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109TH CONGRESS, 2d Session | SENATE | REPORT 109–297

VETERANS' CHOICE OF REPRESENTATION AND BENEFITS ENHANCEMENT ACT OF 2006

JULY 27 (legislative day JULY 26), 2006.—Ordered to be printed

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

R E P O R T

[To accompany S. 2694]

The Committee on Veterans' Affairs (hereinafter, "Committee"), to which was referred the bill (S. 2694), to amend title 38, United States Code, to remove certain limitations on attorney representation of claimants for veterans benefits in administrative proceedings before the Department of Veterans Affairs, 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 2, 2006, Committee Chairman Larry E. Craig introduced S. 2694, a bill to remove certain limitations on attorney representation of claimants for veterans benefits in administrative proceedings before the Department of Veterans Affairs (hereinafter, "VA") and for other purposes. Committee Member Lindsey O. Graham is an original cosponsor of S. 2694. Committee Members Kay Bailey Hutchison and James M. Jeffords, and Senators Saxby Chambliss and Lisa Murkowski were later added as cosponsors. The bill was referred to the Committee.

On April 26, 2005, Senator Christopher J. Dodd introduced S. 909, a bill to expand eligibility for government markers for marked graves of veterans at private cemeteries. Senator Blanche L. Lincoln was later added as a cosponsor.

On June 15, 2005, Committee Ranking Minority Member Daniel K. Akaka introduced S. 1252, a bill to increase the amount of sup-

plemental insurance available for totally disabled veterans. Committee Member Ken Salazar is an original cosponsor.

On July 28, 2005, Committee Ranking Member Akaka introduced S. 1537, a bill to provide for the establishment of Parkinson's Disease Research Education and Clinical Centers in the Veterans Health Administration of the Department of Veterans Affairs and Multiple Sclerosis Centers of Excellence. Committee Members Patty Murray and Barack Obama, and Senators Jeff Bingaman, Gordon H. Smith, Debbie Stabenow, Mark L. Pryor, and Tim Johnson were later added as cosponsors.

On September 22, 2005, Chairman Craig introduced S. 1759, a bill to require the Secretary of the Army to remove the remains of Russell Wayne Wagner from Arlington National Cemetery. Senator Barbara A. Mikulski was later added as a cosponsor.

On December 16, 2005, Senator Charles E. Schumer introduced S. 2121, a bill to provide housing loan benefits for the purchase of residential cooperative apartment units. Senators Mark Dayton and Paul S. Sarbanes are original cosponsors of S. 2121. Committee Member James M. Jeffords was later added as a cosponsor.

On March 15, 2006, Senator Conrad R. Burns introduced S. 2416, a bill to expand the scope of programs of education for which accelerated payments of educational assistance under the Montgomery GI Bill may be used, and for other purposes. Senator Mark L. Pryor is an original cosponsor. Committee Member Lindsey O. Graham and Senators Lisa Murkowski, Barbara A. Mikulski, Elizabeth Dole, Saxby Chambliss and E. Benjamin Nelson were later added as cosponsors.

On March 16, 2006, Committee Member Ken Salazar introduced S. 2433, a bill to establish an Assistant Secretary for Rural Veterans within VA, to improve the care provided to veterans living in rural areas, and for other purposes. Committee Ranking Member Akaka, Committee Members Patty Murray, Richard Burr, and John Thune and Senators Conrad R. Burns, Kent Conrad, Blanche L. Lincoln, Craig Thomas, Max Baucus, Byron L. Dorgan, Tim Johnson, Lisa Murkowski, and Mark L. Pryor are original cosponsors. Senator Michael B. Enzi was later added as a cosponsor.

On April 24, 2006, Chairman Craig introduced S. 2634, a bill to strike the term of the positions of Under Secretary for Health and Under Secretary for Benefits and simplify appointments to such positions.

On April 26, 2006, Committee Ranking Member Akaka introduced S. 2659, a bill to provide for the eligibility of Indian tribal organizations for grants for the establishment of veterans' cemeteries on trust lands. Senator Daniel K. Inouye is an original cosponsor of S. 2659. Committee Member Patty Murray was later added as a cosponsor.

On May 8, 2006, Committee Ranking Member Akaka introduced S. 2762, a bill to ensure appropriate payment for the cost of long-term care provided to veterans in State homes, and for other purposes. Senators Olympia J. Snowe, Susan M. Collins, Charles E. Schumer, and Hillary Rodham Clinton were later added as cosponsors.

On May 25, 2006, Senator Christopher J. Dodd introduced S. 3069, a bill to modify the furnishing of government markers for graves of veterans at private cemeteries, and for other purposes.

Senators Robert C. Byrd, Mike DeWine, Tim Johnson, Patrick J. Leahy, Kent Conrad, Byron L. Dorgan, and Edward M. Kennedy are original cosponsors of S. 3069. Senators John F. Kerry, Blanche L. Lincoln, Jeff Sessions, Herb Kohl, Joseph I. Lieberman, Rick Santorum and George V. Voinovich were later added as cosponsors.

On June 5, 2006, Senator Mike DeWine introduced S. 3363, a bill to provide for accelerated payment of survivors' and dependents' educational assistance for certain programs, and for other purposes.

On June 20, 2006, Chairman Craig introduced S. 3545, a bill to improve services for homeless veterans, and for other purposes. Committee Ranking Member Akaka, and Committee Members Richard Burr and Barack Obama are original cosponsors of S. 3545. Committee Member Johnny Isakson was later added as a cosponsor.

COMMITTEE HEARINGS

On June 23, 2005, the Committee held a hearing on, among other bills, S. 1252 and S. 909. Testimony was heard from: Senators Wayne Allard and Mark L. Pryor; the Honorable Daniel L. Cooper, Under Secretary for Benefits, U.S. Department of Veterans Affairs; Mr. Steve Smithson, Assistant Director, Veterans Affairs and Rehabilitation, The American Legion; Mr. Quentin Kinderman, Deputy 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 National Legislative Director, Paralyzed Veterans of America; and Mr. Richard Jones, National Legislative Director, AMVETS.

On May 11, 2006, the Committee held a hearing on, among other bills, S. 1537, S. 2433, S. 2634, and S. 2762. Testimony was heard from: Dr. Michael Kussman, Deputy Under Secretary for Health, Veterans Health Administration, U.S. Department of Veterans Affairs; Mr. Robert Shaw, Legislative Chairman, National Association of State Veterans Homes; Mr. John Melia, Executive Director, Wounded Warrior Project; Mr. Carl Blake, Associate Legislative Director, Paralyzed Veterans of America; Mr. Juan Lara, Assistant Director, National Legislative Commission, The American Legion; and Mr. Adrian Atizado, Assistant Legislative Director, Disabled American Veterans.

On June 8, 2006, the Committee held a hearing on, among other bills, S. 2121, S. 2416, S. 2659, S. 2694, and S. 3363. Testimony was heard from: Senators Conrad R. Burns and Mark L. Pryor; Mr. Ronald Aument, Deputy Under Secretary for Benefits, Veterans Benefits Administration, U.S. Department of Veterans Affairs; the Honorable Donald L. Ivers, former Chief Judge of the United States Court of Appeals for Veterans Claims; Mr. Quentin Kinderman, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Richard F. Weidman, Director of Government Relations, Vietnam Veterans of America; and Mr. Barton F. Stichman, Co-Director, National Veterans Legal Services Program.

COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearings, the Committee met in open session on June 22, 2006, and voted by unanimous voice vote to report favorably S. 2694, as amended, to include provisions derived from S. 909, S. 1252, S. 1537, S. 1759, S. 2121, S. 2416, S. 2433, S. 2634, S. 2659, S. 2694, as introduced, S. 2753, S. 2762, S. 3069, S. 3363, S. 3545, and several original provisions.

SUMMARY OF THE COMMITTEE BILL AS REPORTED

S. 2694, as reported (hereinafter, "the Committee bill"), contains various amendments to title 38, United States Code, and free-standing provisions, that would:

(a) Authorize claimants to have paid attorney representation in benefits cases before VA;

(b) Establish the eligibility of Indian tribal organizations for grants for the establishment of veterans' cemeteries on trust lands;

(c) Require the Secretary of the Army to remove the remains of Russell Wayne Wagner from Arlington National Cemetery;

(d) Extend the provision of government grave markers and headstones for the marked graves of veterans in private cemeteries;

(e) Authorize accelerated payment of educational assistance under the Montgomery GI Bill for courses leading to employment in the transportation, construction, hospitality, or energy sectors of the economy;

(f) Authorize accelerated payment of survivors' and dependents' educational assistance for courses leading to employment in the transportation, construction, hospitality, or energy sectors of the economy, or that lead to employment in a high technology occupation in a high technology industry;

(g) Authorize funding for State Approving Agencies at $19 million per year using funds paid from the readjustment benefit account and funds made available through discretionary appropriations;

(h) Extend the biennial reporting requirement of VA and the Department of Defense on the operation of the Montgomery GI Bill program;

(i) Mandate the establishment of at least six Parkinson's disease, research, education, and clinical centers and at least two Multiple Sclerosis Centers of Excellence;

(j) Eliminate the term limits for the positions of Under Secretary for Health and Under Secretary for Benefits;

(k) Require VA to pay full costs for certain service-connected veterans residing in State homes, provide medications for certain service-connected conditions to veterans residing in State homes, and create a limited authority for the Secretary of Veterans Affairs (hereinafter, "the Secretary") to designate certain beds in non-State facilities as State homes for purposes of per diem payments;

(l) Create an Office of Rural Health within the Office of the Under Secretary for Health at VA;

(m) Authorize a pilot program to provide caregiver assistance and non-institutional care services;

(n) Reaffirm the national goal to end homelessness among veterans;

(o) Express the Sense of the Congress on the appropriate response of the Federal Government to the needs of homeless veterans;

(p) Extend the authority of VA to provide grant assistance for comprehensive service programs for homeless veterans;

(q) Extend the authority of VA to provide treatment and rehabilitation services to seriously mentally ill and homeless veterans;

(r) Extend the authority of VA to transfer properties it acquires through foreclosure proceedings on homes backed by VA-guaranteed loans for the purpose of housing homeless veterans;

(s) Extend the authorization of, and increase the authorization amount for, grant funding for homeless veterans with special needs;

(t) Extend the authorization of, and increase the authorization amount for, technical assistance programs provided to homeless veterans service providers;

(u) Include additional required elements in an annual report on assistance provided to homeless veterans;

(v) Add additional ex-officio members to the Advisory Committee on Homeless Veterans;

(w) Provide additional rental assistance vouchers for VA-supported housing programs for homeless veterans;

(x) Provide financial assistance for supportive services for low-income veteran families;

(y) Authorize VA to guaranty loans for the purchase of stock in residential cooperative housing corporations;

(z) Increase from $20,000 to $30,000 the amount of supplemental insurance coverage available to totally disabled veterans under the Service-Disabled Veterans' Insurance program;

(aa) Extend from September 30, 2008, to September 30, 2011, the authorization for VA to match certain beneficiary income information with data from other agencies;

(bb) Clarify the scope of covered correctional facilities for purposes of determining entitlement to certain benefits for those residing in correctional facilities.

DISCUSSION

Section 101: Attorney representation in veterans' benefits cases before the Department of Veterans Affairs

Background: Veterans' representation

A. Introduction

VA has a non-adversarial process for developing and adjudicating claims for veterans' benefits. As part of that process, VA generally is obligated to notify a claimant of the evidence needed to substantiate a claim, to assist the claimant in obtaining that evidence, and to provide the claimant with the benefit-of-the-doubt in rendering

a decision. See 38 U.S.C. §§ 5103A, 5103(a), 5107(b). If a claimant disagrees with VA's initial decision, the claimant may seek a more favorable outcome through the non-adversarial appeal process within VA, which may include multiple reviews of the claim by adjudicators at a VA regional office, and a review by the Board of Veterans' Appeals (hereinafter, "BVA" or "Board"). See 38 U.S.C. §§ 7105, 7107.

During the VA administrative process, a claimant may seek assistance—without charge to the claimant—from a recognized representative of a veterans' service organization (hereinafter, "VSO") or from other recognized individuals. See 38 U.S.C. § 5902, 5903. However, until that VA administrative process has been completed, a claimant is statutorily prohibited from paying an attorney or agent to provide services with regard to a claim for veterans' benefits. See 38 U.S.C. § 5904(c). As explained below, that policy dates back to the Civil War and, today, is considered to be unfair and outdated by a broad spectrum of individuals and organizations, including judges, veterans' organizations, veterans' advocates, law professors, and bar associations.

B. History of attorney fee limitation

In 1862, in response to concerns that unscrupulous lawyers were bilking Civil War veterans out of their pensions, Congress imposed a $5 limit on the amount of fees that agents or lawyers could charge individuals seeking veterans' benefits. 12 Stat. 566, 568 (1862). Two years later, the $5 limit was raised to $10. 13 Stat. 387, 389 (1864). When those limits were imposed, "there was no regulation of law practice by government or licensing of attorneys by bar associations" and, therefore, "[a]nyone could hold himself out as an attorney or claims agent and, for a fee, assist a veteran claim a pension." Hearing on Benefits Legislative Initiatives, Senate Committee on Veterans' Affairs, June 8, 2006, 109th Cong., 2d Sess. (hereinafter, "SVAC June 8, 2006, Hearing") (testimony of Mr. Richard Weidman).

The Civil War era restriction on attorney fees remained in place for over 120 years, despite the subsequent development of "very powerful and active disciplinary entities" to police the legal profession. SVAC June 8, 2006, Hearing (testimony of the Honorable Frank Q. Nebeker). As a practical matter, the restriction on attorney fees resulted in very few veterans having attorney representation during administrative proceedings before VA.

In 1988, Congress created the U.S. Court of Veterans Appeals to provide judicial review of decisions rendered by the BVA. See Veterans' Judicial Review Act, Pub. L. 100–687, 102 Stat. 4105 (1988) (hereinafter, "VJRA"); see also Pub. L. 105–368, 112 Stat. 3315 (1998) (renaming the U.S. Court of Veterans Appeals as the U.S. Court of Appeals for Veterans Claims (hereinafter, "CAVC")). At that time, the Committee acknowledged that "the new right to judicial review * * * would be a hollow right indeed without some easing of the limitation on attorneys' fees." S. Rep. 100–418, at 63 (1988). The Committee further stated:

> The basis for Congressional action, first after the Civil War * * *, limiting the amount an attorney could receive for representing a claimant before the VA was grounded in a belief that the lawyers of that day were unscrupulous

> and were taking unfair advantage of veterans by retaining an unwarranted portion of the veterans' statutory entitlement in return for very limited legal assistance. Whatever the merits of such a view at that time that the limitation was imposed * * * it is the Committee's position that such a view of today's organized bar, particularly in light of the widespread network of local bar associations that now generally police attorney behavior, is no longer tenable.
>
> The Committee is also of the view that the current statutory limitation is an undue hindrance on the rights of veterans and other claimants to select representatives of their own choosing to represent them in VA matters.

S. Rep. 100–418, at 64. In discussing the reasons for not advancing legislation to allow attorney representation at the initial stages of the VA process, the Committee explained that "the existing limit on attorneys' fees is generally appropriate with respect to the initial claims stage in the sense that applying for VA benefits is a relatively uncomplicated procedure." S. Rep. 100–418, at 63.

The Committee therefore advanced a bill (S. 11) that would have retained the $10 fee limit during the VA administrative process but would have lifted the fee limit after the BVA rendered an adverse decision. S. Rep. 100–418, at 65. Similarly, the House Committee on Veterans' Affairs favorably reported a bill (H.R. 5288) that would have allowed paid attorney representation after VA had "affirm[ed] its decision to deny a claim." H. Rep. 100–963, at 28.

As enacted, the VJRA removed the $10 fee limit and permitted claimants to hire attorneys only after "the date on which the [BVA] first makes a final decision in the case." 38 U.S.C. § 5904(c). This allowed claimants to have the benefit of legal counsel when pursuing their cases before the CAVC, but did not permit claimants to hire attorneys until after VA had completed its administrative proceedings.

C. Complexity of the VA system

Since the enactment of the VJRA, there has been a growing recognition that the claims process is no longer a "relatively uncomplicated procedure" (S. Rep. 100–418, at 63). Among those recognizing this complexity have been the judges on the CAVC and those on the U.S. Court of Appeals for the Federal Circuit (hereinafter, "Federal Circuit"), which hears appeals from the CAVC. In fact, the CAVC has described the statutory and regulatory framework governing veterans' benefits as a "confusing tapestry" (*Hatlestad* v. *Derwinski,* 1 Vet. App. 164, 167 (1991)) and the Federal Circuit has described the VA benefits system as involving "arcane intricacies * * * that require[ ] voluminous statutes, regulations, manuals, and circulars to administer" (*Cook* v. *Principi,* 318 F.3d 1334, 1357 (Fed. Cir. 2002) (Gajarsa, J., dissenting)).

The increasing complexity has been recognized by VA, as well. In fact, VA's then-Under Secretary for Benefits testified in 2000 that "[t]he Veterans Disability Compensation Program is the most complex disability claims system in the Federal government" and "[t]he process veterans must follow is complicated." Hearing on the Department of Veterans Affairs Claims Adjudication and Pending Legislation Before the Committee, Senate Committee on Veterans' Affairs, July 20, 2000, 106th Cong., 2d sess. (testimony of the Hon-

orable Joseph Thompson). Similarly, in 2005, VA's current Under Secretary for Benefits, the Honorable Daniel Cooper, testified that the VA disability compensation system was becoming "increasingly complicated." Hearing on Battling the Backlog: Challenges Facing the VA Claims Adjudication and Appeal Process, Senate Committee on Veterans' Affairs, 109th Cong., 1st sess., May 26, 2005 (hereinafter, "SVAC May 26, 2005, Hearing").

VSOs also have recognized the increasing complexity of the system. For instance, in 2005, the Veterans of Foreign Wars of the United States (hereinafter, "VFW") provided this description of the VA claims adjudication system: "Compared to the compensation program of a decade ago, the work is much more complicated. It is now a complex thicket of court decisions, and statutory requirements." SVAC May 26, 2005, Hearing (testimony of Mr. Quentin Kinderman). Similarly, VFW testified in 2006 that, "[f]or a veteran without a service officer, navigating the highly complex bureaucracy that the VA claims process has become is a nightmare." Hearing on the Legislative Presentation of the Veterans of Foreign Wars of the United States, Senate Committee on Veterans' Affairs, March 7, 2006, 109th Cong., 2d sess. (testimony of Commander-in-Chief James Mueller).

D. Support for repealing attorney fee limitation

In view of that complexity, the growing recognition that section 5904(c) of title 38 curtails veterans' rights, and other important considerations, a wide array of individuals and organizations have expressed support for allowing veterans and other VA claimants to have the option of hiring lawyers at any time during the VA administrative process. See generally Matthew J. Dowd, Note, No Claim Adjudication Without Representation: A Criticism of 38 U.S.C. § 5904(c), 16 Fed. Cir. B.J. (forthcoming Aug. 2006) (discussing increased public support for amending or revoking section 5904(c) of title 38).

Perhaps most significantly, "[t]he desirability of permitting veterans to employ lawyers during the early proceedings before the VA has been recognized by those in best position to perceive the prejudicial effect of the current system-the Judges presiding over the CAVC." SVAC June 8, 2006, Hearing (statement for the record of Mr. James C. McKay). Indeed, after 10 years of experience as the first Chief Judge of the CAVC, the Honorable Frank Q. Nebeker criticized the prohibition on hiring attorneys in a 1999 opinion:

> Another troubling aspect of representation has to do with the limited role lawyers are permitted (or may be paid) to play in the adjudication of claims for veterans benefits. When judicial review was established ten years ago, there was apparently concern on the part of Congress that opening the door to lawyer representation, even in a limited way, was so fraught with potential peril that at least some oversight of the attorney-client relationship was necessary. As a result, filing and review of fee agreements were, respectively, required and permitted. Arguably, there are two reasons why the law in the past ten years has reluctantly allowed fee-for-service legal representation. The creation of the [CAVC] and its review authority intro-

> duced, for the first time, an adversarial process as an aspect of veterans claims adjudication. Secondly, the Congress might have anticipated that the pro bono services available at the regional office and [BVA] levels of [VA] would not usually be made available to disappointed claimants seeking to appeal to the [CAVC].
>
> So the antiquated ten dollar limit on fees was scrapped for the no-fee-until-after-a-final-BVA-decision rule.
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> Why the perceived need effectively to restrict lawyer representation by proscribing the charging of fees prior to a BVA decision and the oversight of fee agreements by the [CAVC]? In the absence of any empirical or statistical data, one can only wonder whether Congress presumed that the bar would act unprofessionally or would replace the services offered gratis by veterans service groups? If the former, it is an unfounded indictment based on mistrust. If the latter, it is evidence of a desire to prevent the bar from trespassing upon protected turf. In either case, now that we have had nearly ten years of experience, a questioning of the basic premises is in order.
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> A third reason, and perhaps the most important one, may be gleaned from our over nine years of experience in reviewing BVA denials of benefits. The [CAVC] continues to see many appeals where, if counsel were realistically permitted to represent a claimant during the adjudication process before a final BVA decision, an appeal would be unnecessary or even seen as futile by the applicant. However, with the present restrictions on lawyer representation, an error at the VA level may not be discovered until years later, where with counsel it might well have been prevented at the outset. Thus, restricting realistic access to counsel until after a final BVA decision can cause years of delay both in adjudication before VA and in discovering the error through appellate litigation, only to have the matter returned to VA for readjudication. This happens in many appeals.
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> Effectively limiting lawyer representation until after a BVA final decision and after oversight of fee agreements is, quite arguably, unnecessarily paternalistic.

In the Matter of the Fee Agreement of Kenneth B. Mason Jr., 12 Vet. App. 135, 137 (1999) (Nebeker, J., concurring).

Subsequently, other CAVC judges spoke out against the restrictions on hiring lawyers. For instance, Judge Ronald Holdaway made the following statement in 2004:

> I think that there should be a right to counsel at the administrative level. * * *
>
> There's a paternalism involved that seems to me to be excessive. * * *
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> * * * If you get lawyers involved at the beginning, you can focus in on what is this case about. I think you would get better records, you would narrow the issue, there would be screening * * * but the fundamental reason, why should veterans be treated differently from anyone else?

> * * * I think if we had lawyers involved at the beginning of these cases, it would be the single most fundamental change for the better that this system could have.

Should 38 U.S.C. Section 5904 Be Amended?, Eighth Annual Judicial Conference, U.S. Court of Appeals for Veterans Claims, 19 Vet. App. 27 Advance Slip (April 22–23, 2004). Similarly, Judge Donald L. Ivers of the CAVC stated in 2004 that "[t]he Court has historically taken a position recognizing that involvement of lawyers before the VA could be very helpful, and I concur." A Conversation with Chief Judge Donald L. Ivers, Tommy: A Lawyer's Guide to Veterans Affairs, Fed. Bar Ass'n Veterans L. Sec., Washington, D.C. (Dec. 2004).

Numerous professors of law also have reached the conclusion that the prohibition against hiring attorneys should be revisited. Principally among them, Professor William F. Fox, Jr., of Catholic University of America Columbus School of Law, offered the following opinion in his treatise on veterans' law:

> Many of the problems at the Board that lead to defective Board decisions and that ultimately lead to the large numbers of remands for a proper statement of reasons or bases are attributable to the lack of a proper record-building process at the regional office level.
>
> Proper record building at the regional office level requires the participation of attorneys at the claims initiation stage of the process. The Social Security Administration, a benefits program in which attorneys are permitted to participate at the outset of the claims process, has very few of the record-building problems that continue to plague [VA]. Concededly, this requires legislation; but it is legislation of the highest import.

William F. Fox, Jr., The Law of Veterans' Benefits: Judicial Interpretation, at 254 (3d ed., Paralyzed Veterans of America, 2002). Professor Fox later opined that, if he were to design the "ideal process" for the veterans" benefits system, he would "[f]irst and foremost * * * eliminate the remaining and totally artificial restrictions on the use of attorneys in the system to permit attorneys to represent claimants at every stage of the proceeding, including the initial claims process." William F. Fox, Jr., Deconstructing and Reconstructing the Veterans Benefits System, 13 Kan. J.L. & Pub. Pol'y 339, 344 (2004).

Similarly, Professor Richard E. Levy, from the University of Kansas School of Law, offered this opinion in 2004:

> In light of the increasingly complex and legalistic character of the process, a critical question is whether non-attorney representation is sufficient. For example, the CAVC has adopted an exhaustion requirement under which it will not consider matters that were not raised before the BVA. Without representation by attorneys, claimants often may find that they have failed to properly raise critical matters before the agency and, as a result, their claims are foreclosed.

