

think the committee has taken great pains to do that.

So this is a very good consumer bill; it is also a very sound bill. That is why it passed 36 to 1 in the committee. I do not think it will have any effect on interest rates, as one of my colleagues suggested, but what I think it will do is put money back into the pockets of consumers, and I think that is good for the American people.

Mr. GONZALEZ. Mr. Speaker, we have no additional requests for time, and I yield back the balance of my time.

Mr. LEACH. Mr. Speaker, I yield myself such time as I may consume.

In conclusion, I would like to thank again the gentleman from Utah [Mr. HANSEN] for his thoughtfulness and dedication to this issue; the gentlewoman from New Jersey [Mrs. ROUKEMA], whose subcommittee had thoughtful jurisdiction; the minority for their substantive participation, particularly the gentleman from Texas [Mr. GONZALEZ], the gentleman from Massachusetts [Mr. KENNEDY], and the gentlewoman from California [Ms. WATERS], who passed a very significant amendment.

In the final measure, this bill is pro-consumer, pro-homeowner, pro States' rights, and above anything else, it underscores decency and fairness under the law.

Finally, I would also like to say that it is symbolic of a Congress able to work together in trying political times for the public interest.

Mr. HILL. Mr. Speaker, I rise today to oppose House Resolution 607 and urge my colleagues to vote no on this legislation so that parts of the bill can be corrected under regular order.

Mr. Speaker, I am very concerned that House Resolution 607 would adversely affect new home buyers in Montana and throughout the country. As the bill is currently written, it will drive new home buyers, with a low downpayment, to pay higher interest rates and higher premiums for their private mortgage insurance. Due to the bill's automatic cancellation trigger of private mortgage insurance at the 75 percent loan to value ratio, the available pool of insurance funds will shift the risk to lenders which in turn will raise interest rates for low downpayment mortgages. In addition, the bill would increase the premiums significantly for new homeowners who would be required to purchase private mortgage insurance below the 75 percent loan to value ratio.

In addition to the automatic trigger provisions, I am also concerned with the bill's section (h) which is so loosely worded that it exposes the mortgage industry and lender to frivolous class action lawsuits that will benefit only a handful of trial lawyers, without commensurate benefit to borrowers. As a result, the increased cost of these lawsuits would be passed on to home buyers in the form of higher costs for mortgages.

Finally, Mr. Speaker, this bill has gone from a simple disclosure bill to one that attempts to micro manage the day-to-day business transactions of the mortgage market. This is done by making the Department of Housing and Urban Development [HUD], a bureaucratic

agency that cannot manage its own affairs, responsible for regulating of the mortgage insurance industry.

Mr. Speaker, House Resolution 607 is onerous legislation that aims high but misses the mark. Under suspension it cannot be amended. Therefore, I urge my colleagues to defeat this bill under suspension so that a better bill can be worked out for all home buyers.

Mr. SESSIONS. Mr. Speaker, I rise to commend Chairman LEACH and the Banking Committee for working on this legislation as well as Congressman JIM HANSEN for his hard work in bringing this issue before the House for the American taxpayer. I cosponsored the original bill, House Resolution 607, because I support full and increased consumer disclosure regarding private mortgage insurance.

Private mortgage insurance provides a valuable role in expanding the American dream of homeownership. With PMI, families can buy homes with as little as 3 to 5 percent down rather than the usual 20 percent downpayment required.

I want to work with the committee as this bill moves forward to the Senate to ensure that some of the concerns expressed in the markup are addressed. The role of mortgage insurance should be preserved because consumers benefit by being allowed to put a lower downpayment down on their home. But I understand that it's difficult to craft perfect legislation, and I want to ensure that any technical problems or unintended consequences like frivolous litigation with this bill get worked out as we move to conference.

I also want to ensure that the automatic cancellation standards are set at a reasonable level to protect both the consumer and the mortgage industry from problems such as downturns in the economy such as we had in Texas in the eighties. We all benefit from a fair mortgage insurance system that remains safe and sound and also allows consumers to be fully aware of their rights.

