subject to appropriation. CBO assumes that the average cost for the new centers would be similar to the average cost for the 10 centers that currently contract with non-VA physicians. Assuming that the new contracts take effect in April 2004, CBO estimates that implementing this proposal would cost about \$125 million in 2004 and \$1.2 billion over the 2004–2008 period, assuming appropriation of the estimated amounts. If VA were to use non-VA physicians to conduct exams to determine the degree of disability in veterans seeking compensation benefits, VA physicians would be able to treat more veterans seeking medical care at VA facilities. Thus, CBO does not expect that using non-VA physicians to conduct those exams would result in any discretionary savings.

**State Cemetery Grants.** Current law authorizes VA to make grants to build and improve state veterans' cemeteries through fiscal year 2004. Section 203 would extend this authority indefinitely. CBO estimates that implementing this section would cost \$107 million over the 2005–2008 period, assuming appropriation of the necessary amounts.

**Regional Office in Manila, Philippines.** Section 323 would authorize VA to maintain the regional office located in Manila, through December 31, 2008. Under current law, the authorization for this regional office will expire on December 31, 2003. Based on information provided by VA, CBO estimates that implementing section 323 would cost \$3 million in 2004 and \$16 million over the 2004–2008, assuming appropriation of the necessary amounts.

**Spina Bifida Benefits.** Under current law, children with spina bifida who were born to veterans of the Vietnam War are entitled to medical benefits administered by VA. Section 101 would expand eligibility for these benefits to children with spina bifida who were born to veterans who served in the demilitarized zone in the Republic of Korea between January 1, 1967, and December 31, 1969. Based on VA's experience with benefits for children with spina bifida born to Vietnam veterans, CBO estimates that less than 15 children with spina bifida would begin to receive benefits under section 101. According to VA, the average annual cost for providing medical benefits to these children was about \$11,300 per child in 2002. Assuming appropriation of the estimated amounts, CBO estimates that implementing section 101 would cost less than \$200,000 in 2004 and about \$1 million over the 2004–2008 period.

**Other Provisions.** Other provisions in the bill would have an insignificant impact on discretionary spending. Taken together, CBO estimates that implementing all of them would cost about \$1 mil-

lion a year over the 2004–2008 period, subject to the availability of appropriated funds.

a. Section 102 would allow payments of proceeds to alternate beneficiaries of certain VA life insurance policies. Under current law, there is no time limitation within which a named beneficiary is required to file a claim. Because these policies are old, VA sometimes has great difficulty finding the individuals to whom the proceeds should be paid. Moreover, an alternate beneficiary cannot be paid unless VA determines that the principal beneficiary died before the policyholder. VA is required to hold the unclaimed funds indefinitely as a liability to honor any possible future claims. Based on data provided by VA, CBO estimates that VA would need to hire two additional employees to handle the larger caseload associated with paying claims to alternate beneficiaries of these insurance policy proceeds. Since the surplus from the insurance trust funds would cover almost all of the costs of new hires, CBO estimates this provision would cost less than \$10,000 a year.

b. Under current law, surviving spouses of veterans lose eligibility for burial in a national cemetery if they remarry. Surviving spouses can only regain eligibility if the subsequent remarriage ends in death of the subsequent spouse or divorce. Section 202 would change the eligibility requirements for surviving spouses so that remarriage would not affect their eligibility for burial in a national cemetery. This provision would apply to deaths occurring on or after the date of enactment of this act. CBO estimates that the potential increase in costs resulting from an increased number of burials in national cemeteries would be insignificant.

c. Section 303 would allow all former prisoners of war to receive free dental care from VA regardless of the length of their internment. Under current law, only those prisoners of war who were interned or detained for 90 days or more are eligible for free dental care from VA. Using data from VA and DoD, CBO estimates that in 2004 there will be about 36,000 former prisoners of war and of those about 5,000 were interned for less than 90 days. Many of those former prisoners of war are already eligible for dental care because of their service-connected disabilities. Accounting for those veterans, and based on the number of former prisoners of war who currently receive dental care from VA, CBO estimates that about 1,000 former prisoners of war would receive dental care from VA under this provision. Based on information from VA about the cost of providing dental care, CBO estimates that implementing this provision would cost less than \$500,000 in 2004 and would total about \$1 million over the 2004–2008 period, assuming appropriation of the estimated amounts.

d. U.S. veterans are eligible for burial in a national cemetery if they were discharged or separated from active duty under conditions other than dishonorable. Members of the armed forces who die on active duty and spouses and minor children of veterans are also eligible. Section 322 would extend this eligibility to veterans of the New Philippine Scouts and their dependents. Based on information provided by VA, CBO estimates that only a handful of these veterans and their dependents would request burial in a national cemetery each year. Thus, CBO estimates that this new eligibility would not lead to a significant increase in the number of burials in national cemeteries.

e. Section 333 would require both VA and DoD to make available \$250,000 in each fiscal year through 2013 to the National Academy of Sciences for the purposes of epidemiological research on members of the Armed Forces and veterans. CBO estimates that implementing this provision would cost \$500,000 in 2004 and \$2.5 million over the 2004–2008 period, assuming appropriation of the authorized amounts.

f. Section 341 would modify the charter of the Advisory Committee on Minority Veterans so that the committee would continue to operate until December 31, 2007. Under current law, the committee would cease to exist after December 31, 2003. Based on information from the General Services Administration's Federal Advisory Committee Database, CBO estimates that implementing this provision would cost about \$120,000 a year over the 2004–2008 period, assuming the availability of appropriated funds.

g. Section 342 would modify the charter of the Veterans' Advisory Committee on Education so that the committee would continue to operate until December 31, 2013. Based on information from the General Services Administration's Federal Advisory Committee Database, CBO estimates that implementing this provision would cost less than \$100,000 a year over the 2004–2013 period, assuming the availability of appropriated funds.

Intergovernmental and private-sector impact: S. 1132 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimates: On July 14, 2003, CBO transmitted a cost estimate for H.R. 2297, the Veterans Benefits Act of 2003, as ordered reported by the House Committee on Veterans' Affairs on June 26, 2003. Several sections of S. 1132 are similar or identical to sections of H.R. 2297 and would have similar costs.

On May 19, 2003, CBO transmitted a cost estimate for H.R. 1460, the Veterans Entrepreneurship and Benefits Improvement Act of 2003, as ordered reported by the House Committee on Veterans' Affairs on May 15, 2003. Section 308 of S. 1132 is similar to section 5 of H.R. 1460, and the estimated savings are identical.

On March 20, 2003, CBO transmitted a cost estimate for H.R. 241, the Veterans' Beneficiary Fairness Act of 2003, as introduced on January 8, 2003. Section 105 of S. 1132 is similar to H.R. 241, and the estimated savings are identical.

Estimate prepared by: Federal Costs: Compensation: Melissa E. Zimmerman and Dwayne M. Wright; Health Care: Sam Papenfuss; Housing: Sunita D'Monte; Readjustment Benefits: Sarah T. Jennings; Impact on State, Local, and Tribal Governments: Melissa Merrell; and Impact on the Private Sector: Allison Percy.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact that would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any regulation of individuals or businesses or result in any impact on the personal privacy of any

individuals and that the paperwork resulting from enactment would be minimal.

#### TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its September 30, 2003, meeting. On that date, the Committee, by unanimous voice vote, ordered H.R. 1132, a bill to amend title 38, United States Code, to improve and enhance certain benefits for survivors of veterans, and for other purposes, as amended, reported favorably to the Senate.

#### AGENCY REPORT

On July 10, 2003, VA Under Secretary for Benefits, the Honorable Daniel L. Cooper, appeared before the Committee on Veterans' Affairs and submitted testimony on, among other things, S. 1132 as introduced and also on the following additional bills from which provisions in S. 1132, as amended, are derived: S. 257, S. 517, S. 1133, S. 1188, S. 1213, S. 1239, S. 1281, and S. 1360. In addition, VA's General Counsel, the Honorable Tim S. McClain, appeared before the Committee and submitted testimony on, among other things, Section 304 of S. 1156, a provision relating to VA authority to contract with outside entities for disability examinations in connection with the adjudication of claims for veterans benefits, that has been added to S. 1132, as amended. Excerpts from these statements are reprinted below:

#### STATEMENT OF DANIEL L. COOPER, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on several bills of great interest to veterans.

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#### S. 257

S. 257, the "Veterans Benefits and Pensions Protection Act of 2003," would amend VA's anti-assignment statute, 38 U.S.C. §5301, by adding language to prohibit certain agreements, as well as collateral security arrangements, between persons receiving monetary VA benefits and third parties. Third parties use these agreements to acquire for consideration rights to receive monetary benefits paid to VA beneficiaries. Besides prohibiting these agreements and arrangements, S. 257 would subject third parties who enter into such agreements or arrangements to penalties of fine, imprisonment, or both. The bill would also require VA to "carry out a program of outreach" to inform veterans and other beneficiaries of the prohibition and would authorize \$3,000,000 in appropriations for such outreach for FY 2004 through 2008.