* * * * *

> * * * At the very least, veterans are left without an important source of protection considered essential in other legal contexts.
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> * * * [E]limination of limits on attorney compensation, perhaps the most entrenched feature of the [VA] system, warrants careful consideration. The administrative process is not always veteran friendly and may have become more adversarial as a result of judicial review. At any rate, the preservation of issues for review, which was not a factor before the VJRA, has become an important consideration and attorneys are likely to be especially helpful there. Moreover, while attorney representation is often seen as a negative from an agency perspective, attorney representation of veterans may well help the VA by reducing its burden of developing facts and compiling the record.

Richard E. Levy, Of Two Minds: Charitable and Social Insurance Models in the Veterans Benefits System, 13–SPG Kan. J.L. & Pub. Pol'y 303, 318–24 (2004).

Additionally, Professor Eugene R. Fidell, from American University Washington College of Law, recently stated that the prohibition against hiring attorneys "has been widely understood to be unfair for many, many years" and is "a museum piece that should have been gotten rid of a long time ago." Jim Abrams, The Associated Press, Congress Seeks to Change Civil War Law (May 8, 2006), found at http://www.wtopnews.com/?nid=116&sid=784420 (last visited July 19, 2006).

Numerous bar associations also have supported a repeal of section 5904(c) of title 38, including the American Bar Association, the Court of Appeals for Veterans Claims Bar Association, the Pennsylvania Bar Association, the Maryland State Bar Association, the Rhode Island Bar Association, the Oklahoma Bar Association, the West Virginia Bar Association, the Arizona Bar Association, the Bar Association of the District of Columbia, and the Washington Bar Association. See generally Matthew J. Dowd, Note, No Claim Adjudication Without Representation: A Criticism of 38 U.S.C. §5904(c), 16 Fed. Cir. B.J. (forthcoming Aug. 2006); Message from the President of the CAVC Bar Association, Jennifer A. Dowd, Esq., found at http://www.cavcbar.net (last visited July 14, 2006).

In addition, lawyers and other advocates practicing veterans' law before both VA and the CAVC have criticized the current restrictions against hiring attorneys. For instance, at the CAVC Judicial Conference in 2004, a long-time veterans' law practitioner provided these observations regarding the current statutory prohibition:

> [T]his is an issue of choice. * * * That is certainly the way my clients have presented it to me when I tell them that I'm not able to represent them before there's a final Board decision. And I note that [the materials distributed at the conference] talk at length about putting veterans in a special category. And I note that they are in a special category because they are one of only two groups in this country who are prohibited—legally prohibited from choosing to hire an attorney, and the other group is enemy combatants.

> So I would like to understand * * * why it makes sense that veterans along with enemy combatants are prohibited from choosing. We are not talking about forcing them to hire an attorney, we're not talking about what's the best way to fix the system in terms of the VA system, we are talking about giving veterans and their families a choice about how they proceed on their own behalf.

Should 38 U.S.C. Section 5904 Be Amended?, Statement of Ms. Barbara Cook, Eighth Annual Judicial Conference, U.S. Court of Appeals for Veterans Claims, 19 Vet. App. 40 Advance Slip (April 22–23, 2004). (Since that time, the U.S. Supreme Court has loosened the restrictions against enemy combatants engaging attorneys. See *Hamdi* v. *Rumsfeld*, 542 U.S. 507 (2004).)

At the same conference, the president of the National Organization of Veterans Advocates (hereinafter, "NOVA") opined that section 5904 "should be amended," but cautioned that "any amendment to section 5904 should have a mandatory [continuing legal education] component to it" because "this is a complicated field of law." Should 38 U.S.C. Section 5904 Be Amended?, Statement of Mr. Robert Chisholm, Eighth Annual Judicial Conference, U.S. Court of Appeals for Veterans Claims, 19 Vet. App. 26 Advance Slip (April 22–23, 2004).

E. Committee hearings

During the 109th Congress, the issue of attorney representation for veterans was discussed at several Committee hearings. Initially, in May 2005, NOVA testified before the Committee that allowing claimants to hire attorneys after the Board has issued a final decision "is too late in the process for counsel to be truly effective because by the time the Board makes a decision on the claim, the record is effectively closed." SVAC May 26, 2005, Hearing (testimony of Mr. Robert Chisholm); see 38 U.S.C. §7252(b) ("Review in the Court shall be on the record of proceedings before the Secretary and the Board."). In addition, NOVA testified at that hearing that, if retained at earlier stages of the proceedings, "[a]ttorneys would be helpful in obtaining, organizing and presenting records on behalf of the veteran and making sure that the VA processes the claim in a timely and accurate manner."

In March 2006, The Retired Enlisted Association (hereinafter, "TREA") testified that there is no logic to the prohibition against hiring attorneys "except history." Hearing on the Legislative Presentations of the Fleet Reserve Association, the Air Force Sergeant's Association, the Retired Enlisted Association, the Gold Star Wives of America, and the Military Officers Association of America, Senate Committee on Veterans' Affairs, March 2, 2006, 109th Cong., 2d sess. (testimony of Ms. Deirdre Parke Holleman). In addition, TREA testified that allowing attorney representation during VA's administrative proceedings "would help a great deal with the repetitive nature of the filings."

Then, at the Committee's June 8, 2006, hearing, retired CAVC Judge Donald Ivers testified that "[f]reedom to seek counsel of one's choice has long been a hallmark of this nation's system of justice" and that it is "highly contradictory" that veterans "who have given much in defense of that system are denied that freedom in pursuing claims arising out of their service." In addition, retired CAVC

Chief Judge Frank Q. Nebeker stated in written testimony for the record that "the paternal approach of effectively preventing lawyer representation in the benefits process [is] severely outmoded" and stressed that "veterans, like everyone else, should be at liberty to seek counsel in the free market."

Similar opinions were expressed in testimony provided at, or submitted for, the SVAC June 8, 2006, hearing by several organizations, including VVA, Paralyzed Veterans of America (hereinafter, "PVA"), NOVA, and the National Veterans Legal Services Program (hereinafter, "NVLSP"). In part, Mr. Richard Weidman of VVA testified that "[l]egal counsel is the right of all Americans, except veterans" and that "[t]his is an injustice that must be redressed." In addition, he stated:

> This limitation, and the patronizing reasoning behind it, sets veterans off from every other discrete group of the American population. No other group—including illegal aliens and felons in penal institutions—is barred from making a free choice about who will be their legal representative in matters personal to them that may be pending before the government.

Along the same lines, NVLSP testified that "[i]t makes no rational sense to deny [veterans] this right when the right to choose to hire an attorney is enjoyed by criminal defendants, claimants for other federal government benefits including social security, and non-citizens opposing federal government efforts to deport them." SVAC June 8, 2006, Hearing (statement of Mr. Barton Stichman). In addition, NVLSP testified that "the current network of veterans' advocates available to our nation's veterans is greatly overburdened" and that "[a]llowing disabled veterans to hire attorneys will help alleviate this burden and promote justice."

PVA submitted testimony for the June 8, 2006, hearing, noting that "[t]he reason for the statutory fee limitation, now a prohibition, does not exist currently and has not existed for a long time." PVA recommended "that the Committee consider language similar to that contained in Title 42 that governs recognition of representatives before the Social Security Administration and the fees that those representatives may collect." See 42 U.S.C. §406(a).

On the other hand, VA, VFW, Disabled American Veterans (hereinafter, "DAV"), and AMVETS provided testimony in June 2006 expressing their opposition to allowing veterans the option of hiring lawyers. Their principal bases for opposition included concerns that attorneys would charge veterans excessive fees, that attorneys would make the VA process more complicated or more adversarial, and that attorneys would not have sufficient training in this area of law to be effective. SVAC June 8, 2006, Hearing (testimony of Mr. Ronald Aument, VA Deputy Under Secretary for Benefits; Mr. Quentin Kinderman, VFW; Mr. Joseph Violante, DAV; and Mr. David G. Greineder, AMVETS). In addition, DAV stated that "[v]eterans should be able to file claims for disability benefits and receive fair decisions from [VA] without the necessity to hire and pay a large portion of their benefits to lawyers" and that allowing veterans to hire attorneys "will have far reaching detrimental effects that will far outweigh the emotional gratification of having the right to choose representation by a lawyer." SVAC June 8,

2006, Hearing (testimony of DAV citing *Walters* v. *National Ass'n of Radiation Survivors*, 473 U.S. 305 (1985)).

Those concerns were addressed by other witnesses at the June 8, 2006, hearing, including Mr. Richard Weidman of VVA, who provided the following testimony:

> Primarily, the rationale articulated by the major VSOs and the VA for their vehement support for perpetuating the bar to veterans choosing attorney representation is paternalistic, i.e., they argue that the veterans benefits system is non-adversarial and pro-claimant, and as such veterans and their benefits must be "protected" from unscrupulous attorneys. Putting aside the merits of the argument that the VA benefits system is non-adversarial, the view that veterans need to be "protected" from attorneys simply has no basis in fact, and discriminates against veterans in comparison to the unfettered right of all other socio-economic groups in our nation to hire an attorney. There is no evidence that veterans have been abused by their attorneys (by charging exorbitant fees, for example) upon their being provided representation services before the [CAVC] and then on remand from the [CAVC] to the BVA.
>
> Also cited by the VA and some others as to why attorney representation of veterans is harmful and should not be allowed is that, by introducing attorneys into the mix during the initial claims process, VA adjudicators will be forced to take a more adversarial position when adjudicating claims. However, many veterans' advocates would argue that the VA adjudication process is already adversarial. Virtually any veteran who has been through this process will tell you that.
>
> * * * With the assistance of an attorney at the start of a claim, the adjudicator's task can be streamlined to reviewing the evidence, developing the evidence as specified by the attorney, considering the attorney's legal and factual arguments and analysis, and rendering a decision. If the attorney fully develops the evidence as much as possible and writes a coherent argument, a favorable claims decision is essentially written for the adjudicator. * * *
>
> Another discredited "doomsday" argument is that allowing attorneys to represent veterans at the [VA regional office] level will result in undue competition with service representatives, perhaps even causing smaller VSOs to be driven out of the business of representing veterans. Such an outcome is highly unlikely. Allowing veterans the right to choose attorney representation will not diminish the critically important role of VA accredited VSO service representatives. As demonstrated by VVA's historical support for judicial review and the right to attorney representation, as well as its use of its own attorneys to represent veterans before the BVA and the [CAVC], VVA has always viewed the roles of accredited service representatives and attorneys as complementary. Both groups train and learn from each other, and cooperate in the representation of VVA's veteran clients. The strength of accredited service representatives is in their front-line work in the field, de-

veloping claims and succeeding at the regional office level in most routine cases. The further up the appeal process a case must go, the more likely it presents complicated legal or factual issues, and is not routine. In such cases, especially at the appellate levels, the role of attorneys can be critical to providing veterans with quality representation.

Moreover, there will never be enough attorneys representing veterans to assist them all. Nor would attorneys have any incentive to take all veterans as clients. Because attorneys will be paid, economic considerations will determine the number of veterans who will choose legal representation. For the same reason, no small VSOs will be put out of the business of representing veterans because of attorneys. Only a small percentage of veterans' benefits claims involve amounts of past-due compensation sufficient to create incentives for attorney representation. Because the vast majority of cases do not involve large awards of past-due benefits, the vast majority of veterans will continue to have their cases represented by accredited VSO service representatives.

Yet another argument used in the past to resist attorney representation is that many attorneys have little or no training in VA laws, regulations and adjudication policies, which would result in inadequate representation or even legal malpractice. This is a "red herring" because, since the VJRA was enacted in 1988, there already have been a number of attorneys throughout the country practicing in this area of the law. It is true that more attorneys new to this practice will become involved if the current bar to attorney representation is repealed. However, ethical and other professional responsibility rules require attorneys to be competent to adequately represent their clients. Attorneys without direct experience with VA benefits laws and procedures should be at least familiar with how to obtain the information and learn what is necessary to provide adequate representation to veterans. This is not a new concept for attorneys. It is the method attorneys use with respect to every area of law in which they might practice.

Lastly, opponents of allowing veterans' freedom of choice also argue that only those veterans with financial means will be able to afford attorney representation. In other words, they argue that poorer veterans will be unable to afford attorneys and thus will be disadvantaged in terms of the quality of their representation, causing disparate classes of benefits claimants. It is highly unlikely, however, that some veterans will be denied the benefit of attorney representation based solely on their inability to pay the attorney's fee. Virtually no veteran will be required to pay an attorney in advance for representation. The vast majority of veterans' cases handled by attorneys will be done on a contingent basis (no fee unless an award of past-due compensation is won), which is the case with the limited attorney represented cases that occur today. This means that the merits of the veteran's case will most likely

determine his or her access to an attorney, not the veteran's financial standing.

The overriding concern for VVA, as well as any other individual or group that cares about the rights of veterans, is that veterans get the most effective representation possible. If a veteran wants to hire an attorney as his or her representative at the [VA regional office], is there a legitimate basis to deny them the right to do so? The position of VVA since its founding has been that no such basis exists. There should be no wavering from this same answer today.

Additionally, in response to DAV's testimony, Mr. James C. McKay provided this written statement:

The DAV asserts in [its June 8, 2006, testimony] that "veterans should be able to file claims for disability benefits and receive fair decisions from the [VA] without the necessity to hire and pay a large portion of their benefits to lawyers." There is no foundation for the premise of that statement. Under the provisions of S. 2694, there would be no "necessity" that veterans hire lawyers. Rather, each veteran would have the choice of hiring a lawyer or not hiring a lawyer. Likewise, there is no basis for the demeaning conclusion that veterans would choose to hire a lawyer to satisfy an "emotional gratification of having the right to choose representation by a lawyers."

* * * * *

The main thrust of the DAV's argument relies completely on an outdated statement in S. Rep. No. 100–418, at 63–64 (1988), which, in turn, relied completely on the plurality opinion of four justices of the Supreme Court in *Walters,* issued twenty-one years ago. * * *

The DAV statement does not mention that the plurality decision in *Walters* was based largely on the amazing conclusion that lawyers are not needed because service organizations representatives (who charge no fee) are fully capable of representing veterans for the reason that "complex" cases constituted a "tiny fraction" of the total cases pending before the VA. (473 U.S. at 329–330). The plurality of justices proclaimed that the medical questions relating to the degree of disabilities of veteran claimants were overwhelmingly simple, and that complex medical issues seldom arose in VA administrative proceedings. (Ibid.)

The plurality justices' view of the simplicity of veterans claims was at odds with the Supreme Court's view stated eleven years earlier in *Johnson* v. *Robinson,* 415 U.S. 361, 370 (1974), where the Court's decision relied on a statement of the Administrator of the Veterans Administration in support of the 1979 amendment to 38 U.S.C. sec. 361 (1974), that, "in the adjudication of compensation and pension claims, a wide variety of medical, legal, and other technical questions constantly arise which require expert examiners of considerable training and experience and

> which are not readily susceptible of judicial standardization."

SVAC June 8, 2006, Hearing (statement of Mr. James C. McKay).

Although, The American Legion also expressed concerns about allowing veterans to hire attorneys, that veterans' organization did not oppose the enactment of statutory provisions to address those concerns:

> The American Legion does not oppose the concept of attorney representation in the VA system or the lifting of current restrictions on attorney representation. We are concerned that such legislation should contain adequate safeguards to ensure each attorney's competency, training and reasonable fee limits. We are pleased that this bill [S. 2694] includes provisions addressing these areas of concern. We recommend a fee cap or reasonable hourly rate be included to help ensure a speedy resolution of the claim. As it currently stands with a 20 percent fee agreement, the longer it takes to satisfactorily resolve a claim, the larger an attorney's fee. A fee cap or reasonable hourly rate would help to avoid this problem and create an incentive for a timely resolution of the claim.

SVAC June 8, 2006, Hearing (testimony of Mr. Peter Gaytan).

Background: Additional basis for suspension of claimant representatives

For many years, the VA claims processing system has experienced "problems processing veterans" disability compensation and pension claims," including "large numbers of pending claims and lengthy processing times." SVAC May 26, 2005, Hearing (testimony of Ms. Cynthia Bascetta, U.S. Government Accountability Office). Some experts and stakeholders have suggested that "frivolous" claims contribute to those problems and that the system could be improved if those individuals representing claimants before VA help to deter the filing of frivolous claims.

For example, the 1996 report of the Veterans' Claims Adjudication Commission, found that some veterans' representatives "encourage a veteran to file a claim that the agent knows will be denied, but prefer the VA to make the denial," which "clogs the system with frivolous claims." Veterans' Claims Adjudication Commission, Report to Congress, at 137 (Dec. 1996); see Pub. L. 103–446 (1994) (creating the Veterans' Claims Adjudication Commission).

Then, in a 2001 report to the Secretary of VA, the VA Claims Processing Task Force concluded that "service organizations can help improve service to beneficiaries and increase veteran satisfaction by * * * helping deter frivolous claims." VA Claims Processing Task Force, Report to the Secretary of Veterans Affairs, at 59 (Oct. 2001). In addition, that Task Force concluded that "[the Veterans Benefits Administration] and the service organizations must ensure that * * * frivolous claims are removed so that valid claims are not needlessly delayed." Id. at 60.

More recently, the National Association of State Directors of Veterans Affairs stressed that VSOs should have a "greater role * * * in the overall effort to manage and administer claims processing" and repeated the VA Claims Processing Task Force recommenda-

tion that VSOs should "help [ ] deter frivolous claims." Hearing on the Legislative Presentations of the National Association of State Directors of Veterans Affairs, AMVETS, the American Ex-Prisoners of War and the Vietnam Veterans of America, Senate Committee on Veterans' Affairs, March 30, 2006, 109th Cong., 2d sess. (testimony of Mr. George Basher (quoting VA Claims Processing Task Force, Report to the Secretary of Veterans Affairs, at 59 (Oct. 2001))).

Despite those recommendations, there currently is no uniform policy applicable to all representatives regarding the filing of frivolous claims with VA. For instance, although attorneys have an ethical obligation "to examine a claim for its merit and to counsel the client against filing a claim if it is frivolous and without merit" (SVAC May 26, 2005, Hearing (testimony of Mr. Robert Chisholm, NOVA)), VA does not have explicit authority to suspend or exclude attorneys from practicing before VA if they violate that obligation (see 38 U.S.C. §5904(b)). In addition, although VSOs may decline to represent an individual if representation is "impracticable or inappropriate because under the circumstances the facts or law do not support the filing of a claim or appeal" (38 C.F.R. §14.628(d) Note (2006)), most VSOs "essentially represent any claimant." SVAC May 26, 2005, Hearing (testimony of Mr. Rick Surratt, DAV).

Committee bill

Section 101 of the Committee bill would repeal the provisions of section 5904(c) of title 38, United States Code, that prevent claimants from hiring lawyers during the VA administrative process. In addition, it would provide the Secretary with authority (1) to require attorneys and agents practicing before VA to have minimum levels of experience and specialized training, (2) to set reasonable restrictions on the amount of fees that an attorney or agent may charge for services rendered before VA, (3) to collect from attorneys and agents a periodic registration fee to defray costs associated with attorneys or agents practicing before VA, and (4) to review fee agreements and reduce fees that are excessive or unreasonable. As a conforming change, the bill would modify the requirements for filing fee agreements with VA. The bill also would repeal the criminal penalties in section 5905 of title 38 applicable to representatives who impermissibly charge a fee for services provided in connection with a proceeding before VA.

Section 101 would allow VA to suspend any representative—including agents, attorneys, representatives of VSOs, or individuals recognized for particular claims—from practicing before VA for any of the reasons specified in section 5904(b) of title 38, as modified by this bill. The modifications to section 5904(b) of title 38 would expand the basis for suspension to include presenting frivolous claims, issues, or arguments to VA or failing to comply with other conditions specified by the Secretary in regulations.

In general, the provisions of section 101 would be effective 6 months after the date of the enactment of the Committee bill. The provisions that would provide additional basis for suspension of individuals from practicing before VA (section (b)), that would repeal the limitation on hiring attorneys or agents (section (c)), that would modify the requirements for filing fee agreements (section (d)), and

that would modify the Secretary's authority to review fee agreements and reduce fees (section (e)) would apply only to claims submitted to VA on or after that effective date.

In deciding to favorably report this bill, the Committee recognizes that some organizations have concerns about allowing veterans the option of hiring attorneys. After carefully considering those views, the Committee has determined that continuing to abridge the personal rights of all veterans, and other VA claimants, is not an acceptable means of dealing with those concerns. Rather, the Committee has determined that Congress should take steps—as this bill would do—to minimize potential problems, while ensuring that our nation's veterans, and other VA claimants, will have the right to decide for themselves whether to hire attorneys.

Above all, the Committee expects that, after the enactment of this bill, VA will continue to serve all claimants in a non-adversarial, claimant-friendly manner, regardless of the presence of an attorney or any other representative in any case before VA. In addition, this Committee, VA, veterans' advocates, veterans' organizations, and other stakeholders should continue to seek ways to reduce the complexities of the VA adjudication system.

Regarding the implementation of this bill, the Committee notes that VA currently has in place extensive regulations and procedures governing agents and attorneys who represent veterans and other claimants before VA. See, e.g., 38 C.F.R. §§ 14.626–14.635 (2006). Although amendments to existing regulations and procedures may be necessary and appropriate to reflect the new and expanded flexibility for veterans to retain counsel, the Committee does not anticipate a major regulatory burden on VA.

The Committee acknowledges that individuals and organizations have recommended that the prohibition on hiring attorneys be lifted on the bill's day of enactment for all pending and future claims. However, the Committee has adopted a delayed and staggered effective date, which will allow a deliberate and gradual implementation of these policies in order to minimize any disruption to the VA system.

Regarding the addition of "frivolous" filings as a basis for suspension from practice before VA, the Committee notes that, in recent years, the number of claims filed with VA has increased dramatically and the number of disabilities per claim also has increased significantly. See Department of Veterans Affairs FY 2007 Budget Submission, Volume 2, 5A–2 (noting that "annual claims receipts grew 36 percent from 2000 to 2005" and that "the number of cases with eight or more disabilities claimed doubled from 21,814 in 2000 to 43,655 in 2005"). In light of this workload, the Committee believes that requiring all veterans' representatives to advocate responsibly, by avoiding frivolous claims, arguments, or issues, could be of significant help in ensuring that "valid claims are not needlessly delayed." VA Claims Processing Task Force, Report to the Secretary of Veterans Affairs, at 60 (Oct. 2001).

The Committee expects that this authority with respect to frivolous filings will be utilized by VA but that it will be used cautiously, so as not to have an undue chilling effect on the filing of claims that may ultimately succeed. See *Abbs* v. *Principi*, 237 F.3d 1342, 1351 (Fed. Cir. 2001) (defining frivolous arguments or issues as those "that are beyond the reasonable contemplation of fair-

minded people" (quoting *State Indus., Inc.* v. *Mor-Flo Indus., Inc.*, 948 F.2d 1573, 1578 (Fed. Cir. 1991))); *Int'l Union of Bricklayers* v. *Martin Jaska, Inc.*, 752 F.2d 1401, 1406 (9th Cir. 1985) (defining a frivolous appeal "as one in which the result is obvious, or where the appellants" claims are utterly meritless"). In that regard, the Committee intends that attorneys not be sanctioned for pursuing claims in a manner consistent with the ethical standards of jurisdiction(s) where they are licensed to practice law, but that VA will proceed with suspension in cases of egregious or bad faith behavior exceeding those standards of conduct. In no case should an attorney be suspended for pursuing all benefits potentially available to a client or for good faith challenges to existing regulations, statutes, or case law necessary to that pursuit.

Section 201: Eligibility of Indian tribal organizations for grants for the establishment of veterans' cemeteries on trust lands

Background

Section 202 of Public Law 95–476 established the State Cemetery Grants Program within VA and is codified in section 2408 of title 38, United States Code. Through the State Cemetery Grants Program, VA may provide up to 100 percent of the cost to establish, expand, or improve a veterans' cemetery owned by a State. In turn, the State must provide suitable cemetery land and agree to operate and maintain the cemetery in accordance with VA standards.

The State Cemetery Grants Program serves as a complement to VA's nationwide system of national cemeteries in meeting the overarching goal of ensuring that those who have served honorably in the military have a dignified, final resting place. The establishment or expansion of State veterans' cemeteries is particularly valuable in areas of the country where the veterans' population is insufficient to justify construction of a VA national cemetery.

Under current law, the State Cemetery Grants Program is limited to veterans' cemeteries that are owned and operated by a State or U.S. territory. At present, 63 State-operated cemeteries have received grants under the program. Because tribal organizations are not considered States under existing law, they do not qualify for grant assistance.