Mr. HOYER. Mr. Speaker, I rise today in enthusiastic support of the bill House Resolution 607, the Homeowner's Insurance Protection Act of 1997.

This bill will ensure that millions of homeowners who pay private mortgage insurance [PMI] will no longer pay needlessly and unknowingly once the benefits of paying PMI expire.

Private Mortgage Insurance [PMI] provides important protection to mortgage lenders against losses in the event a homeowner defaults on a mortgage loan. PMI works to the immense benefit of lenders and borrowers alike. By offsetting the risk to lenders of providing low downpayment loans—less than 20 percent of the purchase value—PMI substantially expands homeownership opportunities across America while preventing economic catastrophe for lenders during downturns in the housing market.

PMI has helped make the dream of homeownership a reality for more than 17 million American families who have been able to purchase a home with downpayments as low as 3 to 5 percent of the value of their home. Recently, however, problems with PMI have come to light.

Thousands of American homeowners, Mr. Speaker, are overpaying their PMI—making payments well after PMI becomes cancellable and after the risk to the lender of making a low downpayment loan has expired. In many

cases, these homeowners are unaware that their PMI is cancellable or that they are receiving no benefit from continuing to make PMI payments. In other cases, informed homeowners who have attempted to cancel their PMI have encountered difficulty in doing so.

House Resolution 607 addresses this problem by providing for automatic termination of PMI payments once the loan-to-value ratio reaches 75 percent of the value of the home at the time of purchase and by requiring mortgage lenders to notify homeowners as to whether, when and under what conditions their PMI is cancellable.

House Resolution 607 thus empowers homeowners by requiring lenders to inform them of their PMI cancellation rights and by guaranteeing that homeowners will no longer pay for PMI once they have built up 25 percent equity in their new home.

Homeowner beneficiaries of PMI, by and large, are middle-income Americans who are not in a position to invest hard-earned income in overinsuring against a risk to mortgage lenders. This bill preserves the intended protection of lenders provided by PMI while ensuring that the equally important aim of preserving the American dream of homeownership for families is not defeated.

Mr. Speaker, I want to commend Congressman JIM HANSEN for introducing this important legislation which will provide valuable protection to homeowners in the Fifth Congressional District of Maryland and across this great Nation. I strongly urge my colleagues to join me in supporting passage of this important bill.

Mr. LEACH. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa [Mr. LEACH] that the House suspend the rules and pass the bill, H.R. 607, as amended.

The question was taken.

Mr. LEACH. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### AMENDING U.S. CODE TO ALLOW REVISION OF VETERANS BENEFITS DECISIONS BASED ON CLEAR AND UNMISTAKABLE ERROR

Mr. STUMP. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1090) to amend title 38, United States Code, to allow revision of veterans benefits decisions based on clear and unmistakable error.

The Clerk read as follows:

H.R. 1090

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

#### SECTION 1. REVISION OF DECISIONS BASED ON CLEAR AND UNMISTAKABLE ERROR.

(a) ORIGINAL DECISIONS.—(1) Chapter 51 of title 38, United States Code, is amended by inserting after section 5109 the following new section:

#### “§ 5109A. Revision of decisions on grounds of clear and unmistakable error

“(a) A decision by the Secretary under this chapter is subject to revision on the grounds

of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

"(b) For the purposes of authorizing benefits, a rating or other adjudicative decision that constitutes a reversal or revision of a prior decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

"(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Secretary on the Secretary's own motion or upon request of the claimant.

"(d) A request for revision of a decision of the Secretary based on clear and unmistakable error may be made at any time after that decision is made.

"(e) Such a request shall be submitted to the Secretary and shall be decided in the same manner as any other claim."

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5109 the following new item:

"5109A. Revision of decisions on grounds of clear and unmistakable error."

(b) BVA DECISIONS.—(1) Chapter 71 of such title is amended by adding at the end the following new section:

**"§7111. Revision of decisions on grounds of clear and unmistakable error**

"(a) A decision by the Board is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

"(b) For the purposes of authorizing benefits, a rating or other adjudicative decision of the Board that constitutes a reversal or revision of a prior decision of the Board on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

"(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Board on the Board's own motion or upon request of the claimant.