Let me first assure the Committee that, because 38 U.S.C. §5301 generally bars assignment of VA benefits,

VA regional offices have not and do not honor such agreements. Nevertheless, once funds are paid to a beneficiary, VA lacks the ability to oversee how those funds are used, unless the beneficiary has been found mentally incompetent. While we would certainly counsel veterans, their dependents, and survivors to very carefully consider the full ramifications of assigning their benefits, we believe they should be free to decide how best to manage their own personal finances. Therefore, we do not support enactment of S. 257.

S. 517 AND S. 1281

*POWs—Minimum Confinement Periods*

Section 2(a) and (b) of S. 517 would eliminate the current requirements that a former prisoner of war (POW) be detained or interned for at least thirty days in order to be eligible for a presumption of service connection for certain diseases, and at least ninety days in order to be eligible to receive VA care and treatment for a dental condition or disability.

VA supports section 2(a) and (b) of S. 517, which are virtually identical to provisions in a draft bill we recently submitted to Congress. Currently, 38 U.S.C. § 1112(b) provides a presumption of service connection for certain diseases for former POWs who were detained or interned for at least thirty days. Also, 38 U.S.C. § 1712(a)(1)(F) provides eligibility for VA outpatient dental care services and treatment, and related dental appliances for dental conditions or disabilities of former POWs who were detained or interned for at least ninety days. Recent military engagements involving the United States instruct that, because of our Nation's advanced technology and superior warfare capability, actual combat may end in a far shorter period of time than in previous wars. As a result of this phenomenon, American soldiers who are detained or interned by the enemy are likely to be held for less than 90 days, or even 30 days, as was the case with the United States soldiers held as POWs during Operation Iraqi Freedom. Recent experience has indicated, however, that, despite the shorter duration, the conditions of detention or internment may be such that these former POWs may suffer from many of the same diseases for which a presumption of service connection is available pursuant to section 1112(b) and from dental conditions or disabilities for which dental care and treatment is currently available pursuant to section 1712(a)(1)(F) for former POWs who were held for longer periods. We believe it would be equitable to eliminate the requirement of a particular duration of detention or internment so that all former POWs would be eligible for the presumption of service connection for the diseases specified in section 1112(b) and for dental care and treatment pursuant to section 1712(a)(1)(F). We estimate that enactment of section 2(a) and (b) would have mandatory

costs of \$3.3 million in FY 2004 and \$61 million over ten years.

*POWs—Diseases Presumed Service Connected*

Section 2(c) of S. 517 would add heart disease, stroke, liver disease, diabetes (type 2), and osteoporosis to the list of diseases for which a presumption of service connection is available pursuant to 38 U.S.C. § 1112(b). Section 2 of S. 1281 would add cardiovascular disease (heart disease), cerebrovascular disease (stroke), and chronic liver disease, including cirrhosis and primary liver carcinoma, to the presumptive diseases in section 1112(b).

Section 2(c) of S. 517 would also authorize the Secretary to promulgate regulations creating a presumption of service connection for any other disease which the Secretary determines has a “positive association with the experience of being a [POW].” A “positive association” would exist “if the credible evidence for the association is equal to or outweighs the credible evidence against the association.” In deciding whether to promulgate such a regulation, the Secretary would be required to consider the recommendations of the Advisory Committee on Former POWs and any other available sound medical and scientific information and analyses. VA would have 60 days from receipt of an Advisory Committee recommendation to make a determination as to whether a presumption of service connection is warranted, and then another 60 days to publish in the Federal Register either proposed regulations, if VA determines that a presumption is warranted, or a notice explaining the scientific basis for a determination that a presumption is not warranted.

VA continues to investigate the long-term health consequences of the conditions of POW internment or detention, such as malnutrition, vitamin deficiency, and exposure to parasitic and infectious diseases. In severe forms, such conditions of internment or detention could likely be associated with the conditions specified in section 2(c) of S. 517 and section 2 of S. 1281. It is also true that many POWs suffered physical and mental torture and maltreatment, which could lead to long-term stress and anxiety, which in turn have been shown to have adverse effects on the health of many individuals. VA is committed to properly compensating former POWs for the disabilities resulting from their service to our Nation. In light of the potential connection between the POW experience and the diseases listed in the subject bills, we could support enactment of section 2(c) of S. 517 and section 2 of S. 1281 only if the Committee can identify offsetting savings, since most of these costs are not in the President’s FY 2004 Budget. We estimate that enactment of all of the S. 517 provisions, i.e., elimination of the minimum confinement period and additional diseases presumed to be service connected, would result in benefit costs of \$29.4 million in FY 2004 and \$517.3 million over the ten-year period FY 2004 through FY 2013. If S. 517 were enacted, the most signifi-

cant presumptions of S. 1281 would be addressed. If the S. 517 presumptions were not enacted, we estimate the benefit costs of S. 1281 would be \$20.9 million in FY 2004 and \$364.7 million over ten years.

We also note that, in its December 20, 2002 report, the Advisory Committee on Former POWs recommended to VA that cardiovascular disease be established as a presumptive condition. In response to this and previous recommendations by the Advisory Committee to add presumptive conditions, VA is establishing a Workgroup on Medical Presumptive Conditions in Former POWs to establish procedures, guidelines, and standards to determine whether a disease should be designated by VA as presumptively service connected in former POWs. We contemplate that the Workgroup will be comprised of representatives of the Under Secretaries for Benefits and Health, General Counsel, and Chairman of the Advisory Committee on Former POWs. The activities of this Workgroup will assist VA in determining whether scientific and medical evidence supports further expansion of the list of conditions presumed to be service connected in former POWs. In our view, these activities will render unnecessary the procedures for establishment of new presumptions based on consideration of recommendations from the Advisory Committee on Former POWs, as proposed in section 2(c) of S. 517.

*Review of Dose Reconstruction Program of Department of Defense*

Section 3 of S. 1281 would require the Secretary of Defense and the Secretary of Veterans Affairs to conduct a joint review of the mission, procedures, and administration of the DoD Dose Reconstruction Program for preparing radiation dose estimates and to report to Congress on their findings within 90 days after the bill is enacted. The bill would also require the Secretaries to provide for ongoing independent review and oversight of the Dose Reconstruction Program and would require establishment of an advisory board as one method of providing such ongoing review. VA does not support this provision.

DoD has statutory responsibility for preparing radiation dose estimates. VA uses those dose estimates in adjudicating some claims for service-connected benefits filed by veterans exposed to radiation in service or their family members. A recent review by the National Research Council (NRC) of the National Academy of Sciences identified several concerns regarding certain methods and assumptions employed by DoD that may have caused underestimation of the upper-bound limits of exposure in some cases. We understand that DoD is presently in the process of revising its Dose Reconstruction Program to address the concerns identified by the NRC. Correspondingly, VA is working to identify claims previously decided based on dose reconstructions from DoD. Once we have identified those claims, we intend to seek revised dose estimates

from DoD, if the claimant potentially could benefit from a revised dose estimate.

We believe the provisions of this legislation requiring VA and DoD to jointly review and report on the Dose Reconstruction Program would be superfluous in view of the comprehensive NRC report. The committee of highly qualified experts assembled by the NRC spent more than two years reviewing the Dose Reconstruction Program. The NRC report discusses in detail the specific concerns identified in the Dose Reconstruction Program and provides a clear framework for DoD's current efforts to revise its program. We do not believe that a further review of the same matters by VA and DoD would provide any significant additional information to aid in identifying and correcting any problems in the Dose Reconstruction Program. The oversight responsibilities that would be required by this legislation would unnecessarily divert VA resources from the task of identifying and reviewing potentially affected claims.

Dose estimates prepared by DoD are often an important piece of evidence VA must consider in adjudicating claims for benefits based on radiation exposure. In view of the importance of this information and the difficult and sensitive nature of the adjudicative issues involved in such claims, we consider it important to avoid even the appearance that VA is influencing DoD's procedures and methods of preparing the dose estimates. Assigning VA an oversight role in matters affecting the creation of such evidence may result in a perception among some veterans that the estimates lack objectivity.

For these reasons, we do not support this provision. We estimate that this provision, if enacted, would result in approximately \$350,000 in annual costs to VA.

#### *Disposition of Ranch Hand Study*

Section 4 of S. 1281 would require VA, not later than 60 days after the date of the enactment of this Act, to contract with the National Academy of Sciences (NAS), or other appropriate organization, to determine the appropriate disposition of the Air Force's well-known "Ranch Hand" epidemiologic study when it terminates in 2006. Among other things, the NAS would be required to address, and ultimately report on, the advisability of extending the study and the disposition of the specimens, medical records, and other data collected in the course of this long-term study.

VA generally supports the suggestion for independent review of the merits of the Ranch Hand study, as proposed. VA has never been involved in the funding, conduct, or direction of DoD's "Ranch Hand" study. As a result, VA cannot provide close oversight of the NAS contract, as proposed in section 4 of the bill. Were VA required to enter into the contract required by section 4, we estimate the costs associated with enactment of this provision to be \$1.5

million, which would be redirected from veterans' Medical Care funds.

Section 5 of the bill would require both VA and DoD to make available to NAS in each of fiscal years 2004 through 2013, \$250,000 each from their respective appropriations for the Medical Follow-Up Agency (MFUA). MFUA would use these funds for epidemiological research on members of the Armed Forces and veterans.