Committee bill

Section 201 of the Committee bill would authorize VA to make grants under the State Cemetery Grants Program to any tribal organization for the purpose of establishing, expanding, or improving veterans' cemeteries on trust lands owned by, or held in trust for, the tribal organization. Tribal organizations would be defined in the same manner as in section 3765(4) of title 38, United States Code. Under section 201 of the Committee bill, "trust lands" would have the same meaning as in section 3765(1) of title 38.

Section 202: Removal of remains of Russell Wayne Wagner from Arlington National Cemetery

Background

The commission of certain crimes after separation from military service has long been a basis for denial of veterans' benefits. Crimes against the Nation (e.g., mutiny, treason, sabotage, or ren-

dering assistance to the enemy) disqualify a veteran from all veterans' benefits, to include cemetery burial rights. See 38 U.S.C. §§ 6103, 6104, 6105. The law also provides for the reduction of VA disability compensation for convicted felons serving a sentence of 60 days or more in a Federal, State, or local penal institution. See 38 U.S.C. § 5313. In 1997, Public Law 105–116 was enacted to prohibit individuals from being interred or inurned at VA national cemeteries, Arlington National Cemetery (hereinafter, "Arlington"), or VA-funded State cemeteries, if the individual 1) was convicted of a Federal capital crime for which the person was sentenced to death or life imprisonment; 2) was convicted of a State capital crime (defined as the willful, deliberate, or premeditated unlawful killing of another human being) for which the person was sentenced to death or life imprisonment without parole; or 3) was found (through an administrative process) to have committed a Federal or State capital crime but was not convicted of that crime by reason of death or flight from prosecution. Also in 1997, section 1077 of Public Law 105–85 was enacted to prohibit individuals from being interred or inurned in Arlington who are convicted of a capital offense under Federal law for which the death penalty may be imposed.

According to testimony received at the Committee's September 22, 2005, hearing, Russell Wayne Wagner, a veteran who served on active duty for 3 years during the Vietnam era, was convicted in 2002 of the 1994 murders of Daniel and Wilda Davis. For his crime, Wagner was given two consecutive life sentences with the opportunity for parole. Wagner died in prison in February 2005 while carrying out his sentence. His cremated remains were inurned in Arlington in July 2005. Because Wagner's sentence for his State capital crime carried with it the possibility of parole, none of the laws enacted in 1997 provided a legal impediment to the inurnment of his remains.

The 1997 laws first expressed the Congress's desire to preserve the unique status of our nation's military cemeteries as national shrines by proscribing burial eligibility to individuals convicted of capital murder. Moved by the Wagner case, which demonstrated that the effect of the 1997 laws was diluted by myriad State sentencing guidelines for murder, section 662 of Public Law 109–163 was enacted in January 2006 to, among other things, remove parole eligibility as a loophole through which State capital offenders could retain their eligibility for burial in a national cemetery. Wagner's remains, however, remain inurned in Arlington. According to cemetery officials, Wagner's is the sole case of a convicted murderer's remains being interred or inurned in Arlington since 1997.

Committee bill

Section 202 of the Committee bill would direct the Secretary of the Army to remove the remains of Russell Wayne Wagner from Arlington. The Secretary of the Army would first be required to notify the next-of-kin of record for Russell Wayne Wagner of the impending removal of his remains so that the next-of-kin has time to make other burial arrangements. The Secretary of the Army would then be required to relinquish Wagner's remains. In the event that no next-of-kin is available, section 202 would direct the Secretary

of the Army to arrange for an appropriate disposition of the remains.

Section 202 would also make five Congressional findings that are relevant to understanding why Wagner's remains would be ordered removed from Arlington. The first finding is that Arlington is a national shrine that memorializes the service of men and women who have defended the freedoms that the people of the United States enjoy. The second is that including remains of persons who have committed particularly notorious, heinous acts among those interred in Arlington would bring dishonor to the deceased and disrespect to their loved ones. The third finding is that the removal of remains of persons who have committed heinous acts is not an act of punishment against those persons, but rather is an act that would preserve the sacredness of cemetery grounds. The fourth finding is that Congress first enacted laws barring capital offenders from interment or inurnment in Arlington in 1997, and then in 2006 passed a law to remove parole eligibility as a loophole through which capital offenders could retain interment or inurnment eligibility. And finally, the fifth finding is that Russell Wayne Wagner is the only individual convicted of a capital offense who has been interred or inurned in Arlington since 1997, the year Congress first expressed its intent to keep such offenders out of the Nation's national cemeteries.

The Committee recognizes that removing entitlement to gratuitous veterans' benefits based on actions that did not constitute a bar to entitlement at the time the benefits were conferred raises questions of constitutionality under ex post facto and bill of attainder considerations. In *Calder* v. *Bull*, 3 U.S. (3 Dall.) 386, 390–392 (1798), the United States Supreme Court established a long-standing principle that an act violates the ex post facto clause of the U.S. Constitution when it is punitive, or criminal, in nature rather than civil. Whether a law is civil or punitive can, in part, be determined through an examination of legislative intent. According to the Supreme Court's decision in *Seling* v. *Young*, 531 U.S. 250, 261 (2001), a statute will be struck down only when a court determines that "the statutory scheme is so punitive in either purpose or effect as to negate the State's intention." *Seling* v. *Young* also established that a statute that has been classified as civil cannot be "deemed punitive 'as applied' to a single individual," id. at 263. Leaving aside the question of whether any law respecting the disposition of a deceased person's remains could ever be considered punitive, it is clear from the Congressional findings portion of section 202 of the Committee bill that the intent behind ordering Wagner's remains removed is to uphold the unique status of Arlington National Cemetery as a national shrine, as established by existing law. It is a place for our military dead to be forever memorialized and honored. Keeping the remains of a convicted double murderer in Arlington is incompatible with that expressed intent.

Bills of attainder are prohibited by the U.S. Constitution and have been interpreted to include legislative acts which apply to certain named individuals or "easily ascertainable" members of a group in which the individuals are punished without a judicial trial (*United States* v. *Lovitt*, 328 U.S. 303, 315 (1946)). A controlling case for purposes of section 202 of the Committee bill is *Nixon* v. *Administrator of General Services*, 433 U.S. 425, 468–484 (1977). In

that decision, the Supreme Court established a three-prong test in determining whether an act was a prohibited bill of attainder. An act was not a bill of attainder if 1) it imposed no punishment traditionally judged to be prohibited by the clause; 2) viewed functionally in terms of the type and severity of burdens imposed, it could rationally be said to further nonpunitive legislative purposes; and 3) it had no legislative record evincing a Congressional intent to punish. Again, leaving aside the question of whether it is possible to further "punish" a deceased individual, this three-prong test applied to the removal of Russell Wayne Wagner's remains demonstrates no violation of Constitutional principles relating to bills of attainder. Furthermore, the Supreme Court in the *Nixon* case concluded that even though the law in question specifically named the subject of the law, the act would not be struck down because the individual "constituted a legitimate class of one, on whom Congress could fairly and rationally focus." Thus, while section 202 of the Committee bill specifically names Russell Wayne Wagner, it does so for a fair and rational reason, i.e., his are the only known remains of a capital offender interred in Arlington National Cemetery since 1997, the year Congress first expressed its desire to prohibit such offenders from burial privileges.

Section 203: Provision of government markers for marked graves of veterans at private cemeteries

Background

The organizational entity within VA responsible for the administration of VA's memorial programs is the National Cemetery Administration (hereinafter, "NCA"). One of NCA's strategic goals is to provide veterans and their families with symbolic expressions of remembrance of the veteran's military service. These symbolic expressions include NCA's burial flag benefit, Presidential Memorial Certificate benefit, and the headstone and marker benefit.

Under current law, VA will furnish upon request, at no charge to the veteran or the veteran's family, a headstone or marker to mark the grave of an eligible veteran in any cemetery around the world. Until recently, VA only had the authority to furnish a headstone or marker for unmarked graves, i.e., no double marking with a privately-purchased marker and then a government marker was permitted. As will be detailed below, the program has been expanded to allow VA to furnish a headstone or marker for a grave that is already privately marked.

To meet family needs and private cemetery requirements, VA makes its full product line of headstones and markers available. While the style of the headstone or marker chosen must be consistent with existing monuments at the place of burial, families may choose from among flat bronze, granite, or marble markers and upright granite and marble headstones.

Since the end of the Civil War, Congress gradually has expanded the provision of government headstones and markers to mark the graves of deceased veterans. There is a two-fold purpose behind this expansion: First, no person who served honorably in the military should, for lack of means, be buried in an unmarked grave. Second, irrespective of means, those who have served deserve a permanent memorialization of their military service.

Originally, government headstones were provided only to mark the unmarked graves of veterans interred in military cemeteries. On February 3, 1879, Congress authorized the furnishing of headstones for the unmarked graves of veterans in private cemeteries. On October 18, 1978, Congress authorized VA to provide families of deceased veterans with a choice between being provided a government headstone or marker, or an allowance in lieu of a government-provided headstone or marker. With the enactment of the Omnibus Budget and Reconciliation Act, and effective November 1, 1990, the option of providing an allowance was eliminated.

In its Fiscal Year 1999–2000 Report, the Advisory Committee on Cemeteries and Memorials recommended legislation to provide families with a VA headstone or marker for the privately-marked graves of eligible veterans, retroactive to November 1, 1990. In comments made within the Report, NCA noted that many families who chose private memorialization felt that they had lost out on a government benefit. The NCA reported that families were upset that they could not receive government headstones or markers to place along, or affix to, existing headstones or markers at private cemeteries.

Section 502 of the Veterans Education and Benefits Expansion Act of 2001 (hereinafter, "the VEBE Act"), Public Law 107–103, created a 5-year program during which time VA is required, upon request, to provide a government marker for veterans' graves in private cemeteries which are already privately marked. The new program applies to veterans who die on or after December 27, 2001, the date of enactment of the VEBE Act, and expires on December 31, 2006. Section 203 of the Veterans Benefits Act of 2002, Public Law 107–330, amended the effective date of eligibility to apply to deaths occurring on or after September 11, 2001. Thus, since 1978, only the families of veterans who died between November 1, 1990, and September 11, 2001, have not been able to avail themselves to a government-provided benefit, i.e., either a government-provided headstone or marker or an allowance in lieu thereof, if the grave of a veteran was already privately marked.

In a February 2006 report required by the VEBE Act titled *Report to Congress on the Provision of Government-Furnished Markers for Privately-Marked Graves*, the Secretary recommended, in addition to making permanent the authority to provide a government headstone or marker for privately-marked graves, that Congress also consider clarifying how VA will accommodate the various needs of veterans' families when selecting and placing a Government-furnished headstone or marker. Furthermore, the Secretary recommended incorporating into statute VA's existing regulatory language that describes the delivery, placement, and availability of government headstones and markers. Additionally, the Secretary recommended revising existing language to support VA's furnishing a "headstone or marker," as opposed to only a government "marker," for privately-marked graves in private cemeteries.

Committee bill

Section 203 of the Committee bill would permanently authorize VA to provide government headstones or markers for the privately-marked graves of veterans in private cemeteries. In addition, it would authorize VA to provide headstones and markers for the pri-

vately-marked graves of veterans who died on or after November 1, 1990. Section 203 would also effect the Secretary's recommendations to put into statute language that regulates delivery, placement, and availability of government-furnished headstones or markers.

Section 301: Expansion of education programs eligible for accelerated payment of educational assistance under the Montgomery GI bill

Background

Under the Montgomery GI Bill—Active Duty (hereinafter, "MGIB–AD") program, a veteran with at least 3 years of active duty service generally may receive educational assistance benefits in the maximum amount of $1034 per month for 36 months. In 2001, Congress added a new provision to the MGIB–AD program to allow a veteran to receive "accelerated payment" of educational assistance benefits if the veteran is enrolled in a program leading to employment in a high technology industry. Programs that qualify for accelerated payments include engineering, mathematics, computer specialities, life science, and physical science, as long as the veteran will be seeking employment in a high technology industry, e.g., the aerospace industry. Generally, to qualify for accelerated payments, the tuition and fees for a program, when divided by the number of months in the program enrollment period, must be more than double the amount of monthly MGIB–AD benefits. Sixty percent of tuition and fees for the program term may be covered through a lump sum, accelerated payment.

In 2003, President George W. Bush announced his "High Growth Job Training Initiative," an effort to prepare workers to take advantage of new and increasing job opportunities in high growth, high demand, and economically vital sectors of the economy. Currently, 14 sectors have been identified as high growth: Advanced manufacturing, aerospace, automotive, biotechnology, construction, energy, financial services, geospatial technology, health care, homeland security, hospitality, information technology, retail, and transportation.

Committee bill

Section 301 of the Committee bill would allow accelerated payments of MGIB–AD benefits for veterans enrolled in educational assistance programs that last fewer than 2 years and which lead to employment in the transportation sector, the energy sector, the construction sector, or the hospitality sector of the economy. In addition, the Committee bill would authorize accelerated benefits for such educational assistance programs offered by tribally-controlled colleges or universities.

The provisions of section 301 would take effect on October 1, 2007, and would apply only to enrollments that begin on or after that date. The provisions would expire on September 30, 2011.

Section 302: Accelerated payment of survivors' and dependents' educational assistance for certain programs of education

Background

In general, a spouse or child of a veteran who dies or is totally disabled from a service-connected condition may receive up to 45 months of educational assistance benefits under the Survivors' and Dependents' Educational Assistance program (hereinafter, "DEA"). As of October 1, 2005, the maximum monthly DEA payment is $827 per month.

DEA recipients are not currently eligible to receive "accelerated payment" of their educational assistance benefits, an option which is available only to eligible veterans under the MGIB–AD program who enroll in certain programs leading to employment in a high technology industry.

Committee bill

Section 302 of the Committee bill would allow accelerated payments for survivors and dependents enrolled in educational assistance programs that last fewer than 2 years and lead to employment in a high technology industry, or which lead to employment in the transportation sector, the energy sector, the construction sector, or the hospitality sector of the economy.

The provisions of section 302 would take effect on October 1, 2007, and would apply only to enrollments that begin on or after that date. The provisions would expire on September 30, 2011.

Section 303: Reimbursement of expenses for State approving agencies in the administration of educational benefits

Background

Under provisions of chapter 36 of title 38, United States Code, VA contracts for the services of State Approving Agencies (hereinafter, "SAAs") for the purpose of approving programs of education at institutions of higher learning, apprenticeship programs, on-job training programs, and other programs that are located within each SAAs' State of jurisdiction. Generally, SAA approval of these programs is required before beneficiaries may use their educational assistance benefits to pay for them. SAAs are also tasked with assisting VA with various outreach activities to inform eligible VA program participants of the educational assistance benefits to which they are entitled.

Since 1988, VA payment for the services of SAAs has been made only out of funds available for readjustment benefits and is subject to annual funding caps. Section 3674(a)(4) of title 38, United States Code, states as follows: "The total amount made available under this section for any fiscal year may not exceed $13,000,000 or, * * * for fiscal year 2006, $19,000,000, and for fiscal year 2007, $19,000,000." Thus, existing law anticipates a reduction in authorized SAA funding of $6 million beginning in fiscal year 2008. Employees of SAAs are acutely aware of this potential problem. As is stated in the *2006 Report of State Approving Agencies:* "If no action is taken, in 2008 the cap will revert back to 13 million dollars—a 32 percent cut!"

Payments made from the readjustment benefit account are considered mandatory, or direct, spending. Section 505 of the fiscal year 2004 budget resolution (H. Con. Res. 95, 108th Congress) stipulates that a point of order may be raised in the Senate (through fiscal year 2008) against any mandatory spending legislation not assumed in the most recently-adopted budget resolution that would increase, or cause, an on-budget deficit for the first fiscal year, the period of the first 5 fiscal years, or the period of the following 5 fiscal years. Thus, legislation that would continue SAA funding at, or near, the current $19 million level using funds available for readjustment benefits would run afoul of Senate budget rules if no offset is identified. Because the Committee's priority is to use identified offsets to enhance benefit programs for veterans and their survivors, as is evident in sections 301, 302, and 602 of the Committee bill, and given current budget constraints, it is unlikely that SAA funding can be sustained from mandatory accounts alone.

Committee bill

Section 303 of the Committee bill establishes an authorized funding level for SAAs of $19 million. Furthermore, the Committee bill establishes a hybrid funding mechanism for SAAs, with some funding to remain available from amounts paid for readjustment benefits, and other funding that is subject to the availability of discretionary appropriation. Funding from amounts available for readjustment benefits would be capped at $19 million in fiscal years 2006 and 2007, $13 million for each of fiscal years 2008 and 2009, $8 million in each of fiscal years 2010 through 2013, and $13 million for fiscal year 2014 and each subsequent fiscal year.

Section 304: Modification of requirement for reporting on educational assistance program

Background

Section 3036 of title 38, United States Code, requires both VA and the Department of Defense (hereinafter, "DoD") to submit to the Congress separate, biennial reports on the operation of the Montgomery GI Bill educational assistance program. DoD's report is directed to include information on whether educational assistance benefits are adequate to meet its recruiting and retention needs. VA's report is directed to include information on program utilization and expenditure levels. Both agencies' reports are directed to include legislative recommendations for improvements, if there are any. No report has been required under this section since January 1, 2005.

Committee bill

Section 304 of the Committee bill would reinstate the biennial reporting requirement and extend it until January 1, 2011. The first report from each agency would be due no later than 6 months after the date of the Committee bill's enactment. Each subsequent biennial report would be due on January 1.

Section 401: Parkinson's Disease Research, Education, Clinical Centers, and Multiple Sclerosis Centers of Excellence

Background

VA has a long and storied history as a leader in the advancement of medicine, and the Committee commends the department for its progressive and innovative research endeavors. Among the approaches that VA uses to advance its research efforts is the establishment of centers of excellence, and other centers, which combine basic biomedicine, rehabilitation, health services delivery, and clinical trials in their focus on a specific subject matter. This combined model was pioneered in the mid-1970s with the establishment of Geriatric Research, Education, and Clinical Centers (hereinafter, "GRECCs") which focus special attention on conditions of the aging veteran population. There currently are twenty-one GRECCs.

In 2003, the Veterans Health Administration established two Multiple Sclerosis Centers of Excellence (hereinafter, "MSCoEs") to serve the health care needs of approximately 28,000 veterans with Multiple Sclerosis (hereinafter, "MS"). These centers are located in Seattle and Portland, collectively known as "MSCoE, West" and Baltimore, known as "MSCoE, East." Through these centers, scientists are able to carry out focused research on the causes, symptoms, and treatment of MS, including on symptoms such as fatigue and spasticity associated with MS, so as to give veterans afflicted with this disease a better quality of life.

In 2001, VA established six Parkinson's Disease Research, Education and Clinical Centers (hereinafter, "PADRECCs"). Operating as a national consortium, each PADRECC is participating in a landmark clinical trial to assess the effectiveness of surgical implantation of deep brain stimulators in reducing the symptoms of Parkinson's disease, while also studying other innovative clinical treatments. The six PADRECCs are located in the following cities: Houston, TX; Philadelphia, PA; Portland, OR; Seattle, WA; San Francisco, CA; Los Angeles, CA; and Richmond, VA. Through the PADRECCs, clinicians and educators can, among other things, determine better ways to manage symptoms associated with Parkinson's disease.

Committee bill

Section 401 of the Committee bill would add a new section to title 38, United States Code, which would authorize VA to designate at least six PADRECCs and at least two MSCoEs. Additional centers could be established under this authority. Proposals for any future MSCoEs or PADRECCs would have to be vetted through a panel made up of experts in neurodegenerative diseases.

The existing six PADRECCs and two MSCoEs serve veterans across the entire Veterans Health Administration via a nationally coordinated system. These centers are the model of innovation in the delivery of highly specialized healthcare and research for chronic disease in the veteran population. In providing a statutory basis for these centers, the Committee intends to ensure their continued existence.

Section 402: Repeal of term of office for the Under Secretary for Health and the Under Secretary for Benefits

Background

Chapter 3 of title 38, United States Code, contains a description of the fourteen VA positions for which Presidential nomination and Senate confirmation are required. There are seven Assistant Secretaries, one General Counsel, one Inspector General, three Under Secretaries, a Deputy Secretary, and a Secretary. Under Chapter 71 of title 38, United States Code, Presidential nomination and Senate confirmation are required for the position of BVA Chairman, whose term is for 6 years.

With the exception of BVA Chairman, only the Under Secretary for Health and the Under Secretary for Benefits have statutory limits to their terms of office. All other positions serve at the pleasure of the President without a statutory term of office.

Committee bill

Section 402 of the Committee bill would repeal the 4-year terms of office for the Under Secretary for Health and Under Secretary for Benefits positions. In taking this action, the Committee recognizes that the 4-year terms of office were originally intended to shield the office-holders from any political influence. The hope was that statutory term limits would allow the two officials to serve 4 consecutive years without any political considerations regardless of whether the service was in different administrations or under different VA leadership. History, however, has shown that new administrations or even new VA leadership within the same administration often bring new people at all levels of government, including the two Under Secretary positions. In fact, the last three Under Secretaries for Health and the previous Under Secretary for Benefits did not complete a full 4–year term.

The Committee also recognizes that passage of this provision may create the impression that the Committee is endorsing the politicization of these important jobs. However, sections 305(a)(2) (Under Secretary for Health) and 306(a) (Under Secretary for Benefits) require that the President appoint individuals to these two offices "without regard to political affiliation or activity." The Committee bill would not change these requirements.

Section 403: Modifications to existing State home authorities

Background

A. State veterans home per diem

Under current law, VA operates a program in partnership with any State that has, or wishes to construct, a long-term care facility for veterans (hereinafter, "State veterans' home"). State veterans' homes are constructed predominately with Federal money and are maintained with Federal assistance largely for the purpose of providing care to older veterans. Under the terms of the State veterans' home program, VA provides a fixed daily payment, known as a per diem, to the State for each veteran provided care in a State veterans' home. It is then left to each State to determine how to fund the remaining costs of caring for the residents. Some States charge individual veterans the balance of the cost of care. Others

provide financing to the State veterans' home from the State's general revenue tax funds. Many even accept and bill Medicare or Medicaid for those residents who qualify. The VA per diem is provided regardless of the source of other revenue and irrespective of the service-connected condition or the economic status of the veteran.

In 1999, Public Law 106–117, the Veterans' Millennium Health Care and Benefits Act, was enacted. That law, among other things, established a statutory requirement for VA to provide institutional long-term care to any veteran in need of such care for a service-connected condition, and to any veteran in need of such care who is also rated 70 percent or more disabled by VA. When VA provides these services in a VA nursing home or a private nursing care facility with which VA has a contract, the care is provided at no cost to the veteran. However, when the care is provided in a State veterans' home, VA pays only the per diem to the State, which then often bills the veteran for the remaining costs. The Committee believes this is unfair and irrational.

The policy is irrational because under its current strictures a veteran can obtain long-term care for a service-connected condition in a facility owned by VA, or in a private facility under contract with VA, at no cost. However, if that same veteran receives the services in a State veterans' home, the patient will likely be charged out-of-pocket expenses because VA will only provide a per diem for his or her care. The Committee sees no reason to continue a policy that financially discourages veterans from using long-term care facilities constructed primarily for their use.

Even if the economics of this policy does not discourage veterans from using a State veterans' home, it is certainly unfair that the Federal government assumes 100 percent of the cost of care for these veterans in two settings, but not the third. The Committee believes this argument alone constitutes a sufficient justification to change the law.

B. Prescription medications for veterans in State veterans' homes

In 1996, Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996 (hereinafter, "Eligibility Reform Act") created a standard health care benefits package, which includes comprehensive medication coverage. In general, current law requires that prescriptions for medications be filled only on the written order of a physician employed by VA. However, there is an exception to that general requirement. The exception is that VA is required to provide medications on the order of any licensed physician to 1) veterans who are in receipt of additional disability compensation payments under chapter 11 of title 38, United States Code, on account of being permanently housebound, or in need of regular aid and attendance, due to a service-connected condition, or 2) veterans who are in receipt of non-service-connected pension payments under chapter 15 of title 38, and who are permanently housebound or in need of regular aid and attendance. Because veterans residing in State veterans' homes who are receiving VA pension under chapter 15 of title 38 are, by definition, receiving regular aid and attendance, this requirement creates a situation where, in some circumstances, VA is required to provide medica-

tions to certain non-service-connected pension recipients who reside in State veterans' homes, but cannot provide medications to some veterans with severe service-connected conditions who reside in the same State veterans' home. The Committee believes that is simply irrational.