"(d) A request for revision of a decision of the Board based on clear and unmistakable error may be made at any time after that decision is made.

"(e) Such a request shall be submitted directly to the Board and shall be decided by the Board on the merits, without referral to any adjudicative or hearing official acting on behalf of the Secretary.

"(f) A claim filed with the Secretary that requests reversal or revision of a previous Board decision due to clear and unmistakable error shall be considered to be a request to the Board under this section, and the Secretary shall promptly transmit any such request to the Board for its consideration under this section."

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"7111. Revision of decisions on grounds of clear and unmistakable error."

(c) EFFECTIVE DATE.—(1) Sections 5109A and 7111 of title 38, United States Code, as added by this section, apply to any determination made before, on, or after the date of the enactment of this Act.

(2) Notwithstanding section 402 of the Veterans Judicial Review Act (38 U.S.C. 7251 note), chapter 72 of title 38, United States Code, shall apply with respect to any decision of the Board of Veterans' Appeals on a claim alleging that a previous determination of the Board was the product of clear and unmistakable error if that claim is filed after, or was pending before the Department of Veterans Affairs, the Court of Veterans Ap-

peals, the Court of Appeals for the Federal Circuit, or the Supreme Court on, the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona [Mr. STUMP] and the gentleman from Illinois [Mr. EVANS] each will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona [Mr. STUMP].

GENERAL LEAVE

Mr. STUMP. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 1090, the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. STUMP. Mr. Speaker, I yield myself such time as I may consume.

This bill was introduced by the gentleman from Illinois [Mr. EVANS] last year as H.R. 1483. It passed the House in May 1986, but was never considered in the other body.

H.R. 1090 extends the grounds upon which a veteran may appeal an adverse benefit decision to the Board of Veterans Appeals and to the Court of Veterans Appeals. The bill allows appeals based on what is known as a clear and unmistakable error. Veterans who have been denied benefits which have been in error like this must be given the right to have their claims reexamined. This should greatly improve the recourse provided to veterans when they believe that the VA has reached the wrong conclusion in a VA benefit decision.

Mr. Speaker, I would like to commend the gentleman from Illinois [Mr. EVANS], the ranking minority member of the committee, for introducing this bill and for all the hard work that he has put into this.

Mr. Speaker, I reserve the balance of my time.

□ 1345

Mr. EVANS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I want to thank the gentleman from Arizona, BOB STUMP, for helping us get this bill through the committee process so quickly this year. Without his diligence we would not be here this afternoon. I appreciate it very much, Mr. Speaker.

Mr. Speaker, the most significant change made by this bill would be the new authority for veterans with prior claims involving clear and unmistakable errors to resubmit their claims for new review by the Board of Veterans Appeals. Under present law, a veteran has no right to obtain review of clear and unmistakable errors in the previous decision of the board, no matter how blatant that error.

In the cases where the asserted error was made by the regional office of the Department of Veterans Affairs, this right already exists by regulation. My

bill would codify this regulation in title 38.

The kinds of errors which this bill would rectify are those which are undebatable. These are errors which when called to the attention of a subsequent reviewer, compel the conclusion that but for the error, the result would have been manifestly different.

The bill also addresses the situations where evidence in the veteran's file at the time of the prior decision was ignored or wrongfully evaluated under the law as it existed at the time of the original decision. This legislation would give veterans the same kind of opportunity to pursue an erroneous claim decision now provided to Social Security beneficiaries when they had been given misinformation. Veterans deserve the same rights as Social Security recipients to have errors corrected.

H.R. 1090 also provides for a limited expansion of the right for judicial review. Veterans who initiate a claim of clear and unmistakable error in either a prior regional office decision or a prior Board of Veterans Appeals decision would be able to appeal that claim through the administrative process to the Court of Veterans Appeals. Once the court had ruled on the issue, no further claims of clear and unmistakable error could be pursued at the administrative level.

This bill is identical to legislation passed by the Congress last session, and it has strong support from the Disabled American Veterans, as well as other veterans' service organizations.

