

## Calendar No. 194

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SENATE

{ REPORT  
107-86

### VETERANS' BENEFITS IMPROVEMENT ACT OF 2001

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OCTOBER 15, 2001.—Ordered to be printed

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

### REPORT

[To accompany S. 1080]

The Committee on Veterans' Affairs, to which was referred the bill (S. 1088) to amend title 38, United States Code, to facilitate the use of educational assistance under the Montgomery GI Bill for education leading to employment in high technology industry, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute and recommends that the bill, as amended, do pass.

### INTRODUCTION

On June 22, 2001, Committee Chairman John D. Rockefeller IV introduced S. 1088, with the cosponsorship of Ranking Committee Member Arlen Specter. Committee members Bob Graham and Larry E. Craig joined later as cosponsors. S. 1088, as introduced, would have amended provisions of title 38, United States Code, concerning the Montgomery GI Bill (MGIB), to allow eligible veterans to elect to receive accelerated payment of educational assistance under the MGIB for education leading to employment in high technology industries, and included certain private technology entities in the definition of educational institution.

Earlier, on January 22, 2001, S. 131 was introduced by Senator Tim Johnson, with the cosponsorship of Senator Susan M. Collins. Committee members Graham and Y. Tim Hutchinson later became cosponsors. The bill was also cosponsored after introduction by Senators Joseph R. Biden, Jr., Jeff Bingaman, Max Cleland, Jon Corzine, Thomas A. Daschle, Byron L. Dorgan, James M. Inhofe, Edward M. Kennedy, John F. Kerry, Mary L. Landrieu, Joseph I. Lieberman, Blanche Lincoln, Trent Lott, Olympia J. Snowe, and Robert G. Torricelli. S. 131 would have modified the annual deter-

mination of the rate of the basic benefit of active duty educational assistance under the MGIB.

On January 31, 2001, S. 228 was introduced by Committee member Daniel K. Akaka. Committee member Craig, Senators Bingham and Daniel K. Inouye later cosponsored the bill. S. 228 would have made permanent the Native American veterans housing loan program.

On February 28, 2001, S. 409 was introduced by Committee member Kay Bailey Hutchison and cosponsored by Senator Richard J. Durbin. The bill was later cosponsored by Senators George Allen, Cleland, Kent Conrad, Ernest F. Hollings, Johnson, Barbara Boxer, Collins, Dorgan, Russell D. Feingold, Inouye, and Kennedy. S. 409 would have clarified standards for compensation for Persian Gulf veterans suffering from certain undiagnosed illnesses.

On March 29, 2001, S. 662 was introduced by Senator Christopher J. Dodd and cosponsored by Senators Conrad, Feingold, Herb Kohl, Robert C. Byrd, Dorgan, Patrick J. Leahy, Rick Santorum, and George Voinovich. The bill was later cosponsored by Committee members Craig and Zell Miller, and Senators Bingham, Mike DeWine, Lieberman, Jeff Sessions, Ted Stevens, Johnson, Kerry, Lincoln, and Deborah Ann Stabenow. S. 662 would have authorized the Secretary of the Department of Veterans Affairs (VA) to furnish headstones or markers for marked graves of, or to otherwise commemorate, certain individuals.

On April 26, 2001, S. 781 was introduced by Committee member Akaka and cosponsored by Committee member James M. Jeffords. The bill was later cosponsored by Committee member Craig and Senators Christopher S. Bond, Conrad, Mark Dayton, DeWine, Dorgan, Johnson, Lott, and Sessions. S. 781 would have extended authority for housing loans for members of the Selected Reserve.

On May 17, 2001, S. 912 was introduced by Senator Barbara A. Mikulski and cosponsored by Committee member Hutchison. The bill was later cosponsored by Senator Snowe. S. 912 would have increased burial benefits for veterans.

On May 23, 2001, S. 937 was introduced by Senator Cleland and cosponsored by Senators Bingham, Jean Carnahan, Dayton, Kennedy, Landrieu, Lieberman, Jack Reed, and John W. Warner. The bill was later cosponsored by Committee members Graham and Miller and Senator Carl Levin. S. 937 would have permitted the transfer of entitlement to educational assistance under the Montgomery GI Bill by members of the Armed Services to their dependents.

On June 19, 2001, the Committee's Chairman, Senator Rockefeller, introduced S. 1063, with the cosponsorship of Committee member Craig. S. 1063 would have improved the administration of the United States Court of Appeals for Veterans Claims.

On June 22, 2001, Chairman Rockefeller introduced S. 1089 with the cosponsorship of Committee member Craig. S. 1089 would have expanded temporarily the United States Court of Appeals for Veterans Claims in order to further facilitate staggered terms for judges on that court, and for other purposes.

On June 22, 2001, Chairman Rockefeller introduced S. 1091 with the cosponsorship of Ranking Committee Member Specter and Senator Daschle. Committee member Graham later cosponsored the bill. S. 1091 would have modified and extended authorities on the

presumption of service connection for herbicide-related disabilities of Vietnam-era veterans, and for other purposes.

On June 22, 2001, Chairman Rockefeller introduced S. 1093. The bill was later cosponsored by Committee members Craig and Graham. S. 1093 would have excluded certain income from annual income determinations for pension purposes, limited provision of benefits for fugitive and incarcerated veterans, increased the home loan guaranty amount for construction and purchase of homes, modified and enhanced other authorities relating to veterans' benefits, and for other purposes.

On June 25, 2001, S. 1095 was introduced by Senator Fred Thompson and later cosponsored by Senators Chuck Hagel and Kerry. S. 1095 would have extended MGIB eligibility to certain Vietnam-era veterans.

On June 27, 2001, Ranking Committee Member Specter introduced S. 1114. The bill was later cosponsored by Senators Thad Cochran and Snowe. S. 1114 would have increased MGIB monthly rates over 3 years by \$150 each year.

On June 28, 2001, the Committee held a hearing, chaired by Senator Rockefeller, to receive testimony on S. 131, S. 228, S. 409, S. 662, S. 781, S. 912, S. 937, S. 1063, S. 1088, S. 1089, S. 1091, S. 1093, and S. 1114.

Testimony was heard from Senator Hutchinson; the Honorable Leo S. Mackay, Jr., Ph.D., Deputy Secretary for Veterans Affairs; Mr. John Vitikacs, Deputy Director, National Economics Commission, The American Legion; Mr. Sid Daniels, Deputy Director, National Legislative Service, Veterans of Foreign Wars; Rick Surratt, Deputy National Legislative Director, Disabled American Veterans; and David Tucker, Senior Associate Legislative Director, Paralyzed Veterans of America.

Testimony was submitted for the record by: Senator Biden; Senator Collins; Senator Durbin; Senator Johnson; Senator Mikulski; Representative Donald Manzullo; the National Veterans Legal Services Program; the United States Court of Appeals for Veterans Claims; the National Organization of Veterans Advocates; the Vietnam Veterans of America; the Department of Veterans Affairs Inspector General's Office; the Tennessee Education Association of Veterans Program Administrators; and the National Vietnam and Gulf War Veterans Coalition.

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on August 2, 2001, and voted unanimously to report favorably S. 1088, as amended to include provisions from S. 131, S. 228, S. 409, S. 662, S. 781, S. 912, S. 937, S. 1063, S. 1088, S. 1089, S. 1091, S. 1093, S. 1095, and S. 1114. Present were Senators Rockefeller, Miller, Wellstone, Murray, Nelson, Specter, Thurmond and Hutchison. Speakers included Senators Rockefeller, Wellstone, Specter, and Hutchison. The vote to pass the Committee's bill was unanimous.

#### SUMMARY OF THE COMMITTEE BILL AS REPORTED

S. 1088 as reported (herein referred to as the Committee bill) contains various amendments to title 38 of United States Code and other freestanding provisions that would:

(a) increase the rate of the basic Montgomery GI Bill (MGIB) benefit to \$700 in FY 2002, \$800 in FY 2003, and \$950 in FY 2004;

(b) allow MGIB participants to receive their otherwise monthly payment as an accelerated lump-sum payment at the beginning of a course period;

(c) allow acceleration for payment of 60 percent of the cost of an approved program that leads to employment in a high technology industry if the program exceeds 200 percent of the monthly MGIB benefit;

(d) extend eligibility for the MGIB to certain Vietnam-era veterans;

(e) expand the definition of educational institution for VA purposes to include private entities that offer or contract to offer courses that lead to certification and are generally recognized as necessary to obtain or maintain employment in a high technology occupation;

(f) restore a presumption, previously eliminated by a court decision, that in-country Vietnam veterans were exposed to Agent Orange;

(g) expand the definition of "undiagnosed illnesses" to include multisymptom illnesses for the purpose of authorizing compensation to Gulf War veterans with such illnesses;

(h) exclude certain nonrecurring income from countable income for determination of VA non-service-connected death pension eligibility;

(i) modify the time limitation on receipt of claim information;

(j) modify the requirement for pensioners to report changes in income from the end of the month, to the end of the year;

(k) prohibit veterans and dependents from receiving VA benefits while fugitives;

(l) eliminate future compensation for veterans who were incarcerated in 1980 and have remained incarcerated, because veterans incarcerated before 1980 were grandfathered out of prior compensation reductions due to now defunct technological barriers;

(m) repeal the limitation on payment of benefits to incompetent veterans because treatment has changed and incompetent veterans now move between hospitalization and outpatient treatment more frequently;

(n) extend the effective date of certain Omnibus Budget Reconciliation Act provisions by 3 years, from 2008 to 2011;

(o) increase the home loan guaranty amount from \$50,750 to \$63,175;

(p) extend the Native American Veterans Housing Loan Program for 4 years as this benefit continues to be necessary as homes on tribal land fall under different foreclosure and resale rules than general real estate;

(q) extend authority for housing loan guaranties for members of the Selected Reserve for 4 years in order to advertise the home loan guaranty as a recruiting incentive;

(r) increase the VA burial benefits for service-connected deaths of veterans from \$1,500 to \$2,000;

(s) authorize VA to furnish bronze markers for already privately marked graves;

(t) eliminate the cap on veteran participants in the VA's Vocational Rehabilitation "Independent Living" program that assists veterans who are too disabled to retrain for employment to achieve and maintain independent living and reduce reliance on others;

(u) create a plan to address problems related to the possible retirement of a majority of judges at the United States Court of Appeals for Veterans Claims (CAVC) within a short period of time;

(v) repeal the requirement for a judge of the CAVC to provide written notice regarding acceptance of reappointment as a precondition to retirement from the court;

(w) terminate the post-November 17, 1988, Notice of Disagreement as a requirement for jurisdiction in the CAVC;

(x) impose a periodic registration fee on persons admitted to practice before the CAVC; and

(y) make available to the CAVC the same management, administrative, and expenditure authorities currently available to Article III courts.

#### COMMITTEE BILL

##### SECTIONS 101 THROUGH 105: EDUCATION MATTERS

The original "GI Bill of Rights" was created at the end of World War II to, among other things, give returning soldiers, airmen, and seamen compensation for educational opportunities lost while serving in the war and to ease their transition back into civilian life. The World War II GI Bill was succeeded by veterans' education benefits programs for Korean conflict veterans and veterans of the Vietnam war. In 1976, in Public Law 94-502, the Post-Vietnam Era Veterans Educational Assistance Program (VEAP) was enacted to provide the first veterans' education benefit for peacetime veterans of an all-volunteer military. VEAP created an educational matching fund account for servicemembers who entered active duty between December 31, 1975, and July 1, 1985. Participants could contribute up to \$2,700 and the Department of Defense (DOD) would match the contributions on a 2 to 1 basis. Thus, servicemembers could accumulate a college fund worth up to \$8,100 while in service. Recognizing a need to increase educational benefits to assist former servicemembers and recruit high quality individuals to the services, Congress enacted the Montgomery GI Bill (MGIB), in 1984, in Public Law 98-525. The MGIB retained the servicemember contribution feature of VEAP, though at the reduced level of \$1,200. Under the MGIB, participating members accept a reduction in their base pay of \$100 per month for the first 12 months of service. In exchange, they become entitled to 36 months of educational benefits, which are currently set at \$650 per month.

The Committee is very committed to ensuring that the MGIB continues to assist veterans and servicemembers in accessing desired educational opportunities so that they may realistically compete in today's changing job market. To that end, and with the support of Committee members, the Budget Resolution for FY 2002 allocates \$228 million for MGIB enhancements. The Committee bill would increase the rate of the basic MGIB benefit and augment the

coverage and flexibility of the benefit so as to increase use of the benefit, in recognition of the fact that, according to VA, only 45 percent of eligible beneficiaries who entered active duty after 1988 have utilized their MGIB benefit.

#### SECTION 101: INCREASES THE RATE OF THE BASIC MGIB BENEFIT

##### *Background*

Today, one of the best tools for Armed Forces recruiting is the MGIB, because it provides higher education opportunities to qualified men and women who might not otherwise be able to afford post-secondary schooling. However, the effectiveness of the MGIB as a recruiting incentive is compromised because individuals seeking financial assistance to attend college may find funds available from many sources. As an example, a preliminary analysis by the Government Accounting Office indicates that the total Federal aid available to low income, independent nonveterans attending 4-year public universities is \$9,750 per year; while aid to low income veterans (including earned MGIB benefits) is just over \$1,500 per year higher. The Committee believes that the MGIB, as has been the intent since its enactment, should be sufficient to offset the commitment and sacrifices that individuals make to serve in our Nation's military, thus providing an attractive package that stands out among other options and encourages the furtherance of education.

Tuition at the average 4-year public institution went up 4.4 percent, to \$3,510, for the 2000–2001 academic year. Tuition and fees at the average 4-year private institution were \$16,332 up 5.2 percent from the year before. Over a 10-year period ending in 1999–2000, tuition and fees rose 49 percent at public 4-year universities and 32 percent at private 4-year universities. These costs are in addition to room and board, books and supplies, transportation, and other miscellaneous items.