Furthermore, under VA's comprehensive medication coverage, service-connected veterans rated 50 percent or higher are not required to make co-payments for needed medications received on an outpatient basis. Such veterans who are enrolled for care at VA, or who are in receipt of care at community nursing homes paid for by VA, can receive VA's full medication benefit at no charge as part of their care. However, as previously mentioned, service-connected veterans residing in a State veterans' home are not eligible to receive the medication benefit, even if they have a disability rating of 50 percent or higher, unless their service-connected disability necessitated the State home care. Pharmacy costs—in addition to the other out-of-pocket costs described above—are levied upon these veterans. Similar to the current policy regarding per diem payments, the Committee believes this policy is quite inequitable.

C. Rural access to State veterans' homes

As noted above, under current law, VA provides a per diem payment for each veteran who receives care in a State veterans' home. This means that in order to establish beds to provide care and services to veterans (and receive the per diem) a State must construct an entire facility dedicated to that purpose. While it is true that VA provides 66 percent of the cost of construction for a State veterans' home, the State must still contribute one-third of the cost and agree to operate the home far into the future. Over 100 State veterans' homes have been constructed under this arrangement. Unfortunately, in the case of rural and remote areas of the country, major construction of a State veterans' home would likely provide too many beds for too few veterans. In other words, it would be inefficient. Still, long-term care needs persist in rural areas of the country.

Committee bill

Section 403 of the Committee bill would put service-connected veterans receiving State veterans' home care on a level playing field with other veterans, regardless of the setting in which needed nursing home care is provided, by requiring VA to reimburse State veterans' homes for the cost of care of a veteran with a 70 percent or greater service-connected condition.

Section 403 also would require VA to provide, at no cost, prescription medication coverage for veterans with a 50 percent or greater service-connected disability. The Committee notes that existing regulations require that all State veterans' homes in receipt of a VA per diem payment retain the services of a pharmacist and provide all pharmaceutical services, including procedures that ensure the accurate acquisition, receipt, dispensation, and administration of drugs and biologicals to meet the needs of its residents. Therefore, State veterans' homes should have no trouble implementing this provision of the Committee bill.

Finally, section 403 would authorize a 3-year pilot program that would allow VA to deem a total of 100 beds in non-VA facilities to

be eligible for State veterans' home per diem payments. By design, the limited scope and duration of the program would ensure that the new authority does not begin to drive the State veterans' home program from its primary focus of construction and maintenance of separate homes for veterans, or put an unanticipated strain on VA's budget due to a sudden proliferation of beds in non-VA facilities across the country. The Committee intends to assess the interest in the pilot program from States around the country, and plans to follow its progress closely. The Committee also intends to consult with all interested stakeholders prior to any decision to re-authorize or expand the pilot program.

Section 404: Office of Rural Health

Background

During the past 8 years, VA has greatly expanded its network of individual sites for the delivery of health care services. Sites of care across the country now number over 1,000. The vast majority of these sites are community-based outpatient clinics, which have opened in downtown, urban communities and, increasingly, in suburban settings.

While these new sites of care are providing more services to more people closer to their homes, they are exacerbating the divide between those who live close to a VA site of care and those who do not. It is increasingly only those veterans who reside in rural areas of the country who cannot receive VA-provided care from a facility in close proximity to home.

Health care access in rural communities is a challenge not only confronting veterans who seek to use the VA health care system. Rural health access is a problem for many Americans and has been a long-time concern of Congress. Still, while Congress has provided funding and programs to assist the private medical system with the construction of health care facilities in rural communities, the training of physicians, nurses, and other providers to work in those communities, and even provided subsidies to encourage workers to move to remote locations, services provided by VA to veterans in rural areas remain sparse.

The Committee acknowledges that moving more facilities or services to rural communities presents challenges. Facilities must have a large enough patient base to justify their existence or those facilities will be extremely inefficient and fiscally questionable investments. On the other hand, services purchased directly from community providers carry the risks of budget over-extension and a lack of care continuity.

Committee bill

Section 404 of the Committee bill would create an Office of Rural Health in the Office of the Under Secretary for Health. The purpose of the Office of Rural Health would be to assist the Committee and VA health officials with the collection of data on, and the development of strategies for, many of the issues outlined above. The Committee expects that VA will devote time and attention, through this Office of Rural Health, to develop new and creative solutions that may ultimately help reduce the service divide between rural and non-rural veterans that is growing with each passing year.

Section 405: Pilot program on improvement of caregiver assistance services

Background

VA currently administers a number of services that are geared towards providing support to severely disabled or aging veterans, and the families of those veterans, who can no longer care for themselves but who do not want to be cared for in an institutional setting. These programs include, but are not limited to: adult-day care, respite care, case management and coordination, transportation services, home care services, hospice, and general caregiver support, such as education and training of family members.

Committee bill

Section 405 of the Committee bill would require VA to conduct a 2-year pilot program to improve assistance provided to caregivers, particularly in home-based settings. Under this provision, $5,000,000 would be authorized for the purposes of carrying out the pilot program. The $5,000,000 for this program would be allocated in addition to whatever other funds VA is already spending on caregiver assistance services. The goal of this pilot program would be to encourage VA providers in the field to initiate their own versions of support services for caregivers in areas where such services are needed and where there are few other options available for families of disabled or aging veterans, particularly in rural or geographically isolated areas of the country. The Committee seeks to assist VA in building its non-institutional long-term care capacity and believes this pilot program would be one innovative way to do so.

The section 405 pilot program is modeled after a program established through section 116 of Public Law 106–117. That program expanded and enhanced mental health services for veterans, and it has led to innovations in the treatment of veterans who suffer from mental illnesses and disorders. It is the Committee's hope that the program that would be established under section 405 will have similar results, and that new initiatives will arise from it that will be valuable to the overall VA system.

Section 405 would also require a report to Congress on the pilot program. The report would contain a detailed assessment of the program's implementation, allocation of funds in support of the program, and results of the program.

Section 501: Reaffirmation of national goal to end homelessness among veterans

Background

Public Law 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001 (hereinafter, "HVCA Act"), established a goal to end homelessness among veterans within a decade of its enactment. The HVCA Act aimed to achieve the goal through: improved cooperation and coordination among Federal agencies with similar missions to stem or end homelessness; accountability of those agencies for achieving their mission; education of the homeless population to provide greater opportunities for work and earned income;

and the establishment of programs to prevent homelessness among veterans.

Committee bill

Section 501 of the Committee bill reiterates the goal of Congress to end homelessness among veterans within the time frame established under the HVCA Act. The Committee recognizes this is an ambitious goal. However, the Committee believes that it is a goal worth aggressively pursuing and commits to that pursuit with this and subsequent provisions within Title V of the Committee bill.

Section 502: Sense of Congress on the response of the Federal Government to the needs of homeless veterans

Committee bill

Section 502 of the Committee bill provides a complete list of concerns and views of the Committee on the needs of homeless veterans in America and outlines the Committee's concerns with the Federal government's response to those needs.

Section 503: Authority to make grants for comprehensive service programs for homeless veterans

Background

VA operates a Homeless Providers Grant and Per Diem Program to fund community agencies providing services to homeless veterans. The program aims to help homeless veterans achieve residential stability, improve skill levels, and increase personal income. Only programs that offer supportive housing or service centers for case management, education, crisis intervention, and counseling are eligible for funds.

Since 1992, when the Homeless Providers Grant and Per Diem Program was established, VA has been able to spur development of increased levels of assistance at the local level for homeless veterans living throughout the country. Indeed, grantees' programs often fill existing gaps in the continuum of VA care and services, thus serving as an effective complement to VA's own efforts.

VA has been successful at leveraging new resources to increase the overall supply of transitional housing and other effective assistance for homeless veterans throughout the country. The only programmatic shortcomings the Committee has identified are that there is more interest on the part of participating providers than there is grant money to support those efforts, and there are some suburban and rural areas where attracting potential community agencies to participate as grantees has been a major challenge for VA.

Committee bill

Section 503 of the Committee bill would extend the authorization for the Homeless Grant and Per Diem Program and would increase the amount of funds authorized for these efforts to $130,000,000 in each fiscal year.

Section 504: Extension of treatment and rehabilitation for seriously mentally ill and homeless veterans

Background

The HVCA Act authorized VA to provide expanded services and programs to homeless veterans who suffer with serious and chronic mental illnesses. In addition to the comprehensive services available to all veterans who are homeless, the bill authorized: outreach services; care, treatment, and rehabilitative services, directly or by contract in community-based treatment facilities, including halfway houses; and therapeutic transitional housing assistance in conjunction with work therapy and outpatient care.

Further, the HVCA Act authorized VA to establish centers for the comprehensive provision of homeless services to veterans. The law directed that these service centers be in at least the 20 largest Metropolitan Statistical Areas of the country.

Each of the authorities above would expire on December 31, 2006.

Committee bill

Section 504 of the Committee bill would extend the authority to operate both of these important, special programs for homeless veterans through December 31, 2011.

Section 505: Extension of authority for transfer of properties obtained through foreclosure of home mortgages

Background

Under current law, VA is authorized to sell, lease, or donate to non-profit entities and State and local governments, housing acquired by VA as a result of foreclosure on housing financed with a VA-guaranteed loan if the housing will be used for the purpose of providing shelter and assistance to homeless veterans and their families. VA is also authorized to make loans to non-profit entities for the purpose of financing the purchase or lease of housing to provide shelter to homeless veterans.

The law requires VA to ensure that any transactions entered into under this authority are not to the serious financial detriment of VA and that the agreements will not seriously affect the financial integrity of the VA loan guaranty program.

Committee bill

The Committee continues to support the use of foreclosed, VA-owned property under the strictures and parameters that currently exist for its use. As such, section 505 of the Committee bill extends the VA's authority for this purpose through 2011.

Section 506: Extension of funding for grant program for homeless veterans with special needs

Background

Under current law, VA operates a program through which it makes grants to homeless veteran service providers specifically for the purpose of encouraging those entities to provide unique services to special needs populations. Specifically, the program is intended to help: women veterans, including those with dependent children;

veterans with serious mental illness; frail and elderly veterans; and those with terminal illnesses.

The Committee continues to believe that mainstream programs which focus on recovery, employment, and reintegration may not be perfectly suited for these special populations. The Committee is attuned to the challenges inherent in providing safe shelter and services for women veterans, particularly those with dependent children. It is certainly likely that medical recovery and employment services will not be well suited for terminally ill and frail elderly patients.

Committee bill

Section 506 of the Committee bill extends VA's authority to operate this program through 2011 and increases the annual authorized expenditure amount to $7,000,000 through the same time period.

Section 507: Extension of funding for homeless veterans service provider technical assistance program

Background

Under current law, VA operates a program to provide technical assistance to non-profit entities in their writing of submissions to VA for grants to provide services to homeless veterans. The current authority to provide the technical assistance expired at the end of 2005.

The Committee recognizes that the grant-writing process is often a difficult and technical exercise that can leave even the most well-intentioned, non-profit entities searching for answers to legitimate questions. If poorly done or understood, the answers to these technical questions may ultimately decrease the possibility of their grant succeeding. The Committee does not desire to keep good providers out of Federal programs because of technical difficulties with the grant submission process.

Committee bill

Section 507 of the Committee bill would authorize the continuation of the grant-application-assistance program through 2012.

Section 508: Additional element in annual report on assistance to homeless veterans

Background

The HVCA Act established the Advisory Committee on Homeless Veterans (hereinafter, "Advisory Committee"). It consists of members appointed by the Secretary representing VSOs, homeless advocates, community-based providers, previously homeless veterans, and experts in the areas of mental health, substance abuse, vocational rehabilitation, and permanent housing. In addition, ex-officio members of the Advisory Committee include the Secretaries of other Cabinet-level agencies with an interest or role in the elimination and prevention of homelessness among veterans.

Among the Advisory Committee's overarching goals is a review of the continuum of services provided by VA, directly or by contract, in order to improve coordination of all VA-provided services with those of the departments that are involved in addressing the

special needs of homeless veterans. Following its review of this and other issues, the Advisory Committee is required by statute to submit an annual report to VA.

Committee bill

Section 508 of the Committee bill adds as a requirement to the Advisory Committee's annual report that it include findings of identified redundancies and gaps in government-wide, homeless assistance coordination efforts so that duplication can be eliminated and gaps can be filled.

Section 509: Advisory committee on homeless veterans

Background

As discussed above, the Advisory Committee on Homeless Veterans includes, as ex-officio members, the Secretaries of other Cabinet-level agencies with an interest or role in the elimination and prevention of homelessness amongst veterans. The role of these members, among other things, is to review VA programs serving homeless veterans and to assess VA's coordination with housing and services provided by other Federal agencies. The current authority for the Advisory Committee expires on the December 31, 2006.

Committee bill

Section 509 of the Committee bill would add two new ex-officio members to the Advisory Committee: the Under Secretaries of Health and Benefits, who both have operational responsibility for VA's homeless programs. Section 509 would also add the Executive Director of the President's Interagency Council on Homelessness as a member to the Advisory Committee to improve the Committee's agency-wide coordination and oversight responsibilities. Finally, section 509 would authorize the Advisory Committee's continuation through September 30, 2011.

Section 510: Rental assistance vouchers for Veterans Affairs supported housing program

Background

The HVCA Act codified the existing Departments of Housing and Urban Development and Veterans Affairs Supported Housing (hereinafter, "HUD–VASH") program, which the two departments had been operating since 1992. In this coordinated program, the Department of Housing and Urban Development (hereinafter, "HUD") is required to set aside section 8 housing vouchers for homeless veterans, and VA is required to provide appropriate case management services for each veteran in the program.

Committee bill

Section 510 of the Committee bill would require HUD to set aside 500 rental assistance vouchers for homeless veterans in fiscal year 2007, 1,000 vouchers in fiscal year 2008, 1,500 vouchers in fiscal year 2009, 2,000 vouchers in fiscal year 2010, and 2,500 vouchers in fiscal year 2011. In addition, section 510 would require VA to report to the Committees on Veterans' Affairs in both the House of Representatives and the Senate on the effectiveness of the

HUD–VASH program in comparison with other VA homeless programs. It is the Committee's hope that this report will confirm that the goals of eliminating any existing duplication among homeless assistance programs, and fully utilizing programs with a record of success, have been, or soon will be, successfully accomplished.

Section 511: Financial assistance for supportive services for very low-income veteran families in permanent housing

Background

Poor, disabled, frail or elderly veterans, and poor veterans who reside in rural areas that are long distances from centrally-located services, are among a population of poverty-level veterans (as defined by the HUD "very low income index") who, while not yet "homeless" as it is customarily defined, are certainly at risk of becoming homeless. Notably, the U.S. Census Bureau has estimated that 400,000 children live in households with poverty-level veterans. These at-risk veterans and their families are capable of benefitting from supportive services in home-based settings, but because they are not yet homeless, they do not likely qualify for traditional homeless assistance services. With the scarcity of homeless shelters and transitional housing units that are safe and appropriate for children, the Committee believes it is appropriate to invest in programs that can be an optimal aid for veterans who are committed to retaining their independence and self-sufficiency, while keeping their families intact.

Committee bill

Section 511 of the Committee bill would establish a new VA program to provide supportive services to poverty-level veterans in their homes to help keep those veterans from becoming homeless. For this purpose, it would authorize $15 million for fiscal year 2007, $20 million for fiscal year 2008, and $25 million for fiscal year 2009, with up to $750,000 to be made available annually for technical assistance. The funding would be used to provide financial assistance to non-profit, faith-based and consumer cooperatives so that they may provide and coordinate supportive services to help keep low-income veterans in permanent housing. The supportive services would include physical and mental health services, if they are not readily available at a nearby VA facility; personal financial planning; vocational counseling, assistance in obtaining health insurance; income support and veterans' benefits application services; transportation and educational services; and rehabilitation services.

In addition, section 511 of the Committee bill would require VA to equitably distribute the program's financial assistance across geographic regions, including rural communities. It would require training and technical assistance to be provided to eligible entities for planning, development, and the provision of supportive services to very low-income veteran families occupying permanent housing. Finally, section 511 would require a report on the effectiveness of this new program at preventing homelessness.

Section 601: Residential cooperative housing units

Background

Under the provisions of chapter 37 of title 38, United States Code, VA is authorized to guarantee loans for eligible veterans and survivors to buy or build a home; to buy a residential condominium; to repair, alter or improve a home; to refinance an existing home loan; to buy a manufactured home with or without a lot; to buy and improve a manufactured home lot; to install a solar heating or cooling system or other weatherization improvements; or to buy a home and install energy-efficient improvements. There is no authority in law for VA to guarantee loans to purchase stock in a cooperative housing corporation (hereinafter, "co-op").

A co-op is a legal entity that owns real estate, typically residential buildings. Owners who purchase shares in a co-op are entitled to occupy a specific housing unit within the co-op. In addition to making payments on loans used to purchase shares in a co-op (hereinafter, "share loans"), owners are responsible for paying monthly carrying charges to cover the co-op's debt, maintenance, and other expenses. According to the National Association of Housing Cooperatives, in written testimony for the record submitted for the Committee's June 8, 2006, hearing, "[o]ver 1.2 million families now live in townhouse and apartment housing co-ops in 30 states, the District of Columbia, and Puerto Rico."

The Federal Housing Administration has had authority for over 25 years to insure share loans. VA has no authority to guaranty share loans for veterans under its loan guaranty program. The Committee received testimony in association with its June 8, 2006, hearing in support of legislation to allow VA to guarantee share loans. Mr. David Greineder, Deputy National Legislative Director for AMVETS, submitted the following testimony: "Co-ops make up the vast percentage of affordable housing in large cities and are usually less expensive than a condo or other unit. This legislation would give veterans greater housing choice by allowing them to use their hard-earned benefits to buy a co-op if they prefer." Also submitting testimony in support of S. 2121 were VFW, PVA, and DAV. In addition, the Mortgage Bankers Association and the National Association of Realtors submitted letters of support.

Committee bill

Section 601 of the Committee bill would authorize VA to guarantee loans for the purchase of stock or membership in a co-op. To ensure that the interests of veterans are protected, section 601 gives VA the authority to prescribe in regulations criteria that a co-op development, project, or structure must comply with before VA can guarantee a share loan.

Section 602: Increase in supplemental insurance for totally disabled veterans

Background

The Insurance Act of 1951 established the Service-Disabled Veterans' Insurance (hereinafter, "S–DVI") program for veterans with service-connected disabilities. The purpose of the S–DVI program is to provide veterans who, because of the nature of their disabilities,

may not qualify for, or be able to afford, commercial life insurance policies. The S–DVI coverage limit has remained at $10,000 since the program's inception in 1951. Veterans who are rated as totally disabled by VA are eligible for waivers of premiums for the basic $10,000 coverage.

In an attempt to allow certain service-connected veterans to supplement their S–DVI life insurance coverage, the Veterans' Benefits Act of 1992, Public Law 102–568, was enacted to provide for $20,000 of supplemental coverage (hereinafter, "supplemental S–DVI"). Veterans are eligible for supplemental S–DVI if they meet three criteria: 1) be eligible for a waiver of premiums due to total disability, 2) apply for supplemental S–DVI within 1 year from the time the waiver of premiums was granted, and 3) be under age 65. However, unlike the $10,000 basic coverage, premiums may not be waived for supplemental S–DVI. Premiums on supplemental S–DVI cover about two-thirds of the death benefit cost; the government covers the remaining costs.

In 2001, a Congressionally mandated study, *Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities,* recommended that the basic S–DVI coverage limit be increased from $10,000 to $50,000. The study based its recommendation on data which show that, on average, for all surviving spouses of S–DVI policy holders, total household income decreased from about $48,840 to $27,300 in the year after the policy holder's, i.e., the veteran's, death. The study concluded that basic S–DVI coverage limits should cover the loss of income for at least 2 years after a veteran's death. Thus, in order to meet the study's recommendation for totally disabled S–DVI policy holders, supplemental S–DVI would need to be increased by $20,000 to allow for an aggregate coverage limit of $50,000 ($10,000 in basic coverage and $40,000 in supplemental S–DVI).

Totally disabled veterans would benefit from the availability of higher supplemental S–DVI coverage amounts. This was reaffirmed in a July 28, 2005, letter from Secretary R. James Nicholson to the Committee Chairman regarding the administration's position on S. 1252:

> In our view, the current aggregate S–DVI coverage of $30,000 is insufficient to meet disabled veterans' life insurance needs. S. 1252 would increase the financial security of disabled veterans by affording them the opportunity to purchase additional life insurance coverage otherwise not available to them.

Committee bill

Section 602 would provide for a $10,000 increase in the amount of supplemental S–DVI available to totally disabled S–DVI policy holders. The increase would be effective from October 1, 2007, until September 30, 2011. Veterans who purchase the higher level of supplemental S–DVI during this period would be able to retain the higher level of coverage, assuming continued payment of applicable premiums.

Section 603: Reauthorization of use of certain information from other agencies

Background

Section 5317 of title 38, United States Code, directs VA to notify applicants for needs-based VA benefits, such as 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 for VA to obtain such information expires on September 30, 2008.

Section 6103(l)(7) 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 603 would extend until September 30, 2011, the authority of VA 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) of the Internal Revenue Code.

Section 604: Clarification of correctional facilities covered by certain provisions of law

Background

Under section 5313 of title 38, United States Code, there is a limitation on the payment of VA compensation to an individual incarcerated in a "Federal, State, or local penal institution" for more than 60 days for conviction of a felony. In *Wanless* v. *Principi*, the CAVC directed VA to specifically address the question of whether the section 5313 limitation applies to a felon incarcerated—at the expense of the government—in a facility that is owned and operated by a private contractor (*Wanless* v. *Principi*, 18 Vet. App. 337, 338 (2004)). In a concurring opinion, it was suggested that the phrase "Federal, State, or local penal institution" would not encompass a privately owned and operated correctional facility. After the CAVC issued *Wanless*, VA requested—but has not received—an opinion from the VA General Counsel on the issue posed by the CAVC.

In recent years, there has been significant growth in the number of government entities utilizing penal facilities that are operated by private contractors. This growth may lead to further litigation over whether the current language of section 5313 encompasses private prisons. If VA or the courts were to conclude that private prisons do not constitute a "Federal, State, or local penal institution," as the CAVC has suggested, there would be the anomalous situation of the section 5313 limitation applying to a felon in a publicly operated facility and not to a felon incarcerated for the same crime in a privately operated facility.

Committee bill

Section 604 of the Committee bill would make a technical amendment to title 38, United States Code, to clarify that the section 5313 limitation applies to a felon incarcerated in any type of penal

facility, including facilities operated by a private contractor. It would make the same change in other title 38 sections that currently have the phrase "Federal, State, or local penal institution."

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, relative to current law, increase direct spending for veterans' programs by less than $500,000 in fiscal year 2007, but decrease such spending by $6 million over the fiscal year 2007–2011 period, and by $5 million over the 2007–2016 period. In addition, CBO projects discretionary spending resulting from S. 2694 at $186 million in fiscal year 2007 and $1.1 billion over the 2007–2011 period, assuming appropriation of the necessary amounts. Enactment of the Committee bill would not affect the budget 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, July 19, 2006.

Hon. LARRY E. CRAIG,
Chairman, Committee on Veterans' Affairs,
United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2694, the Veterans' Choice of Representation and Benefits Enhancement Act of 2006.

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

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

S. 2694—Veterans' Choice of Representation and Benefits Enhancement Act of 2006

Summary: S. 2694 would make changes to several programs at the Department of Veterans Affairs (VA), primarily for medical care. CBO estimates that implementing this bill would cost $186 million in 2007 and almost $1.1 billion over the 2007–2011 period, assuming appropriation of the necessary amounts. In addition, CBO estimates that enacting this legislation would increase direct spending for veterans programs by less than $500,000 in 2007, but reduce it by $6 million over the 2007–2011 period and by $5 million over the 2007–2016 period.

S. 2694 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. State and tribal governments would benefit from provisions of this bill.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2694 is summarized in Table 1. The costs of this

legislation fall within budget function 700 (veterans benefits and services).

TABLE 1. ESTIMATED BUDGETARY IMPACT OF S. 2694, THE VETERANS' CHOICE OF REPRESENTATION AND BENEFITS ENHANCEMENT ACT OF 2006

	By fiscal year, in millions of dollars—				
	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	216	237	238	219	220
Estimated Outlays	186	229	240	219	220
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	*	6	2	−6	−10
Estimated Outlays	*	6	2	−6	−10

Note.—* = Less than $500,000.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2007 and that the necessary amounts will be appropriated for each year. Most of the legislation's budgetary effects would fall within the discretionary spending category, but a few provisions would affect direct spending.

Spending subject to appropriation

S. 2694 would affect VA programs for homeless veterans, nursing home care, readjustment benefits, and burial benefits. CBO estimates that implementing this bill would cost $186 million in 2007 and almost $1.1 billion over the 2007–2011 period, assuming appropriation of the necessary amounts (see Table 2).