This legislation is about justice for our veterans. Veterans who have given first-class service to our country should not be experiencing anything less than first-class justice. I want to thank my colleagues for their support of this legislation.

Mr. Speaker, thank you for your willingness to cosponsor this important bill. The most significant change made by this bill is to authorize veterans with prior claims involving clear and unmistakable errors to resubmit their claims for a new review by the Board of Veterans Appeals. Because there is presently no statute or regulation allowing a veteran to claim clear and unmistakable error in a prior decision of the Board of Veterans Appeals, the erroneous decision is binding on the veteran no matter how obvious and egregious the error.

In cases where the asserted error was made by a Regional Office of the Department of Veterans Affairs [VA], a VA regulation permits the veteran to assert clear and unmistakable error in a prior decision. H.R. 1090 would codify this regulation in title 38. The absence of a statute addressing the issue of clear and unmistakable error creates an anomaly by which a veteran who previously appealed a claim to the Board of Veterans Appeals on the basis of clear and unmistakable error is placed in a worse position than a veteran who never appealed the original Regional Office decision.

The kind of errors which this bill will rectify are those which are egregious and undebatable. These are errors which when called to the attention of a subsequent reviewer compel the conclusion that, but for that

error, the result would have been manifestly different. The need for this legislation is illustrated by Precedent Opinion 2-97 recently issued by the Department of Veterans Affairs General Counsel. That opinion, which is binding on all levels of the administrative process, affirmed that if a BVA decision is rendered based upon an erroneous interpretation of the law, that decision is final and binding on all VA components unless the Board reconsiders the decision. Under present law, only the VA, and not the veteran has the right to obtain reconsideration of a Board decision. Unlike other actions of the Board, reconsideration decisions are not subject to judicial review.

The following cases brought by veterans who sought review of prior decisions illustrate the kinds of clear and unmistakable errors which would be subject to correction under this legislation.

A veteran with an above-the-knee amputation due to a service-connected condition was entitled to a 60 percent rating under existing law. If at the time of the original rating, the veteran's file showed that he had an above-the-knee amputation, but received only a 40 percent rating, clear and unmistakable error would exist. Under present law, if the Board of Appeals had previously found that there was no clear and unmistakable error in the rating, this veteran could seek, but not compel reconsideration and would have no remedy if the request was denied. Under this bill, the veteran would have the right to have the Board review his claim of clear and unmistakable error and, if dissatisfied with that decision, could seek review in the Court of Veterans Appeals.

A veteran was shot by a single bullet traveling through both the upper and lower leg while in combat. He was awarded service-connection for the injury to the lower leg, but not for the injury to the thigh. Since the record at the time of the original decision showed through and through wounds of both the upper and lower leg, both wounds should have been rated. The failure to rate both wounds would constitute clear and unmistakable error. Since a Regional Office of the VA had made the original clear and unmistakable error, present regulations allow it to be corrected. Under this bill, such a condition could be similarly revisited even if the clear and unmistakable error had been made at the Board of Veterans Appeals.

The bill also addresses those situations where evidence in the veteran's file at the time of the prior decision was ignored or wrongly evaluated under the law as it existed at the time of the original decision. For example, if a dependent's benefit had been wrongly denied because a legal and valid adoption was not recognized by the VA, the bill would allow for correction of the error.

This legislation would provide veterans an opportunity similar to that presently provided to Social Security beneficiaries under title 42 of the United States Code, sections 402(j)(5) and 1383(e)(5). Under those provisions an individual may receive retroactive benefits when a claim for benefits was not pursued due to misinformation provided by any officer or employee of the Social Security Administration. The standard for claims of clear and unmistakable error is similar to the standard currently contained in Social Security regulations at 42 Code of Federal Regulations, section 404.988, for revision of a claim at any time due to error that appears on the face of the evidence con-

sidered when the determination or decision was made. Veterans deserve the same right as Social Security beneficiaries to have manifest errors corrected.

The bill does not alter the standard for evaluation of claims of clear and unmistakable error. In order to sustain such a claim, the veteran must specifically identify the alleged error. The claim must assert either a basic error of law or fact in the prior decision or must give persuasive reasons as to why the outcome would be manifestly different had the error not been made. Once a claim of clear and unmistakable error has been raised and decided, the veteran may not raise the same claim again.