We support the continued funding of the MFUA whose independence and outstanding scientific reputation lend a high degree of credibility to critical studies that have a direct bearing on VA health care and compensation policies. As you know, the MFUA has been essential to VA for conducting a number of critical studies on veterans' health issues, including a study on Shipboard Hazard and Defense (SHAD) veterans, studies on actual hepatitis rates among veterans, and a congressionally mandated study on hearing loss among military personnel. In short, the MFUA is a critical asset for VA.

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S. 1132

Mr. Chairman, S. 1132, the "Veterans' Survivors Benefits Enhancements Act of 2003," contains several provisions that would improve benefits for survivors and certain dependents of veterans under the Department's various programs.

Specifically, section 2 of this bill would increase educational assistance benefits under the chapter 35 VA's Survivors' and Dependents' Educational Assistance program by 44.8 percent, from \$680 to \$985 per month for full-time course pursuit, from \$511 to \$740 for three-quarter time pursuit, and from \$340 to \$492 per month for half-time pursuit, effective for months of course pursuit on or after October 1, 2003. It would also raise the basic monthly rate payable for Special Restorative Training (SRT) to \$985. Similarly, the optional supplement to the SRT basic rate would be increased to pay the amount of tuition and fee charges that, on a monthly basis, would exceed \$307 for FY 2004.

Given this benefits increase, the measure would suspend the statutory annual Consumer Price Index-based adjustment in chapter 35 educational assistance rates for FY 2004.

Chapter 35 benefit rates earlier equaled rates payable under the Vietnam Era GI Bill to a veteran with no dependents and, for a time, exceeded chapter 30 Montgomery GI Bill (MGIB) rates. In more recent years, however, chapter 35 benefits have lost ground. The current \$680 chapter 35 monthly rate is significantly below the MGIB rate payable to eligible veterans with 3 years or more of service, which will be \$985 per month in FY 2004 under legislation already enacted. Section 2 of S. 1132 would remedy this, ensuring that chapter 35 spouses, surviving spouses, and

children would receive educational assistance equal to that of veterans receiving such educational assistance under the MGIB. Mr. Chairman, although we appreciate your efforts to restore this balance, the President's FY 2004 Budget does not include this proposal.

VA estimates the effect of the rate increase in section 2 of this measure could raise obligations by approximately \$1.4 billion over the 10-year period FY 2004 through FY 2013.

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Section 5 would amend 38 U.S.C. §2402(5) to make a veteran's surviving spouse who marries a non-veteran after the veteran's death eligible for burial in a VA national cemetery based on his or her marriage to the veteran. This provision is similar to a VA proposal sent to Congress on April 25, 2003. Our full rationale and justification for this proposal, as well as our cost estimates, are contained in Secretary Principi's April 25, 2003 letter to the President of the Senate.

Unlike VA's proposal, section 5 of S. 1132 would make the burial eligibility of remarried surviving spouses of veterans retroactive to deaths occurring on or after January 1, 2000. We estimate that the additional costs associated with this retroactivity would be negligible. Although it is difficult to determine how many families of already deceased, and presumably interred, remarried surviving spouses of veterans would want to disinter their loved ones and then re-inter them with their veteran spouses in a national cemetery, we believe the number of such families would not be significant.

Section 6 would amend chapter 18 of title 38, United States Code, to authorize VA to provide a monetary allowance and other benefits to a person suffering from spina bifida who is natural child, regardless of age or marital status, of a veteran who served in the active military, naval, or air service in or near the Korean demilitarized zone (DMZ) between January 1, 1967, and December 31, 1969, if the person was conceived after such service began and if the veteran is determined by VA, in consultation with the DoD, to have been exposed to a herbicide agent during such service. The term "herbicide agent" would be defined as a chemical in a herbicide used in support of United States and allied military operations in or near the Korean DMZ, as determined by VA in consultation with DoD during the specified period.

VA is still formulating its views and cost estimates on this provision. As soon as those views and estimates are cleared for transmittal, we will provide them to the Committee.

S. 1133

Mr. Chairman, we very much appreciate your courtesy in introducing S. 1133 at the Department's request. Our full rationale and justification for these proposals, as well

as our cost estimates, are contained in Secretary Principi's April 25, 2003 letter to the President of the Senate and will not be repeated here. Several of this bill's provisions are also covered in other bills that are on the agenda for today's hearing.

All of the provisions in VA's proposal are significant to the programs administered by VA and the veterans served by those programs. Among the important proposals in S. 1133 that have not been otherwise introduced in the Senate are:

Sections 3 and 4, which would repeal the 45-day rule for effective dates of death pension awards and exclude lump-sum life insurance proceeds from determinations of annual income for pension purposes. These changes are necessary to eliminate unequal treatment of death pension applicants and to uphold one of the fundamental principles of the pension program—insuring that those with the greatest need receive the greatest benefit.

Section 6, which would authorize VA to pay unclaimed National Service Life Insurance and United States Government Life Insurance proceeds to an alternative beneficiary. This proposal would allow VA to ensure that the proceeds of insurance policies are paid to an appropriate beneficiary and to avoid adding to the approximately 4,000 existing policies in which payment has not been made due to the fact that we cannot locate the primary beneficiary, despite extensive efforts.

Section 7, which would clarify VA's authority both to declare a claim abandoned where it is not completed within one year of VA's notice of what is required to complete it, and to decide claims before the end of the one year the claimant has to provide the evidence to substantiate the claim. Such early adjudications are subject to revision based on evidence submitted within the year, and the effective date of any decision so revised will be the earlier date on which the claim was made.

Section 11, which would make permanent the State Cemetery Grants Program, an important supplement to the National Cemetery system. This program authorizes VA to make grants to states to assist them in establishing, expanding, or improving state veterans' cemeteries.

Section 15, which would extend the date on which eligibility for education benefits ends for individuals ordered to full-time National Guard service under title 32 of the United States Code in the same manner the delimiting date is now extended for those who are activated under title 10.

All of the proposals in S. 1133 would improve veterans programs and their administration, and we commend them to the Committee's careful consideration.

S. 1188

S. 1188, the "Veterans' Survivor Benefits Act of 2003," would, in section 2, eliminate a discrepancy regarding the limitation on the period for which retroactive benefits due

and unpaid a claimant may be paid to others after the claimant's death. In the interest of fairness, we support enactment of this provision.

Under 38 U.S.C. § 5121, periodic monetary benefits to which an individual was entitled at death under existing ratings or decisions or based on evidence on file with VA at the date of death are paid upon the individual's death to specified classes of survivors according to a prescribed order of preference. Before a recent court decision, VA had construed section 5121 to limit the payment of any benefits under that section to the retroactive period specified in the statute, regardless of whether the payment was based on an existing rating or decision or on evidence on file at the date of death. The retroactive payment period, originally one year, was extended to two years by Public Law 104-275, the "Veterans' Benefits Improvements Act of 1996."

On December 10, 2002, the United States Veterans Court issued its decision in *Bonny v. Principi*, 16 Vet. App. 504 (2002). The court held that 38 U.S.C. § 5121(a) specifies two kinds of benefits: benefits that have been awarded to an individual in existing ratings or decisions but not paid before the individual's death, and benefits that could have been awarded based on evidence in the file at the date of death. The court held that, in the case of the first type of benefits, the statute requires that an eligible survivor is to receive the entire amount of the award; only the latter type of "accrued" benefits is subject to section 5121(a)'s two-year limitation. The court based its interpretation of the statute primarily on section 5121(a)'s punctuation.

The Veterans Court's *Bonny* decision has resulted in differing entitlements under section 5121 based on the status of the deceased's claim at the date of his or her death. S. 1188 would eliminate this discrepancy by eliminating the two-year limitation on payment of retroactive benefits for all classes of beneficiaries under that statute.

The distinction the *Bonny* decision draws between the two categories of claimants—those whose claims had been approved and those whose entitlement had yet to be recognized when they died—is really one without a difference. In either case, a claimant's estate is deprived of the value of benefits to which the claimant was, in life, entitled. Section 2 of S. 1188 would remove this inequitable distinction, and we support its enactment.

We note that section 2 of S. 1188 would also add a new class of claimants eligible for accrued benefits. Chapter 18 of title 38, United States Code, authorizes monetary benefits for Vietnam veterans' children with birth defects. This provision would ensure that, upon the death of a child entitled to benefits under chapter 18, the child's surviving parents would be eligible for accrued benefits.

In addition, we note one technical change needed in section 2 of S. 1188 should it be enacted. The comma in current section 5121(a) following "existing ratings or deci-

sions” should be deleted to clarify, for purposes of 38 U.S.C. §§ 5121(b) and (c) and 5122, that the term “accrued benefits” includes both benefits that have been awarded to an individual in existing ratings or decisions but not paid before the individual’s death, as well as benefits that could be awarded based on evidence in the file at the date of death.

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VA estimates that enactment of these provisions of S. 1188 could result in benefit costs of \$16.1 million for FY 2004 and \$62.5 million for the period FY 2004 through FY 2013 and administrative costs of \$661,000 in FY 2004 and \$2.6 million for the period FY 2004 through FY 2013.