According to a program evaluation of the MGIB done by VA in 2000, MGIB benefits only cover half of the typical out-of-pocket expenses for a 4-year college education. In fact, students who use the MGIB benefit for a bachelors degree tend to have a higher debt load than students who pay for college in other ways. The same study found that only about 45 percent of veterans eligible for MGIB benefits who entered active duty after 1988 have taken advantage of MGIB benefits.

According to the College Board, \$1.487 billion in student aid was available specifically to veterans in 1999–2000. However, in the past 10 years, veterans' educational benefits have not kept pace with rising tuition costs. While tuition has increased by 50 percent this decade, educational aid to veterans has only increased by about 41 percent, after adjusting for inflation.

The Veterans Benefits and Health Care Improvement Act of 2000, Public Law. 106–419, raised the monthly MGIB benefit from \$528 to the current \$650 for individuals whose original service obligation was for 3 years and from \$429 to \$528 for those with a 2-year obligation period of service. Public Law 106–419 also provided servicemembers with an opportunity to “buy up” their MGIB benefit by up to \$180 per month by making a \$600 contribution toward that end.

### *Committee Bill*

Section 101 of the Committee bill, based on S. 131 and S. 1114, would supplement the recent improvement in the benefit rate by increasing the monthly benefit, for veterans whose original service obligation was 3 or more years, to \$700 in FY 2002, \$800 in FY 2003, and \$950 in FY 2004. For veterans whose original service obligation was 2 years, the monthly educational benefit is increased to \$569 in FY 2002, \$650 in FY 2003, and \$772 in FY 2004. This provision should aid military recruiting, by making the MGIB more competitive with other forms of financial aid, and ease a veteran's transition back into civilian life. Thus, after full phase-in of the MGIB amounts in this section, and together with the "buy up" benefit, the potential exists for a total monthly benefit of \$1,100 for servicemembers who serve at least 3 years.

*Cost:* The Congressional Budget Office (CBO) estimates the total cost of section 101 would be \$53 million in 2002, \$1.8 billion over the 5-year period, 2002–2006, and \$5.3 billion over the 10-year period, 2002–2011.

### SECTION 102: PROVIDES AUTHORITY FOR ACCELERATED PAYMENTS OF BASIC EDUCATIONAL ASSISTANCE UNDER THE MGIB

#### *Background*

Current law provides that the MGIB benefit be disbursed in 36 equal monthly amounts. However, according to VA's MGIB program evaluation, the payments do not arrive at the same time every month. Some colleges and universities want students' tuition paid at the beginning of the term. Many schools also impose substantial up front costs at the beginning of each course, term; or semester. Thus, veterans are often forced to pay for their tuition, supplies, books, and other educational costs out of their own pocket and then recoup those costs with the MGIB benefit. Many veterans cannot borrow sufficient funds in order to await reimbursement.

The Committee notes that the 1999 Report of the Congressional Commission on Servicemembers and Veterans Transition Assistance recommended that the Congress enact legislation providing for accelerated payments. An accelerated payment benefit would also provide a greater incentive for veterans who are eligible for MGIB benefits to actually use the benefit. As part of the VA program evaluation, 564 veterans were asked to cite the factors which would encourage them to use their MGIB entitlement. Twenty six percent responded that the ability to receive lump-sum payments would be the primary encouraging factor.

### *Committee Bill*

Section 102 of the Committee Bill, derived from S. 937, would allow MGIB participants to receive their otherwise monthly payment as an accelerated lump-sum payment for the month in which the course begins, plus up to 4 months worth of educational assistance allowance, or in the case of a term, quarter, or semester, the amount of the aggregate monthly educational assistance allowance payable for the entire term, quarter, or semester. The remainder of the MGIB entitlement would be reduced by the same amount as it would have been charged had payments been made on a monthly basis.

*Cost:* CBO estimates that this provision would increase direct spending by \$100 million in 2002, \$300 million over the 5-year period, 2002–2006, and \$365 million over the 10-year period, 2002–2011.

SECTION 103: ACCELERATES PAYMENTS OF MGIB BENEFIT BY 60 PERCENT OF THE COST OF AN APPROVED PROGRAM THAT LEADS TO EMPLOYMENT IN A HIGH TECHNOLOGY INDUSTRY

### *Background*

The payment structure of the MGIB was designed to provide assistance to veterans pursuing traditional 4-year degrees at universities by offering benefits, distributed monthly for up to 36 months. Last year, in Public Law 106–419, Congress extended MGIB benefits to cover the costs of certification exams that technical systems training courses prepare veterans to take.

In today's fast-paced, high technology economy, in which many students work and support families, traditional degrees may not be the chosen option for every veteran. According to the VA's 2000 MGIB program evaluation, many eligible beneficiaries surveyed said that they are not able to enroll in choice programs because they are over burdened with other responsibilities. Among all MGIB users who dropped out of a college or training program, "job responsibilities" was the most cited reason. The proportion of women among the active duty forces has increased by more than 4 percent between 1985 and 1998, and there was also an increase in the average number of dependents per family of active duty members. Female users most often quit because of "family/personal" reasons.

With heightened job, financial, and family responsibilities, many veterans wish to pursue training with condensed schedules. Also, many veterans could benefit from training in the computer and technical skills that are highly sought-after in today's high technology marketplace. In these fields, certification is often a prerequisite for employment.

Microsoft, Cisco, and other technical training for certification is offered through training centers, private contractors to community colleges, or by the companies themselves. These courses often last just a few weeks or months, and can cost many thousands of dollars. Under current law, the MGIB is paid out in monthly disbursements which are ill-suited for the payment structure that these sorts of courses demand. For example, in the case of a 2 month certification course that might cost \$10,000, the MGIB would pay only \$1,300.

During the Committee's June 28th hearing, Dr. Leo Mackay, Deputy Secretary of the Department of Veterans Affairs, testified that "providing educational benefits for pursuit of these [technology] courses is fully consonant with MGIB purposes." David Tucker, Senior Associate Legislative Director of the Paralyzed Veterans of America, also testified that, "If the MGIB is to be used not only for recruitment purposes, but also as a means of enabling a veteran to make a smooth transition back to civilian life, then S. 1088 [allowing veterans to use their MGIB benefits in courses leading to certification in technical fields] is a vital means to accomplish these goals."



### *Committee Bill*

Section 103 of the Committee bill, derived from S. 1088, takes the next logical step after last year's expansion to include coverage of certification exam costs by authorizing payment for a portion of these courses. This provision would allow an accelerated payment of MGIB benefits to accommodate the compressed schedule of courses that lead to employment in a high technology industry. Veterans would be eligible to receive an accelerated payment equal to 60 percent of the costs. The dollar value of the accelerated payment would be deducted from the veteran's remaining MGIB entitlement.

The Committee bill would not specify which technology fields are covered by this section. Instead, it authorizes the Secretary to determine which courses are applicable, thus ensuring flexibility to keep pace with emerging fields and courses.

*Cost:* CBO estimates the cost of section 103 would be \$4 million in 2002, \$140 million over the 5-year period, 2002–2006, and \$440 million in the 10-year period, 2002–2011.

#### SECTION 104: EXTENDS ELIGIBILITY FOR THE MGIB TO CERTAIN VIETNAM-ERA VETERANS

### *Background*

Current law provides that, if a Vietnam-era veteran had eligibility for Vietnam-era GI Bill benefits as of December 31, 1989, was on active duty on October 19, 1984, and served 3 continuous years, the veteran could convert his or her Vietnam-era benefit to the MGIB educational benefit. There are, however, some veterans who served during the Vietnam era and left the service in the early 1980's, only to reenlist and serve again on active duty after October 19, 1984. Rejoining active duty after October 19, 1984, precluded them from converting prior benefits to MGIB and effectively eliminated their ability to use their Vietnam-era GI Bill. Thus, someone who served honorably at least twice is left with no educational benefits under current law because they did not reenlist for active duty before the October 19, 1984, statutory deadline.

### *Committee Bill*

Section 104 of the Committee bill, derived from S. 1095, would allow a Vietnam-era veteran to convert Vietnam-era GI Bill benefits to MGIB benefits if the veteran had eligibility for the Vietnam-era GI Bill benefits as of December 31, 1989, was not on active duty on October 19, 1984, and served 3 continuous years in the Armed Forces after July 2, 1985.

*Cost:* CBO estimates the cost will be less than \$500,000 in 2002, \$9 million over the 5-year period, 2002–2006, and \$18 million over the 10-year period, 2002–2011.

#### SECTION 105: INCLUDES HIGH TECHNOLOGY ENTITIES IN THE DEFINITION OF EDUCATIONAL INSTITUTIONS

### *Background*

Under current law, course providers must be approved for VA purposes as an educational institution in the state where the course is offered in order for MGIB funds to be released. If a pro-

vider operates in multiple states, it must be approved separately in each state where MGIB beneficiaries are enrolled for veterans to receive benefits in each state. Courses offered by Novell, Microsoft, and other technology companies are offered through some VA-recognized educational institutions as well as designated business centers or other private providers. When the courses are offered through private providers, they often do not undertake the process of becoming a VA-approved educational institution. Even if classes are identical, only those veterans at a VA-recognized educational institution are able to receive educational assistance.

#### *Committee Bill*

Under Section 105 of the Committee bill, derived from S. 1088, the Secretary of Veterans Affairs would be given authority, for MGIB purposes, to establish requirements for private entities to qualify for MGIB payments because their educational services to veterans fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance a veteran's employment in a profession or vocation in a high technology occupation. This would enable veterans, regardless of where they take their high technology classes, to apply for MGIB benefits.

*Cost:* CBO did not estimate any cost to be associated with section 105.

#### SECTION 201: RESTORES THE VA PRESUMPTION OF AGENT ORANGE EXPOSURE FOR VIETNAM VETERANS AND EXTENDS SCIENTIFIC STUDIES INTO ITS LONG-TERM HEALTH EFFECTS

##### *Background*

Questions about the health consequences of exposure to the herbicide Agent Orange in Vietnam arose at the inception of its use in 1962, and continue long after the return of American servicemembers. In 1969, research showed that the herbicide component of Agent Orange could cause birth defects in laboratory animals. Subsequent studies into the adverse effects of dioxin, a contaminant of Agent Orange, heightened public fears that diseases manifested by Vietnam veterans and their children resulted from wartime exposures. In the absence of conclusive evidence for or against specific health effects of Agent Orange exposure, many veterans and public interest groups expressed frustration with the Federal response to Vietnam veterans' concerns.

In order to address these concerns, Congress passed Public Law 102-4, the Agent Orange Act of 1991. This act modified title 38, chapter 11, to establish presumptions of service connection for diseases associated with exposure to herbicide agents of the kind used in the Republic of Vietnam. Section 1116 of title 38 states that the Secretary of Veterans Affairs may determine which diseases warrant presumption of a service connection based on an association with exposure to an herbicide agent in the case of a veteran who served in Vietnam between January 9, 1962, and May 7, 1975.

Service connection for a disability "means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein." 38

C.F.R. § 3.303(a), 38 U.S.C. § 501. Direct service connection is established by showing that the disability was “coincident” with service. Direct service connection can be established by showing a causal relationship between the current disability (manifesting after service) and some injury or disease during service. Presumptive service connection requires no causal relationship, but merely relies on the presumption that the disability was present or caused by service or some special circumstance during service.

A 1999 U.S. Court of Appeals for Veterans Claims (CAVC) decision, *McCartt v. West*, 12 Vet. App. 164 (1999), held that a presumption of exposure to Agent Orange can only apply when the veteran’s disease is included in the list of enumerated diseases in 38 U.S.C. § 1116(a) or 38 C.F.R. § 3.309(e).

McCartt had a skin condition which he claimed was attributable to his service in Vietnam, but which was not on the list of diseases. The CAVC held that, if McCartt had none of the enumerated diseases in either 38 U.S.C. § 1116(a) or 38 C.F.R. § 3.309(e), then he was not entitled to a presumption of exposure to Agent Orange under the language of the law. Section 1116(a)(3) of title 38 states that a veteran who served in Vietnam and has one of the enumerated diseases will be presumed to have been exposed.

[A] veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, and has [one of the enumerated diseases] shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid (2,4-D), and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. 38 U.S.C. § 1116(a)(3) (emphasis added).

Therefore, the court held that McCartt had the burden of submitting evidence to justify his claim of exposure to herbicides.

VA practice prior to the *McCartt* decision had been to presume exposure for anyone who had served in Vietnam during the statutorily defined period of war, that is, from January 9, 1962, to May 7, 1975, unless there was affirmative evidence to the contrary. After *McCartt*, VA practice was changed to presume exposure to herbicide agents only if the veteran had one of the presumptive diseases listed in 38 U.S.C. § 1116(a) or 38 C.F.R. § 3.309(e), unless there was affirmative evidence to the contrary.

Addressing this issue, Rick Surratt, Deputy Legislative Director of the Disabled American Veterans, stated before the Committee on Veterans’ Affairs on June 28, 2001:

From 1980 to 1999, VA presumed exposure to herbicides in the case of any Vietnam veteran who claimed exposure, in recognition that circumstances make it near impossible to prove or rule out exposure in individual cases and in observance of the benefit-of-the-doubt rule. Following [*McCartt*] in which the court had no cognizance of the presumption and did not recognize it, VA conveniently abandoned the presumption, although no circumstances responsible for this policy and its legal premises had changed. Now, the only veterans entitled to the pre-

sumption of exposure to herbicides are those who claim compensation for disabilities subject to the statutory presumption of service connection. Others are left with the often impossible burden of proving exposure even though existing records are insufficient to document individual exposure in most instances.