This legislation also provides for a limited expansion of the right to judicial review. This expansion is premised upon an understanding that the error in the original adjudication of the claim was so egregious that it should be revised to conform to the true state of the law and the facts as they existed at the time of the original decision. Veterans who initiate a claim of clear and unmistakable error in either a prior Regional Office decision or a prior Board of Veterans Appeals decision would be able to appeal that claim through the administrative process to the Court of Veterans Appeals. Once the court had ruled on the issue, no further claims of clear and unmistakable error could be pursued at the administrative level.

H.R. 1090 is identical to legislation approved by the House last Congress. It is not concerned with minor disputes or the weight given to evidence. Instead it provides an avenue of correction of only those serious and obvious errors about which there can be no doubt. The bill has strong support from the veterans service organizations.

This legislation is about justice for veterans. Veterans who have honorably served our country deserve no less. Where the prior adjudication of claims are found to contain egregious violations of law, veterans should have an opportunity for a full and fair consideration of the errors. Our Nation's veterans are entitled to this.

I thank my colleagues, including the 46 cosponsors of this bill, for their support of H.R. 1090.

Mr. QUINN. Mr. Speaker, H.R. 1090 will provide important new appeal rights to veterans whose claims have been denied by the Veterans Administration.

Mr. Speaker, this bill will put current VBA regulations on clear and unmistakable error into law. Those regulations now apply only to VA Regional Offices. It will also allow veterans to appeal on the basis of clear and unmistakable error at the Board of Veterans Appeals. Currently, veterans may file a motion for reconsideration at the Board on the grounds of obvious error, which the Court of Veterans Appeals has determined to be the same as clear and unmistakable error. Unfortunately, that motion for reconsideration falls short of a right of appeal and is allowable only at the discretion of the Chairman of the Board of Veterans Appeals.

Mr. Speaker, this bill sets a high standard for appeal. The grounds on which such an appeal may be made must be so obvious that a reasonable person would allow the appeal. The error must also materially contribute to a faulty decision by the VA. The court has stated that a mere allegation of such error is not sufficient to automatically grant the appeal.

Mr. Speaker, this right of appeal is long overdue and I urge my colleagues to support H.R. 1090.

Mr. EVANS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. STUMP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GILLMOR). The question is on the motion offered by the gentleman from Arizona [Mr. STUMP] that the House suspend the rules and pass the bill, H.R. 1090.

The question was taken; and (two-thirds of those present having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

#### EXTENDING AUTHORITY TO ENTER INTO ENHANCED-USE LEASES, AND RENAMING U.S. COURT OF VETERANS APPEALS AND NATIONAL CEMETERY SYSTEM

Mr. STUMP. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1092) to amend title 38, United States Code, to extend the authority of the Secretary of Veterans Affairs to enter into enhanced-use leases for Department of Veterans Affairs property, to rename the U.S. Court of Veterans Appeals and the National Cemetery System, and for other purposes.

The Clerk read as follows:

H.R. 1092

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

#### SECTION 1. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

#### TITLE I—ENHANCED-USE LEASES OF DEPARTMENT OF VETERANS AFFAIRS REAL PROPERTY

##### SEC. 101. EXPANSION OF AUTHORITY FOR ENHANCED-USE LEASES OF DEPARTMENT OF VETERANS AFFAIRS REAL PROPERTY.

(a) FIVE-YEAR EXTENSION OF AUTHORITY.—Section 8169 is amended by striking out "December 31, 1997" and inserting in lieu thereof "December 31, 2002".

(b) REPEAL OF LIMITATION ON NUMBER OF AGREEMENTS.—(1) Section 8168 is repealed.

(2) The table of sections at the beginning of chapter 81 is amended by striking out the item relating to section 8168.

#### TITLE II—RENAMING PROVISIONS

##### SEC. 201. RENAMING OF THE COURT OF VETERANS APPEALS.

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

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

(b) CONFORMING AMENDMENTS.—

(1) The following sections are amended by striking out "Court of Veterans Appeals"