Medical Care. Titles IV and V of S. 2694 would make several changes to VA programs, primarily for nursing home care and homeless veterans. CBO estimates those provisions would cost about $1 billion over the 2007–2011 period, assuming appropriation of the necessary amounts.

TABLE 2. CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 2694

	By fiscal year, in millions of dollars—				
	2007	2008	2009	2010	2011
MEDICAL CARE					
Assistance for Homeless Veterans:					
Authorization Level	153	158	163	138	138
Estimated Outlays	131	157	161	139	138
State Veterans' Nursing Homes Payments and Benefits:					
Estimated Authorization Level	58	66	69	70	71
Estimated Outlays	52	62	68	69	71
Pilot Programs to Assist Caregivers of Veterans:					
Authorization Level	5	0	0	0	0
Estimated Outlays	3	1	1	0	0
Subtotal–Medical Care:					
Estimated Authorization Level	216	224	232	208	209
Estimated Outlays	186	220	230	208	209
READJUSTMENT BENEFITS					
Estimated Authorization Level	0	6	6	11	11
Estimated Outlays	0	6	6	11	11
BURIAL BENEFITS					
Estimated Authorization Level	*	7	0	0	0

TABLE 2. CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 2694—Continued

	By fiscal year, in millions of dollars—				
	2007	2008	2009	2010	2011
Estimated Outlays	*	3	4	0	0
Total Changes in Spending Subject to Appropriations Under S. 2694:					
Estimated Authorization Level	216	237	238	219	220
Estimated Outlays	186	229	240	219	220

Note.—* = Less than $500,000.

Assistance for Homeless Veterans. Title V would create or extend authorization for several programs intended to assist homeless veterans. These provisions would increase VA spending by about $130 million in 2007 and $725 million over the 2007–2011 period, assuming appropriation of the authorized amounts. In addition, section 505 would extend a mandatory program that allows for the transfer of properties to nonprofit organizations for use as homeless shelters. (CBO's estimate for the cost of this program is discussed below in the "Direct spending" section.)

Grants for Comprehensive Service Programs. Section 503 would provide VA with permanent authority to give grants to organizations that provide comprehensive service programs for homeless veterans. The prior authorization for this program expired in September of 2005. This section would authorize the appropriation of $130 million per year. Based on historical spending patterns for this program, CBO estimates that implementing this section would cost $117 million in 2007 and about $630 million over the 2007–2011 period.

Assistance to Very Low-Income Families. Section 511 would require VA to provide financial assistance to organizations that help families of very low-income veterans who are living in, or about to move in to, permanent housing. This section would authorize appropriations for this program of $15 million in 2007, $20 million in 2008, and $25 million in 2009. CBO expects that it will take at least one year for the program to be established and provide grants. We estimate that implementing this program would cost $7 million in 2007 and about $60 million over the 2007–2011 period.

Grants for Special Needs Veterans. Section 506 would reauthorize funding from 2007 through 2011 for a grants program for homeless veterans with special needs, such as women, the elderly, and the mentally ill. (No funding was provided for this program in 2006.) Based on the authorized amount of $7 million per year, CBO estimates that implementing this section would cost $6 million in 2007 and about $34 million over the 2007–2011 period.

Technical Assistance Grants for Service Providers. Section 507 would reauthorize through 2012 a program that provides technical assistance grants for organizations that help homeless veterans. Section 507 would authorize the appropriation of $1 million per year through 2012. CBO estimates that implementing this section would cost about $1 million in 2007 and $5 million over the 2007–2011 period.

State Veterans' Nursing Homes Payments and Benefits. Section 403 would modify VA payments to state-run nursing homes for veterans and the provision of VA benefits to the veterans who are pa-

tients in those homes. In total, implementing section 403 would cost $52 million in 2007 and $322 million over the 2007–2011 period, assuming appropriation of the necessary amounts.

Increased Payments to State Nursing Homes. Under current law, VA pays state nursing homes for veterans a daily allowance to care for certain veterans. In 2006, that rate is $63.40 per veteran. Section 403 would require VA to pay state nursing homes for the full cost of care for veterans who have a service-connected disability rating of 70 percent or more. Based on information from VA and from the National Association of State Veterans Homes, CBO estimates that it costs the states about $200 a day to care for each veteran and that there are about 1,000 veterans in state homes whose disability ratings are 70 percent or more. Thus, CBO estimates that enacting this provision would cost $48 million in 2007 and about $280 million over the 2007–2011 period, assuming appropriation of the necessary amounts. This estimate assumes that the daily cost will rise at an average inflation rate of about 4 percent.

Because the amount VA currently pays the state nursing homes for veterans does not cover the full cost of care, the homes must also collect money from the veterans themselves and, depending on the state, from other federal government sources and the state itself. If the Congress appropriates the full amount necessary to allow VA to pay for the complete costs for these veterans' care, it is likely that there will be a reduction in the amount of Medicaid funds used to cover the costs of care. Based on the current estimated portion of the cost that is paid for by Medicaid funds, CBO estimates that there could be potential savings to the federal government of about $5 million per year. (Such savings are contingent upon appropriation of the amounts necessary to implement this section.)

Hospital Beds Treated as Nursing Home Beds. Section 403 would also allow VA to treat up to 100 beds found in health facilities such as hospitals as nursing home beds for the purposes of making payments to cover the costs of care for veterans. No new beds could be added to this program after fiscal year 2009. Based on an estimated average cost of care of $250 per day in 2007, and allowing one year for the program to reach full capacity, CBO estimates that implementing this provision would cost about $4 million in 2007 and $40 million over the 2007–2011 period, assuming appropriation of the necessary amounts.

Filling Prescriptions for Veterans in State Nursing Homes. Finally, section 403 would require that VA furnish prescription medicines to veterans with a service-connected disability rating of 50 percent or more who reside in state nursing homes. Under current law, VA can only fill prescriptions for those veterans who are enrolled in the VA medical care system and have prescriptions written by VA doctors. Based on data from VA about the percentage of veterans eligible for this benefit who are already enrolled in their system, CBO estimates that implementing this provision would cost less than $500,000 per year.

Pilot Program to Assist Caregivers of Veterans. Section 405 would require the Secretary to create a two-year program to provide funds to VA medical facilities to assist those caring for veterans by providing services such as adult daycare programs, transportation services, and hospice care. This section would authorize the spend-

ing of not less than $5 million on the pilot program. CBO estimates that implementing this provision would cost $3 million in 2007 and $5 million over the duration of the program.

Readjustment Benefits. VA is authorized to reimburse agencies that approve courses for veterans' readjustment (education) benefits for certain of the costs they incur in their certification efforts. Those agencies—known as state approving agencies—are offices designated by each state to provide the VA with a list of approved courses provided by educational institutions in their states. Under current law, VA may reimburse the agencies from funds available for the payment of readjustment benefits by a total of $19 million in both 2006 and 2007, and $13 million each year thereafter.

Section 303 would increase the amount VA may pay the agencies to $19 million a year for all years, but would reduce the amount VA could draw for that purpose from funds available for the payment of readjustment benefits to $8 million a year for 2010 through 2013. VA would be authorized to use funds, subject to the availability of appropriations, to make up the difference between the full amount authorized and the amount that could be paid from funds for readjustment benefits. CBO estimates that implementing this provision would have no cost in 2007 but would cost $34 million over the 2008–2011 period, assuming appropriation of the estimated amounts. (The effect of this section on readjustment benefits is discussed under the "Direct spending" section.)

Burial Benefits. Section 201 would allow VA to provide grants to tribal organizations to establish, expand, or improve veterans' cemeteries on trust lands owned by the tribal organizations. Under current law, VA can only provide grant money to states for the purposes of establishing, expanding, or improving a veterans' cemetery. Based on information from VA, state cemetery grants range from $4 million to $7 million, depending on the size of the project, with an average time of 24 months to establish a cemetery from design to opening. CBO expects that one such request for a cemetery would be made over the 2007–2011 period, and estimates that implementing section 201 would cost $7 million over that period, subject to appropriation of the necessary amounts.

Section 202 would require the Secretary of the Army to remove the remains of Russell Wayne Wagner, a convicted murderer, from Arlington National Cemetery and return his remains to his family.

Based on information from VA, CBO estimates that implementing section 202 would cost less than $100,000 in 2007, subject to the availability of appropriated funds.

Direct spending

S. 2694 contains provisions that would both increase and decrease direct spending for veterans programs. On balance, CBO estimates enacting this legislation would increase direct spending for veterans programs by less than $500,000 in 2007, but reduce it by $6 million over the 2007–2011 period and by $5 million over the 2007–2016 period (see Table 3).

TABLE 3. CHANGES IN DIRECT SPENDING UNDER S. 2694

	Outlays by fiscal year, in millions of dollars—									
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
COMPENSATION, PENSIONS, AND BURIAL BENEFITS										
Income Verification Extension	0	0	−5	−9	−13	0	0	0	0	0
Supplemental Service Disabled Veterans Insurance	0	2	3	3	3	2	2	2	2	2
Grave Markers	*	*	*	*	*	*	*	*	*	*
Subtotal-Compensation, Pensions, and Burial Benefits	*	2	−2	−6	−10	2	2	2	2	2
READJUSTMENT BENEFITS										
Accelerated Payments of MGIB	0	3	3	4	4	0	0	0	0	0
Accelerated Payments for Survivors and Dependants	0	1	1	1	1	0	0	0	0	0
State Approving Agencies	0	0	0	−5	−5	−5	−5	0	0	0
Subtotal-Readjustment Benefits	0	4	4	0	0	−5	−5	0	0	0
Total Changes in Direct Spending Under S. 2694	*	6	2	−6	−10	−3	−3	2	2	2

Notes.—MGIB = Montgomery GI Bill; * = Less than $500,000.

Compensation, Pensions, and Burial Benefits. Several sections of the bill would affect veterans benefits for disability compensation, pensions, life insurance, and burial benefits. CBO estimates that implementing these provisions would increase direct spending for veterans programs by less than $500,000 in 2007, but reduce it by $14 million over the 2007–2011 period and by $3 million over the 2007–2016 period.

Income Verification Extension. Section 603 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 will expire on September 30, 2008, as will the authorization allowing VA to acquire the information. Section 603 would extend these authorities through September 30, 2011, for both VA and the IRS. Because current law allows VA and the IRS to conduct income verification through the end of fiscal year 2008, CBO estimates that enacting this provision would provide no savings until fiscal year 2009.

Based on information from VA, CBO estimates that in 2009 VA will make approximately $5 million in pension benefit overpayments that could be prevented by verifying veterans' incomes. Using that information, CBO estimates that enacting section 603 would result in direct spending savings of $26 million over the 2009–2011 period.

Supplemental Service Disabled Veterans Insurance (S–DVI). Section 602 would temporarily increase the amount of supplemental S–DVI a veteran may purchase. S–DVI is an insurance program open to veterans who separated from service on or after April 25, 1951, and who have been determined by VA to have a service-connected disability. Under current law, veterans who are eligible for a waiver of S–DVI premiums (totally disabled veterans) are eligible for an additional $20,000 in S–DVI coverage and they must apply within a year from notice of the grant of waiver. The premiums for supplemental S–DVI cannot be waived. By law, the premiums for

S–DVI have been held constant for many years. Since the premiums are no longer sufficient to cover the estimated death claims per year, the federal government now subsidizes the program.

Section 602 would increase the amount of supplemental S–DVI a veteran could purchase from $20,000 to $30,000 over the period beginning on October 1, 2007, and ending on September 30, 2011. The amount of supplemental S–DVI that could be purchased would return to $20,000 after that period. However, veterans who purchased the additional coverage would be able to retain the higher coverage level. Based on information from VA on S–DVI accessions and mortality rates, CBO estimates that the number of veterans holding S–DVI policies will increase from about 15,000 in 2008 to 18,000 in 2011 and then decrease to about 12,000 by 2016, and that about 20 percent of all policy holders would chose to purchase additional coverage over the specified period. CBO estimates that enacting section 602 would increase direct spending for insurance benefits by $2 million in 2008, $11 million over the 2008–2011 period, and $21 million over the 2008–2016 period.

Grave Markers. Section 203 would allow VA to provide a marker or headstone to be placed on a marked grave or other appropriate location in a private cemetery to commemorate a veteran's military service for those veterans who were buried after November 11, 1990.

Under current law, veterans buried in a private cemetery are eligible for a second marker or headstone only if they were buried after September 11, 2001.

Section 203 would also indefinitely extend the period during which a marker or headstone could be requested. The authority for VA to provide government headstones or markers to veterans buried in private cemeteries currently expires on December 31, 2006.

Based on VA projections about future deaths and burials in private cemeteries, CBO estimates that about 20,000 requests for headstones or markers would be made over the 2007–2016 period. The estimate also reflects information from a VA study that showed that only 27 percent of private cemeteries allow second markers and that less than 5 percent of those eligible would participate in this program. With an average cost of about $92 for each marker, CBO estimates that this provision would result in an increase in spending for burial benefits of less than $500,000 in 2007, $1 million over the 2007–2011 period, and $2 million over the 2007–2016 period.

Veterans Readjustment Benefits. S. 2694 contains several provisions that would modify the way veterans education benefits are currently provided. In total, CBO estimates enacting these provisions would not change direct spending for veterans readjustment benefits in 2007, but would increase such spending by $8 million over the 2008–2011 period, and would decrease such spending by $2 million over the 2008–2016 period.

Accelerated Payments of MGIB Benefits. Section 301 would expand the range of education programs eligible for accelerated payment of education benefits under the Montgomery GI Bill (MGIB). Under current law, veterans may receive a lump-sum payment equal to 60 percent of the costs for certain courses, if tuition for those courses exceeds twice the benefit that would otherwise be paid. This section would add programs leading to employment in

the transportation, construction, hospitality, and energy industries to those in high-technology industries already eligible for such payments, but would limit such expansion to the 2008–2011 period. Based on information from VA about the number of veterans using the current accelerated payment program and the number of veterans training in the transportation, construction, hospitality and energy fields, CBO estimates that this provision would increase direct spending for readjustment benefits by $14 million over the 2008–2011 period.

Accelerated Payments for Survivors and Dependants. Section 302 would allow survivors and dependents to receive their education benefits using the expanded program of accelerated payments described above. These beneficiaries, who have not previously been allowed to receive any accelerated payments, would be eligible for such payments from 2008 through 2011. Based on information from the VA about the usage of this program by MGIB beneficiaries, CBO estimates that this provision would increase direct spending for readjustment benefits by $4 million over the 2008–2011 period.

State Approving Agencies. VA is currently authorized to reimburse the state approving agencies from amounts available for the payment of readjustment benefits. The state approving agencies provide verification that various educational institutions are qualified to provide courses of education so that eligible veterans, survivors, and dependents may receive veterans education benefits while attending those institutions. Section 303 would reduce the amount of such reimbursements that could be provided from funds available for payment of readjustment benefits by $5 million a year from 2010 through 2013. (This provision also would authorize additional amounts to be paid to the state approving agencies subject to the availability of appropriations, which is discussed under the "Spending subject to appropriation" section.) CBO estimates that enacting this provision would reduce direct spending for veterans readjustment benefits by $20 million over the 2010–2013 period.

Other Provisions. The following provisions would have an insignificant impact on direct spending:

- Section 101 would allow VA to periodically collect fees from individuals recognized as agents or attorneys when representing veterans in benefits cases so as to offset the costs VA incurs in certifying that agents or attorneys are properly qualified. CBO estimates that implementing this provision would have an insignificant net effect on direct spending because it would allow VA to spend the fees collected to defray such costs.
- Section 505 would extend from 2008 through 2011, VA's authority to sell, lease, or donate foreclosed homes to nonprofit organizations and state or local governments for use as homeless shelters for veterans. The program provides savings to VA by reducing its inventory of foreclosed homes, but those savings are offset by discounts, ranging from 20 percent to 50 percent of the estimated property value (roughly $90,000), that VA gives to nonprofit organizations. Because of the low volume of homes provided under this program—an average of 10 properties a year over the last few years—CBO estimates this provision would have no significant effect on direct spending for the VA home loan program.
- Section 601 would authorize VA to guarantee loans made to purchase stock or membership in residential cooperatives. Accord-

ing to VA, cooperative housing projects have unique characteristics such as lack of outright ownership of real property, restrictions on sale of stock or membership, and blanket mortgages (a mortgage that covers the entire cooperative project, rather than an individual borrower), that would, in most instances, either violate VA's underwriting criteria or make them unsuitable for the home loan program. As a result, CBO estimates that very few loans would be guaranteed under this provision.

Intergovernmental and private-sector impact: S. 2694 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. State and tribal governments would benefit from provisions of this bill.

Section 201 would make tribal governments eligible for a current program to establish, expand, or improve veteran cemeteries. Any costs to those governments would be incurred as a condition of participating in a voluntary federal program.

Section 403 would authorize the Secretary of the VA to reimburse the full costs of long-term care for certain veterans in State Veteran Homes. Currently, the VA reimburses about one-third of those costs; one-third of the remaining costs are collected from the veteran, and the rest is reimbursed by Medicaid or state contributions. CBO estimates that state governments could save about $10 million annually as a result of this provision, assuming that appropriations are provided to fully fund the costs of long-term care.

Estimate prepared by: Federal Costs: Medical Care: Michelle Patterson. Readjustment Benefits: Mike Waters. Compensation, Pensions, Burial Benefits and Other Programs: Dwayne M. Wright. Housing: Sunita D'Monte. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: R. Derek Trunkey.

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 BY 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 June 22, 2006, meeting. On that date, the Committee, by unanimous voice vote, ordered S. 2694, as amended, a bill to amend title 38, United States Code, to remove certain limitations on attorney representation of claimants for veterans benefits in administrative proceedings before the Department of Veterans Affairs, and for other purposes, reported favorably to the Senate.

AGENCY REPORT

On June 23, 2005, VA's Under Secretary for Benefits, the Honorable Daniel L. Cooper, appeared before the Committee and submitted testimony on, among other things, S. 909 and S. 1252. Additional comments were provided on S. 1252 in a letter to the Committee Chairman on July 28, 2005, from VA Secretary R. James Nicholson. On May 11, 2006, VA's Deputy Under Secretary for Health, Dr. Michael Kussman, appeared before the Committee and submitted testimony on, among other things, S. 1537, S. 2433, S. 2634, and S. 2762. On June 8, 2006, VA's Deputy Under Secretary for Benefits, Ronald Aument, appeared before the Committee and submitted testimony on, among other things, S. 2694 as introduced, and also on the following additional bills from which provisions in S. 2694, as amended, are derived: S. 1252, S. 2121, S. 2416, and S. 3363. Furthermore, in a letter from the Honorable William J. Haynes II, General Counsel of the Department of Defense, to the Committee Chairman on February 9, 2006, additional views were provided with respect to S. 1759. Excerpts from the hearings on June 23, 2005, May 11, 2006, and June 8, 2006, and the February 9, 2006, letter are reprinted below:

STATEMENT OF DANIEL L. COOPER, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS—JUNE 23, 2005

Mr. Chairman and members of the Committee, I appreciate this opportunity to testify today on several bills concerning important programs administered by the Department of Veterans Affairs (VA).

* * * * *

S. 909

S. 909 would expand eligibility for government markers by changing the applicability date of VA's current authority to provide a marker for the private-cemetery grave of a veteran regardless of whether the grave has been marked at private expense.

Pursuant to 38 U.S.C. § 2306(d)(1), VA is authorized to furnish a Government marker for the grave of an individual who is buried in a private cemetery, even if the gravesite is already privately marked. However, this authority extends only to individuals who died on or after September 11, 2001. S. 909 would authorize VA to furnish such markers for the graves of individuals who died on or after November 1, 1990.

VA supports enactment of S. 909. Under current law, if a veteran died before September 11, 2001, VA is authorized to furnish a Government headstone or marker only if the veteran's grave is unmarked. Although the current law has allowed VA to begin to meet the needs of families who view the Government-furnished marker as a means of honoring and publicly recognizing a veteran's military service, VA is now in the difficult position of having to deny this recognition based solely on when a veteran died.

Furthermore, the law has never precluded the addition of a privately purchased headstone to a grave after placement of a Government-furnished marker, even though this practice results in double marking. In contrast, if a private marker is placed on a veteran's grave in the first instance, a Government marker may not be provided if the veteran died before September 11, 2001. In our view, this creates an arbitrary distinction disadvantaging families who promptly obtained a private marker.

For veterans who died during the period from October 18, 1979, until November 1, 1990, when the Omnibus Budget Reconciliation Act of 1990 was enacted, VA may pay a headstone or marker allowance to those families who purchased a private headstone or marker in lieu of a Government headstone or marker. Therefore, those families also had an opportunity to benefit from the VA-marker program. S. 909 would, for the first time, permit families who bought a private marker for veterans who died between November 1, 1990, and September 11, 2001, to participate in the VA-marker program as well.

VA estimates that enactment of S. 909 would cost $90,000 during FY 2006 and $225,000 over the ten-year period FYs 2006–2015. VA pays for headstones and markers with funds from the Compensation and Pension appropriation account.

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S. 1138, S. 1252, S. 1259, S. 1271

Unfortunately, we did not receive the text of S. 1252, the "Disabled Veterans Insurance Improvement Act," S. 1259, the "Veterans Employment and Transition Services Act," or S. 1271, the "Prisoner of War Benefits Act of 2005," in time to be able to state our views on those bills. We will be happy to provide the Committee with official views and estimates once the necessary executive branch coordination has been completed. S. 1138, a bill to authorize placement in Arlington National Cemetery of a monument honoring veterans who fought in World War II as members of Army Ranger Battalions, was also recently added to the hearing agenda. We will provide our comments on this bill to the Committee after completing necessary executive branch coordination.

LETTER FROM SECRETARY OF VETERANS AFFAIRS R. JAMES NICHOLSON

JULY 28, 2005.

Hon. LARRY E. CRAIG,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As requested at the June 23, 2005, legislative hearing before the Senate Committee on Veterans' Affairs, I am pleased to provide the views of the Department of Veterans Affairs (VA) on those bills for which

we did not previously submit comments, including S. 917, a bill to make permanent the pilot program for direct housing loans for Native American veterans, S. 1138, a bill to authorize placement in Arlington National Cemetery of a monument honoring veterans who fought in World War II as members of Army Ranger Battalions, S. 1252, the "Disabled Veterans Insurance Improvement Act of 2005," S. 1259, the "Veterans Employment and Transition Services Act," and S. 1271, the "Prisoner of War Benefits Act of 2005." VA's views on each of these bills are discussed below. To the extent that VA supports enactment of aspects of these bills that have cost implications, it is assumed that the costs would be accommodated within the scope of the President's budget request.

* * * * *

S. 1252

S. 1252, the "Disabled Veterans Insurance Improvement Act of 2005," would amend section 1922A of title 38, United States Code, to increase from $20,000 to $40,000 the amount of supplemental life insurance available to veterans who are insured under Service-Disabled Veterans' Insurance (S–DVI) and who qualify for waiver of premiums due to total disability. Under current law, a veteran who has a service-connected disability but is otherwise in good health may obtain up to $10,000 of S–DVI by applying to VA within two years from the date of being notified that the disability is service connected. 38 U.S.C. §§ 1903, 1922(a). VA may, upon application of an insured veteran, waive the payment of premiums during a period of continuous total disability. 38 U.S.C. §§ 1912(a), 1922(a). Section 1922A currently provides up to $20,000 of supplemental insurance to a disabled veteran who: (1) has basic S–DVI coverage; (2) has obtained a waiver of premiums on this coverage because he or she is totally disabled; and (3) applies to VA for the supplemental S–DVI coverage within one year of being notified by VA that he or she is entitled to waiver of premiums. 38 U.S.C. § 1922A(a) and (b). Waiver of premiums is not available on the supplemental coverage. 38 U.S.C. § 1922A(d).

By increasing the amount of available supplemental S–DVI to $40,000, S. 1252 would address a major concern of veterans, as shown by the Congressionally-mandated study *Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities*. This study indicated that veterans were least satisfied with the maximum insurance available and that veterans deem the need for increased coverage to be most important. In our view, the current aggregate S–DVI coverage of $30,000 is insufficient to meet disabled veterans' life insurance needs. S. 1252 would increase the financial security of disabled veterans by affording them the opportunity to purchase additional life insurance coverage otherwise not available to them. Accordingly, VA supports S. 1252.

S. 1252 does not specify its scope of applicability, but we interpret it to apply prospectively to any veteran who is eligible to apply for and obtain supplemental S–DVI under section 1922A, or to change the amount of supplemental S–DVI coverage previously obtained, on or after the date of S. 1252's enactment. Based on this interpretation, VA estimates that the additional coverage provided by S. 1252 would cost $2.6 million over the five-year period FY 2006 through FY 2010 and $9.5 million over the ten-year period FY 2006 through FY 2015.