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#### S. 1213

S. 1213 would amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and their survivors, who lawfully reside in the United States, by expanding their eligibility for VA health care, compensation, DIC, and burial benefits. S. 1213 would also extend VA’s authority to maintain a regional office in the Philippines through 2008. This bill reflects proposed legislation submitted by the Secretary of Veterans Affairs to the President of the Senate by letter dated May 12, 2003, and we greatly appreciate the Chairman’s courtesy in introducing S. 1213. The full rationale and justification for this proposed legislation, as well as our cost estimates, are contained in the Secretary’s May 12th letter. For the reasons stated in that letter, VA strongly supports this legislation and recommends that Congress approve S. 1213 as introduced.

#### S. 1239

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#### *Dental Care for Former Prisoners of War*

Section 4 of S. 1239 would require VA to provide outpatient dental services and treatment, and related dental appliances, for any non-service-connected dental condition or disability from which a veteran who is a former POW is suffering. Currently, a veteran who is a former POW may receive dental benefits for non-service-connected dental conditions or disabilities only if the veteran was incarcerated for 90 days or more. By eliminating the 90-day requirement, section 4 would authorize VA to treat all former POWs the same, regardless of their length of captivity, with respect to dental care for a non-service-connected condition or disability. It would also make the eligibility rules for dental benefits for former POWs the same as for other health-care services for former POWs.

This provision is identical to VA’s recent proposal, and we strongly support its enactment.

Costs resulting from enactment of this provision would be insignificant.

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S. 1360

Section 1(a) of S. 1360 would amend 38 U.S.C. § 7105(b) to provide, in effect, that a writing filed by a claimant, a claimant's legal guardian, an accredited representative, attorney, or authorized agent, or a legal guardian expressing disagreement with a decision of an agency of original jurisdiction shall be recognized as a notice of disagreement (NOD). The amendment made by section 1(a) would apply to any document filed on or after the date of enactment of S. 1360 and any document filed prior to the date of enactment that was not rejected as an NOD by VA as of that date. Section 1(b) of S. 1360 would provide that, if a document filed as an NOD between March 15, 2002, and the date of enactment of S. 1360 meets the requirements of section 1(a) for an NOD, but VA determined that it did not constitute an NOD pursuant to 38 C.F.R. § 20.201, VA would have to treat the document as an NOD if the claimant makes a request, or VA makes a motion, within one year after the date of enactment, to treat it as a NOD.

S. 1360 would overturn the decision of the United States Court of Appeals for the Federal Circuit in *Gallegos v. Principi*, in which that court held that 38 C.F.R. § 20.201, defining an NOD as a writing expressing a desire for appellate review, is a reasonable and permissible construction of 38 U.S.C. § 7105, which sets forth the necessary steps for appellate review by the Board. Defining a writing as an NOD irrespective of whether it expresses a desire for appellate review would represent a major change in the statutory scheme of 38 U.S.C. § 7105, which refers to an NOD only in the context of initiating an appeal to the Board.

It does not serve veterans to initiate appeals of their claims against their wishes. However, requiring VA to treat any document disagreeing with an initial VA determination or decision on a claim as an NOD, without regard to whether it expresses a desire for appellate review, would impose a substantial burden on the VA claims adjudication system and hinder us in achieving our objective of improving the efficiency of claim adjudications and reducing the time necessary to resolve claims. VA is inundated on a daily basis by myriad correspondence from claimants and their representatives. Under the proposed amendment, in any case in which such correspondence could be construed as expressing disagreement with an initial claim decision, VA would be required to initiate a time-consuming, multi-step process under which it is obligated to reexamine the claim and determine if additional review or development is warranted and, ultimately, prepare a statement of the case summarizing the evidence, citing applicable laws and explaining their affect, and providing the rea-

sons for making the determination in question. This process would apparently be required even in cases where, although a claimant has expressed disagreement with a VA decision, it is quite plain from the claimant's submission that the claimant has no desire for appellate review of the decision.

VA opposes S. 1360 and believes that the goal of the bill can better be achieved by amending VA's procedures to assure that VA ascertains the intent of a claimant who expresses disagreement with an initial VA claim decision.

That concludes my statement, Mr. Chairman. I would be happy now to entertain any questions you or the other members of the Committee may have.

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STATEMENT OF TIM S. MCCLAIN, GENERAL COUNSEL,  
DEPARTMENT OF VETERANS AFFAIRS

Good afternoon Mr. Chairman and Members of the Committee. I am pleased to be here to present the Administration's views on six bills that pertain primarily to the veterans health-care system.

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Section 304 of S. 1156 would broaden the authority of the Veterans Benefits Administration to contract with outside entities for disability examinations in connection with the adjudication of claims for veterans benefits. Current law allows VBA to do so at no more than 10 regional offices on a pilot basis. Section 304 would remove the 10-office limitation. The pilot has been a success, however, there are funding issues and we do not yet have cleared views and estimates on this provision. We will supply them when they are available.

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CHANGES IN EXISTING LAW MADE BY THE COMMITTEE BILL, AS  
REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Committee bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 26—UNITED STATES CODE**

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**§ 6103. Confidentiality and disclosure of returns and return information**

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(1) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) \* \* \*

\* \* \* \* \*

(7) Disclosure of return information to Federal, state, and local agencies administering certain programs under the Social Security Act, the Food Stamp Act of 1977 or title 38, United States Code, or certain housing assistance programs.—

(A) \* \* \*

\* \* \* \* \*

(D) PROGRAMS TO WHICH RULE APPLIES.—The programs to which this paragraph applies are:

(i) \* \* \*

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Only return information from returns with respect to net earnings from self employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV). Clause (viii) shall not apply after September 30, [2008] 2011.

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**TITLE 38—UNITED STATES CODE**

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**CHAPTERS OF TITLE 38**

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**PART II—GENERAL BENEFITS**

<b>Chapter</b>	<b>Section</b>
11. * * *	
* * * * *	
18. Benefits for children of Vietnam Veterans [who are born with spina bifida] and certain other veterans.	1802
* * * * *	

**§ 107. Certain service deemed not to be active service**

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(b) Service in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 shall not be deemed to have been active military, naval, or air service for the purposes of any of the laws administered by the Secretary except—

(1) with respect to contracts of National Service Life Insurance entered into (A) before May 27, 1946, (B) under section 620 or 621 of the National Service Life Insurance Act of 1940, or (C) under section 1922 of this title; and

(2) chapters 11 [and], 13 (except section 1312(a)), 23, and 24 (to the extent provided for in section 2402(8)) of this title.

**[Payments]** Except as provided in subsection (c) or (d), payments under such chapters shall be made at a rate of \$0.50 for each dollar authorized, and where annual income is a factor in entitlement to benefits, the dollar limitations in the law specifying such annual income shall apply at a rate of \$0.50 for each dollar.

(c) In the case of benefits under subchapters II and IV of chapter 11 of this title *and subchapter II of chapter 13 (except section 1312(a)) of this title* paid by reason of service described in subsection (a) or (b) to an individual residing in the United States who is a citizen of, or an alien lawfully admitted for permanent residence in, the United States, the second sentence [of subsection (a)] of the applicable subsection shall not apply.

(d)(1) With respect to benefits under chapter 23 of this title, in the case of an individual described in paragraph (2), the second sentence of subsection (a) or (b), *as applicable*, shall not apply.

(2) Paragraph (1) applies to any individual whose service is described in subsection (a) and who dies after November 1, 2000, or whose service is described in subsection (b) and who dies after the date of enactment of the Veterans' Benefits Enhancements Act of 2003, if the individual, on the individual's date of death—

(A) is a citizen of, or an alien lawfully admitted for permanent residence in, the United States;

(B) is residing in the United States; and

(C) either—

(i) is receiving compensation under chapter 11 of this title; or

(ii) if the individual's service had been deemed to be active military, naval, or air service, would have been paid pension under section 1521 of this title without denial or discontinuance by reason of section 1522 of this title.

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**§ 315. Regional Offices**

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(b) The Secretary may maintain a regional office in the Republic of the Philippines until December 31, [2003] 2008.

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**§ 544. Advisory Committee on Minority Veterans**

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(e) The Committee shall cease to exist December 31, [2003] 2007.

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**§ 1104. Cost-of-living adjustments**

(a) In the computation of cost-of-living adjustments for fiscal years 1998 through [2011] 2013 in the rates of, and dollar limitations applicable to, compensation payable under this chapter, such adjustments shall be made by a uniform percentage that is no more than the percentage equal to the social security increase for that fiscal year, with all increased monthly rates and limitations (other than increased rates or limitations equal to a whole dollar amount) rounded down to the next lower whole dollar amount.