In the Agent Orange Act of 1991, Congress sought to address skepticism about VA's objectivity by requiring the Secretary to rely upon an independent assessment of health effects suspected to be linked to herbicide exposures. Section 3 of the Agent Orange Act of 1991 required the Secretary to contract with the National Academy of Sciences (NAS) to review the scientific and clinical evidence regarding the health effects of exposure to the components of herbicides used in Vietnam, and to report to the Congress and VA every 2 years for 10 years. Section 1116(c)(1) of title 38 then requires the Secretary to determine whether a presumption of service connection is warranted for each disease covered in the NAS report, and to propose regulations for each disease if necessary. These reviews have led to the recent addition of type 2 diabetes as a service-connected disease, and understanding of the possible long-term effects of herbicide and dioxin exposure continues to grow.

#### *Committee Bill*

Section 201 of the Committee bill, derived from S. 1091, would restore the VA practice, eliminated by the *McCartt* decision, to presume that veterans who served in Vietnam during the time specified in law were exposed to herbicides such as Agent Orange regardless of the disease the veteran seeks to have service connected. Thus, VA would be mandated to resume the practice of presuming exposure for anyone who served on active military, naval, or air service, in the Republic of Vietnam from January 9, 1962, to May 7, 1975. Claimants will still need to submit evidence sufficient to show that a disease is related to Agent Orange exposure if the disease is not on the list. The Committee bill also directs VA to contract with NAS so NAS will continue to review scientific evidence on effects of dioxin or herbicide exposure for 10 more years (five reports), and extends authority of the Secretary of Veterans Affairs to presume service connection for additional diseases as based on future NAS reports for 10 more years.

*Cost:* CBO estimates that the cost of extending the production of the report on Agent Orange and veterans that is produced biennially would be \$4 million over the 10-year period, 2002–2011, assuming appropriation of the necessary amounts.

SECTION 202: EXPANDS THE DEFINITION OF SERVICE-CONNECTED "UNDIAGNOSED ILLNESSES" AND EXTENDS THE PRESUMPTIVE PERIOD FOR GULF WAR VETERANS

#### *Background*

Following the Gulf War in 1991, returning servicemembers began to report a range of unexplained illnesses characterized by symptoms such as chronic fatigue, muscle and joint pain, loss of concentration and forgetfulness, headaches, and skin rashes that many attributed to their service. Subsequent review revealed that men and women who served in the war might have been exposed to multiple biological and chemical agents, including, among others,

smoke from oil well fires, pesticides, organic solvents, the drug pyridostigmine bromide, numerous vaccinations, and sarin nerve gas.

Efforts to determine what hazards might be linked to specific symptoms have been limited by inconclusive data on the long-term effects of low-dose exposures, and by poor documentation of troop location during the conflict. In response to concerns about the health of Gulf War veterans, Congress passed Public Law 102-585—authorizing health examinations, tasking the NAS to evaluate scientific evidence regarding potential Gulf War exposures, and establishing the Gulf War Veterans Health Registry—and Public Law 102-310, authorizing VA to provide health care services on a priority basis to Gulf War veterans. However, the inability of clinical and scientific evidence to link the symptoms that have been labeled collectively “Gulf War Syndrome” directly to specific wartime exposures proved a barrier to establishing service connection for Gulf War veterans’ disabilities.

In 1994, Congress passed the Persian Gulf War Veterans’ Benefits Act as title I of Public Law 103-446, to provide compensation to Gulf War veterans disabled by illnesses that could not be diagnosed or defined at that time, and for which no other causes could be identified. Among other things, this law amended chapter 11 of title 38 so as to add a new section, section 1117, which authorized the Secretary to pay compensation to any Gulf War veteran suffering from a chronic disability resulting from an undiagnosed illness (or combination of undiagnosed illnesses) that became manifest during service in the Gulf War theater or to a degree of 10 percent or more within the presumptive period set by the Secretary in regulations.

VA has interpreted this authority to limit service connection only to conditions for which no clinical diagnosis can be made. Since the passage of this law, many Gulf War veterans have received diagnoses for chronic conditions whose causes cannot be identified conclusively, but which preclude them from eligibility for benefits under the current law. Over the last decade, the medical community has increasingly accepted diagnoses such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome to describe multisymptom chronic illnesses without known cause. Under VA’s interpretation of its authority, a veteran with a diagnosis of “chronic fatigue of unknown etiology” is eligible for benefits under the current law, but a veteran with a diagnosis of “chronic fatigue syndrome” is not eligible, despite the fact that their symptoms may not differ in any significant way. This situation results not from advances in understanding the causes of symptoms manifested by Gulf War veterans, but from changes in medical terminology in the past decade.

Because current scientific research has not determined the etiology of veterans’ symptoms or the long-term health consequences of Gulf War-era exposures, and because the Department of Defense recently released new estimates of the number and locations of service personnel exposed to nerve agents, extension of this presumptive period beyond the scheduled termination date of December 31, 2001, as set forth in the Federal Register of April 29, 1997, 62 FR 23138–23139, is warranted. Although section 1117 of title 38 authorizes the Secretary to extend the period for presumption of

service connection by regulation, the Secretary has not yet acted on this authority.

#### *Committee Bill*

Section 202 of the Committee bill, derived from S. 409, would correct this unintended exclusion of veterans with poorly defined diagnosed illnesses from the “undiagnosed illnesses” provisions in section 1117 of title 38 by adding to the list of conditions that can be service connected “poorly defined chronic multisymptom illnesses of unknown etiology, regardless of diagnosis,” characterized by the symptoms already listed in VA regulations. Section 202 does not define Gulf War Syndrome, but authorizes the Secretary to offer compensation to veterans with diagnoses such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome, which are diagnosed in Gulf War veterans more frequently than in age-matched control populations. This section also extends the presumptive period for health care and benefits for Gulf War veterans for 10 more years.

*Cost:* Section 202 would take effect on April 1, 2001, and because VA takes an average of 6 months to adjudicate reopened claims, CBO expects that no payments would be made in 2002. CBO estimates that enacting section 202 would increase direct spending by \$46 million in 2003, \$168 million in the 4-year period from 2003 through 2006, and \$400 million over the 9-year period, 2003–2011.

#### SECTION 203: EXCLUDES LIFE INSURANCE FROM COUNTABLE INCOME FOR NON-SERVICE-CONNECTED DEATH PENSION

#### *Background*

Non-service-connected death pension is paid to low income surviving dependents, mainly spouses, of wartime veterans. All VA pension programs have complex rules relating to effective dates and what types of income are not counted in VA’s determination of the claimant’s income.

Under current law, section 5110(d)(2) of title 38, a claim for non-service-connected death pension received within 45 days of the veteran’s death is effective on the date of death. Claims received more than 45 days after the veteran’s death are effective on the date of the claim. This distinction was created in Public Law 98–369, as a cost-cutting measure.

However, this provision created a loophole that has led to unequal treatment for surviving spouses applying for death pension. The effect of Public Law 98–369 was to exclude life insurance proceeds from countable income for claimants who file more than 45 days after the date of the veteran’s death. The effective dates for those who wait more than 45 days are the dates the claims were filed, regardless of their insurance proceeds. However, the life insurance of those spouses who file within 45 days of death is counted as income for the following 12 months and may result in making them ineligible for pension for a full year.

#### *Committee Bill*

Section 203 of the Committee bill, derived from S. 1093, would exclude life insurance proceeds and other nonrecurring income from countable income for VA death pension. This income will still

be accounted for in VA's net worth calculations, when appropriate. The Secretary is given authority to set an appropriate limit on the amount of insurance and nonrecurring income that are to be excluded as income for pension purposes, in order to maintain fairness if a survivor were to receive an unusually large windfall.

*Cost:* CBO estimates that enacting this provision would cost \$3 million in 2002, \$17 million over the 5-year period, 2002–2006, and \$62 million over the 10-year period, 2002–2011.

#### SECTION 204: MODIFIES THE TIME LIMITATION FOR RECEIPT OF CLAIM INFORMATION

##### *Background*

On November 9, 2000, the President signed Public Law 106–475, the Veterans Claims Assistance Act of 2000 (VCAA), which reinstated and clarified the VA's duty to assist veterans with their claims for benefits. The VCAA's primary purpose was to substantially return VA claims assistance practice to what it traditionally had been throughout VA's modern history prior to the decision of the U.S. Court of Appeals for Veterans Claims in *Morton v. West*, 12 Vet. App. 477 (1999). In *Morton*, the court held that VA does not have the authority to assist claimants prior to the submission of a well-grounded claim. As a consequence of *Morton*, VA directed regional offices to subject all claims to an initial review to determine whether they are well-grounded before proceeding to assist the claimant in fully developing the claim. Section 3 of the VCAA defines the responsibilities that both VA and claimants have at two distinct points of the claims process: submitting information to complete an incomplete application for benefits and submitting evidence necessary to substantiate a claim for benefits based on a complete or substantially complete application.

Prior to the VCAA's enactment, section 5103(a) of title 38, United States Code, provided that if a claimant's application for benefits was incomplete, the Secretary of Veterans Affairs was required to notify the applicant of the evidence needed to complete the application. If such evidence was not received within 1 year of the Secretary's notification, section 5103(a) prohibited benefits from being furnished or paid based on the incomplete application. Section 3 of the VCAA created a new section 5102(b) that retained the language of prior section 5103(a) requiring the Secretary to notify an applicant of the evidence required to complete an application, but omitted the language requiring the evidence to be submitted within 1 year of the Secretary's notice. Instead, the VCAA placed the 1 year time limitation language in a new section 5103(b), which governs the receipt of information and evidence necessary to substantiate a claim for benefits based on a complete or substantially complete application.

In testimony submitted to the Committee on June 28, 2001, VA Deputy Secretary Leo Mackay testified on behalf of VA regarding the effect of the change in law concerning the 1-year time limitation, noting that, under the VCAA:

. . . if a claimant were to submit an application for benefits and receive notification from VA that the application is incomplete, it does not appear that VA would be authorized to close or deny the claim based on an applicant's failure to respond.

Further, if the claimant submits the requested information at any time in the future, and if a benefit were granted, VA would be required to establish an effective date for an award of benefits based on the date the incomplete application was filed without regard to whether the applicant responded to VA's request for further information to "complete" the application in a timely fashion. We do not believe this result was intended by the Congress.

The Committee concurs with VA's assessment of Congressional intent.

#### *Committee Bill*

Section 204 of the Committee bill, derived from S. 1093, would, through a technical correction, restore the law on this matter as it was prior to the VCAA by making the 1-year time limitation applicable to evidence necessary to complete an application and not applicable to evidence necessary to substantiate a claim based on a complete or substantially complete application.

*Cost:* CBO estimates that this provision would have little or no net effect on direct spending.

SECTION 205: MODIFIES THE REQUIREMENT FOR PENSIONERS TO REPORT CHANGES IN INCOME FROM THE END OF THE MONTH TO THE END OF THE YEAR

#### *Background*

VA pension is a needs-based program payable to low income war-time veterans who cannot work due to permanent and total disability. Death pension is payable to low income surviving dependents of wartime veterans. Pension amounts are offset dollar-for-dollar with income from other sources (unless specifically excluded by statute).

Under current law, section 5112(b)(4)(A) of title 38 (the "end of the month rule") requires VA pension to be reduced or discontinued effective the first day of the month following the month in which the pensioner's net income is increased, even if it is a one-time increase. This can lead to multiple adjustments per year and an increased probability of errors.

These reporting requirements are burdensome for pensioners and call for very exacting income matching and accounting procedures by VA, which in turn leads to a disproportionate percentage of time being spent by VA on pension as compared with the number of people receiving pension, and is one of the greatest sources of errors in claims processing. In fiscal year 2000, VA's quality review program, STAR, showed that effective date errors were made roughly one out of nine times when effective date issues were reviewed. Of those, 54 percent were related to pension income calculations. VA states that the errors occur most often in the end-of-the-month adjustments.

These adjustments also affect the basic security of the pensioners, who by definition have low incomes. When VA creates a debt through overpayments, until the adjustment is processed (which occurred 107,000 times in fiscal year 2000), the pensioner frequently seeks a waiver of the debt under section 5302 of title 38 and is often successful because of their limited means. In FY 2000,



15,730 requests for waiver of pension debt were received and 10,027 of those were granted.

*Committee Bill*

Section 205 of the Committee bill, derived from S. 1093, would modify the requirement for pensioners to report changes in income from the end of the month to the end of the year. This would reduce the number of times that VA has to adjust pension, reducing administrative overhead and opportunities for mistakes.

*Cost:* CBO estimates that this provision would have little or no net effect on direct spending.

SECTION 206: BARS VETERANS FROM RECEIVING BENEFITS WHILE  
FUGITIVES

*Background*

In 1996, Congress enacted Public Law 104–193. This law was designed to cut off the means of support that allows fugitive felons to continue to flee. It barred fugitive felons from receiving Supplemental Security Insurance from the Social Security Administration and food stamps from the Department of Agriculture. However, under current law, there is no bar to prevent veterans who are fugitives from justice from receiving VA benefits.

*Committee Bill*

Section 206 of the Committee bill, derived from S. 1093, would bar veterans and eligible dependents from receiving veterans benefits while fugitive, which is defined as fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the veteran flees. The benefits which would be barred include those for service-connected disabilities; dependency and indemnity compensation for service-connected deaths; non-service-connected disability/death pension; hospital, nursing home, domiciliary and medical care; insurance; educational entitlements; training and rehabilitation benefits for veterans with service-connected disabilities; post-Vietnam era veterans' educational assistance; survivors' and dependents' educational assistance; and, housing and small business loans.

*Cost:* CBO estimates that this provision would have little or no net effect on direct spending.

SECTION 207: ELIMINATES COMPENSATION FOR VETERANS WHO WERE  
INCARCERATED PRIOR TO 1980 AND HAVE REMAINED INCARCERATED

*Background*

One of the purposes of VA benefits is to help disabled veterans who have a service-connected disability maintain a standard of living, determined by lost average earnings capacity, that has been compromised by the service-connected disability. If a veteran is incarcerated, then the government provides a minimum standard of living.