* * * * *

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's programs.

Sincerely yours,

R. JAMES NICHOLSON.

STATEMENT OF MICHAEL KUSSMAN, DEPUTY UNDER SECRETARY FOR HEALTH, DEPARTMENT OF VETERANS AFFAIRS—MAY 11, 2006

Good Morning Mr. Chairman and Members of the Committee:

Thank you for inviting me here today to present the Administration's views on several bills that would affect Department of Veterans Affairs (VA) programs that provide veterans benefits and services.

S. 1537 Parkinson's Disease Research Education and Clinical Centers; Multiple Sclerosis Research Education and Clinical Centers

Mr. Chairman, I will begin by addressing S. 1537. This bill would require VA to establish six Parkinson's Disease Research, Education, and Clinical Centers (PADRECCs) and two Multiple Sclerosis Centers of Excellence (MS Centers). The bill prescribes detailed requirements for the centers. It would provide that any such center in existence on January 1, 2005, must be designated as a PADRECC or MS Center under this law unless the Secretary determines that it does not meet the bill's requirements, has otherwise not demonstrated effectiveness in carrying out the purposes of a PADRECC or MS Center, or has not demonstrated the potential to carry out those purposes effectively in the reasonably foreseeable future. The centers would also need to be geographically distributed. Finally, the Secretary could designate a facility as a new PADRECC or MS Center only if a peer review panel finds that the facility meets the requirements of the law, and recommends designation.

VA does not support S. 1537 because it is unnecessary; the Department is already in full compliance with the substantive requirements of this bill. VA recommends that Congress await an ongoing evaluation of the existing PADRECCs before it considers whether to mandate that

VA either continue their operation or designate new centers. Additionally, VA is concerned that statutory mandates for these "disease specific" centers has the potential to fragment care in what is otherwise a well-designed, world class integrated health care system. I am increasingly concerned about the proliferation of this disease specific model and its impact on patient care and VA's integrate health care model. As it relates to a particular disease, I believe that it is much more important for VA to disseminate the best in evidence based practices across its health care system than to establish centers that provide care for a particular disease.

VA currently has PADRECCs at six sites—San Francisco, California; Richmond, Virginia; Philadelphia, Pennsylvania; Houston, Texas; Los Angeles, California, and Puget Sound/Portland, Oregon (a combined site). Those sites served a total of 18,500 patients in fiscal year 2004. We are currently conducting an evaluation of PADRECCs' effectiveness in disseminating best practices, impact on patient outcomes, and the types of organizational structures that contribute to effectiveness. The study will be completed in 2007. Until this study is complete, VA believes that it would be unwise to mandate continued operation of these or additional PADRECCs. VA will, of course, share the results of the evaluation with Congress to assist in determining the need for legislation in the future.

For similar reasons, VA also does not support establishing new specialty centers for the care of veterans with multiple sclerosis. VA is well aware that Parkinson's disease and multiple sclerosis are prevalent in the veteran population, particularly among aging veterans. However, the nature of battlefield injuries is changing, and VA is now treating many new veteran patients with complex polytrauma syndromes, including brain injuries, limb loss, and sensory loss. Treating such disorders, and the mental and emotional disorders that accompany them, requires an interdisciplinary approach that moves beyond the focus on a single disease. By mandating new "education, research, and clinical centers" that are disease-specific, flexibility to respond to changing combinations of related conditions is reduced. It is also important to note that the "models" on which PADRECCs and MS Centers are based, the successful Geriatric Research, Education and Clinical Center (GRECC) and Mental Illness Research, Education and Clinical Center (MIRECC) programs, were not as narrowly-focused on a disease process but addressed a wide gamut of issues facing a significant portion of the veteran population.

S. 2433 Rural Veterans Care Act of 2006

Mr. Chairman, S. 2433 is an ambitious measure to improve access to VA health care and other VA benefits by veterans living in rural and remote areas by creating a new Assistant Secretary who would be responsible for formulating, coordinating, and overseeing all VA benefits,

policies, and procedures affecting such veterans. This would include overseeing and coordinating personnel and policies of the three Administrations (i.e., Veterans Health Administration (VHA), Veterans Benefits Administration, National Cemetery Administration) to the extent such programs affect veterans living in rural areas.

Section 2 of the bill would establish a new Assistant Secretary for Rural Veterans (AS) to formulate, coordinate, and implement all policies and procedures of the Department that affect veterans living in rural areas. It would require the new Assistant Secretary to oversee, coordinate, promote, and disseminate research into issues affecting veterans living in rural areas, in cooperation with VHA and the centers that would be established under section 6 of the bill, as well as ensure maximum effectiveness and efficiency in the provision of benefits to these veterans in coordination with the Departments of Health and Human Services (HHS), Labor, Agriculture and local government agencies.

In addition, section 2 would require the Assistant Secretary to identify a Rural Veterans Coordinator in each VHA Integrated Service Network (VISN), who would report directly to the Assistant Secretary and coordinate all the functions authorized under section 2 within his respective VISN. It would also require the Assistant Secretary, under the direction of Secretary, to supervise the VA employees who are responsible for implementing these policies and procedures.

Section 3 of the bill would require the Assistant Secretary to carry out demonstration projects to examine alternatives for expanding care in rural areas. In so doing, the Assistant Secretary would have to work with the Department of Health and Human Services to coordinate care that is delivered through the Indian Health Service, Critical Access hospitals, or Community Health Centers. One such program would have to involve expanded use of fee-basis care for veterans living in rural or remote areas. Not later than one year after the date of enactment of this Act, the Assistant Secretary would be further required to re-evaluate VA policy on the use of fee basis care nationwide and to revise established policies to extend health care services to rural and remote rural areas.

Section 4 of the bill would require the Secretary to conduct a three-year pilot program in 3 VISNs to evaluate various means to improve access to care in highly rural or geographically remote areas for all enrolled veterans and those with service-connected disabilities who live in such areas. In carrying out the pilot, the Secretary would be required to provide these veterans with acute or chronic symptom management, non-therapeutic medical services, and any other medical services jointly determined to be appropriate by the individual veteran's VA primary care physician and the respective VISN Director. The Secretary would also have to allocate 0.9% of the appropriated med-

ical care funds to carry out this section before allocating any other medical funds.

Section 5 would amend VA's authority to provide beneficiary travel benefits to require that covered lodging and subsistence be determined at the same rates that apply to Federal employees. It would also require that VA's mileage allowance be determined in accordance with the rates that apply to Federal employees.

Finally, section 6 of the bill would require the new Assistant Secretary to establish up to five centers of excellence for rural health research, education, and clinical activities. These center(s) would be required to: conduct research on rural health services; allow for use of specific models of furnishing services to this population; provide education and training for health care professionals; and, develop and implement innovative clinical activities and systems of care.

We share the concern that rural veterans have adequate access to VA health care and other VA services; however, we do not agree that the bill would effectively achieve this and, so, oppose S. 2433. First, the Under Secretaries of the three VA Administrations are responsible for formulating and implementing program policy in their respective areas. The proposed Assistant Secretary could have no direct authority over them or their organizations. The proposed role and responsibilities of the Assistant Secretary, as provided for in this legislation, would cause significant confusion and disruption across organizational lines—both among, and within, the Administrations.

Assuming there were some way to operationalize the responsibilities of the Assistant Secretary, the ability of the Under Secretaries to manage their employees and respective programs efficiently and effectively would be significantly reduced. The bill would dilute control from the Administrations with respect to specified activities, personnel, and resources. This would increase the potential for fragmented services, waste, and inconsistent, if not unequal, treatment of veterans based solely on their geographic location. For instance, 23% of enrollees live in rural areas based on the Census' definition of a rural area. However, only four percent of enrollees live in a rural area and travel more than 60 minutes to a VA facility. Under the bill, a disproportionate share of health care resources would be directed to this population. The planning and delivery of services to rural veteran-enrollees would be inconsistent and incoherent with respect to the total population of enrolled veterans. The possibility of fragmentation in the delivery of benefits cannot be overstated.

Second, S. 2433 would adversely dilute the ability of the Under Secretary for Health to manage not only the delivery of VA health care to rural veterans but also the delivery of health care to all veterans because of the significant costs associated with enactment of this bill. The proposed demonstration projects would cost $225 million based on the President's Budget for Fiscal Year 07. The additional

beneficiary travel benefits would cost approximately $550 million (based on current employee-related rates), and that estimate accounts only for the proposed increase in VA's mileage allowance. Providing per diem (lodging and subsistence) at the proposed rates in addition to the mileage allowance would raise the estimate to well over $1 billion. Moreover, these increases would assist only the limited categories of veterans who are eligible for beneficiary travel benefits. We believe medical care funds are better directed to the delivery of direct health care for all eligible veterans.

We note that the mandate to expand the use of fee-basis care in the proposed demonstration projects may not be possible, because VA's authority to provide fee-basis care (meaning contract care other than care furnished under a sharing or scarce-medical-specialist agreement) is limited by statute. Further, the mandate ignores the economic impact of expanding the use of fee basis care. The cost of care in fee settings is typically significantly greater than the cost of the same care provided in VA settings. As a result, while fee-basis expansion may make care accessible for some rural veterans, it would disproportionately reduce the resources available for care of all other veterans. Moreover, we do not understand the mandate to provide non-therapeutic medical services as part of the pilot program and would question the wisdom of providing such service from the three medical care appropriations. Finally, the demonstration projects and pilot project could be achieved, to a large extent, within the current VHA structure and existing authority. It does not require an organizational restructuring, which, again, would create significant risk of fragmentation and lack of continuity of care and benefits.

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S. 2634 Eliminating Statutory Term Limits of Under Secretary for Health and Under Secretary for Benefits

Mr. Chairman, S. 2634 would eliminate the current statutory four-year term limit that applies to both the Under Secretary for Health and the Under Secretary for Benefits position, as well as the currently mandated search-commission processes for identifying candidates to recommend to the President for these positions. VA supports S. 2634 as it would provide the Secretary with needed flexibility as well as decrease the time required to fill these vacancies.

STATEMENT OF RONALD AUMENT, DEPUTY UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS—JUNE 8, 2006

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on a number of legislative items of great interest to veterans. I am joined at the witness table by John H. Thompson, Deputy General Counsel.

S. 2121

S. 2121, the "Veterans Housing Fairness Act of 2005," would authorize VA to guarantee loans for stock in certain developments, structures, or projects of a cooperative housing corporation (co-ops).

VA cannot support this bill because we do not believe that VA participation in co-ops would be in the best interest of the veteran or of the Government as guarantor of the loan. Under current law, a veteran may purchase a conventional home, a condominium unit, or a manufactured home and a manufactured home lot. In all cases except a manufactured home, the veteran is purchasing real property. Although the manufactured home is normally considered personal property, the veteran also obtains title to the actual home he or she will be occupying. In contrast, the buyer of a co-op does not acquire an interest in real estate or obtain title to his or her dwelling unit. Instead, the purchaser acquires personal property in the form of a share of the cooperative's stock, coupled with the right to occupy a particular apartment in the building. A buyer normally obtains a share loan that finances the purchase of an ownership interest in the co-op. This loan is evidenced by a promissory note and is secured by a pledge of the stock, shares, membership certificate, or other contractual agreement that evidences ownership in the corporation and by an assignment of the proprietary lease or occupancy agreement. VA would be guaranteeing this corporate share loan. Unlike other VA loans, there would be no lien on real property or tangible personal property.

Cooperative housing projects are usually subject to blanket mortgages. This is a matter of great concern because of the significant risk to which the buyer, the loan holder, and VA are exposed. The buyer of a co-op is responsible for the monthly payment on the share loan as well as the assessments levied by the corporation, which can be significant. The survival of the project may depend upon each member of the co-op meeting his or her obligations. Failure to do that could lead to foreclosure of the blanket mortgage on the entire building. Such foreclosure would wipe out any interest individual co-op owners, even owners who are timely in the payment of their share loans, may have in the project since they have no interest in real property. It would also leave the holder of the share loan without any security. This is what principally sets co-ops apart from condominiums.

Many co-ops also retain a right of first refusal or a right by the co-op board to approve or reject a prospective buyer. Rights of first refusal are not permitted by VA regulation, 38 C.F.R. §36.4350, and VA does not participate in projects that have them. We believe that the issue of right of first refusal alone would disqualify most projects from VA eligibility.

We understand that some co-op projects impose other restrictions on sales, such as imposing a fee when the owner sells his or her unit to someone other than the corporation,

or granting the exclusive right to sell units to a particular real estate broker, often at a higher commission. These and similar practices would be viewed as detrimental to the interests of veterans and, therefore, not permitted under current VA regulations for conventional or condominium developments. These practices could also adversely affect the marketability of a unit. If a veteran-borrower is experiencing financial difficulties and cannot freely dispose of his or her unit at an advantageous price, foreclosure with a resultant loss to VA is more likely.

We also understand that conventional lenders, as well as the secondary mortgage market agencies, generally have additional underwriting and project requirements for co-ops because of the additional risks they present. In addition, valuation of these properties would be very complicated because of the blanket mortgage.

Costs associated with this legislation would likely be insignificant compared to the overall VA guaranteed loan portfolio.

S. 2416

S. 2416, the "Veterans Employment and Training Act of 2006," would expand the programs of education for which accelerated payment of educational assistance may be made under the chapter 30 Montgomery GI Bill (MGIB) program. Specifically, this measure would permit accelerated payment of the basic educational assistance allowance to veterans pursuing an approved program of education (in addition to the programs now authorized such payment) lasting less than two years and leading to employment in a sector of the economy that is projected to experience substantial job growth, positively affects the growth of another sector of the economy, or consists of existing or emerging businesses that are being changed by technology and innovation and require new skills for workers, as determined by the Department of Labor (DOL).

Under current law, only an MGIB participant pursuing high-cost courses leading to employment in a high technology occupation in a high technology industry has the option of receiving an accelerated benefit payment. This optional lump-sum accelerated benefit payment may cover up to 60 percent of the cost of such a course, provided the pro-rated course costs exceed 200 percent of the applicable monthly MGIB rate. The lump-sum payment is deducted from the veteran's MGIB entitlement balance in the same manner as if paid on a monthly basis and may not exceed that balance.

In addition, S. 2416 specifically states that, for purposes of accelerated payment of educational assistance, the term "program of education" would include such a program pursued at a tribally controlled college or university (as defined in the Tribally Controlled College or University Assistance Act of 1978).

VA supports S. 2416, subject to Congress' enactment of legislation offsetting the cost of the increased benefits.

However, as discussed below, we believe there may be a more efficient way of achieving its objective.

We note that implementation would be challenging for VA. The DOL employment projections change every two years. In addition, depending on the definition of "sector," it is possible that almost all programs would lead to employment in one sector of the economy that would affect at least one other sector positively. It would be cleaner and more direct if the bill simply stated that all high-cost short-term courses were eligible for accelerated payment. Secondly, S. 2416 would exclude from the proposed expansion of accelerated payment eligibility those individuals who are enrolled in an associate's or higher degree program. Thus, such an individual only could receive an accelerated payment if his or her program of education leads to employment in a high technology occupation in a high technology industry (as determined by VA). We can see no sound public policy basis for making this distinction.

Concerning the bill's express provision for accelerated payments under chapter 30 to eligible veterans pursuing a program of education at a tribally controlled college or university, VA has no objection. We note, however, that VA currently considers such programs to be "programs of education" for MGIB purposes, and we are not aware of any situations pertaining to servicemembers or veterans attending tribally controlled colleges or universities that adversely affect their eligibility for accelerated benefit payments.

VA estimates S. 2416, if enacted, would cost $11.5 million during FY 2007 and approximately $121.6 million over the period FYs 2007–2016. The estimates for the years following FY 2007 would need to be reassessed annually due to DOL initiative changes.

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S. 2659

S. 2659, the "Native American Veterans Cemetery Act of 2006," would authorize the Secretary of Veterans Affairs to make grants to Native American tribal organizations to assist them in establishing, expanding, or improving veterans' cemeteries on trust lands in the same manner and under the same conditions as grants to states are made under 38 U.S.C. § 2408. We strongly support enactment of this bill.

The cemetery grants program has proven to be an effective way of making the option of veterans cemetery burial available in locations not conveniently served by our national cemeteries. S. 2659 would create another means of accommodating the burial needs of Native American veterans who wish to be buried in tribal lands.

S. 2694

S. 2694, the "Veterans' Choice of Representation Act of 2006," would eliminate the current prohibition on the

charging of fees for services of an agent or attorney provided before the Board of Veterans' Appeals (Board) makes its first final decision in the case. It would also authorize VA to restrict the amount of fees agents or attorneys may charge and subject fee agreements between agents or attorneys and claimants to review by the Secretary, such review to be appealable to the Board. In addition, it would eliminate fee matters as grounds for criminal penalties under 38 U.S.C. § 5905.

S. 2694 would also authorize VA to regulate the qualifications and standards of conduct applicable to agents and attorneys, add three grounds to the list of grounds for suspension or exclusion of agents or attorneys from further practice before VA, subject VSO representatives and individuals recognized for a particular claim to suspension on the same grounds as apply to agents and attorneys, and authorize VA to periodically collect registration fees from agents and attorneys to offset the cost of these regulatory activities.

We understand, and in fact agree with, the argument that veterans are as capable as anyone of deciding whether to employ attorneys on their behalves. However, that is not the issue. The Government has an obligation to ensure that veterans derive maximum value from taxpayer-supported VA programs. This Committee expressed its concern in 1988 when it reported out a bill (S. 11, 100th Cong.) that would have retained the prior $10 limitation on fees for claims resolved before or in the first Board decision, that any changes relating to attorneys' fees "be made carefully so as not to induce unnecessary retention of attorneys by VA claimants." Under S. 2694, attorney fees would consume significant amounts of payments under programs meant to benefit veterans, and Congress should not enact this bill unless it becomes convinced veterans would gain more in terms of increased benefits than they would lose to their attorneys. Available evidence shows that is unlikely, hence we cannot support the bill's enactment.

Throughout the years, Congress has recognized, correctly, that integration of VSO representatives into the process of developing and deciding claims is one of the most valuable features of the VA adjudication system. These representatives are available to guide through the claims process all claimants who seek their assistance, without charge. VSO representatives are well-versed in veterans benefits law as a result of the training they receive and therefore are well-equipped to successfully assist claimants throughout the administrative processing of their claims. Further, VSOs must certify to VA that their representatives are fully qualified to represent claimants. These facts alone cause us to doubt that participation by attorneys would gain claimants more in increased benefits than it would cost them in fees.

Moreover, what empirical data exist do not indicate attorneys would provide service superior to that rendered by

VSO representatives. For example, in FY 2005, 7.5 percent of appellants before the Board of Veterans' Appeals were represented by attorneys, and approximately 80 percent were represented by VSOs. Approximately the same percentage of claims was granted in matters appealed to the Board whether a claimant was represented by a VSO representative or was represented by an attorney. In FY 2005, the Board granted one or more of the benefits sought in 21.3 percent of the appeals in which a claimant was represented by an attorney. The Board granted one or more of the benefits sought in 22.3 percent of the cases in which a claimant was represented by a VSO.

The expense of employing an attorney to obtain veterans benefits would appear to be largely unwarranted. For example, many claims are granted immediately by VA based on a presumption of service connection or incurrence of an injury or disease during service. VA currently has presumptions of service connection for several different kinds of service and many diseases. For example, a Vietnam veteran is entitled to a presumption of service connection if he or she develops diabetes mellitus (Type 2). Giving VA an opportunity to decide such a claim without attorney involvement may well save a veteran money. In addition, claimants do not appeal to the Board in about 90 percent of claims decided by VA regional offices, suggesting a high level of satisfaction with the regional offices' decisions in their cases. Paying an attorney to assist in presenting these claims would seem to be a waste of claimants' financial resources.

Also, as this Committee recognized in 1988 when it reported out S. 11, there is "no compelling justification" for hiring an attorney prior to that point. The Supreme Court recognized in Walters v. National Ass'n of Radiation Survivors that, "[a]s might be expected in a system which processes such a large number of claims each year, the process prescribed by Congress for obtaining disability benefits does not contemplate the adversary mode of dispute resolution." Rather, the Supreme Court said, "The process is designed to function throughout with a high degree of informality and solicitude for the claimant."

All a claimant need do is file a claim, and VA will notify the claimant of the information and evidence necessary to substantiate the claim, assist the claimant in obtaining relevant Government and private records, provide a medical examination or obtain a medical opinion when necessary to decide a compensation claim, and make an initial decision on the claim. If a claim is denied, all a claimant need do to initiate an appeal to the Board is to write VA expressing dissatisfaction or disagreement with the decision and a desire to contest the result. The VA agency that made the original decision on the claim will develop or review the claim in a final attempt to resolve the disagreement and issue a statement of the case if the disagreement is not resolved. VA assumes primary responsibility for leading a claimant through the administrative claims proc-

ess, making the expenditure of a claimant's limited financial resources on an attorney unnecessary. Furthermore, we are concerned that enactment of this bill would impede the Government's paramount interest in promoting and maintaining a non-adversarial adjudicative process, as exemplified by the Veterans Claims Assistance Act of 2000 requiring VA to notify a claimant of the information and evidence necessary to substantiate a claim and to assist a claimant in obtaining such evidence. This statute was designed to facilitate beneficial interaction between claimants and VA during the initial adjudication process. S. 2694, by permitting claimants to employ paid attorneys before issuance of the first final Board decision, would be incongruent with the beneficent VA system that Congress has nurtured over the decades.

Also, attorney-represented claimants would lose certain benefits of the current non-adversarial system. For example, the Court of Appeals for the Federal Circuit recently held in Andrews v. Nicholson that VA must sympathetically read all pro se pleadings, including a pro se motion alleging clear and unmistakable error (CUE) in a VA decision. However, the court stated in Andrews and in Johnston v. Nicholson that VA is not obligated to sympathetically read pleadings filed by counsel, and the failure to raise an issue in a CUE motion filed by counsel before the Board is fatal to subsequently raising the issue before the Court of Appeals for Veterans Claims. S. 2694 would attempt to maintain the non-adversarial nature of the process by authorizing VA to suspend claim representatives who fail to conduct themselves "with due regard for the non-adversarial nature of" VA proceedings. However, a requirement for non-adversarial conduct by an attorney appears inconsistent with an attorney's professional responsibility to "represent a client zealously within the bounds of the law." MODEL CODE OF PROF'L RESPONSIBILITY CANON 7 (1983). "While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law" and may urge any permissible construction of the law favorable to his client. MODEL CODE OF PROF'L RESPONSIBILITY EC 7–3 and 7–4 (1983). An attorney who "appear[s] before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law." MODEL CODE OF PROF'L RESPONSIBILITY EC 7–15. Introducing an attorney charged with such professional obligations into the non-adversarial claims process from its initial stages would, in our view, inevitably make the process more adversarial, which we believe would harm the interests of VA claimants. Further, if S. 2694 were enacted, VA would likely have to hire attorneys to work in its Regional Offices to respond to the legal pleadings filed by attorneys in support of their clients' claims. However unintentional it would be, we predict the process would inevitably become more formal and brief driven, to the point claimants may feel they

must hire attorneys to establish entitlement to their benefits. The result would almost certainly be to increase the time all veterans must wait for decisions in their claims. Finally, we cannot support S. 2694 because it would require creation of a substantial new bureaucracy to perform the additional accreditation and oversight responsibilities. Currently, an attorney in good standing with the bar of any state may represent a claimant before VA if the attorney states in a signed writing on his or her letterhead that he or she is authorized to represent the claimant. If S. 2694 were enacted, VA would have to create procedures and standards for accrediting attorneys and for reviewing fee agreements for services performed at the ROs to determine whether a fee charged by an agent or attorney is "excessive or unreasonable." The additional time and substantial resources that would be required to carry out the accreditation process and review fee agreements for work performed before the ROs would, in our view, be better spent adjudicating the approximately 800,000 benefit claims that VA receives annually.

Moreover, attorneys are licensed by the various states, which are responsible for regulating their conduct and disciplining them if they overreach with respect to fees charged. If attorneys are permitted to practice before the Department and charge fees for their services, it would be far better to have them regulated by the states responsible for their licenses than to create a new Federal office to monitor attorney conduct.

S. 3363

S. 3363 would provide for accelerated payment of survivors' and dependents' educational assistance for certain programs of education under chapter 35 of title 38, United States Code. VA will provide its comments and costs on S. 3363 at a later time.

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.

LETTER FROM WILLIAM J. HAYNES II, GENERAL COUNSEL, DEPARTMENT OF DEFENSE

FEBRUARY 9, 2006.