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**§ 1112. Presumptions relating to certain diseases and disabilities**

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(b)(1) For the purposes of section 1110 of this title and subject to the provisions of section 1113 of this title, in the case of a veteran who is a former prisoner of war [and who was detained or interned for not less than thirty days, the disease of]—

- [(1) avitaminosis,
- [(2) beriberi (including beriberi heart disease),
- [(3) chronic dysentery,
- [(4) helminthiasis,
- [(5) malnutrition (including optic atrophy associated with malnutrition),
- [(6) pellagra,
- [(7) any other nutritional deficiency,
- [(8) psychosis,
- [(9) any of the anxiety states,
- [(10) dysthymic disorder (or depressive neurosis),
- [(11) organic residuals of frostbite, if the Secretary determines that the veteran was interned in climatic conditions consistent with the occurrence of frostbite,
- [(12) post-traumatic osteoarthritis,
- [(13) peripheral neuropathy except where directly related to infectious causes,
- [(14) irritable bowel syndrome, or
- [(15) peptic ulcer disease,

[which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service.]

(A) a disease specified in paragraph (2) which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be considered to have been incurred or aggravated by such service, notwithstanding that there is no record of such disease during the period of service; and

(B) if the veteran was detained or interned as a prisoner of war for not less than thirty days, a disease specified in paragraph (3) which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service.

(2) The diseases specified in this paragraph are the following:

- (A) Psychosis.
- (B) Any of the anxiety states.
- (C) Dysthymic disorder (or depressive neurosis).
- (D) Organic residuals of frostbite, if the Secretary determines that the veteran was detained or interned in climatic conditions consistent with the occurrence of frostbite.
- (E) Post-traumatic osteoarthritis.

(3) The diseases specified in this paragraph are the following:

- (A) Avitaminosis.
- (B) Beriberi (including beriberi heart disease).
- (C) Chronic dysentery.
- (D) Helminthiasis.

(E) *Malnutrition (including optic atrophy associated with malnutrition).*

(F) *Pellagra.*

(G) *Any other nutritional deficiency.*

(H) *Cirrhosis of the liver.*

(I) *Peripheral neuropathy except where directly related to infectious causes.*

(J) *Irritable bowel syndrome.*

(K) *Peptic ulcer disease.*

\* \* \* \* \*

**§ 1303. Cost-of-living adjustments**

(a) In the computation of cost-of-living adjustments for fiscal years 1998 through [2011] 2013 in the rates of dependency and indemnity compensation payable under this chapter, such adjustments (except as provided in subsection (b)) shall be made by a uniform percentage that is no more than the percentage equal to the social security increase for that fiscal year, with all increased monthly rates (other than increased rates equal to a whole dollar amount) rounded down to the next lower whole dollar amount.

\* \* \* \* \*

**§ 1712. Dental care; drugs and medicines for certain disabled veterans; vaccines (a)(1) Outpatient dental service and treatment, and related dental appliances, shall be furnished under this section only for a dental condition or disability—**

(A) \* \* \*

\* \* \* \* \*

(F) from which a veteran who is a former prisoner of war [and who was detained or interned for a period of not less than 90 days] is suffering.

\* \* \* \* \*

**CHAPTER 18—BENEFITS FOR CHILDREN OF VIETNAM VETERANS AND CERTAIN OTHER VETERANS**

\* \* \* \* \*

*Subchapter III—Children of Certain Korea Service Veterans Born With Spina Bifida*

*1821. Benefits for children of certain Korea service veterans born with spina bifida*

**Subchapter [III] IV—GENERAL PROVISIONS**

**[1821]** *1831. Definitions.*

**[1822]** *1832. Applicability of certain administrative provisions.*

**[1823]** *1833. Treatment of receipt of monetary allowance and other benefits.*

**[1824]** *1834. Nonduplication of benefits.*

\* \* \* \* \*

**§ 1811. Definitions**

In this subchapter:

(1) The term “eligible child” means an individual who—

(A) is the child (as defined in section [1821(1)] 1831(1) of this title) of a woman Vietnam veteran; and

(B) was born with one or more covered birth defects.

(2) The term “covered birth defect” means a birth defect identified by the Secretary under section 1812 of this title.

\* \* \* \* \*

**Subchapter III—Children of Certain Korea Service Veterans  
Born With Spina Bifida**

**§ 1821. Benefits for children of certain Korea service veterans  
born with spina bifida**

(a) *BENEFITS AUTHORIZED.*—*The Secretary may provide to any child of a veteran of covered service in Korea who is suffering from spina bifida the health care, vocational training and rehabilitation, and monetary allowance required to be paid to a child of a Vietnam veteran who is suffering from spina bifida under subchapter I of this chapter as if such child of a veteran of covered service in Korea were a child of a Vietnam veteran who is suffering from spina bifida under such subchapter.*

(b) *SPINA BIFIDA CONDITIONS COVERED.*—*This section applies with respect to all forms and manifestations of spina bifida, except spina bifida occulta.*

(c) *VETERAN OF COVERED SERVICE IN KOREA.*—*For purposes of this section, a veteran of covered service in Korea is any individual, without regard to the characterization of that individual’s service, who—*

(1) *served in the active military, naval, or air service in or near the Korean demilitarized zone (DMZ), as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on January 1, 1967, and ending on December 31, 1969; and*

(2) *is determined by the Secretary, in consultation with the Secretary of Defense, to have been exposed to a herbicide agent during such service in or near the Korean demilitarized zone.*

(d) *HERBICIDE AGENT.*—*For purposes of this section, the term “herbicide agent” means a chemical in a herbicide used in support of United States and allied military operations in or near the Korean demilitarized zone, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on January 1, 1967, and ending on December 31, 1969.*

**Subchapter [III] IV—General Provisions**

**[1821] § 1831. Definitions.**

In this chapter:

(1) The term “child” means [an individual, regardless of age or marital status, who] *the following—*

(A) [is the natural child of a Vietnam veteran; and] *For purposes of subchapters I and II of this chapter, an individual, regardless of age or marital status, who—*

(i) *is the natural child of a Vietnam veteran; and*

(ii) *was conceived after the date on which that veteran first entered the Republic of Vietnam during the Vietnam era.*

(B) [was conceived after the date on which that veteran first entered the Republic of Vietnam during the Vietnam

era.] For purposes of subchapter III of this chapter, an individual, regardless of age or marital status, who—

(i) is the natural child of a veteran of covered service in Korea (as determined for purposes of section 1821 of this title); and

(ii) was conceived after the date on which that veteran first entered service described in subsection (c) of that section.

\* \* \* \* \*

§ **[1822] 1832.** Applicability of certain administrative provisions.

\* \* \* \* \*

§ **[1823] 1833.** Treatment of receipt of monetary allowance and other benefits.

\* \* \* \* \*

§ **[1824] 1834.** Nonduplication of benefits.

(a) MONETARY ALLOWANCE.—In the case of an eligible child under subchapter II of this chapter whose only covered birth defect is spina bifida, a monetary allowance shall be paid under subchapter I of this chapter. In the case of an eligible child under subchapter II of this chapter who has spina bifida and one or more additional covered birth defects, a monetary allowance shall be paid under subchapter II of this chapter. *In the case of a child eligible for benefits under subchapter I or II of this chapter who is also eligible for benefits under subchapter III of this chapter, a monetary allowance shall be paid under the subchapter of this chapter elected by the child.*

\* \* \* \* \*

§ **1917. Insurance maturing on or after August 1, 1946**

\* \* \* \* \*

(f)(1) *Following the death of the insured and in a case not covered by subsection (d)—*

(A) *if the first beneficiary otherwise entitled to payment of the insurance does not make a claim for such payment within two years after the death of the insured, payment may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first beneficiary had predeceased the insured; and*

(B) *if, within four years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment may (notwithstanding any other provision of law) be made to such person as may in the judgment of the Secretary be equitably entitled thereto.*

(2) *Payment of insurance under paragraph (1) shall be a bar to recovery by any other person.*

\* \* \* \* \*

**§ 1952. Optional settlement**

\* \* \* \* \*

(c)(1) *Following the death of the insured and in a case not covered by section 1950 of this title—*

*(A) if the first beneficiary otherwise entitled to payment of the insurance does not make a claim for such payment within two years after the death of the insured, payment may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first beneficiary had predeceased the insured; and*

*(B) if, within four years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment may (notwithstanding any other provision of law) be made to such person as may in the judgment of the Secretary be equitably entitled thereto.*

*(2) Payment of insurance under paragraph (1) shall be a bar to recovery by any other person.*

\* \* \* \* \*

**§ 1974. Advisory Council on Servicemembers' Group Life Insurance**

(a) There is an Advisory Council on Servicemembers' Group Life Insurance. The council consist of—

- (1) the Secretary of the Treasury, who is the chairman of the council;
- (2) the Secretary of Defense;
- (3) the Secretary of Commerce;
- (4) the Secretary of Health and Human Services;
- (5) the Secretary of **Transportation** *Homeland Security*;
- and
- (6) the Director of the Office of Management and Budget.

Members of the council shall serve without additional compensation.