In 1980, Congress enacted legislation to reduce compensation to incarcerated veterans to the equivalent to the rate of compensation paid for a 10-percent disability (or, if they only receive ten percent, to the equivalent dollar amount of 5 percent). The policy under-

lying this provision is that many of the veteran's basic needs, such as food, clothing, and shelter, are already being met by the entity which is incarcerating the veteran. The remainder of the veteran's compensation can be apportioned and sent to the veteran's dependents (if any).

Veterans who were already incarcerated in 1980 were not covered by this change in law. One reason was that VA did not believe that it would be able to identify those veterans. However, technological changes now make this possible and VA has indicated that is only a small number of veterans who were incarcerated in 1980 who have remained continuously incarcerated.

#### *Committee Bill*

Section 207 of the Committee bill, derived from S. 1093, would eliminate compensation for veterans who were incarcerated in 1980 and have remained incarcerated, by stopping their future payments. It would not affect any payments they have received between 1980 and enactment of this provision. Further, this provision would not impede these veterans' ability to apportion their benefits to any dependents they may have. The provision furthers VA's program integrity by treating similarly situated veterans alike now that technology provides the ability to do so.

*Cost:* CBO estimates that this provision would result in an annual savings of about \$2 million.

#### SECTION 208: REPEALS THE LIMITATION ON PAYMENT OF BENEFITS TO INCOMPETENT VETERANS

#### *Background*

A reduction of benefits to incompetent veterans dates back to 1933, when incompetent people would be institutionalized for years. The "\$1,500" rule prohibited compensation and pension benefits from being paid to incompetent veterans with assets of \$1,500 or more and no dependants, if the veteran was being provided institutional health care by the government. The rule was created by Congress to prevent the accumulation of large estates of Federal benefits which would be inherited by persons who had no original entitlement to those benefits during the veteran's lifetime. It was also felt that a large estate based on the veteran's benefits should not be allowed to build up just to escheat to the state upon the veteran's death.

In addition, this provision was intended to guard against misuse of accumulated benefits for long-term hospitalized incompetent veterans. An unintended result was that veterans with financial obligations (e.g. a home mortgage) lost the income to meet their debts. Now, treatment for the mentally ill has changed and veterans do not generally remain hospitalized for years at a time. Instead, they are more likely to cycle in and out of treatment, resulting in virtually constant suspension and reinstatement of their benefits.

In 2000, Congress addressed this prohibition against paying compensation and pension benefits to an incompetent veteran who had no dependents and who had assets of \$1,500 or more, if the veteran was being provided institutional health care by the government. Although the Committee sought to fully eliminate this disparate and discriminatory treatment of incompetent veterans, because of fund-

ing restraints it was only able, in Public Law 106–419, to raise the dollar amount of the cutoff from \$1,500 to five times the 100 percent compensation rate.

#### *Committee Bill*

Section 208 of the Committee bill would fully repeal the limitation on payment of benefits to incompetent institutionalized veterans who have no dependents, treating these veterans the same as any other veteran receiving disability compensation.

*Cost:* CBO estimates that the cost of Section 208 would be about \$4 million in 2002, \$22 million over the 5-year period, 2002–2006, and \$47 million over the 10-year period, 2002–2011.

#### SECTION 209: EXTENDS CERTAIN OMNIBUS BUDGET RECONCILIATION ACT PROVISIONS

#### *Background*

In 1990, Public Law 101–508 authorized VA to use income information received from other agencies, such as the Department of Health and Human Services and the Department of the Treasury, to determine the level of a VA beneficiary’s income. VA may use this information as part of its process to determine continuing eligibility for receipt of VA means-tested benefits. This authority expired on September 30, 1992, and has since been extended through 1997 in Public Law 102–568, through 1998 in Public Law 103–66, through 2002 in Public Law 105–33, and through 2008 in Public Law 106–419.

Public Law 101–508 also reduced the VA pension amount for certain veterans receiving Medicaid-covered nursing home care to no more than \$90 per month, for any period after the month of admission to the nursing care facility. This authority expired on September 30, 1992, and was extended through 1997 in Public Law 102–568, through 1998 in Public Law 103–66, through 2002 in Public Law 105–33, and through 2008 in Public Law 106–419.

#### *Committee Bill*

Section 209(a) of the Committee bill, extends the income information verification from September 30, 2008 to September 30, 2011.

Section 209(b) of the bill extends the authority for limitation of VA pension to \$90 per month for certain veterans receiving Medicaid-covered nursing home care from September 30, 2008 and inserting September 30, 2011.

*Cost:* CBO estimates that 209(a) would lower direct spending by \$5 million over the 3-year period, 2009–2011, and that 209(b) would result in a net spending reduction of \$631 million over the same period.

#### SECTION 301: INCREASES THE HOME LOAN GUARANTY AMOUNT FROM \$50,750 TO \$63,175

#### *Background*

VA does not generally provide a direct home loan for servicemembers and veterans. Instead, it provides a guaranty to mortgage lenders should the borrower veteran be unable to meet the payments and go into foreclosure. A VA guaranty allows a veteran to buy a home for up to four times the guaranty amount, with

a current maximum of \$203,000. In 2000, VA guaranteed 175,000 housing loans. While a popular benefit, its value has decreased in recent years as the price of homes in major metropolitan areas has increased significantly, while the VA guaranty amount has not increased since 1994. Rick Surratt, Deputy Legislative Director of the Disabled American Veterans, stated before the Committee on June 28, 2001:

A recent survey by the Federal Housing Finance Board showed average home prices [are] higher than \$203,000 in several areas of the Nation. Several years have passed without any adjustment in the maximum home loan guaranty, and the erosion of the benefit in the face of increasing housing costs has put housing beyond the reach of veterans living in these several areas of the Nation.

#### *Committee Bill*

Section 301 of the Committee bill, derived from S. 1093, would increase the home loan guaranty to \$63,175 to keep pace with the FHA home loan guaranties supporting a loan of up to \$252,700.

*Cost:* CBO estimates this provision would increase direct spending by \$6 million in 2002, \$33 million over the 5-year period, 2002–2006, and \$87 million over the 10-year period, 2002–2011.

#### SECTION 302: EXTENDS THE NATIVE AMERICAN VETERANS HOUSING LOAN PROGRAM FOR 4 YEARS

#### *Background*

Public Law 102–547 authorized the Secretary of VA to establish and implement a pilot program under which VA could make direct housing loans to Native American veterans. The purpose of such loans was to permit Native American veterans to purchase, construct, or improve dwellings on trust land. The pilot program was established after it was brought to the Committee's attention that there was no documented case of a Native American veteran using the VA home loan guaranty program. This was attributed to the Native American veteran's inability to use trust lands as collateral, poor economic conditions on reservations, and private lenders discriminatory attitudes toward Native Americans.

VA undertook a study on the use of the VA home loan guaranty program by Native American veterans living on trust lands. The study, completed in 1991, calculated that 21,204 Native American veterans lived on Federal reservations and trust lands. The study found that only 15 Native Americans living on trust land had used VA home loan benefits of any kind. Their participation rate was 0.07 percent compared with an overall veteran participation rate of 0.67 percent almost 10 times greater than the participation rate of Native Americans. The 15 home loan guaranties made were for specific adapted housing renovations for totally disabled veterans with certain mobility impairments, and none of the loans were VA-guaranteed home loans. The Committee concluded that the VA home loan programs were not responsive to the needs of those veterans who reside on trust lands and passed Public Law 102–547. In 1997, in Public Law 105–114, the program was extended through December 31, 2001.

### *Committee Bill*

Section 302 of the Committee bill, derived from S. 228, would extend the Native American veterans housing loan program, set to expire on December 31, 2001, by 4 years to December 31, 2005.

*Cost:* CBO estimates that this provision would result in an annual direct spending cost of \$250,000 and that VA's administrative expenses, a discretionary cost, would be roughly \$500,000 annually.

SECTION 303: EXTENDS FOR 4 YEARS THE AUTHORITY FOR HOUSING LOAN GUARANTIES FOR MEMBERS OF THE SELECTED RESERVE AND OTHER EXPIRING AUTHORITIES

### *Background*

When members of the Selected Reserve were extended eligibility for home loans in 1992, Congress recognized the expanded responsibilities of reservists in this Nation's defense. Congress acknowledged that reservists responded willingly to the call of duty during the Gulf War, but also that the call up disrupted lives and caused economic hardship. It was felt that whether or not reservists continued to serve depended partially on the benefits that were made available to them. With the reduction of the active duty military force, reservists will be increasingly relied upon to provide an adequate portion of the total military force. Incentives to recruit will become increasingly important, especially in light of the personal sacrifices required of recently recalled reservists.

In 1992, in Public Law 102-291, Congress granted the Secretary of Veterans Affairs enhanced loan asset sale authority that was set to expire in December 31, 2002. This authority was extended several times, most recently through December 31, 2008, in Public Law 106-419.

In 1982, Congress required VA to charge a loan fee for VA home loan guaranties in Public Law 97-253. This authority and the amount of the fee have been modified and extended numerous times, until section 3729 of title 38 of the United States Code was completely rewritten to clarify the various loan fees and combine them into one table in Public Law 106-419. At that time, the authority of VA to charge loan fees was extended through October 1, 2008.

Section 3732 of title 38 defines the procedures for a liquidation sale in the event of a default on a VA-guaranteed home loan. The authority for these procedures is currently set to expire on October 1, 2008.

### *Committee Bill*

Section 303(a) of the Committee bill, derived from S. 778, would extend for 4 years the authority for housing loan guaranties for members of the Selected Reserve. Reservists must serve 6 years in order to become eligible for a VA-guaranteed loan. In order for the home loan to be advertised as a recruiting incentive now, the benefit must be authorized beyond 6 years.

Section 303(b) of the bill would extend VA's loan asset sale authority through December 31, 2011.

Section 303(c) would extend the VA's home loan fee authorities through October 1, 2011.

Section 303(d) would extend the effectiveness of the procedures applicable to liquidation sales on defaulted home loans guaranteed by VA through October 1, 2011.

*Cost:* CBO estimates that loan fees charged for extended home loan benefits for reservists would lower net spending by \$2 million annually over the 4-year period, 2008–2011. CBO estimates that the subsections of section 303 that extend provisions affecting housing would reduce direct spending by \$778 million over the 3-year period, 2009–2011.

#### SECTION 401: INCREASED VA BURIAL BENEFITS FOR SERVICE-CONNECTED DEATHS OF VETERANS FROM \$1,500 TO \$2,000

##### *Background*

Efforts to ensure veterans a proper burial have along history in our country. In 1862, President Lincoln signed legislation that authorized national cemeteries to ensure a proper burial for soldiers who died in the service of the country. Congress expanded burial benefits with the War Risk Insurance Act Amendments of 1917, so as to avoid a potter's field burial for war veterans. That act provided a cash payment, of no more than \$100, to pay for funeral and burial expenses for deaths occurring prior to separation from military service.

In 1923, the burial allowance was extended to veterans who died without sufficient assets to pay for burial. The asset limitation requirement was removed in 1936. In addition, eligibility for cash payments was extended to veterans who served during a war or died in the line of duty. The 1940's and 1950's represented a period of increase in the burial allowances to veterans. The increases were justified by the rise in cost of burial expenses and a rise in the cost of living. Opponents of the increases said that a large proportion of veterans had other resources sufficient to meet burial costs, such as Social Security old-age lump sum benefits, or in some cases, private resources.

In 1973, Congress set the amount of service-connected and non-service-connected burial expenses at \$800 (covering 72 percent of an average adult funeral) and \$250 (22 percent of the total cost) respectively. Congress intended to make veterans' burial benefits in line with the then existent-system of Federal civilian employees burial benefits. The increase also showed a clear recognition by the Federal Government of its responsibility to veterans who suffered a service-connected death. In 1978, the burial allowance for a service-connected death was raised to \$1,100 (80 percent of the total cost). The non-service-connected death allowance rose from \$250 to \$300.

In 1981, non-service-connected burial benefits were restricted to veterans who were in receipt of or entitled to compensation or pension at the time of death to impose some limitation on who was entitled to non-service-connected benefits. By restricting the burial benefit, Congress attempted to return to the original purpose of the benefit and make certain that only the neediest of veterans were entitled to burial aid. In 1982, the non-service-connected burial allowance was extended to wartime veterans (1) who were discharged for a service-incurred or aggravated injury, (2) whose bodies were held by the state unclaimed, (3) who had no next of kin, or (4)

when there were insufficient resources to cover burial and funeral expenses.

VA currently pays up to \$1,500 for burial and funeral expenses for a service-connected death and \$300 for burial and funeral expenses for a non-service-connected death.

In addition, VA provides a \$150 plot allowance for purchase of a burial plot and internment for veterans not buried in national cemeteries. To be eligible, the veteran must have: (1) been discharged due to a disability incurred or aggravated in the line of duty; (2) been eligible for compensation or pension at the time of death; (3) died in a VA facility; or (4) been a reservist discharged or released under circumstances other than dishonorable.

Legislation on this issue was spurred by the issuance of a VA report in December 2000, which showed the effect of inflation on the burial benefit. In 1973, the average cost of an adult funeral was \$1,116. In 1999, the average cost for an adult funeral was \$5,157. Funeral costs have risen faster than the cost of inflation.

#### *Committee Bill*

Section 401 of the Committee bill, based on S. 912, would raise the burial allowance to \$2,000 for service-connected deaths, covering 39 percent of the cost for the average adult funeral.

*Cost:* CBO estimates that this provision would cost \$5 million in 2002, \$25 million over the 5-year period, 2002–2006, and \$49 million over the 10-year period, 2002–2011.