Hon. LARRY E. CRAIG,
Chairman, Committee on Veterans Affairs,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN CRAIG: I want to convey the Department of Defense's position on S. 1759, a bill to "require the Secretary of the Army to remove the remains of Russell Wayne Wagner from Arlington National Cemetery." The Department of Defense has no objection to the enactment of this bill.

The Department notes that Mr. Wagner's remains were buried in accordance with existing law and that S. 1759

would not direct the removal of the remains of other capital offenders interred at Arlington National Cemetery. The Department is concerned that, as drafted S. 1759 would require the Department of the Army to bear the costs of a subsequent interment or inurnment in a public or private cemetery. The Department of Defense does not provide funeral costs for veterans at public or private cemeteries. Doing so in this case could set an undesirable precedent. Additionally, we believe the first option should be to offer the remains to the decedent's family.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this letter for the consideration of the committee.

Sincerely,

WILLIAM J. HAYNES II.

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

* * * * * * *

§ 6103. Confidentiality and disclosure of returns and return information

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(l) * * *

(7) * * *

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] *September 30, 2011.*

TITLE 38, UNITED STATES CODE

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PART I. GENERAL PROVISIONS

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CHAPTER 3. DEPARTMENT OF VETERANS AFFAIRS

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§ 305. Under Secretary for Health

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[(c) The Under Secretary for Health shall be appointed for a period of four years, with reappointment permissible for successive like periods. If the President removes the Under Secretary for Health before the completion of the term for which the Under Secretary for Health was appointed, the President shall communicate the reasons for the removal to Congress.]

[(d)] *(c)*(1) Whenever a vacancy in the position of Under Secretary for Health occurs or is anticipated, the Secretary shall establish a commission to recommend individuals to the President for appointment to the position.

(2) A commission established under this subsection shall be composed of the following members appointed by the Secretary:

(A) Three persons representing clinical care and medical research and education activities affected by the Veterans Health Administration.

(B) Two persons representing veterans served by the Veterans Health Administration.

(C) Two persons who have experience in the management of veterans health services and research programs, or programs of similar content and scope.

(D) The Deputy Secretary of Veterans Affairs.

(E) The Chairman of the Special Medical Advisory Group established under section 7312 of this title.

(F) One person who has held the position of Under Secretary for Health (including service as Chief Medical Director of the Department), if the Secretary determines that it is desirable for such person to be a member of the commission.

(3) A commission established under this subsection shall recommend at least three individuals for appointment to the position of Under Secretary for Health. The commission shall submit all recommendations to the Secretary. The Secretary shall forward the recommendations to the President with any comments the Secretary considers appropriate. Thereafter, the President may request the commission to recommend additional individuals for appointment.

(4) The Assistant Secretary or Deputy Assistant Secretary of Veterans Affairs who performs personnel management and labor relations functions shall serve as the executive secretary of a commission established under this subsection.

§ 306. Under Secretary for Benefits

* * * * * * *

[(c) The Under Secretary for Benefits shall be appointed for a period of four years, with reappointment permissible for successive like periods. If the President removes the Under Secretary for Benefits before the completion of the term for which the Under Secretary for Benefits was appointed, the President shall communicate the reasons for the removal to Congress.]

[(d)] *(c)*(1) Whenever a vacancy in the position of Under Secretary for Benefits occurs or is anticipated, the Secretary shall establish a commission to recommend individuals to the President for appointment to the position.

(2) A commission established under this subsection shall be composed of the following members appointed by the Secretary:

(A) Three persons representing education and training, real estate, mortgage finance, and related industries, and survivor benefits activities affected by the Veterans Benefits Administration.

(B) Two persons representing veterans served by the Veterans Benefits Administration.

(C) Two persons who have experience in the management of veterans benefits programs or programs of similar content and scope.

(D) The Deputy Secretary of Veterans Affairs.

(E) The chairman of the Veterans' Advisory Committee on Education formed under section 3692 of this title.

(F) One person who has held the position of Under Secretary for Benefits (including service as Chief Benefits Director of the Department), if the Secretary determines that it is desirable for such person to be a member of the commission.

(3) A commission established under this subsection shall recommend at least three individuals for appointment to the position of Under Secretary for Benefits. The commission shall submit all recommendations to the Secretary. The Secretary shall forward the recommendations to the President with any comments the Secretary considers appropriate. Thereafter, the President may request the commission to recommend additional individuals for appointment.

(4) The Assistant Secretary or Deputy Assistant Secretary of Veterans Affairs who performs personnel management and labor relations functions shall serve as the executive secretary of a commission established under this subsection.

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PART II. GENERAL BENEFITS

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CHAPTER 15. PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

Subchapter I. General

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§ 1505. Payment of pension during confinement in penal institutions

(a) No pension under public or private laws administered by the Secretary shall be paid to or for an individual who has been imprisoned in a Federal, State, [or local penal institution] *local, or other penal institution or correctional facility* as a result of conviction of a felony or misdemeanor for any part of the period beginning sixty-one days after such individual's imprisonment begins and ending when such individual's imprisonment ends.

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CHAPTER 17. HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

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Subchapter V. Payments to State Homes

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Subchapter II. Hospital, Nursing Home, or Domiciliary Care and Medical Treatment

§ 1710. Eligibility for hospital, nursing home, and domiciliary care

(a) * * *

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(4) The requirement in paragraphs (1) and (2) that the Secretary furnish hospital care and medical services, the requirement in section 1710A(a) of this title that the Secretary provide nursing home care, [and] the requirement in section 1710B of this title that the Secretary provide a program of extended care services*, and the requirement in section 1745 of this title to provide nursing home care and prescription medicines to veterans with service-connected disabilities in State homes* shall be effective in any fiscal year only to the extent and in the amount provided in advance in appropriations Acts for such purposes.

* * * * * * *

§ 1741. Criteria for payment

(a)(1) [The] *Except as provided in section 1745 of this title,* the Secretary shall pay each State at the per diem rate of—

(A) $8.70 for domiciliary care; and

(B) $20.35 for nursing home care and hospital care, for each veteran receiving such care in a State home, if such veteran is eligible for such care in a Department facility.

* * * * * * *

(f) Any State home that requests payment or reimbursement for services provided to a veteran under this section shall provide to the Secretary such information as the Secretary considers necessary to identify each individual veteran eligible for payment under such section.

* * * * * * *

§ 1745. Nursing home care and medications for veterans with service-connected disabilities

(a)(1) The Secretary shall pay each State home for nursing home care at the rate determined under paragraph (2), where such care is provided to any veteran as follows:

(A) Any veteran in need of such care for a service-connected disability.

(B) Any veteran who—

(i) has a service-connected disability rated at 70 percent or more; and

(ii) is in need of such care.

(2) The rate determined under this paragraph with respect to a State home is the lesser of—

(A) the applicable or prevailing rate payable in the geographic area in which the State home is located, as determined by the Secretary, for nursing home care furnished in a non-Department nursing home (as that term is defined in section 1720(e)(2)); or

(B) a rate not to exceed the daily cost of care, as determined by the Secretary, following a report to the Secretary by the director of the State home.

(3) Payment by the Secretary under paragraph (1) to a State home for nursing home care provided to a veteran described in that paragraph constitutes payment in full to the State home for such care furnished to that veteran.

(b) The Secretary shall furnish such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of illness or injury to any veteran as follows:

(1) Any veteran who—

(A) is not being provided nursing home care for which payment is payable under subsection (a); and

(B) is in need of such drugs and medicines for a service-connected disability.

(2) Any veteran who—

(A) has a service-connected disability rated at 50 percent or more;

(B) is not being provided nursing home care for which payment is payable under subsection (a); and

(C) is in need of such drugs and medicines.

(c) Any State home that requests payment or reimbursement for services provided to a veteran under this section shall provide to the Secretary such information as the Secretary considers necessary to identify each individual veteran eligible for payment under such section.

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CHAPTER 19. INSURANCE

Subchapter I. National Service Life Insurance

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§ 1922A. Supplemental service disabled veterans' insurance for totally disabled veterans

(a) Any person insured under section 1922(a) of this title who qualifies for a waiver of premiums under section 1912 of this title is eligible, as provided in this section, for supplemental insurance in an amount not to exceed **[**$20,000**]** *$30,000, during the period*

beginning on October 1, 2007, and ending on September 31, 2011, or $20,000 at any other time.

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CHAPTER 20. BENEFITS FOR HOMELESS VETERANS

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Subchapter V. Housing Assistance

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Subchapter II. Comprehensive Service Programs

§ 2011. Grants

(a) AUTHORITY TO MAKE GRANTS.—**[**(1)**]** Subject to the availability of appropriations provided for such purpose, the Secretary shall make grants to assist eligible entities in establishing programs to furnish, and expanding or modifying existing programs for furnishing, the following to homeless veterans:

[(A)**]** *(1)* Outreach.

[(B)**]** *(2)* Rehabilitative services.

[(C)**]** *(3)* Vocational counseling and training

[(D)**]** *(4)* Transitional housing assistance.

[(2) The authority of the Secretary to make grants under this section expires on September 30, 2005.**]**

* * * * * * *

§ 2013. Authorization of appropriations

[There are authorized to be appropriated to carry out this subchapter amounts as follows:

[(1) $60,000,000 for fiscal year 2002.

[(2) $75,000,000 for fiscal year 2003.

[(3) $75,000,000 for fiscal year 2004.

[(4) $99,000,000 for fiscal year 2005.**]**

There is authorized to be appropriated, to carry out this subchapter, $130,000,000 for fiscal year 2007 and each fiscal year thereafter.

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Subchapter IV. Treatment and Rehabilitation for Seriously Mentally Ill and Homeless Veterans

§ 2031. General treatment

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(b) The authority of the Secretary under subsection (a) expires on December 31, **[**2006**]** *2011.*

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§ 2033. Additional services at certain locations

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(d) The program under this section shall terminate on December 31, [2006] *2011*.

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§ 2041. Housing assistance for homeless veterans

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(c) The Secretary may not enter into agreements under subsection (a) after December 31, [2008] *2011*.

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§ 2043. Domiciliary care programs

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§ 2044. Financial assistance for supportive services for very low-income veteran families in permanent housing

(a) DISTRIBUTION OF FINANCIAL ASSISTANCE.—

(1) The Secretary shall provide financial assistance to eligible entities approved under this section to provide and coordinate the provision of supportive services described in subsection (b) for very low-income veteran families occupying permanent housing.

(2) Financial assistance under this section shall consist of per diem payments for each such family for which an approved eligible entity is providing or coordinating the provision of supportive services.

(3)(A) Subject to the availability of appropriations provided for such purpose, the Secretary shall provide to each family for which an approved eligible entity is providing or coordinating the provision of supportive services per diem payments in the amount of the daily cost of care estimated by such eligible entity (as adjusted by the Secretary under subparagraph (C)).

(B) In no case may the amount of per diem paid under this paragraph exceed the rate of per diem authorized for State homes for domiciliary care under subsection (a)(1)(A) of section 1741 of this title, as adjusted by the Secretary under subsection (c) of such section.

(C) The Secretary may adjust the daily cost of care estimated by an eligible entity for purposes of this paragraph to exclude other sources of income described in subparagraph (E) that the eligible entity certifies to be correct.

(D) Each eligible entity shall provide to the Secretary such information with respect to other sources of income as the Secretary may require to make the adjustment under subparagraph (C).

(E) The other sources of income referred to in subparagraphs (C) and (D) are payments to the eligible entity for furnishing services to homeless veterans under programs other than under this subchapter, including payments and grants from other departments and agencies of the Federal Government, from departments or agencies of State or local government, and from private entities or organizations.

(4) In providing financial assistance under paragraph (1), the Secretary shall give preference to entities providing or coordinating the provision of supportive services for very low-income veteran families who are transitioning from homelessness to permanent housing.

(5) The Secretary shall ensure that, to the extent practicable, financial assistance under this subsection is equitably distributed across geographic regions, including rural communities and tribal lands.

(6) Each entity receiving financial assistance under this section to provide supportive services to a very low-income veteran family shall notify that family that such services are being paid for, in whole or in part, by the Department.

(7) The Secretary may require entities receiving financial assistance under this section to submit a report to the Secretary that describes the projects carried out with such financial assistance.

(b) SUPPORTIVE SERVICES.—The supportive services referred to in subsection (a) are the following:

(1) Services provided by an eligible entity or subcontractors that address the needs of very low-income veteran families occupying permanent housing, including—

(A) Outreach services;

(B) health care services, including diagnosis, treatment, and counseling for mental health and substance abuse disorders and for post-traumatic stress disorder, if such services are not readily available through the Department medical center serving the geographic area in which the veteran family is housed;

(C) habilitation and rehabilitation services;

(D) case management services;

(E) daily living services;

(F) personal financial planning;

(G) transportation services;

(H) vocational counseling;

(I) employment and training;

(J) educational services;

(K) assistance in obtaining veterans benefits and other public benefits, including health care provided by the Department;

(L) assistance in obtaining income support;

(M) assistance in obtaining health insurance;

(N) fiduciary and representative payee services;

(O) legal services to assist the veteran family with reconsiderations or appeals of veterans and public benefit claim denials and to resolve outstanding warrants that interfere with the family's ability to obtain or retain housing or supportive services;

(P) child care;

(Q) housing counseling;

(R) other services necessary for maintaining independent living; and

(S) coordination of services under this paragraph.

(2) Services described in paragraph (1) that are delivered to very low-income veteran families who are homeless and who are

scheduled to become residents of permanent housing within 90 days pending the location or development of housing suitable for permanent housing.

(3) Services described in paragraph (1) for very low-income veteran families who have voluntarily chosen to seek other housing after a period of tenancy in permanent housing, that are provided, for a period of 90 days after such families exit permanent housing or until such families commence receipt of other housing services adequate to meet their current needs, but only to the extent that services under this paragraph are designed to support such families in their choice to transition into housing that is responsive to their individual needs and preferences.

(c) APPLICATION FOR FINANCIAL ASSISTANCE.—

(1) An eligible entity seeking financial assistance under subsection (a) shall submit an application to the Secretary in such form, in such manner, and containing such commitments and information as the Secretary determines to be necessary to carry out this section.

(2) Each application submitted by an eligible entity under paragraph (1) shall contain—

(A) a description of the supportive services proposed to be provided by the eligible entity;

(B) a description of the types of very low-income veteran families proposed to be provided such services;

(C) an estimate of the number of very low-income veteran families proposed to be provided such services;

(D) evidence of the experience of the eligible entity in providing supportive services to very low-income veteran families; and

(E) a description of the managerial capacity of the eligible entity to—

(i) coordinate the provision of supportive services with the provision of permanent housing, by the eligible entity or by other organizations;

(ii) continuously assess the needs of very low-income veteran families for supportive services;

(iii) coordinate the provision of supportive services with the services of the Department;

(iv) tailor supportive services to the needs of very low-income veteran families; and

(v) continuously seek new sources of assistance to ensure the long-term provision of supportive services to very low-income veteran families.

(3) The Secretary shall establish criteria for the selection of eligible entities to be provided financial assistance under this section.

(d) TECHNICAL ASSISTANCE.—

(1) The Secretary shall provide training and technical assistance to participating eligible entities regarding the planning, development, and provision of supportive services to very low-income veteran families occupying permanent housing.

(2) The Secretary may provide the training described in paragraph (1) directly or through grants or contracts with appropriate public or nonprofit private entities.

(e) FUNDING.—

(1) From amounts appropriated to the Department for Medical Care, there shall be available to carry out this section amounts as follows:

(A) $15,000,000 for fiscal year 2007.

(B) $20,000,000 for fiscal year 2008.

(C) $25,000,000 for fiscal year 2009.

(2) Not more than $750,000 may be available under paragraph (1) in any fiscal year to provide technical assistance under subsection (d).

(f) DEFINITIONS.—In this section:

(1) The term "consumer cooperative" has the meaning given such term in section 202 of the Housing Act of 1959 (12 U.S.C. 1701q).

(2) The term "eligible entity" means—

(A) a private nonprofit organization; or

(B) a consumer cooperative.

(3) The term "homeless" has the meaning given that term in section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).

(4) The term "permanent housing" means community-based housing without a designated length of stay.

(5) The term "private nonprofit organization" means any of the following:

(A) Any incorporated private institution or foundation—

(i) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(ii) which has a governing board that is responsible for the operation of the supportive services provided under this section; and

(iii) which is approved by the Secretary as to financial responsibility;

(B) A for-profit limited partnership, the sole general partner of which is an organization meeting the requirements of clauses (i), (ii), and (iii) of subparagraph (A).

(C) A corporation wholly owned and controlled by an organization meeting the requirements of clauses (i), (ii), and (iii) of subparagraph (A).

(D) A tribally designated housing entity (as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)).

(6)(A) Subject to subparagraphs (B) and (C), the term "very low-income veteran family" means a veteran family whose income does not exceed 50 percent of the median income for the area, as determined by the Secretary in accordance with this paragraph.

(B) The Secretary shall make appropriate adjustments to the income requirement under subparagraph (A) based on family size.

(C) The Secretary may establish an income ceiling higher or lower than 50 percent of the median income for an area if the Secretary determines that such variations are necessary because the area has unusually high or low construction costs, fair mar-

ket rents (as determined under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)), or family incomes.

(7) The term "veteran family" includes a veteran who is a single person and a family in which the head of household or the spouse of the head of household is a veteran.

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Subchapter VII. Other Provisions

§ 2061. Grant program for homeless veterans with special needs

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(c) FUNDING.—

(1) From amounts appropriated to the Department for "Medical Care" for each of fiscal years **[**2003, 2004, and 2005, $5,000,000**]** *2007 through 2011, $7,000,000* shall be available for each such fiscal year for the purposes of the program under this section.

* * * * * * *

§ 2064. Technical assistance grants for nonprofit community-based groups

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[(b) FUNDING.—There is authorized to be appropriated $750,000 for each of fiscal years 2002 through 2005 to carry out the program under this section.**]**

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 2007 through 2012 to carry out the program under this section.

§ 2065. Annual report on assistance to homeless veterans

* * * * * * *

(b) * * *

* * * * * * *

(4) * * *

(5) Information on the efforts of the Secretary to coordinate the delivery of housing and services to the homeless veterans with other Federal departments and agencies, including—

(A) the Department of Defense;

(B) the Department of Health and Human Services;

(C) the Department of Housing and Urban Development;

(D) the Department of Justice;

(E) the Department of Labor;

(F) the Interagency Council on Homelessness;

(G) the Social Security Administration; and

(H) any other Federal department or agency with which the Secretary coordinates the delivery of housing and services to homeless veterans.

[(5)**]** *(6)* Any other information on those programs and on the provision of such assistance that the Secretary considers appropriate.

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§ 2066. Advisory Committee on Homeless Veterans

(a) * * *

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(3) The Committee shall include, as ex officio members, the following:

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(D) * * *

(E) The Executive Director of the Interagency Council on Homelessness (or a representative of the Executive Director).

(F) The Under Secretary for Health (or a representative of the Under Secretary after consultation with the Director of the Office of Homeless Veterans Programs).

(G) The Under Secretary for Benefits (or a representative of the Under Secretary after consultation with the Director of the Office of Homeless Veterans Programs).

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(d) TERMINATION.—The Committee shall cease to exist [December 31, 2006] *September 30, 2011.*

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CHAPTER 23. BURIAL BENEFITS

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§ 2306. Headstones, markers, and burial receptacles

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(d)(1) The Secretary shall furnish, when requested, an appropriate **[**Government marker**]** *Government headstone or marker* at the expense of the United States for the grave of an individual described in paragraph (2) or (5) of subsection (a) who is buried in a private cemetery, notwithstanding that the grave is marked by a headstone or marker furnished at private expense. Such a *headstone or* marker may be furnished only if the individual making the request for the Government *headstone or* marker certifies to the Secretary that the *headstone or* marker will be placed on the grave for which the headstone or marker is requested*, or, if placement on the grave is impossible or impracticable, as close as possible to the grave within the grounds of the cemetery in which the grave is located.*

(2) Any *headstone or* marker furnished under this subsection shall be delivered by the Secretary directly to the cemetery where the grave is located *or to a receiving agent for delivery to the cemetery.*

[(3) The authority to furnish a marker under this subsection expires on December 31, 2006.**]**

(3) In furnishing headstones and markers under this subsection, the Secretary shall permit the individual making the request for a headstone or marker to select among any headstone or marker in the complete product line of Government headstones and markers.

[(4) Not later than February 1, 2006, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of

Representatives a report on the use of the authority under this subsection. The report shall include the following:

[(A) The rate of use of the benefit under this subsection, shown by fiscal year.

[(B) An assessment as to the extent to which markers furnished under this subsection are being delivered to cemeteries and placed on grave sites consistent with the provisions of this subsection.

[(C) The Secretary's recommendation for extension or repeal of the expiration date specified in paragraph (3).]

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

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

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

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CHAPTER 24. NATIONAL CEMETERIES AND MEMORIALS

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

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(e) * * *

(f)(1) The Secretary may make grants under this subsection to any tribal organization to assist the tribal organization in establishing, expanding, or improving veterans' cemeteries on trust land owned by, or held in trust for, the tribal organization.

(2) Grants under this subsection shall be made in the same manner, and under the same conditions, as grants to States are made under the preceding provisions of this section.

(3) In this subsection:

(A) The term "tribal organization" has the meaning given that term in section 3765(4) of this title.

(B) The term "trust land" has the meaning given that term in section 3765(1) of this title.

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PART III. READJUSTMENT AND RELATED BENEFITS

CHAPTER 30. ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

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Subchapter II. Basic Educational Assistance

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

§ 3014A. Accelerated payment of basic educational assistance

(a) An individual described in subsection (b) who is entitled to basic educational assistance under this subchapter may elect to receive an accelerated payment of the basic educational assistance allowance otherwise payable to the individual under section 3015 of this title.

(b) An individual described in this subsection is an individual who is—

[(1) enrolled in an approved program of education that leads to employment in a high technology occupation in a high technology industry (as determined pursuant to regulations prescribed by the Secretary); and]

(1) enrolled in either—

(A) an approved program of education that leads to employment in a high technology occupation in a high technology industry (as determined pursuant to regulations prescribed by the Secretary); or

(B) an approved program of education lasting less than two years that (as so determined) leads to employment in—

(i) the transportation sector of the economy;

(ii) the construction sector of the economy;

(iii) the hospitality sector of the economy; or

(iv) the energy sector of the economy.

(2) charged tuition and fees for the program of education that, when divided by the number of months (and fractions thereof) in the enrollment period, exceeds the amount equal to 200 percent of the monthly rate of basic educational assistance allowance otherwise payable to the individual under section 3015 of this title.

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Subchapter IV. Time Limitation for Use of Eligibility and Entitlement; General and Administrative Provisions

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§ 3036. Reporting requirement

(a) The Secretary of Defense and the Secretary shall submit to the Congress at least once every two years, *on January 1,* separate reports on the operation of the program provided for in this chapter.

* * * * * * *

(d) No report shall be required under this section after [January 1, 2005] *January 1, 2011.*

CHAPTER 31. TRAINING AND REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

§ 3108. Allowances

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(g)(1) Notwithstanding any other provision of this title and subject to the provisions of paragraph (2) of this subsection, no subsistence allowance may be paid under this section in the case of any veteran who is pursuing a rehabilitation program under this chapter while incarcerated in a Federal, State, [or local penal institution] *local, or other penal institution or correctional facility* for conviction of a felony.

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CHAPTER 32. POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

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Subchapter III. Entitlement; Duration

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§ 3231. Entitlement; loan eligibility

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(d)(1) Subject to the provisions of paragraph (2) of this subsection, the amount of the educational assistance benefits paid to an eligible veteran who is pursuing a program of education under this chapter while incarcerated in a Federal, State, [or local penal institution] *local, or other penal institution or correctional facility* for conviction of a felony may not exceed the lesser of (A) such amount as the Secretary determines, in accordance with regulations which the Secretary shall prescribe, is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program and the cost of necessary supplies, books, and equipment, or (B) the applicable monthly benefit payment otherwise prescribed in this section 3233 of this title. The amount of the educational assistance benefits payable to a veteran while so incarcerated shall be reduced to the extent that the tuition and fees of the veteran for any course are

paid under any Federal program (other than a program administered by the Secretary) or under any State or local program.