\* \* \* \* \*

**§ 2303. Death in Department facility; plot allowance**

\* \* \* \* \*

(b) In addition to the benefits provided for under section 2302 of this title and subsection (a) of this section, in the case of a veteran who is eligible for **a burial allowance under such section 2302, or under such subsection, who was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, or who is a veteran of any war** *burial in a national cemetery under section 2402 of this title* and who is not buried in a national cemetery or other cemetery under the jurisdiction of the United States—

(1) \* \* \*

(2) if such veteran **[(other than a veteran whose eligibility for benefits under this subsection is based on being a veteran of any war)] is eligible for a burial allowance under section 2302 of this title or under subsection (a) of this section, or was**

*discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, and such veteran is buried in a cemetery, or a section of a cemetery, other than as described in clause (1) of this subsection, the Secretary shall pay a sum not exceeding \$300 as a plot or interment allowance to such person as the Secretary prescribes, except that if any part of the plot or interment costs of a burial to which this clause applies has been paid or assumed by a State, an agency or political subdivision of a State, or a former employer of the deceased veteran, no claim for such allowance shall be allowed for more than the difference between the entire amount of the expenses incurred and the amount paid or assumed by any or all of the foregoing entities.*

\* \* \* \* \*

**§ 2402. Persons eligible for interment in national cemeteries**

Under such regulations as the Secretary may prescribe and subject to the provisions of section 6105 of this title, the remains of the following persons may be buried in any open national cemetery under the control of the National Cemetery Administration:

(1) \* \* \*

\* \* \* \* \*

(5) The spouse, surviving spouse (which for purposes of this chapter includes **an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce** *a surviving spouse who had a subsequent remarriage*), minor child (which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution), and, in the discretion of the Secretary, unmarried adult child of any of the persons listed in paragraphs (1) through (4) and paragraph (7).

\* \* \* \* \*

(8) Any individual whose service is described in section 107(a) or (b) of this title if such individual at the time of death—

(A) was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(B) resided in the United States.

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

(a)**[(1)]** Subject to subsection (b) of this section, the Secretary may make grants to any State to assist such State in establishing, expanding, or improving veterans' cemeteries owned by such State. Any such grant may be made only upon submission of an application to the Secretary in such form and manner, and containing such information, as the Secretary may require.

**[(2)]** There is authorized to be appropriated such sums as may be necessary for fiscal year 1999 and for each succeeding fiscal year

through fiscal year 2004 for the purpose of making grants under paragraph (1).】

\* \* \* \* \*

(e) 【Sums appropriated under subsection (a) of this section】 *Amounts appropriated to carry out this section* shall remain available until expended. If all funds from a grant under this section have not been utilized by a State for the purpose for which the grant was made within three years after such grant is made, the United States shall be entitled to recover any such unused grant funds from such State.

\* \* \* \* \*

**§ 3015. Amount of basic educational assistance**

\* \* \* \* \*

(h) With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded *down* to the nearest dollar) in the rates payable under subsections (a)(1) and (b)(1) equal to the percentage by which—

- (1) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds
- (2) such Consumer Price Index for the 12-month period preceding the 12-month period described in paragraph (1).

\* \* \* \* \*

**§ 3462. Time limitations for completing a program of education**

DELIMITING PERIOD FOR COMPLETION

(a)(1) Subject to paragraph (4) of this subsection, no educational assistance shall be afforded an eligible veteran under this chapter beyond the date 10 years after the veteran’s last discharge or release from active duty after January 31, 1955; except that, in the case of any eligible veteran who was prevented from initiating or completing such veteran’s chosen program of education within such time period because of a physical or mental disability which was not the result of such veteran’s own willful misconduct, such veteran shall, upon application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of such mental or physical disability, or (C) October 1, 1980, whichever is the latest, be granted an extension of the applicable delimiting period for such length of time as the Secretary determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted a veteran under the preceding sentence, the delimiting period with respect to such veteran will again begin running on the first day following such veteran’s recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Secretary shall prescribe, for such veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

[(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, any veteran shall be permitted to use any of such veteran's unused entitlement under section 3461 of this title for the purposes of eligibility for an education loan, pursuant to the provisions of subchapter III of chapter 36 of this title [38 USCS §§ 3698 et seq.], after the delimiting date otherwise applicable to such veteran under such paragraph (1), if such veteran was pursuing an approved program of education on a full-time basis at the time of the expiration of such veteran's eligibility.

[(B) Notwithstanding any other provision of this chapter [38 USCS §§ 3451 et seq.] or chapter 36 of this title [38 USCS §§ 3670 et seq.], any veteran whose delimiting period is extended under subparagraph (A) of this paragraph may continue to use any unused loan entitlement under this paragraph as long as the veteran continues to be enrolled on a full-time basis in pursuit of the approved program of education in which such veteran was enrolled at the time of expiration of such veteran's eligibility (i) until such entitlement is exhausted, (ii) until the expiration of two years after November 23, 1977, or the date of the expiration of the delimiting date otherwise applicable to such veteran under paragraph (1) of this subsection, whichever is later, or (iii) until such veteran has completed the approved program of education in which such veteran was enrolled at the end of the delimiting period referred to in paragraph (1) of this subsection, whichever occurs first.]

[(3) [Repealed]]

[(4)] (2) For purposes of paragraph (1) of this subsection, a veteran's last discharge or release from active duty shall not include any discharge or release from a period of active duty of less than 90 days of continuous service unless the individual involved is discharged or released for a service-connected disability, for a medical condition which preexisted such service and which the Secretary determines is not service connected, for hardship, or as a result of a reduction in force as described in section 3011(a)(1)(A)(ii)(III) of this title.

\* \* \* \* \*

**§ 3485. Work-study allowance**

(a)(1) \* \* \*

\* \* \* \* \*

(e)(1) Subject to paragraph (2) of this subsection, the Secretary may, notwithstanding any other provision of law, enter into an agreement with an individual under this section, or a modification of such an agreement, whereby the individual agrees to perform services of the kind described in clauses (A) through (E) of subsection (a)(1) of this section and agrees that the Secretary shall, in lieu of paying the work-study allowance payable for such services, as provided in subsection (a) of this section, deduct the amount of the allowance from the amount which the individual has been determined to be indebted to the United States by virtue of such individual's participation in a benefits program under this chapter, chapter 30, 31, 32, 35, or 36 [(other than an education loan under subchapter III)] of this title, or chapter 106 of title 10 (other than

an indebtedness arising from a refund penalty imposed under section 2135 of such title).

\* \* \* \* \*

**§ 3512. Periods of eligibility**

(a) \* \* \*

\* \* \* \* \*

[(f) Any eligible person (as defined in section 3501(a)(1)(B), (C), or (D) of this chapter) shall be entitled to an additional period of eligibility for an education loan under subchapter III of chapter 36 of this title beyond the maximum period provided for in this section pursuant to the same terms and conditions set forth with respect to an eligible veteran in section 3462(a)(2) of this title.]

\* \* \* \* \*

**§ 3512. Periods of eligibility**

\* \* \* \* \*

(h) Notwithstanding any other provision of this section, if an eligible person, during the delimiting period otherwise applicable to such person under this section, serves on active duty pursuant to an order to active duty issued under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, or is involuntarily ordered to full-time National Guard duty under section 502(f) of title 32, such person shall be granted an extension of such delimiting period for the length of time equal to the period of such active duty plus four months.

\* \* \* \* \*

**§ 3532. Computation of educational assistance allowance**

(a)(1) The educational assistance allowance on behalf of an eligible person who is pursuing a program of education consisting of institutional courses shall be paid at the monthly rate of **[\$670]** \$788 for full-time, **[\$503]** \$592 for three-quarter time, or **[\$335]** \$394 for half-time pursuit.

(2) The educational assistance allowance on behalf of an eligible person pursuing a program of education on less than a half-time basis shall be paid at the rate of the lesser of (A) the established charges for tuition and fees that the educational institution involved requires similarly circumstanced nonveterans enrolled in the same program to pay; or (B) **[\$670]** \$788 per month for a full-time course, whichever is the lesser.

(b) The educational assistance allowance to be paid on behalf of an eligible person who is pursuing a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion, shall be computed at the rate of **[\$670]** \$788 per month.

(c)(1) \* \* \*

\* \* \* \* \*

(2) The monthly educational assistance allowance to be paid on behalf of an eligible person pursuing a farm cooperative program

under this chapter shall be ~~[\$541]~~ \$636 for full time, ~~[\$406]~~ \$477 for three-quarter-time, or ~~[\$271]~~ \$319 for half-time pursuit.

\* \* \* \* \*

**§ 3534. Apprenticeship or other on-job training; correspondence courses.**

\* \* \* \* \*

(b) Any eligible spouse or surviving spouse shall be entitled to pursue a program of education exclusively by correspondence and be paid an educational assistance allowance as provided in section 3686 (other than subsection (a)(2)) of this title and the period of such spouse's entitlement shall be charged with one month for each ~~[\$670]~~ \$788 which is paid to the spouse as an educational assistance allowance for such course.

\* \* \* \* \*

**§ 3542. Special training allowance**

(a) While the eligible person is enrolled in and pursuing a full-time course of special restorative training, the eligible person shall be entitled to receive a special training allowance computed at the basic rate of ~~[\$670]~~ \$788 per month. If the charges for tuition and fees applicable to any such course are more than ~~[\$210]~~ \$247 per calendar month, the basic monthly allowance may be increased by the amount that such charges exceed ~~[\$210]~~ \$247 a month, upon election by the eligible person to have such person's period of entitlement reduced by one day for each such increased amount of allowance that is equal to one-thirtieth of the full-time basic monthly rate of special training allowance.