#### SECTION 402: AUTHORIZES VA TO FURNISH BRONZE MARKERS FOR ALREADY MARKED GRAVES

#### *Background*

VA is restricted by statute from providing a headstone or marker for an already marked grave. VA policy on headstones is based on the principle that the Nation wants to ensure that no veteran lies in an unmarked grave. Section 2306(a) of title 38 requires VA to furnish, upon request, markers or headstones for the unmarked graves of veterans eligible to be buried in national and post cemeteries. An exception to this policy exists in section 2306(b)(1) of title 38 which authorizes VA to furnish a headstone or marker for an individual whose remains are unavailable for internment. Once VA provides a marker, a veteran's family can get a private marker later. However, because of existing law, if a veteran's family obtains a private marker first, VA may not furnish a headstone or marker.

The Committee recognized the inequity of this situation and the need to permanently commemorate a veteran's service.

#### *Committee Bill*

Section 402 of the Committee bill, derived from S. 662, would allow the Secretary of VA to furnish bronze markers for already privately marked graves in order to more permanently commemorate a veteran's military service. It does not authorize a second marker if the veteran already received a VA marker or headstone. The marker must be put in an appropriate place, determined by the cemetery concerned, within the grounds of the cemetery. Eligibility for these grave markers will apply to deaths occurring after

the date of enactment of the Act. This provision will also apply to a death before the enactment, but after November 1, 1990, so long as the request for the marker is made within 4 years after the date of the enactment of this measure.

*Cost:* CBO estimates that enacting this provision would result in an increase in spending for burial benefits of \$2 million in 2002, \$13 million over the 5-year period, 2002–2006, and \$20 million over the 10-year period, 2002–2011.

SECTION 501: REPEALS THE FISCAL YEAR LIMITATION ON THE NUMBER OF VETERANS IN VA’S PROGRAM OF INDEPENDENT LIVING SERVICES AND ASSISTANCE

*Background*

VA’s Vocation Rehabilitation and Employment Service maintains an independent living program. The goal of the program is to assist service-disabled veterans who are too disabled to retrain for employment to achieve and maintain defined independent living outcomes and reduce reliance on others.

The Independent Living program was initially developed as a pilot program in 1986 in Public Law 96–466. The program was to run through fiscal years 1982 to 1985 and have no more than 500 veteran participants. The authority for the program was extended through 1989, and in Public Law 101–237, the program was made permanent. However, the cap on the number of participants has never been modified. While VA has not turned away any veteran seeking services, it has exceeded the statutory cap over the last several years. VA projects that demand for the program will continue to rise as the large Vietnam-era veteran population ages.

*Committee Bill*

Section 501 of the Committee bill, derived from S. 1093, would eliminate the 500-veteran cap for participants of the independent living program, and would retain first priority to veterans for whom there is a reasonable feasibility of achieving a vocational goal but for their service-connected condition.

*Cost:* CBO expects the cost of section 501 would be \$6 million in 2002, about \$60 million over the 5-year period, 2002–2006, and \$230 million over the 10-year period, 2002–2011.

SECTION 601: CREATES A SUCCESSION PLAN TO ADDRESS JUDGES RETIRING FROM THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

*Background*

The U.S. Court of Appeals for Veterans Claims, originally named the U.S. Court of Veterans Appeals, was created in 1988 in the Veterans’ Judicial Review Act to provide judicial review of veterans’ claims for benefits from the Department of Veterans Affairs.

At the court’s inception, the terms for judges were not staggered by Congress. The original chief judge and six associate judges were appointed to 15-year terms within 16 months of one another in 1989–1991. A new judge was appointed in 1997 to fill a vacancy created by the death of one of the originally appointed judges. The chief judge retired in 2000, and his seat has not yet been filled. By 2005, the terms of five of the remaining judges will have ended.



Because the judges' terms were not staggered, it is very likely that there will be at least four simultaneous vacant seats. Recognizing this, in Public Law 105-368, Congress attempted to avoid the crisis preemptively that would be created if the court had only two or three sitting judges and the resulting enormous backlog of cases, by offering some of the original judges early retirement. However, no judges accepted early retirement and the likelihood of multiple, simultaneous vacancies persists.

#### *Committee Bill*

Section 601 of the Committee bill, derived from S. 1089, would address the problem by allowing two additional judges to be appointed, in order to bridge the retirement of the original judges. Specifically, this bill would temporarily expand the membership of the court by two seats until August 2005, when the last of the seven original judges' terms will expire. Under the Committee bill, by that time, two seats would be eliminated to restore the court to seven judges. The Committee believes that this temporary expansion will give ample time for the President to nominate, and the Senate to confirm, judges for the court, and avoid the potentially damaging effects of a court with only two or three judges.

*Cost:* CBO estimates that an extra judge in 2004 would result in an increase in discretionary spending of \$1 million for 2004, assuming the availability of appropriated funds.

SECTION 602: REPEALS THE REQUIREMENT FOR A JUDGE TO PROVIDE WRITTEN NOTICE REGARDING ACCEPTANCE OF REAPPOINTMENT AS A PRECONDITION TO RETIREMENT FROM THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

#### *Background*

Currently there are three ways for a judge to retire from the United States Court of Appeals for Veterans Claims. First, under section 7296(b)(1) of title 38 of the United States Code, if the age of the judge and the years served on the United States Court of Appeals for Veterans Claims add up to 80, then the judge may retire (the so-called Rule of 80). For example, a judge who has served on the court for 12 years and has attained the age of 68 could retire from the court. Second, under section 7296(b)(2), a judge who has not been reappointed following the expiration of the term for which the judge was appointed must advise the President, in writing, that the judge is willing to accept reappointment, and if not reappointed, the judge may retire. Last, under section 7296(b)(3), a judge who becomes permanently disabled may retire.

#### *Committee Bill*

Section 602 of the Committee bill would repeal the requirement set forth in section 7296(b)(2) that a judge provide written notice regarding acceptance of reappointment, as a precondition to retirement from the United States Court of Appeals for Veterans Claims, in order to provide a smooth transition of judges under section 601 of the Committee bill.

*Cost:* CBO did not estimate a cost to be associated with section 602.

SECTION 603: TERMINATES THE POST-NOVEMBER 17, 1988, NOTICE OF DISAGREEMENT AS A PREREQUISITE TO JURISDICTION FOR THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS AND FOR CHARGING ATTORNEY FEES FOR REPRESENTATION OF VETERANS

*Background*

The Notice of Disagreement (NOD) begins the appellate process within the Department of Veterans Affairs. The veteran submits an NOD to a regional office of the Department of Veterans Affairs, indicating disagreement with the regional office's original decision, in whole or part. When Congress created the United States Court of Veterans Appeals in 1988, the law required claims to have an NOD filed on or after November 18, 1988—the date of enactment of the Veterans' Judicial Review Act (VJRA)—in order to be reviewed by the court. This provision was enacted so as to prevent the new court from becoming overwhelmed with appeals.

However, many difficulties have arisen with this jurisdictional requirement, due to the complexity of the VA appellate process. Problems arose in determining what is the applicable NOD when there were multiple agency decisions and extensive correspondence by the claimants. Also, many cases originated before November 18, 1988, adding to the difficulty of determining which NOD conferred jurisdiction to the court. In addition, much litigation has occurred to determine what type of writing constitutes an NOD and the type of language that must be used to construe disagreement over the VA's decision. Then-Chief Judge Frank Q. Nebeker commented, "[T]here appear to be countless possible permutations of the NOD issues." Frank Q. Nebeker, *Jurisdiction of the United States Court of Appeals: Searching Out the Limits*, 46 Me. L. Rev. 5 (1994).

While many veterans have brought appeals to the court, the flood of appeals that was anticipated when the court was created has not occurred, nor does the Committee anticipate that repealing the NOD will create a significant increase in cases before the court. The Committee notes that, last year, the court decided 1,556 claims out of 2,442 cases filed. Ten percent of these cases were dismissed for lack of jurisdiction, although no data is available on what portion of these cases received NOD-related dismissal.

*Committee Bill*

Subsection (a) of section 603 of the Committee bill would eliminate the post-November 17, 1988, NOD as a prerequisite to jurisdiction at the U.S. Court of Appeals for Veterans Claims set out in section 402 of the VJRA. It would not affect the requirement of an NOD to trigger agency appeal of a decision. It would not eliminate other requirements for a case to be heard by the court, such as a timely Notice of Appeal. It is the intent of the Committee to free up the court to determine appeals on their merits. The appellate process for veterans' claims is long enough without a veteran being additionally burdened to argue over NODs. It is also important to note that this provision would not confer jurisdiction upon the court on any matter not currently within its jurisdiction.

Subsection (b) of this provision would repeal section 403 of the VJRA that limits payment of attorney fees to cases with a post-November 17, 1988, NOD, as a conforming change to subsection (a) of the Committee bill. This would ensure that veterans can secure

representation for any appeal previously barred by section 403 of the VJRA that may be filed once section 603 of the Committee bill becomes effective. It would not modify any other requirement for a veteran to hire or pay an attorney.

*Cost:* CBO did not estimate a cost to be associated with section 603.

SECTION 604: PERMITS EXPANDED USE OF THE PERIODIC REGISTRATION FEE PAID BY PERSONS ADMITTED TO PRACTICE BEFORE THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

*Background*

Currently, the U.S. Court of Appeals for Veterans Claims collects a \$30 practice fee that may be imposed periodically on those admitted to practice before the court. In addition, the court collects registration fees that are paid at the court's periodic Judicial Conference that is carried out under section 7286 of title 38. The court has amassed approximately \$55,000 from registration fees at the periodic conferences. It has expended a small amount on hiring an ethics speaker for the last four Judicial Conferences. Currently, under section 7285(b), the court is authorized to make expenditures "implementing standards of proficiency for practice before the court" only.

*Committee Bill*

Section 604 of the Committee bill, derived from S. 1063 and requested by the court in a May 24, 2001, letter by Chief Judge Kenneth Kramer to then-Committee Chair Specter, would amend section 7286 of title 38 of the United States Code so that registration fees paid to the court may be used for purposes in addition to "implementing standards of proficiency for practice before the court," including expanded disciplinary proceeding activities and employing independent counsel. The provision would also make funds available for support activities, such as the preparation, procurement, use, display, or dissemination of appropriate court materials. The legislation also would allow the use of registration funds to foster and support bench and bar activities or the study, understanding, commemoration, or improvement of veterans law or the work of the court.

*Cost:* CBO did not estimate a cost to be associated with section 604.

SECTION 605: MAKES AVAILABLE TO THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS THE SAME MANAGEMENT, ADMINISTRATIVE, AND EXPENDITURE AUTHORITIES AVAILABLE TO ARTICLE III COURTS

*Background*

The U.S. Court of Appeals for Veterans Claims, established by the Congress under Article I of the Constitution to exercise judicial power, has unusual status as an independent tribunal that is not subject to the control of the President or the executive branch. Pursuant to section 7282 of title 38, the court submits its budget directly to and receives its appropriations directly from Congress. Because of its standalone status, the court does not have available to it the same general management, administrative, and expenditure

authorities that are available to Article III courts of the United States (under the Administrative Office of the U.S. Courts), or to other courts that are part of other administrative structures, such as the U.S. Court of Appeals for the Armed Forces (under the Department of Defense).

Over the years since its establishment, the court has requested the enactment of various gap-filling statutory provisions, which are described by Chief Judge Kramer in a May 24, 2001, letter to then-Committee Chairman Specter:

. . . for example, in 1990, the Congress specifically added to title 5 U.S.C. App. §§ 109(8) and 109(10) a reference to this Court so that financial disclosure reports by its judges and certain nonjudicial personnel would be filed with and reviewed by the [Administrative Office] (Pub. L. No. 101–280, § 3, 104 Stat. 152, 155 (1990) (amendments to Ethics in Government Act of 1978, as amended by Ethics Reform Act of 1989)); in 1991, the Congress added subsection (g) to 38 U.S.C. § 7253 to provide that a process comparable to that prescribed by 28 U.S.C. § 372(c) for consideration of complaints of judicial conduct would apply to the Court’s judges (Pub. L. No. 102–82, § 3, 105 Stat. 375 (1991)); in 1991, the Congress added subsection (c) to 38 U.S.C. § 7264 to make applicable to the Court’s judges 28 U.S.C. § 455 relating to the disqualification of judges (Pub. L. No. 102–82, § 4, 105 Stat. 375, 376 (1991)); also in 1991, the Congress added subsection (i) to 38 U.S.C. § 7281 to give the Court specific authority to accept and utilize voluntary services (Pub. L. No. 102–82, § 7, 105 Stat. 375, 377 (1991)).

The court’s special standalone nature is also reflected in the provisions of section 7281(a) through (g) of title 38, United States Code, which permit it to develop its own personnel and job classification system for its judicial and nonjudicial personnel.

#### *Committee Bill*

Section 605 of the Committee bill, derived from S. 1063 and as requested by the court, would provide a generic authority for it to use court-related management, administrative, and fund-expenditure authorities that are appropriate for its efficient operation. This would preclude the need for gap-filling provisions. For example, there are two recently enacted authorities that the court is lacking, but that seem to be generally available to the rest of the Federal Government, to reduce the risk of personal liability for official actions (5 U.S.C. subchapter IV note found preceding 5 U.S.C. § 5941; 28 U.S.C. § 613; 31 U.S.C. § 3529). Under the proposed new section, the court would have these types of authorities available to it. However, the court would not have available any provision of law that is inconsistent with any provision of chapter 72 of title 38. Moreover, the court would have to exercise the new authority in accordance with all limitations with respect to the underlying authorities themselves, subject, as with all authorities, to the availability of appropriations provided for its operation.

*Cost:* CBO did not estimate a cost to be associated with section 605.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 23, 2001.*

Hon. JOHN D. ROCKEFELLER IV,  
*Chairman, Committee on Veterans' Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1088, the Veterans' Benefits Improvement Act of 2001.