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CHAPTER 34. VETERANS' EDUCATIONAL ASSISTANCE

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Subchapter IV. Payments to Eligible Veterans; Veteran-Student Services

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§ 3482. Computation of educational assistance allowances

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(g)(1) Subject to the provisions of paragraph (2) of this subsection, the amount of the educational assistance allowance paid to an eligible veteran who is pursuing a program of education under this chapter while incarcerated in a Federal, State, [or local penal institution] *local, or other penal institution or correctional facility* for conviction of a felony may not exceed such amount as the Secretary determines, in accordance with regulations which the Secretary shall prescribe, is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program and the cost of necessary supplies, books, and equipment, or the applicable monthly educational assistance allowance prescribed for a veteran with no dependents in subsection (a)(1) or (c)(2) of this section or section 3687(b)(1) of this title whichever is the lesser. The amount of the educational assistance allowance payable to a veteran while so incarcerated shall be reduced to the extent that the tuition and fees of the veteran for any course are paid under any Federal program (other than a program administered by the Secretary) or under any State or local program.

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CHAPTER 35. SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

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Subchapter IV. Payments to Eligible Persons

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§ 3532. Computation of educational assistance allowance

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(e) In the case of an eligible person who is pursuing a program of education under this chapter while incarcerated in a Federal, State, [or local penal institution] *local, or other penal institution or correctional facility* for conviction of a felony, the educational assistance allowance shall be paid in the same manner prescribed in section 3482(g) of this title for incarcerated veterans, except that the references therein to the monthly educational assistance allowance prescribed for a veteran with no dependents shall be deemed to refer to the applicable allowance payable to an eligible person under corresponding provisions of this chapter or chapter 36 of this title, as determined by the Secretary.

* * * * * * *

§ 3532A. Accelerated payment of educational assistance allowance

(a) The educational assistance allowance payable under section 3531 of this title with respect to an eligible person described in subsection (b) may, upon the election of such eligible person, be paid on an accelerated basis in accordance with this section.

(b) An eligible person described in this subsection is an individual who is—

(1) enrolled in either—

(A) an approved program of education that leads to employment in a high technology occupation in a high technology industry (as determined pursuant to regulations prescribed by the Secretary); or

(B) an approved program of education lasting less than two years that (as so determined) leads to employment in the—

(i) transportation sector of the economy;

(ii) construction sector of the economy;

(iii) hospitality sector of the economy; or

(iv) energy sector of the economy; and

(2) charged tuition and fees for the program of education that, when divided by the number of months (and fractions thereof) in the enrollment period, exceeds the amount equal to 200 percent of the monthly rate of educational assistance allowance otherwise payable with respect to the individual under section 3531 of this title.

(c)(1) The amount of the accelerated payment of educational assistance payable with respect to an eligible person making an election under subsection (a) for a program of education shall be the lesser of—

(A) the amount equal to 60 percent of the established charges for the program of education; or

(B) the aggregate amount of educational assistance allowance to which the individual remains entitled under this chapter at the time of payment.

(2) In this subsection, the term "established charges", in the case of a program of education, means the actual charges (as determined pursuant to regulations prescribed by the Secretary) for tuition and fees which similarly circumstanced nonveterans enrolled in the program of education would be required to pay. Established charges shall be determined on the following basis:

(A) In the case of an individual enrolled in a program of education offered on a term, quarter, or semester basis, the tuition and fees charged the individual for the term, quarter, or semester.

(B) In the case of an individual enrolled in a program of education not offered on a term, quarter, or semester basis, the tuition and fees charged the individual for the entire program of education.

(3) The educational institution providing the program of education for which an accelerated payment of educational assistance allowance is elected by an eligible person under subsection (a) shall certify to the Secretary the amount of the established charges for the program of education.

(d) An accelerated payment of educational assistance allowance made with respect to an eligible person under this section for a program of education shall be made not later than the last day of the month immediately following the month in which the Secretary receives a certification from the educational institution regarding—

(1) the person's enrollment in and pursuit of the program of education; and

(2) the amount of the established charges for the program of education.

(e)(1) Except as provided in paragraph (2), for each accelerated payment of educational assistance allowance made with respect to an eligible person under this section, the person's entitlement to educational assistance under this chapter shall be charged the number of months (and any fraction thereof) determined by dividing the amount of accelerated payment by the full-time monthly rate of educational assistance allowance otherwise payable with respect to the person under section 3531 of this title as of the beginning date of the enrollment period for the program of education for which the accelerated payment is made.

(2) If the monthly rate of educational assistance allowance otherwise payable with respect to an eligible person under section 3531 of this title increases during the enrollment period of a program of education for which an accelerated payment of educational assistance allowance is made under this section, the charge to the person's entitlement to educational assistance under this chapter shall be determined by prorating the entitlement chargeable, in the manner provided for under paragraph (1), for the periods covered by the initial rate and increased rate, respectively, in accordance with regulations prescribed by the Secretary.

(f) The Secretary may not make an accelerated payment of educational assistance allowance under this section for a program of education with respect to an eligible person who has received an advance payment under section 3680(d) of this title for the same enrollment period.

(g) The Secretary shall prescribe regulations to carry out this section. The regulations shall include requirements, conditions, and methods for the request, issuance, delivery, certification of receipt and use, and recovery of overpayment of an accelerated payment of educational assistance allowance under this section. The regulations may include such elements of the regulations prescribed under sec-

tion 3014A of this title as the Secretary considers appropriate for purposes of this section.

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CHAPTER 36. ADMINISTRATION OF EDUCATIONAL BENEFITS

Subchapter I. State Approving Agencies

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§ 3674. Reimbursement of expenses

(a) * * *

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(2)(A) The Secretary shall make payments to State and local agencies, out of amounts available for the payment of readjustment benefits, *and is authorized to make additional payments subject to the availability of appropriations,* for the reasonable and necessary expenses of salary and travel incurred by employees of such agencies in carrying out contracts or agreements entered into under this section, for expenses approved by the Secretary that are incurred in carrying out activities described in section 3674A(a)(3) of this title (except for administrative overhead expenses allocated to such activities), and for the allowance for administrative expenses described in subsection (b).

(B) The Secretary shall make such a payment to an agency within a reasonable time after the agency has submitted a report pursuant to paragraph (3) of this subsection.

(C) Subject to paragraph (4) of this subsection, the amount of any such payment made to an agency for any period shall be equal to the amount of the reasonable and necessary expenses of salary and travel certified by such agency for such period in accordance with paragraph (3) of this subsection plus the allowance for administrative expenses described in subsection (b) and the amount of expenses approved by the Secretary that are incurred in carrying out activities described in section 3674A(a)(3) of this title for such period (except for administrative overhead expenses allocated to such activities).

(3) Each State and local agency with which a contract or agreement is entered into under this section shall submit to the Secretary on a monthly or quarterly basis, as determined by the agency, a report containing a certification of the reasonable and necessary expenses incurred for salary and travel by such agency under such contract or agreement for the period covered by the report. The report shall be submitted in the form and manner required by the Secretary.

(4) ❲The total amount made available under this section for any fiscal year may not exceed $13,000,000 or, for each of fiscal years 2001 and 2002, $14,000,000, for fiscal year 2003, $14,000,000, for fiscal year 2004, $18,000,000, for fiscal year 2005, $18,000,000, for fiscal year 2006, $19,000,000, and for fiscal year 2007, $19,000,000.❳ *The total amount authorized and available under this section for any fiscal year may not exceed $19,000,000, except that the total amount made available*

for purposes of this section from amounts available for the payment of readjustment benefits may not exceed $19,000,000 for fiscal years 2006 and 2007, $13,000,000 for fiscal years 2008 and 2009, $8,000,000 for each of fiscal years 2010 through 2013, and $13,000,000 for fiscal year 2014 and each subsequent fiscal year. For any fiscal year in which the total amount that would be made available under this section would exceed the amount applicable to that fiscal year under the preceding sentence except for the provisions of this paragraph, the Secretary shall provide that each agency shall receive the same percentage of the amount applicable to that fiscal year under the preceding sentence as the agency would have received of the total amount that would have been made available without the limitation of this paragraph.

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CHAPTER 37. HOUSING AND SMALL BUSINESS LOANS

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Subchapter II. Loans

§ 3710. Purchase or construction of homes

(a) * * *

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(11) * * *

(12) To purchase stock or membership in a cooperative housing corporation for the purpose of entitling the veteran to occupy for dwelling purposes a single family residential unit in a development, project, or structure owned or leased by such corporation, in accordance with subsection (h).

* * * * * * *

(h)(1) A loan may not be guaranteed under subsection (a)(12) unless—

(A) the development, project, or structure of the cooperative housing corporation complies with such criteria as the Secretary prescribes in regulations; and

(B) the dwelling unit that the purchase of stock or membership in the development, project, or structure of the cooperative housing corporation entitles the purchaser to occupy is a single family residential unit.

(2) In this subsection, the term "cooperative housing corporation" has the same meaning given such term in section 216(b)(1) of the Internal Revenue Code of 1986.

(3) When applying the term "value of the property" to a loan guaranteed under subsection (a)(12), such term means the appraised value of the stock or membership entitling the purchaser to the permanent occupancy of the dwelling unit in the development, project, or structure of the cooperative housing corporation.

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PART IV. GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 53. SPECIAL PROVISIONS RELATING TO BENEFITS

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§ 5313. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony

(a)(1) To the extent provided in subsection (d) of this section, any person who is entitled to compensation or to dependency and indemnity compensation and who is incarcerated in a Federal, State, [or local penal institution] *local, or other penal institution or correctional facility* for a period in excess of sixty days for conviction of a felony shall not be paid such compensation or dependency and indemnity compensation, for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends, in an amount that exceeds—

(b) * * *

* * * * * * *

(3) No apportionment may be made under this subsection to or on behalf of any person who is incarcerated in a Federal, State, [or local penal institution] *local, or other penal institution or correctional facility* for conviction of a felony.

(c) The Secretary shall not assign to any veteran a rating of total disability based on the individual unemployability of the veteran resulting from a service-connected disability during any period during which the veteran is incarcerated in a Federal, State, [or local penal institution] *local, or other penal institution or correctional facility* for conviction of a felony.

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§ 5313A. Limitation on payment of clothing allowance to incarcerated veterans

In the case of a veteran who is incarcerated in a Federal, State, [or local penal institution] *local, or other penal institution or correctional facility* for a period in excess of 60 days and who is furnished clothing without charge by the institution, the amount of any annual clothing allowance payable to the veteran under section 1162 of this title shall be reduced by an amount equal to 1/365 of the amount of the allowance otherwise payable under that section for each day on which the veteran was so incarcerated during the 12-month period preceding the date on which payment of the allowance would be due. This section shall be carried out under regulations prescribed by the Secretary.

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

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(g) The authority of the Secretary to obtain information from the Secretary of the Treasury or the Commissioner of Social Security under section 6103(1)(7)(D)(viii) of the Internal Revenue Code of 1986 expires on [September 30, 2008] *September 30, 2011.*

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CHAPTER 59. AGENTS AND ATTORNEYS

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§ 5902. Recognition of representatives of organizations

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(b)*(1)* No individual shall be recognized under this section—

[(1)] *(A)* unless the individual has certified to the Secretary that no fee or compensation of any nature will be charged any individual for services rendered in connection with any claim; and

[(2)] *(B)* unless, with respect to each claim, such individual has filed with the Secretary a power of attorney, executed in such manner and form as the Secretary may prescribe.

(2) An individual recognized under this section shall be subject to the provisions of 5904(b) of this title on the same basis as an individual recognized under section 5904(a) of this title.

* * * * * * *

§ 5903. Recognition with respect to particular claims

(a) IN GENERAL.—The Secretary may recognize any individual for the preparation, presentation, and prosecution of any particular claim for benefits under any of the laws administered by the Secretary if—

(1) such individual has certified to the Secretary that no fee or compensation of any nature will be charged any individual for services rendered in connection with such claim; and

(2) such individual has filed with the Secretary a power of attorney, executed in such manner and in such form as the Secretary may prescribe.

(b) SUSPENSION.—An individual recognized under this section shall be subject to the provisions of section 5904(b) of this title on the same basis as an individual recognized under section 5904(a) of this title.

§ 5904. Recognition of agents and attorneys generally

(a)*(1)* The Secretary may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary. [The Secretary may require that individuals, before being recognized under this section, show that they are of good moral character and in good repute, are qualified to render claimants valuable service, and otherwise are competent to assist claimants in presenting claims.]

(2) The Secretary may prescribe in regulations qualifications and standards of conduct for individuals recognized under this section, including a requirement that, before being recognized, an individual—

(A) show that such individual is of good moral character and in good repute, is qualified to render claimants valuable service, and is otherwise competent to assist claimants in presenting claims;

(B) has such level of experience and specialized training as the Secretary shall specify; and

(C) certifies to the Secretary that the individual has satisfied any qualifications and standards prescribed by the Secretary under this section.

(3) The Secretary may prescribe in regulations reasonable restrictions on the amount of fees that an agent or attorney may charge a claimant for services rendered in the preparation, presentation, and prosecution of a claim before the Department.

(4)(A) The Secretary may, on a periodic basis, collect a registration fee from individuals recognized as agents or attorneys under this section.

(B) The Secretary shall prescribe the amount and frequency of collection of such fees. The amount of such fees may include an amount, as specified by the Secretary, necessary to defray the costs to the Department in recognizing individuals under this section, in administering the collection of such fees, in administering the payment of fees under subsection (d), and in conducting oversight of agents or attorneys.

(C) Amounts so collected shall be deposited in the account from which amounts for such costs were derived, merged with amounts in such account, and available for the same purpose, and subject to the same conditions and limitations, as amounts in such account.

(b) The Secretary, after notice and opportunity for a hearing, may suspend or exclude from further practice before the Department any agent or attorney recognized under this section if the Secretary finds that such agent or attorney—

(1) has engaged in any unlawful, unprofessional, or dishonest practice;

(2) has been guilty of disreputable conduct;

(3) is incompetent;

(4) has violated or refused to comply with any of the laws administered by the Secretary, or with any of the regulations or instructions governing practice before the Department; **[**or**]**

(5) has in any manner deceived, misled, or threatened any actual or prospective claimant**[**.**]***;*

(6) has presented frivolous claims, issues, or arguments to the Department; or

(7) has failed to comply with any other condition specified by the Secretary in regulations prescribed by the Secretary for purposes of this subsection.

(c)**[**(1) Except as provided in paragraph (3), in connection with a proceeding before the Department with respect to benefits under laws administered by the Secretary, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which the Board of Veterans' Appeals first makes a final decision in the case. Such a fee may be charged, allowed, or paid in the case of services provided after such date only if an agent or attorney is retained with respect to such case before the end of the one-year period beginning on that

date. The limitation in the preceding sentence does not apply to services provided with respect to proceedings before a court.]

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

(2)(A) The Secretary, upon the Secretary's own motion or at the request of the claimant, may review a fee agreement filed pursuant to paragraph (1) and may order a reduction in the fee called for in the agreement if the Secretary finds that the fee is excessive or unreasonable.

(B) A finding or order of the Secretary under subparagraph (A) may be reviewed by the Board of Veterans' Appeals under section 7104 of this title.

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§ 5905. Penalty for certain acts

Whoever [(1) directly or indirectly solicits, contracts for, charges, or receives, or attempts to solicit, contract for, charge, or receive, any fee or compensation except as provided in sections 5904 or 1984 of this title, or (2)] wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

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PART V. BOARDS, ADMINISTRATIONS, AND SERVICES

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CHAPTER 73. VETERANS HEALTH ADMINISTRATION-ORGANIZATION AND FUNCTIONS

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Subchapter II. General Authority and Administration

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§ 7328. Medical preparedness centers

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§ 7329. Parkinson's disease research, education, and clinical centers and multiple sclerosis centers of excellence

(a) DESIGNATION.—The Secretary, upon the recommendation of the Under Secretary for Health and pursuant to the provisions of this section, shall—

(1) designate—

(A) at least 6 Department health care facilities as the locations for centers of Parkinson's disease research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose); and

(B) at least 2 Department health care facilities as the locations for Multiple Sclerosis Centers of Excellence (subject to the appropriation of sufficient funds for such purpose); and

(2) establish and operate such centers at such locations in accordance with this section.

(b) EXISTING FACILITIES; GEOGRAPHIC DISTRIBUTION.—In designating locations for centers under subsection (a), the Secretary, upon the recommendation of the Under Secretary for Health, shall—

(1) designate each Department health care facility that, as of January 1, 2005, was operating a Parkinson's Disease Research, Education, and Clinical Center or a Multiple Sclerosis Center of Excellence unless the Secretary, on the recommendation of the Under Secretary for Health, determines that such facility—

(A) does not meet the requirements of subsection (c);

(B) has not demonstrated effectiveness in carrying out the established purposes of such center; or

(C) has not demonstrated the potential to carry out such purposes effectively in the reasonably foreseeable future; and

(2) assure appropriate geographic distribution of such facilities.

(c) MINIMUM REQUIREMENTS.—The Secretary may not designate a health care facility as a location for a center under subsection (a) unless—

(1) the peer review panel established under subsection (d) determines that the proposal submitted by such facility is among those proposals which meet the highest competitive standards of scientific and clinical merit; and

(2) the Secretary, upon the recommendation of the Under Secretary for Health, determines that the facility has (or may reasonably be anticipated to develop)—

(A) an arrangement with an accredited medical school which provides education and training in neurology and with which such facility is affiliated under which residents receive education and training in innovative diagnosis and treatment of chronic neurodegenerative diseases and movement disorders, including Parkinson's disease, or in the case of Multiple Sclerosis Centers, multiple sclerosis disease;

(B) the ability to attract the participation of scientists who are capable of ingenuity and creativity in health-care research efforts;

(C) a policymaking advisory committee composed of consumers and appropriate health care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center;

(D) the capability to conduct effectively evaluations of the activities of such center;

(E) the capability to coordinate, as part of an integrated national system, education, clinical, and research activities within all facilities with such centers;

(F) the capability to jointly develop a consortium of providers with interest in treating neurodegenerative diseases, including Parkinson's disease, and other movement disorders, or multiple sclerosis in the case of Multiple Sclerosis Centers, at facilities without such centers in order to ensure better access to state of the art diagnosis, care, and education for neurodegenerative disorders, or in the case of the Multiple Sclerosis Centers, autoimmune disease affecting the central nervous system throughout the health care system; and

(G) the capability to develop a national repository in the health care system for the collection of data on health services delivered to veterans seeking care for neurodegenerative diseases, including Parkinson's disease, and other movement disorders, or in the case of Multiple Sclerosis Centers, autoimmune disease affecting the central nervous system.

(d) PANEL.—

(1) The Under Secretary for Health shall establish a panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the establishment of new centers under this section.

(2)(A) The membership of the panel shall consist of experts in neurodegenerative diseases, including Parkinson's disease and other movement disorders, and, in the case of Multiple Sclerosis Centers, experts in autoimmune disease affecting the central nervous system.

(B) Members of the panel shall serve as consultants to the Department for a period of no longer than 2 years except in the case of panelists asked to serve on the initial panel as specified in subparagraph (C).

(C) In order to ensure panel continuity, half of the members of the first panel shall be appointed for a period of 3 years and half for a period of 2 years.

(3) The panel shall review each proposal submitted to the panel by the Under Secretary and shall submit its views on the relative scientific and clinical merit of each such proposal to the Under Secretary.

(4) The panel shall not be subject to the Federal Advisory Committee Act.

(e) ADEQUATE FUNDING.—Before providing funds for the operation of any such center at a health care facility other than a health care facility designated under subsection (b)(1), the Secretary shall ensure that—

(1) the Parkinson's disease center at each facility designated under subsection (b)(1) is receiving adequate funding to enable such center to function effectively in the areas of Parkinson's disease research, education, and clinical activities; and

(2) in the case of a new Multiple Sclerosis Center, that existing centers are receiving adequate funding to enable such centers to function effectively in the areas of multiple sclerosis research, education, and clinical activities.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) There are authorized to be appropriated such sums as may be necessary for the support of the research and education activities of the centers established under subsection (a).

(2) The Under Secretary for Health shall allocate to such centers from other funds appropriated generally for the Department of medical services account and medical and prosthetics research account, as appropriate, such amounts as the Under Secretary for Health determines appropriate.

(g) FUNDING ELIGIBILITY AND PRIORITY FOR PARKINSON'S DISEASE RESEARCH.—Activities of clinical and scientific investigation at each center established under subsection (a) for Parkinson's disease shall—

(1) be eligible to compete for the award of funding from funds appropriated for the Department medical and prosthetics research account; and

(2) receive priority in the award of funding from such account to the extent funds are awarded to projects for research in Parkinson's disease and other movement disorders.

(h) FUNDING ELIGIBILITY AND PRIORITY FOR MULTIPLE SCLEROSIS RESEARCH.—Activities of clinical and scientific investigation at each center established under subsection (a) for multiple sclerosis shall—

(1) be eligible to compete for the award of funding from funds appropriated for the Department medical and prosthetics research account; and

(2) receive priority in the award of funding from such account to the extent funds are awarded to projects for research in multiple sclerosis and other movement disorders.

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PART VI. ACQUISITION AND DISPOSITION OF PROPERTY

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CHAPTER 81. ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

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Subchapter III. State Home Facilities for Furnishing Domiciliary, Nursing Home, and Hospital Care

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§ 8137. State control of operations

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§ 8138. Treatment of certain health facilities as State homes

(a) The Secretary may treat a health facility, or certain beds in a health facility, as a State home for purposes of subchapter V of chapter 17 of this title if the following requirements are met:

(1) The facility, or certain beds in such facility, meets the standards for the provision of nursing home care that is applicable to State homes, as prescribed by the Secretary under section 8134(b) of this title, and such other standards relating to the facility, or certain beds in such facility, as the Secretary may require.

(2) The facility, or certain beds in such facility, is licensed or certified by the appropriate State and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting State home facilities.

(3) The State demonstrates in an application to the Secretary that, but for the treatment of a facility (or certain beds in such facility), as a State home under this subsection, a substantial number of veterans residing in the geographic area in which the facility is located who require nursing home care will not have access to such care.

(4) The Secretary determines that the treatment of the facility, or certain beds in such facility, as a State home best meets the needs of veterans for nursing home care in the geographic area in which the facility is located.

(5) The Secretary approves the application submitted by the State with respect to the facility, or certain beds in such facility.

(b) The Secretary may not treat a health facility, or certain beds in a health facility, as a State home under subsection (a) if the Secretary determines that such treatment would increase the number of

beds allocated to the State in excess of the limit on the number of beds provided for by regulations prescribed under section 8134(a) of this title.

(c) The number of beds occupied by veterans in a health facility for which payment may be made under subchapter V of chapter 17 of this title by reason of subsection (a) shall not exceed—

(1) 100 beds in the aggregate for all States; and

(2) in the case of any State, the difference between—

(A) the number of veterans authorized to be in beds in State homes in such State under regulations prescribed under section 8134(a) of this title; and

(B) the number of veterans actually in beds in State homes (other than facilities or certain beds treated as State homes under subsection (a)) in such State under regulations prescribed under such section.

(d) The number of beds in a health facility in a State that has been treated as a State home under subsection (a) shall be taken into account in determining the unmet need for beds for State homes for the State under section 8134(d)(1) of this title.

(e) The Secretary may not treat any new health facilities, or any new certain beds in a health facility, as a State home under subsection (a) after September 20, 2009.

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TITLE 42, UNITED STATES CODE

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CHAPTER 8. LOW-INCOME HOUSING

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§ 1437f. Low-income housing assistance

(o) * * *

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(19) * * *

[(B) AMOUNT.—The amount specified in this subparagraph is—

[(i) for fiscal year 2003, the amount necessary to provide 500 vouchers for rental assistance under this subsection;

[(ii) for fiscal year 2004, the amount necessary to provide 1,000 vouchers for rental assistance under this subsection;

[(iii) for fiscal year 2005, the amount necessary to provide 1,500 vouchers for rental assistance under this subsection; and

[(iv) for fiscal year 2006, the amount necessary to provide 2,000 vouchers for rental assistance under this subsection.**]**

(B) AMOUNT.—The amount specified in this subparagraph is—

(i) for fiscal year 2007, the amount necessary to provide 500 vouchers for rental assistance under this subsection;

(ii) for fiscal year 2008, the amount necessary to provide 1,000 vouchers for rental assistance under this subsection;

(iii) for fiscal year 2009, the amount necessary to provide 1,500 vouchers for rental assistance under this subsection; and

(iv) for fiscal year 2010, the amount necessary to provide 2,000 vouchers for rental assistance under this subsection; and

(v) for fiscal year 2011, the amount necessary to provide 2,500 vouchers for rental assistance under this subsection.

[(C) FUNDING THROUGH INCREMENTAL ASSISTANCE.—In any fiscal year, to the extent that this paragraph requires the Secretary to set aside rental assistance amounts for use under this paragraph in an amount that exceeds the amount set aside in the preceding fiscal year, such requirement shall be effective only to such extent or in such amounts as are or have been provided in appropriation Acts for such fiscal year for incremental rental assistance under this subsection.]

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