\* \* \* \* \*

**§ 3564. Annual adjustment of amounts of educational assistance**

With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded *down* to the nearest dollar) in the rates payable under sections 3532, 3534(b), and 3542(a) of this title equal to the percentage by which—

(1) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(2) such Consumer Price Index for the 12-month period preceding the 12-month period described in paragraph (1).

\* \* \* \* \*

**CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS**

Subchapter I—State Approving Agencies

Sec.  
3670 \* \* \*

\* \* \* \* \*

**【Subchapter III—Education Loans】**

**【3698. Eligibility for loans; amount and conditions of loans; interest rate on loans.  
3699. Revolving fund; insurance】**

\* \* \* \* \*

**§ 3687. Apprenticeship or other on-job training**

(a) \* \* \*

\* \* \* \* \*

(b)(1) \* \* \*

\* \* \* \* \*

(2) The monthly training assistance allowance of an eligible person pursuing a program described under subsection (a) shall be **【\$488】** \$574 for the first six months, **【\$365】** \$429 for the second six months, **【\$242】** \$285 for the third six months, and **【\$122】** \$144 for the fourth and any succeeding six-month period[s] of training.

\* \* \* \* \*

**§ 3692. Advisory committee**

(a) There shall be a Veterans' Advisory Committee on Education formed by the Secretary which shall be composed of persons who are eminent in their respective fields of education, labor, and management and of representatives of institutions and establishments furnishing education to eligible veterans or persons enrolled under chapter 30, 32, or 35 of this title and chapter **【106】** 1606 of title 10. The committee shall also, *to the maximum extent practicable*, include veterans representative of World War II, the Korean conflict era, the post-Korean conflict era, the Vietnam era, the post-Vietnam era, and the Persian Gulf War. The Assistant Secretary of Education for Postsecondary Education (or such other comparable official of the Department of Education as the Secretary of Education may designate) and the Assistant Secretary of Labor for Veterans' Employment and Training shall be ex officio members of the advisory committee.

(b) The Secretary shall consult with and seek the advice of the committee from time to time with respect to the administration of this chapter, **【chapter】** chapters 30, 32, and 35 of this title, and chapter **【106】** 1606 of title 10. The committee may make such reports and recommendations as it considers desirable to the Secretary and the Congress.

(c) The committee shall remain in existence until December 31, **【2003】** 2013.

\* \* \* \* \*

**【SUBCHAPTER III—EDUCATION LOANS】**

**【§ 3698. Eligibility for loans; amount and conditions of loans; interest rate on loans】**

**【(a)(1)** Subject to paragraph (2) of this subsection, each eligible veteran shall be entitled to a loan under this subchapter (if the program of education is pursued in a State) in an amount determined under, and subject to the conditions specified in, subsection (b)(1) of this section if the veteran satisfies the requirements set

forth in subsection (c) of this section and the criteria established under subsection (g) of this section.

[(2) Except in the case of a veteran to whom section 3462(a)(2) of this title is applicable, no loan may be made under this subchapter after September 30, 1981.

[(b)(1) Subject to paragraph (3) of this subsection, the amount of the loan to which an eligible veteran shall be entitled under this subchapter for any academic year shall be equal to the amount needed by such veteran to pursue a program of education at the institution at which the veteran is enrolled, as determined under paragraph (2) of this subsection.

[(2)(A) The amount needed by a veteran to pursue a program of education at an institution for any academic year shall be determined by subtracting (i) the total amount of financial resources (as defined in subparagraph (B) of this paragraph) available to the veteran which may be reasonably expected to be expended by such veteran for educational purposes in any year from (ii) the actual cost of attendance (as defined in subparagraph (C) of this paragraph) at the institution in which such veteran is enrolled.

[(B) The term "total amount of financial resources" of any veteran for any year means the total of the following:

[(i) The annual adjusted effective income of the veteran less Federal income tax paid or payable by such veteran with respect to such income.

[(ii) The amount of cash assets of the veteran.

[(iii) The amount of financial assistance received by the veteran under the provisions of title IV of the Higher Education Act of 1965.

[(iv) Educational assistance received by the veteran under this title other than under this subchapter.

[(v) Financial assistance received by the veteran under any scholarship or grant program other than those specified in clauses (iii) and (iv).

[(C) The term "actual cost of attendance" means, subject to such regulations as the Secretary may provide, the actual per-student charges for tuition, fees, room and board (or expenses related to reasonable commuting), books, and an allowance for such other expenses as the Secretary determines by regulation to be reasonably related to attendance at the institution at which the veteran is enrolled.

[(3) The aggregate of the amounts any veteran may borrow under this subchapter may not exceed \$ 376 multiplied by the number of months such veteran is entitled to receive educational assistance under section 3461 of this title, but not in excess of \$2,500 in any one regular academic year.

[(c) An eligible veteran shall be entitled to a loan under this subchapter if such veteran—

[(1) is in attendance at an educational institution on at least a half-time basis and (A) is enrolled in a course leading to a standard college degree, or (B) is enrolled in a course, the completion of which requires six months or longer, leading to an identified and predetermined professional or vocational objective, except that the Secretary may waive the requirements of subclause (B) of this clause, in whole or in part, if the Secretary determines, pursuant to regulations which the Secretary

shall prescribe, it to be in the interest of the eligible veteran and the Federal Government;

[(2) enters into an agreement with the Secretary meeting the requirements of subsection (d) of this section; and

[(3) satisfies any criteria established under subsection (g) of this section.

[No loan shall be made under this subchapter to an eligible veteran pursuing a program of correspondence, or apprenticeship or other on-job training.

[(d) Any agreement between the Secretary and a veteran under this subchapter—

[(1) shall include a note or other written obligation which provides for repayment to the Secretary of the principal amount of, and payment of interest on, the loan in installments

[(A) over a period beginning nine months after the date on which the borrower ceases to be at least a half-time student and ending ten years and nine months after such date; or

[(B) over such shorter period as the Secretary may have prescribed under subsection (g) of this section;

[(2) shall include provision for acceleration of repayment of all or any part of the loan, without penalty, at the option of the borrower;

[(3) shall provide that the loan shall bear interest, on the unpaid balance of the loan, at a rate prescribed by the Secretary, at the time the loan is contracted for which rate shall be comparable to the rate of interest charged students at such time on loans insured by the Secretary of Education, under part B of title IV of the Higher Education Act of 1965, but in no event shall the rate so prescribed by the Secretary exceed the rate charged students on such insured loans, and shall provide that no interest shall accrue prior to the beginning date of repayment; and

[(4) shall provide that the loan shall be made without security and without endorsement.

[(e)(1) Except as provided in paragraph (2) of this subsection, whenever the Secretary determines that a default has occurred on any loan made under this subchapter, the Secretary shall declare an overpayment, and such overpayment shall be recovered from the veteran concerned in the same manner as any other debt due the United States.

[(2) If a veteran who has received a loan under this section dies or becomes permanently and totally disabled, then the Secretary shall discharge the veteran's liability on such loan by repaying the amount owed on such loan.

[(f) Payment of a loan made under this section shall be drawn in favor of the eligible veteran and mailed promptly to the educational institution in which such veteran is enrolled. Such institution shall deliver such payment to the eligible veteran as soon as practicable after receipt thereof. Upon delivery of such payment to the eligible veteran, such educational institution shall promptly submit to the Secretary a certification, on such form as the Secretary shall prescribe, of such delivery, and such delivery shall be

deemed to be an advance payment under section 3680(d)(4) of this title for purposes of section 3684(b) of this title.

[(g)(1) The Secretary shall conduct, on a continuing basis, a review of the default experience with respect to loans made under this section.

[(2)(A) To ensure that loans are made under this section on the basis of financial need directly related to the costs of education, the Secretary may, by regulation, establish (i) criteria for eligibility for such loans, in addition to the criteria and requirements prescribed by subsections (c) and (d) of this section, in order to limit eligibility for such loans to eligible veterans attending educational institutions with relatively high rates of tuition and fees, and (ii) criteria under which the Secretary may prescribe a repayment period for certain types of loans made under this section that is shorter than the repayment period otherwise applicable under subsection (d)(1)(A) of this section. Criteria established by the Secretary under clause (i) of the preceding sentence may include a minimum amount of tuition and fees that an eligible veteran may pay in order to be eligible for such a loan (except that any such criterion shall not apply with respect to a loan for which the veteran is eligible as a result of an extension of the period of eligibility of such veteran for loans under this section provided for by section 3462(a)(2) of this title.

[(B) In prescribing regulations under subparagraph (A) of this paragraph, the Secretary shall take into consideration information developed in the course of the review required by paragraph (1) of this subsection.

[(C) Regulations may be prescribed under subparagraph (A) of this paragraph only after opportunity has been afforded for public comment thereon.]

\* \* \* \* \*

### **[§ 3699. Revolving fund; insurance]**

[(a) There is hereby established in the Treasury of the United States a revolving fund to be known as the "Department of Veterans Affairs Education Loan Fund" (hereinafter in this section referred to as the "Fund").

[(b) The Fund shall be available to the Secretary, without fiscal year limitation, for the making of loans under this subchapter.