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

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

S. 1088—Veterans' Benefits Improvement Act of 2001 (As ordered reported by the Senate Committee on Veterans' Affairs on August 2, 2001)

## SUMMARY

S. 1088 would affect several veterans' programs, including education, compensation, pensions, burial benefits, and housing. CBO estimates that enacting this legislation would raise direct spending by \$180 million in 2002, \$2.6 billion over the 2002–2006 period, and almost \$5.6 billion over the 2002–2011 period. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

In addition, CBO estimates that implementing S. 1088 would increase spending subject to appropriation by \$1 million in 2002 and \$6 million over the 2002–2006 period, assuming appropriation of the necessary amounts.

S. 1088 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.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1088 is shown in Table 1. This estimate assumes the legislation will be enacted near the start of fiscal year 2002. The costs of this legislation fall within budget functions 550 (health) and 700 (veterans benefits and services).

Table 1.—Estimated Budgetary Impact of S. 1088  
[By Fiscal Year, in Millions Dollars]

	2002	2003	2004	2005	2006
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority .....	180	407	631	656	723
Estimated Outlays .....	180	407	631	656	723
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level .....	1	1	2	1	1
Estimated Outlays .....	1	1	2	1	1

## BASIS OF ESTIMATE

*Direct Spending*

The legislation would affect direct spending in veterans' programs for education, compensation, pensions, burial benefits, and housing. Table 2 summarizes those effects, and individual provisions that would affect direct spending are described below.

**Veterans' Readjustment Benefits.** Several sections of the bill would affect veterans' education and rehabilitation benefits. In total, these provisions would increase direct spending by \$161 million in 2002, by \$2.3 billion over the 2002–2006 period, and by \$6.3 billion over the 2002–2011 period (see Table 3).

**Basic Benefit.** Under current law, participants in the Montgomery GI Bill (MGIB) program who serve at least three years on active duty are entitled to receive \$650 a month if they are full-time students. That stipend is available for a total of 36 months. For part-time students, the monthly benefit is reduced proportionately, but can be spread over a larger number of months up to the equivalent of 36 months of full-time training. Similarly, individuals who serve two years on active duty are entitled to a monthly stipend of \$528 for 36 months. In all cases, the benefits increase by an annual cost-of-living allowance (COLA) and expire 10 years after the end of military service.

Table 2.—Estimated Direct Spending Under S. 1088

[By Fiscal Year, Outlays in Millions of Dollars]

	2001	2002	2003	2004	2005	2006
<b>VETERANS' READJUSTMENT BENEFITS</b>						
Spending Under Current Law .....	1,693	1,880	2,000	2,107	2,238	2,341
Proposed Changes .....	0	161	341	574	594	659
Spending Under S. 1088 .....	1,693	2,041	2,341	2,681	2,832	3,000
<b>COMPENSATION, PENSIONS, AND BURIAL BENEFITS<sup>a</sup></b>						
Spending Under Current Law .....	21,173	24,501	25,562	26,698	29,736	28,357
Proposed Changes .....	0	13	60	51	55	56
Spending Under S. 1088 .....	1,173	4,514	5,622	6,749	9,791	28,413
<b>HOUSING</b>						
Spending Under Current Law .....	–991	262	275	283	288	294
Proposed Changes .....	0	6	6	6	7	8
Spending Under S. 1088 .....	–991	268	281	289	295	302

<sup>a</sup> One provision affecting veterans benefits would also increase spending under the federal Medicaid program, but those costs would not begin to occur until 2009.

Section 101 would increase the monthly stipend of participating veterans who served at least three years on active duty to \$700 in 2002, \$800 in 2003, and \$950 in 2004. Participating veterans with at least two years of active duty would be eligible for a maximum monthly benefit of \$560 in 2002, \$650 in 2003, and \$772 in 2004. The COLAs scheduled for the 2002–2004 period would not occur. Thus, the monthly benefit would increase by 5 percent in 2002, 17 percent in 2003, and 35 percent in 2004.

Table 3.—Estimated Changes in Education Benefits Under S. 1088

[By Fiscal Year, Outlays in Millions of Dollars]

2*1Description of provision	2002	2003	2004	2005	2006
Basic Benefit .....	53	205	472	518	568
Accelerated Payments .....	98	107	61	19	18

Table 3.—Estimated Changes in Education Benefits Under S. 1088—Continued  
[By Fiscal Year, Outlays in Millions of Dollars]

2*1Description of provision	2002	2003	2004	2005	2006
Training for Technological Occupations .....	4	18	27	39	51
Independent Living Services .....	6	10	12	15	19
Enrollment of Vietnam-Era Veterans .....	<sup>a</sup>	1	2	3	3
Total Changes in Education Benefits .....	161	341	574	594	659

<sup>a</sup> Less than \$500,000.

Based on current and past usage rates provided by the Department of Veterans Affairs (VA), CBO estimates that this substantial increase in the MGIB benefit would increase not only the number of veterans who use the program, but also the number of veterans who will choose to attend school on a full-time rather than part-time basis. In 2000, 266,000 veterans received an average annual MGIB benefit of \$3,200. Under current law, CBO predicts that in 2011, 335,000 veterans will receive an average annual benefit that will have grown by annual cost-of-living increases to \$4,615.

Under section 101, CBO estimates that the number of veterans training under MGIB would rise only slightly in the first couple years, but the number of participants would eventually grow to about 360,000 in 2011, an 8 percent increase over the current-law (or baseline) estimate. CBO estimates that, over the next 10 years, the average annual benefit paid by VA would increase by about 3 percent because more veterans would choose to attend school full time, and by 35 percent because of the benefit increase. CBO estimates the average annual benefit in 2011 would be about \$6,400.

MGIB benefits are also available to active-duty members of the armed forces who have completed two years of service. When these servicemembers use MGIB benefits, they receive an amount no greater than the cost of tuition. In many cases, therefore, servicemembers do not receive the full MGIB benefit, and would not be affected by an increase in the benefit levels. Over the last few years, the number of active-duty servicemembers using MGIB has been gradually declining, down to about 14,000 in 2000. Under current law, CBO expects the number to continue to decline to about 11,800 by 2011. CBO estimates that this provision would partially stem the decline, so that by 2011 there would be about 12,000 servicemember trainees, an increase of 2 percent above the baseline estimate. In 2000, these servicemember trainees received an average annual benefit of \$2,200. Under section 101, we estimate the average benefit these trainees would receive would increase to \$3,500 in 2011, almost 35 percent above the current projection.

CBO estimates the total cost of section 101 would be \$53 million in 2002, about \$1.8 billion over the 2002–2006 period, and \$5.3 billion over the 2002–2011 period.

*Accelerated Payments.* Section 102 would permit veterans to receive a lump-sum payment for benefits they would normally receive monthly over a term of their training—for example, a semester in college or, for other forms of training, the period of a course's instruction. CBO estimates that this provision would increase direct spending by about \$100 million in 2002, \$300 million over the 2002–2006 period, and \$365 million over the 2002–2011 period. Increased costs would occur initially as payments from one fiscal year

are made instead in the preceding year. The effect would be much smaller in later years when benefit rates would increase mostly from COLAs, because payments shifted to the preceding year would be largely offset by payments shifted from the following year. CBO estimates that about 30 percent of MGIB beneficiaries would elect to receive an accelerated payment in 2002 and that a total of 60 percent would make that election in 2004 and subsequent years.

*Training for Technological Occupations.* Section 105 would expand education allowed under MGIB to include training required for certification in technological occupations. Section 103 would allow payment of 60 percent of the tuition and fees for such training, when the total cost of the training was more than double the amount that could otherwise be paid under MGIB. The payment would be made in a lump sum and the trainee's remaining months of MGIB entitlement would be reduced accordingly. Based on information from a number of technical training schools about the number of individuals in the general population who undergo training for technological occupations, CBO estimates that about 25,000 veterans a year would eventually participate in such training. Assuming that half of these veterans would have used MGIB benefits even in the absence of this provision, CBO estimates the cost of section 103 would be \$4 million in 2002, about \$140 million over the 2002–2006 period, and \$440 million in the 2002–2011 period.

*Independent Living Services.* Section 501 would repeal the annual limit on the number of veterans in programs of independent living services and assistance. Although the current annual limit on veterans in these programs is 500, VA reports that 1,987 veterans were enrolled in independent living programs last year, at an average cost of \$4,000. VA expects sharp growth in the eligible population, due to the aging of the Vietnam-era veteran population and new rules regarding presumptive disabilities. Absent this provision, CBO assumes that VA will reduce their caseload to come into compliance with the current limitation by 2003. Under section 501, we estimate the caseload for these programs would be about 2,400 in 2002 and would grow to about 8,700 in 2011. CBO estimates the average cost would be about \$4,250 in 2002 and would grow to over \$5,300 in 2011. Based on these projections, CBO expects the cost of section 501 would be \$6 million in 2002, about \$60 million over the 2002–2006 period, and \$230 million over the 2002–2011 period.

*Enrollment of Vietnam-Era Veterans.* Section 104 would grant MGIB eligibility to certain Vietnam-era veterans who were not on active duty during the 1985 conversion to MGIB, but later rejoined the armed forces. Based on information from the Department of Defense, CBO estimates that almost 9,000 servicemembers and veterans would qualify. Because this is an older population and many of these veterans have been out of the service for some time, we assume that only 25 percent would become trainees and that they would, on average, train at one-quarter time over a period of four years. Assuming individuals would initiate training over a period of years, as they leave the military or hear about their new eligibility, CBO estimates the cost will be less than \$500,000 in 2002, \$9 million over the 2002–2006 period, and \$18 million over the 2002–2011 period.



*Compensation, Pensions, and Burial Benefits.* Several sections of the bill would affect spending for veterans' disability compensation, pensions, and burial benefits (see Table 4). In total, the bill would increase spending for these programs by \$13 million in 2002 and \$235 million over the 2002–2006 period. Over the 2002–2011 period, the bill would reduce net direct spending by \$78 million because of the extension of provisions affecting pensions and Medicaid.

*Compensation Related to Undiagnosed Illnesses.* Section 202 would expand the definition of undiagnosed illness for the purpose of granting service-connected disability compensation to more Persian Gulf War veterans. It also would extend until the end of 2011 the time during which a veteran must exhibit and document signs of an undiagnosed illness. Under current law, veterans who served in the Persian Gulf anytime between August 2, 1990, and the present can be presumed to have a compensable disability if they exhibit symptoms that cannot be attributed to any diagnosable illness before December 31, 2001. This section would expand eligibility to those Gulf War veterans who are diagnosed with any chronic multisymptom illness that cannot be clearly defined and is characterized by two or more of certain signs or symptoms, which include joint pain, headaches, sleep disorders, and respiratory problems. For the purpose of this estimate, CBO assumes that diseases for which veterans could receive service-connected disability include chronic fatigue syndrome (CFS), fibromyalgia, irritable bowel syndrome, multiple chemical sensitivity (MCS), and autoimmune disorder since these diseases are regularly identified in articles and reports regarding "Persian Gulf War Syndrome."

CBO obtained data from the VA on the number of Gulf War veterans who have been diagnosed with ill-defined illnesses like CFS and fibromyalgia and have had their claims for compensation denied. VA was unable to provide similar data for MCS or chronic multisymptom illness because it does not have diagnostic codes for these illnesses. CBO used data from a comprehensive study of Gulf War veterans' health to estimate the incidence of MCS within that population. Because chronic multisymptom illness often exhibits similar symptoms as CFS or fibromyalgia, CBO assumed that most veterans with this illness are likely to have already been diagnosed as having these other diseases. From the data provided by VA, CBO could not estimate the prevalence of autoimmune disorders that might be attributed to service in the Gulf War. VA does not have a single diagnostic code for this illness but, instead, classifies over a dozen widely varying diseases as autoimmune disorders.

Table 4.—Estimated Changes in Compensation, Pensions, and Burial Benefits Under S. 1088  
[By Fiscal Year, in Millions of Dollars]

Description of Provision	2002	2003	2004	2005	2006
Compensation Related to Undiagnosed Illnesses .....	0	46	38	41	43
Extension of Provisions Affecting Pensions and Medicaid <sup>a</sup> .....	0	0	0	0	0
Burial Allowance .....	5	5	5	5	5
Incompetent Institutionalized Veterans .....	4	4	4	5	5
Excluded Income for Pension Purposes .....	3	3	3	4	4
Grave Markers .....	3	4	3	2	1
Limited Compensation for Incarcerated Veterans .....	–2	–2	–2	–2	–2
Other Provisions .....	b	b	b	b	b

Table 4.—Estimated Changes in Compensation, Pensions, and Burial Benefits Under S. 1088—  
Continued  
[By Fiscal Year, in Millions of Dollars]

Description of Provision	2002	2003	2004	2005	2006
Total Changes in Compensation, Pensions, and Burial Benefits .....	13	60	51	55	56

<sup>a</sup> The extensions of provisions affecting veterans' pensions and Medicaid would have no budgetary impact until 2009.

<sup>b</sup> Less than \$500,000.

Assuming that some of the diagnoses are overlapping and that some previously denied cases would likely be resubmitted, CBO estimates that enacting this bill would result in about 3,000 additional veterans being granted compensation for a service-connected disability in the first year. CBO estimates that extending this deadline for another 10 years would allow an additional 3,700 claims to be granted over that time. This number is based on recent historical data on the rate of undiagnosed illness claims that have been granted by VA.

Because this section of the bill would take effect on April 1, 2002, and since VA takes an average of six months to adjudicate reopened claims, CBO expects that no payments would be made in 2002. Based on payment data from VA for approved claims for CFS, fibromyalgia, and similar illnesses, CBO estimates the average annual benefit for such illnesses would be about \$8,000 in 2003. As a result, CBO estimates that enacting section 202 would increase direct spending by \$46 million in 2003, \$168 million from 2003 through 2006, and \$400 million over the 2003–2011 period. (Under current law, we estimate that disability compensation payments to veterans will total \$254 billion over the 10-year period.)

*Extension of Provisions Affecting Pensions and Medicaid.* Section 209 would extend through 2011 the sunset dates on provisions affecting pensions and Medicaid. One of these provisions would reduce direct spending for veterans' pensions and increase spending for Medicaid, resulting in a net spending reduction of \$631 million over the 2009–2011 period. The other provision would lower direct spending by \$5 million over the same time period.

*Veterans in Medicaid nursing homes.* Subsection 209(b) would extend from September 30, 2008, to September 30, 2011, the expiration date on a provision of law that sets a \$90 per month limit on pensions for any veteran without a spouse or child, or for any survivor of a veteran, who is receiving Medicaid coverage in a Medicaid-approved nursing home. There are currently about 19,000 veterans and 27,000 survivors who are affected by this provision of law. The average savings is \$14,000 per veteran and \$9,000 per survivor. Based on these numbers, CBO estimates there would be gross savings for VA of \$1.6 billion over the 2009–2011 period. Higher Medicaid payments to nursing homes would offset some of the savings credited to VA. CBO estimates that those costs would total \$969 million over the 2009–2011 period, resulting in a net savings of \$631 million over the same period.

*Income verification.* Current law authorizes VA to acquire information on income reported to the Internal Revenue Service (IRS) to verify income reported by recipients of VA pension benefits. This authorization will expire on September 30, 2008. Subsection 209(a) would extend the expiration date to Sep-

tember 30, 2011. CBO's estimate is based on VA's recent experience, which has shown that about \$9 million in new savings is achieved annually through this income match. However, the provision of law that allows the IRS to provide the information to VA will expire on September 30, 2003. Because the act does not extend both provisions, savings would be limited to the continuing effects of the current program. Thus, CBO projects a \$5 million savings over the 2009–2011 period.

*Burial Allowance.* Section 401 would increase the allowance to help cover burial and funeral expenses for veterans whose deaths are attributed to a service-connected disability. This benefit would increase from the current rate of \$1,500 to \$2,000. Based on information from the VA, CBO estimates that this provision would apply to about 9,700 burials per year and would cost \$5 million in 2002, \$25 million over the 2002–2006 period, and \$49 million over the 2002–2011 period.

*Incompetent Institutionalized Veterans.* Section 208 would eliminate the requirement that VA withhold benefit payments from certain incompetent veterans who are institutionalized at the government's expense and whose estates are valued above \$10,180. These veterans cannot have their benefits reinstated until the value of their estates falls to no more than \$5,090. Data from VA indicates that about 1,900 veterans covered by this provision have estates valued over \$10,180 and would thus begin receiving benefits under this provision. In 1999, the average length of time for which veterans lost their benefit payments was 45 days. Data from VA indicates these veterans have neither a spouse nor a child and receive an average monthly benefit of \$1,604. CBO estimates that the annual added costs for veterans' entitlements would be about \$4 million in 2002, \$22 million over the 2002–2006 period, and \$47 million over the 2002–2011 period.

*Excluded Income for Pension Purposes.* Section 203 would exclude life insurance proceeds and other nonrecurring income from determination of eligibility for a survivors' pension. Under current law, VA considers various forms of income to determine if a surviving spouse of a wartime veteran is eligible to collect a pension, including any life insurance funds. Based on information provided by VA, CBO estimates that an additional 700 survivors would be eligible for a pension in 2002. By 2011, that number would grow to about 2,000 survivors. In addition, survivors who are currently counseled by veterans service organizations to delay applying for a pension to avoid having insurance proceeds considered would be able to collect benefits sooner following the veteran's death. This would result in an additional half a month's benefit. CBO estimates there will be about 14,000 survivors who collect this extra benefit in 2002, with the number growing to about 40,000 in 2011. With an average annual benefit of \$3,600 in 2001, CBO estimates that enacting this provision would cost \$3 million in 2002, \$17 million over the 2002–2006 period, and \$62 million over the 2002–2011 period.

*Grave Markers.* Section 402 would allow VA to provide a bronze marker to be placed on the grave or other appropriate location in a cemetery to commemorate a veteran's military service. Under current law, veterans buried in a private cemetery may only receive a commemorative headstone or marker from VA if the

gravesite is not marked. Veterans buried in national or state veterans' cemeteries automatically receive a commemorative headstone or marker. This bill would allow families of deceased veterans who have already provided their own headstone or marker to request a second marker from VA. For those veterans who died before enactment of this bill but after November 1, 1990, (the date when the law was changed to prohibit a second marker), the families have four years from enactment in which to request the marker. Based on information provided by VA about the number of veterans who have already died, projections about future deaths, and the number of headstones and markers already provided, CBO estimates that about 365,000 requests for bronze markers would be made over the next 10 years. The estimate reflects information from a VA study that showed only 27 percent of private cemeteries allow second markers and an assumption that only half of those eligible will participate in this program. With an average cost of about \$50 for each marker, CBO estimates that enacting this provision would result in an increase in spending for burial benefits of \$3 million in 2002, \$13 million over the 2002–2006 period, and \$20 million over the 2002–2011 period.

*Limited Compensation for Incarcerated Veterans.* Section 207 would reduce compensation payments to veterans who were incarcerated on October 7, 1980, for a felony committed before that date and remain incarcerated for conviction of that felony. Current law allows for reduced payments to veterans who were convicted and incarcerated after October 7, 1980. Incarcerated veterans who have a service-connected disability rating of 20 percent or more are paid at the 10 percent rate. Incarcerated veterans who are rated at 10 percent receive payments of half that amount. VA has identified 230 veterans who were incarcerated prior to enactment of the legislation that provided for these reductions and who meet the criteria stipulated in section 207. Based on information provided by VA on the average annual payment to incarcerated veterans, CBO estimates that this provision would result in an annual savings of about \$2 million.

*Other Provisions.* CBO estimates that the following provisions would have little or no net effect on direct spending: Claims Handling. Section 204 would modify legislation enacted last year that directed VA to assist veterans in establishing their claims for benefits. This section would allow VA to close claims after a year if the veterans has not cooperated in providing needed information.

*Income Reporting for Pensions.* Section 205 would change the requirement that veterans and survivors receiving pensions report changes to their income from once a month to once a year. This provision would simplify the administrative process for VA but would have no real savings effects.

*Eliminate Benefits for Fugitives.* Section 206 would add VA benefits to the list of federal benefits for which fugitive felons are prohibited from receiving. Based on information provided by VA, CBO estimates that any savings that result from this provision would be negligible. Housing. Title III of the bill would affect direct spending on veterans housing programs; in total these provisions would increase direct spending by \$6 million in 2002 and by \$34 million over the 2002–2006 period.

(see Table 5). Over the 2002–2011 period, however, the bill would reduce direct spending by \$698 million.

Table 5.—Estimated Changes in Housing Under S. 1088  
[By Fiscal Year, Outlays in Millions of Dollars]

Description of Provision	2002	2003	2004	2005	2006
Extension of Provisions Affecting Housing <sup>a</sup>	0	0	0	0	0
Increase in Loan Guarantee Amount	6	6	6	7	8
Housing for Members of the Selected Reserves <sup>a</sup>	0	0	0	0	0
Housing for Native American Veterans	<sup>b</sup>	<sup>b</sup>	<sup>b</sup>	<sup>b</sup>	<sup>b</sup>
Total Changes in Housing	6	6	6	7	8

<sup>a</sup> These provisions would have budgetary effects for 2009 through 2011.

<sup>b</sup> Less than \$500,000.

*Extension of Provisions Affecting Housing.* Section 303 would extend through 2011 three provisions that affect housing programs for veterans, thus reducing direct spending by \$778 million over the 2009–2011 period.

*Loan fees.* Subsection 303(c) would reduce the VA loan subsidy by charging veterans a fee surcharge of 0.75 percent of the loan amount at the time the loan is made. CBO estimates this provision would affect 170,000 new loans a year and raise collections by an average of \$182 million a year. Under current law, veterans can reuse their home loan guarantee benefit if their previous debt has been paid in full. Subsection 303(c) would require VA to collect a fee of 3 percent of the total loan amount from veterans who reuse their benefit. CBO estimates this provision would affect roughly 22,800 new loans a year and raise collections by an average of \$59 million a year for 2009 through 2011.

*Resale losses.* Subsection 303(d) would extend a provision of law that requires VA to consider losses it might incur when selling a property acquired through foreclosure. Under current law, VA follows a formula defined in statute to decide whether to acquire the property or pay off the loan guarantee instead. The formula requires appraisals that might be valid at the time they are made, but does not account for changes in market conditions that might occur while VA prepares to dispose of the property. The bill would require VA to take account of losses from changes in housing prices that the appraisal does not capture. Losses of this type might be prevalent when housing prices are particularly volatile or if appraisals are biased for other reasons. Based on information from VA, CBO estimates this provision would save \$10 million a year over the 2009 through 2011 period.

*Loan sales.* Subsection 303(b) would extend VA's authority to guarantee the real estate mortgage conduits that are used to sell certain direct loans on the secondary mortgage market. Without this authority, VA could market direct loans under other provisions of current law, but by guaranteeing the certificates issued on a pool of loans, VA obtains a better price for the loans sold. CBO estimates this provision would save VA \$8 million a year for 2009 through 2011.

*Increase in Loan Guarantee Amount.* Section 301 would increase the maximum loan guarantee amount on VA home loans from \$50,750 to \$63,175, thereby raising the maximum loan amount

from \$203,000 to \$252,700. (For large loan amounts, VA can guarantee no more than 25 percent of the loan amount.) CBO estimates this provision would increase direct spending by \$6 million in 2002, \$33 million over the 2002–2006 period, and \$87 million over the 2002–2011 period.

Based on information from VA, CBO estimates that the bill would result in 8,000 new loans a year over the 2002–2011 period. In addition, roughly 3,000 loans each year would now be made with higher loan amounts—these would not be new borrowers, but veterans who would no longer need a downpayment (or as large a downpayment) to qualify for the VA loan guarantee. By boosting participation in the VA home loan program, the bill would increase direct spending in three different ways. First, added subsidy costs for 11,000 guaranteed loans a year (8,000 new loans and 3,000 loans with larger loan amounts) would average \$6.5 million a year over the 2002–2011 period. Second, some of those 11,000 loans will become delinquent and go to foreclosure. When a guaranteed loan goes into foreclosure, VA often acquires the property and issues a new direct loan (called a vendee loan) when the property is sold. CBO estimates that the subsidy cost of these vendee loans would be less than \$500,000 each year until 2011. Finally, VA sells most vendee loans on the secondary mortgage market and guarantees their timely repayment. Based on information from VA, CBO estimates the subsidy cost of such guarantees would be less than \$500,000 each year until 2005, but would eventually reach \$4 million a year by 2011.

*Housing for Members of the Selected Reserves.* Section 303 would extend home loan benefits for reservists and raise fees charged for this benefit through 2011. Under current law, the benefit expires in 2007, and the fees expire in 2008. CBO estimates that enacting this provision would result in VA guaranteeing an additional 7,000 loans a year over the 2008–2011 period, with an average loan amount of \$140,000. Because loan fees would more than offset the subsidy cost of additional loan guarantees, CBO estimates that the provision would lower net spending by \$2 million annually over the 2008–2011 period.

*Housing for Native American Veterans.* Section 302 would extend the Native American Veteran Housing Loan Pilot Program through December 31, 2005. Under the program, VA makes direct loans to veterans living on trust lands for the purchase, construction, or improvement of a home. In 1993, Public Law 102–389 provided appropriations of \$4.5 million for the subsidy cost of these loans. Since the program’s inception, VA has made about 200 loans at a subsidy cost of \$2 million. CBO estimates that under the bill, VA would subsidize about 30 loans a year at an annual cost of about \$250,000. Because the bill would affect outlays from funds already appropriated and would not depend on future appropriation action, these additional outlays are considered direct spending for scorekeeping purposes. In addition, CBO estimates that VA’s administrative expenses, a discretionary cost, would be roughly \$500,000 each year.

*Spending Subject to Appropriation*

Table 6 shows the estimated effects of S. 1088 on discretionary spending for veterans' programs, assuming that appropriations are provided in the amount of the estimated authorizations.

*Extension of National Academy of Sciences Reports.* Section 201(b) would extend for another 10 years the biennial report on Agent Orange and veterans that is produced by the National Academy of Sciences. This comprehensive literature review and analysis of current laboratory studies categorizes specific diseases as to whether they could be caused by herbicide exposure. VA uses this information to establish an automatic presumption of service connection, thereby making all Vietnam veterans with these diseases eligible for compensation benefits. Based on information about the current costs for producing this report, CBO estimates that implementing this section would cost \$4 million over the 2002–2011 period, assuming appropriation of the necessary amounts.

*Housing for Native American Veterans.* Section 302 would extend the Native American Veteran Housing Loan Pilot Program through December 31, 2005. As discussed above, this provision would increase VA's administrative expenses by roughly \$500,000 each year.

*Court of Appeals for Veterans Claims.* Section 601 would allow two extra judges to be appointed to the Court of Appeals for Veterans Claims to compensate for the upcoming retirements of most of the sitting judges. In 2004 and 2005, five of the seven judges on the Court will retire. To ensure that the Court would have enough judges to fill a three-person panel, this section would authorize the appointment of two judges to the Court before September 30, 2004. CBO assumes that one judge will be nominated in 2002 and another in 2003. Since the last appointment of a judge to the Court took 18 months, CBO assumes that 2004 would be the only year in which an extra judge would be on the Court. CBO estimates this would result in an increase in discretionary spending of \$1 million for 2004, assuming the availability of appropriated funds. This estimate includes salaries and benefits for the judge, a secretary, and three clerks, plus some modifications to the current offices to create additional office space.