[(c) There shall be deposited in the Fund (1) by transfer from current and future appropriations for readjustment benefits such amounts as may be necessary to establish and supplement the Fund in order to meet the requirements of the Fund, and (2) all collections of fees and principal and interest (including overpayments declared under section 3698(e) of this title) on loans made under this subchapter.

[(d) The Secretary shall determine annually whether there has developed in the Fund a surplus which, in the Secretary's adjustment, is more than necessary to meet the needs of the Fund, and such surplus, if any, shall be deemed to have been appropriated for readjustment benefits.

[(e) A fee shall be collected from each veteran or person obtaining a loan made under this subchapter for the purpose of insuring against defaults on loans made under this subchapter; and no loan shall be made under this subchapter until the fee payable with re-

spect to such loan has been collected and remitted to the Secretary. The amount of the fee shall be established from time to time by the Secretary, but shall in no event exceed 3 percent of the total loan amount. The amount of the fee may be included in the loan to the veteran or person and paid from the proceeds thereof.】

\* \* \* \* \*

**§ 3712. Loans to purchase manufactured homes and lots**

(a)(1) \* \* \*

\* \* \* \* \*

(m) *The authority of the Secretary to guarantee loans under this section shall expire on December 31, 2003.*

\* \* \* \* \*

**§ 3729. Loan fee**

\* \* \* \* \*

(b) DETERMINATION OF FEE.—(1) The amount of the fee shall be determined from the loan fee table in paragraph (2). The fee is expressed as a percentage of the total amount of the loan guaranteed, insured, or made, or, in the case of a loan assumption, the unpaid principal balance of the loan on the date of the transfer of the property.

(2) The loan fee table referred to in paragraph (1) is as follows:

LOAN FEE TABLE

Type of loan	Active duty veteran	Reservist	Other obligor
(A)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed before October 1, 2011) .....	2.00	2.75	NA
(A)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2011) .....	1.25	2.00	NA
(B)(i) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed before October 1, 2011) .....	<b>3.00</b> 3.50	<b>3.00</b> 3.50	NA
(B)(ii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2011) .....	1.25	2.00	NA
(C)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed before October 1, 2011) .....	1.50	2.25	NA
(C)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after October 1, 2011) .....	0.75	1.50	NA
(D)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed before October 1, 2011) .....	1.25	2.00	NA
(D)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after October 1, 2011) .....	0.50	1.25	NA
(E) Interest rate reduction refinancing loan .....	0.50	0.50	NA
(F) Direct loan under section 3711 .....	1.00	1.00	NA
(G) Manufactured home loan under section 3712 (other than an interest rate reduction refinancing loan) .....	1.00	1.00	NA
(H) Loan to Native American veteran under section 3762 (other than an interest rate reduction refinancing loan) .....	1.25	1.25	NA
(I) Loan assumption under section 3714 .....	0.50	0.50	0.50
(J) Loan under section 3733(a) .....	2.25	2.25	2.25

\* \* \* \* \*

**§ 3733. Property management**

(a)(1) Of the number of purchases made during any fiscal year of real property acquired by the Secretary as the result of a default on a loan guaranteed under this chapter for a purpose described in section 3710(a) of this title, not more than ~~65~~ 85 percent, nor less than 50 percent, of such purchases may be financed by a loan made by the Secretary. ~~【The maximum percentage stated in the preceding sentence may be increased to 80 percent for any fiscal year if the Secretary determines that such an increase is necessary in order to maintain the effective functioning of the loan guaranty program.】~~

~~【(2) After September 30, 1990, the percentage limitations described in paragraph (1) of this subsection shall have no effect.】~~

~~【(3) (2) The Secretary may, beginning on October 1, 1990, sell any note evidencing a loan referred to in paragraph (1)—~~

~~(A) with recourse; or~~

~~(B) without recourse, but only if the amount received is equal to an amount which is not less than the unpaid balance of such loan.~~

~~【(4) (3)(A)—Except as provided in subparagraph (B) of this paragraph, the amount of a loan made by the Secretary to finance the purchase of real property from the Secretary described in paragraph (1) [of this subsection] may not exceed an amount equal to 95 percent of the purchase price of such real property.~~

~~(B)(i) The Secretary may waive the provisions of subparagraph (A) of this paragraph in the case of any loan described in paragraph ~~【(5) of this subsection】~~ (4).~~

~~(ii) A loan described in subparagraph (A) of this paragraph may, to the extent the Secretary determines to be necessary in order to market competitively the property involved, exceed 95 percent of the purchase price.~~

~~【(5) (4) The Secretary may include, as part of a loan to finance a purchase of real property from the Secretary described in paragraph (1) [of this subsection], an amount to be used only for the purpose of rehabilitating such property. Such amount may not exceed the amount necessary to rehabilitate the property to a habitable state, and payments shall be made available periodically as such rehabilitation is completed.~~

~~【(6) (5) The Secretary shall make a loan to finance the sale of real property described in paragraph (1) [of this subsection] at an interest rate that is lower than the prevailing mortgage market interest rate in areas where, and to the extent, the Secretary determines, in light of prevailing conditions in the real estate market involved, that such lower interest rate is necessary in order to market the property competitively and is in the interest of the long-term stability and solvency of the Veterans Housing Benefit Program Fund established by section 3722(a) of this title.~~

\* \* \* \* \*

**§ 5102. Application forms furnished upon request; notice to claimants of incomplete applications**

(a) \* \* \*

\* \* \* \* \*

(c) *TIME LIMITATION.*—(1) *If information that a claimant and the claimant’s representative, if any, are notified under subsection (b) is necessary to complete an application is not received by the Secretary within one year from the date of such notification, no benefit may be paid or furnished by reason of the claimant’s application*

(2) *This subsection shall not apply to any application or claim for Government life insurance benefits.*

\* \* \* \* \*

**§ 5103. Notice to claimants of required information and evidence**

\* \* \* \* \*

(b)(1) \* \* \*

\* \* \* \* \*

(3) *The limitation in paragraph (1) shall not be construed to prohibit the Secretary from making a decision on a claim before the expiration of the period referred to in that subsection.*

\* \* \* \* \*

**§ 5121. Payment of certain accrued benefits upon death of a beneficiary**

(a) Except as provided in sections 3329 and 3330 of title 31, periodic monetary benefits (other than insurance and servicemen’s indemnity) under laws administered by the Secretary to which an individual was entitled at death under existing ratings or decisions~~[,]~~ or those based on evidence in the file at date of death (hereinafter in this section and section 5122 of this title referred to as “accrued benefits”) and due and unpaid [for a period not to exceed two years], shall, upon the death of such individual be paid as follows:

(1) \* \* \*

\* \* \* \* \*

(4) Upon the death of a child, to the surviving children of the veteran who are entitled to death compensation, dependency and indemnity compensation, or death pension; ~~and~~

(5) *Upon the death of a child claiming benefits under chapter 18 of this title, to the surviving parents; and*

~~5~~ (6) In all other cases, only so much of the accrued benefits may be paid as may be necessary to reimburse the person who bore the expense of last sickness and burial.

\* \* \* \* \*

**§ 5301. Nonassignability and exempt status of benefits**

(a)(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained

as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity. **[For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.]**

*(2) For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.*

*(3)(A) This subsection is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive payment of such compensation, pension, or dependency compensation, as the case may be, whether by payment from the beneficiary to such other person, deposit into an account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.*

*(B) Notwithstanding subparagraph (A), nothing in this subsection is intended to prohibit a loan to a beneficiary under the terms of which the beneficiary may use some of the benefits to repay the loan, so long as each of the periodic payments made to repay the loan is separately and voluntarily executed by the beneficiary at the time such periodic payment is made.*

*(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void ab initio.*

\* \* \* \* \*

**§ 5317. Use of income information from other agencies: notice and verification**

\* \* \* \* \*

(g) The authority of the Secretary to obtain information from the Secretary of the Treasury or the Secretary of Health and Human Services under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 expires on September 30, **[2008] 2011.**

\* \* \* \* \*

**§ 6105. Forfeiture for subversive activities**

\* \* \* \* \*

(b) The offenses referred to in subsection (a) of this section are those offenses for which punishment is prescribed in—

- (1) sections 894, 904, and 906 of title 10 (articles 94, 104, and 106 of the Uniform Code of Military Justice);

(2) [sections 792, 793, 794, 798, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105 of title 18] *sections 175, 229, 792, 793, 794, 798, 831, 1091, 2332a, 2332b, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105 of title 18;*

(3) sections 222, 223, 224, 225, and 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2272, 2273, 2274, 2275, and 2276); and (4) section 4 of the Internal Security Act of 1950 (50 U.S.C. 783).

\* \* \* \* \*

**§ 7105. Filing of notice of disagreement and appeal**

\* \* \* \* \*

(b)(1) \* \* \*

\* \* \* \* \*

(3) *A document that meets the requirements of the second sentence of paragraph (1) and the first sentence of paragraph (2) shall be recognized as a notice of disagreement for purposes of this section unless the Secretary finds that the claimant has disavowed a desire for appellate review.*

\* \* \* \* \*