Table 6.—Estimated Spending Subject to Appropriation for S. 1088

[By Fiscal Year, in Millions of Dollars]

	2001	2002	2003	2004	2005	2006
Spending Under Current Law						
Estimated Authorization Level <sup>a</sup> .....	1,093	1,143	1,182	1,223	1,264	1,305
Estimated Outlays .....	1,079	1,138	1,178	1,219	1,260	1,301
Proposed Changes						
Estimated Authorization Level .....	0	1	1	2	1	1
Estimated Outlays .....	0	1	1	2	1	1
Spending Under S. 1088						
Estimated Authorization Level <sup>a</sup> .....	1,093	1,144	1,183	1,225	1,265	1,306
Estimated Outlays .....	1,079	1,139	1,179	1,221	1,261	1,302

<sup>a</sup> The 2001 level is the amount appropriated for that year for General Operating Expenses, the Court of Appeals for Veterans Claims, and administrative expenses for the Native American Veteran Housing Loan Pilot Program. Both the current program and the proposed changes for the Native American Veteran Housing Loan Pilot program are more than \$500,000 but less than \$1 million.

The other provisions relating to the Court of Appeals for Veterans Claims would have no net impact on discretionary spending.

## PAY-AS-YOU-GO CONSIDERATIONS

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

Table 7.—Estimated Impact of S. 1088 on Direct Spending and Receipts  
[By Fiscal Year, in Millions of Dollars]

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays .....	0	180	407	631	656	723	783	829	425	470	464
Changes in receipts *											

\* Not applicable.

## INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 1088 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

## PREVIOUS CBO ESTIMATES

On July 20, 2001, CBO prepared a cost estimate for H.R. 2540, the Veterans Benefits Act of 2001, as ordered reported by the House Committee on Veterans' Affairs on July 19, 2001. Section 202 of S. 1088 is similar to section 202 of H.R. 2540, though the Senate version extends for another 10 years the time in which a Gulf War veteran can make a claim for undiagnosed illnesses. As a result, the Senate version has a higher estimated cost over the 2003–2011 period.

On July 5, 2001, CBO prepared a cost estimate for H.R. 1929, the Native American Veterans Home Loan Act of 2001, as introduced in the House on May 21, 2001. Section 302 of S. 1088 is similar to H.R. 1929, and its costs are identical through 2008; other provisions of S. 1088 would lower costs over the 2009–2011 period.

On June 22, 2001, CBO prepared a cost estimate for H.R. 442, a bill to amend title 38, United States Code, to increase the maximum amount of a home loan guarantee available to a veteran, as introduced in the House on February 6, 2001. Section 301 of S. 1088 is similar to H.R. 442, and its costs are identical through 2008; other provisions of S. 1088 would lower costs over the 2009–2011 period.

On June 15, 2001, CBO prepared a cost estimate for H.R. 1291, the 21st Century Montgomery GI Bill Enhancement Act, as introduced in the House on March 29, 2001. Section 101 of S. 1088 is similar to H.R. 1291, but H.R. 1291 would provide a larger increase in the MGIB benefit, and thus has a higher cost over the 2002–2011 period.

Estimate prepared by: Federal Costs: (Readjustment Benefits) Sarah Jennings; (Housing) Sunita D'Monte. Compensation, Pensions, and Other Programs: Michelle Patterson. Impact on State, Local, and Tribal Governments: Elyse Goldman. Impact on the Private Sector: Allison Percy.



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

#### REGULATORY IMPACT STATEMENT

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

#### TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its August 2, 2001, meeting. On that date, the Committee, by unanimous voice vote, ordered S. 1088, with the original purpose to facilitate the use of educational assistance under the Montgomery GI Bill for education leading to employment in high technology industry, and for other purposes, reported favorably to the Senate.

#### AGENCY REPORT

On June 29, 2001, the Honorable Leo S. Mackay, Jr., Ph.D., Deputy Secretary for Veterans Affairs, appeared before the Committee and submitted testimony on, among other things, certain provisions of S. 1088, as amended. His statement is reprinted below:

#### **STATEMENT OF THE HONORABLE LEO S. MACKAY, JR., PHD, DEPUTY SECRETARY OF VETERANS AFFAIRS**

Good Morning, Mr. Chairman and Members of the Committee. I am pleased to appear before you today to provide the Department's views on a number of pieces of legislation currently before the Committee. With me this morning are the Under Secretary for Benefits, Mr. Joseph Thompson, his Assistant Deputy Under Secretary for Program and Management, Mr. Robert Epley, and our Deputy General Counsel, Mr. John Thompson.

In the short time that I have available to me I would like to provide highlights of the Administration's views on these bills and would ask that my entire written statement be submitted for the record.

We commend the Committee for holding this hearing and I thank you and your staffs for the cooperation shown the Department to include a number of provisions that will clarify existing law and help improve the benefits that we provide to our veterans and their dependents.

The Committee has before it, S. 1090, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2001." This bill would authorize a cost-of-living adjustment in VA compensation and dependency and indemnity compensation rates. The Administration strongly supports this legislation and urges its speedy adoption. This proposed increase is necessary and appropriate to protect the

benefits of affected veterans and dependents from the eroding effects of inflation.

The Committee is also considering two pieces of legislation that primarily impact the Court of Appeals for Veterans Claims. VA defers to the Court with regard to S. 1063, which deals with administrative matters affecting the Court. S. 1089 would expand temporarily the Court so as to facilitate staggered terms for judges on that Court. VA defers to the Court with respect to the merits of this change. S. 1089 would also eliminate the requirement that appeals to the Board of Veterans' Appeals must have been initiated before November 18, 1988, in order for there to be judicial review of the Board's decisions. VA is assessing the impact of the provision and will notify the Committee of our views once that assessment is complete.

S. 1091 would modify current law regarding presumption of service-connection for Vietnam veterans. VA is currently studying the scientific merits of removing the 30-year respiratory cancer presumption and we defer taking a position pending the outcome of that review. We support the extension of the National Academy of Sciences for providing biennial reports to the Secretary on herbicide exposure.

S. 1088 would permit accelerated Montgomery GI Bill payments for veterans training in high-tech courses. VA supports the concept of acceleration of benefits for high cost/short-term courses but we do not believe this should be limited to veterans in high-tech courses.

S. 1093, the "Veterans' Benefits Programs Modification Act of 2001," contains a number of provisions that VA is pleased to support. It would restrict compensation payments to prisoners and fugitives. It would make needed clarifying changes to the Veterans Claims Assistance Amendments of 2000. It would remove the current 500-veteran cap on the number of vocational rehabilitation participants in a program of independent living. S. 1093 would also raise the maximum home loan guaranty from \$50,750 to \$63,175. Finally, it would make needed changes to the law regarding VA's need-based pension program.

S. 131 would index monthly Montgomery GI Bill rates to the average monthly cost of tuition and fees for commuter students at 4-year colleges with annual adjustments. Mr. Chairman, VA acknowledges that the monthly benefits need to be increased. We prefer, however, the stepped increases found in H.R. 1291, which recently was passed by the House of Representatives.

S. 228 would make permanent the Native American Home Loan Program. This program is slated to expire at the end of this year. We support an extension of the program through FY 2005.

S. 781 would extend through FY 2015 the authority to guaranty home loans for members of the Selected Reserve. VA supports this bill. Extending the benefit recognizes the role the Reserves play in our National Defense and would provide assurance to those entering reserve service today that this benefit will be there for them when they need it.

S. 912 would increase various burial and plot allowances. However, this bill would increase expenditures for this program by more than three-fold and consequently we cannot support the bill in its proposed form. We can, however, support an increase from

\$1,500 to \$2,000 for the burial allowance for service-connected deaths.

S. 937 would amend the Montgomery GI Bill to permit servicemembers to transfer their entitlement to their dependents, permit a limited form of accelerated benefits, make benefits available for technological occupations, and permit separated reservists to use Montgomery GI Bill benefits. Since the Department of Defense would pay for the transfer of benefits and for reservists, we would defer to DoD on those two issues. As I stated earlier, we support the concept of accelerated benefits and it should not be limited to just the payment for semester.

Mr. Chairman, there are three bills before the Committee today that VA is unable to support.

S. 409 would statutorily extend until December 31, 2011, the presumptive period for undiagnosed illnesses suffered by Gulf War veterans. VA currently has the authority to extend this period administratively and that is the preferred method. This bill would also redefine “undiagnosed illnesses” to include poorly defined illnesses such as fibromyalgia, and chronic fatigue syndrome, among others. VA has adequate authority under existing law to establish presumptions for these conditions should scientific and medical evidence support such action.

S. 457 would establish a presumption of service-connection for hepatitis C for seven different categories of veterans. VA opposes this because the presumption would be overly broad and necessarily result in compensating many veterans whose hepatitis is due to illegal intravenous drug use.

S. 662. would authorize VA to provide headstones or markers for previously marked graves of veterans. VA opposes this proposal. We believe that the purpose of providing a headstone or a marker is to ensure that no veteran’s grave goes unmarked. And we are particularly concerned with the concept of placing a marker at an “area appropriate for the purpose of commemorating” an individual. This bill represents a departure from the longstanding policy of providing headstones and markers for “graves” of veterans.

Mr. Chairman, this completes my opening statement. We will be happy to answer any questions the Committee may have.

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

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### **TITLE 38, UNITED STATES CODE**

\* \* \* \* \*

#### **CHAPTER 11—COMPENSATION FOR SERVICE- CONNECTED DISABILITY OR DEATH**

\* \* \* \* \*

## SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

\* \* \* \* \*

CHAPTER 11—COMPENSATION FOR SERVICE-  
CONNECTED DISABILITY OR DEATH

## SUBCHAPTER I—GENERAL

Sec.

1101. \* \* \*

\* \* \* \* \*

## SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

\* \* \* \* \*

**1116.** Presumptions of service connection for diseases associated with exposure to certain herbicide agents]

*1116. Presumptions of service connection for diseases associated with exposure to certain herbicide agents; presumption of exposure.*

\* \* \* \* \*

**§ 1114. Rates of wartime disability compensation**

For the purposes of section 1110 of this title—

\* \* \* \* \*

(r) Subject to section **[5503(e)] 5503(c)** of this title, if any veteran, otherwise entitled to compensation authorized under subsection (o) of this section, at the maximum rate authorized under subsection (p) of this section, or at the intermediate rate authorized between the rates authorized under subsections (n) and (o) of this section and at the rate authorized under subsection (k) of this section, is in need of regular aid and attendance, then, in addition to such compensation—

\* \* \* \* \*

**[§ 1116. Presumptions of service connection for diseases associated with exposure to certain herbicide agents]**

**§ 1116. Presumptions of service connection for diseases associated with exposure to certain herbicide agents; presumption of exposure**

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

\* \* \* \* \*

**[(4)] (3)** For purposes of this section, the term “herbicide agent” means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975.

\* \* \* \* \*

(e) Subsections (b) through (d) shall cease to be effective **[10 years] 20 years** after the first day of the fiscal year in which the National Academy of Sciences transmits to the Secretary the first report under section 3 of the Agent Orange Act of 1991.

**[(a)(3)] (f)** **[For the purposes of this subsection, a veteran]** *For purposes of establishing service connection for a disability or death resulting from exposure to a herbicide agent, including a presumption of service-connection under this section, a veterans who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, [and has a disease referred to in paragraph (1)(B) of this subsection]* shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

**§ 1117. Compensation for disabilities occurring in Persian Gulf War veterans**

(a) The Secretary may pay compensation under this subchapter to any Persian Gulf veteran suffering from a chronic disability resulting from an undiagnosed illness (or combination of undiagnosed illnesses) *or any poorly defined chronic multisymptom illness of unknown etiology, regardless of diagnosis, characterized by two or more of the signs or symptoms listed in subsection (f) that—*

\* \* \* \* \*

(2) became manifest to a degree of 10 percent or more **[with-** in the presumptive period prescribed under subsection (b)] *before December 31, 2011, or such later date as the Secretary may prescribe by regulation.*

**[(b)]** The Secretary shall prescribe by regulation the period of time following service in the Southwest Asia theater of operations during the Persian Gulf War that the Secretary determines is appropriate for presumption of service connection for purposes of this section. The Secretary's determination of such period of time shall be made following a review of any available credible medical or scientific evidence and the historical treatment afforded disabilities for which manifestation periods have been established and shall take into account other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War.]

**[(c)](b)(1)** Whenever the Secretary determines under section 1118(c) of this title that a presumption of service connection for an undiagnosed illness (or combination of undiagnosed illnesses) previously established under this section is no longer warranted—

\* \* \* \* \*

**[(d)](c)(1)** The Secretary shall prescribe regulations to carry out this section.

\* \* \* \* \*

**[(e)] (d)** A disability for which compensation under this subchapter is payable shall be considered to be service connected for purposes of all other laws of the United States.

**[(f)] (e)** For purposes of this section, the term "Persian Gulf veteran" means a veteran who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

(f) *For purposes of this section, signs or symptoms that may be a manifestation of an undiagnosed illness include the following:*

- (1) *Fatigue.*
- (2) *Unexplained rashes or other dermatological signs or symptoms.*
- (3) *Headache.*
- (4) *Muscle pain.*
- (5) *Joint pain.*
- (6) *Neurologic signs or symptoms.*
- (7) *Neuropsychological signs or symptoms.*
- (8) *Signs or symptoms involving the respiratory system (upper or lower).*
- (9) *Sleep disturbances.*
- (10) *Gastrointestinal signs or symptoms.*
- (11) *Cardiovascular signs or symptoms.*
- (12) *Abnormal weight loss.*
- (13) *Menstrual disorders.*

**§ 1118. Presumptions of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War**

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

\* \* \* \* \*

(4) *For purposes of this section, signs or symptoms that may be a manifestation of an undiagnosed illness include the signs and symptoms listed in section 1117(f) of this title.*

\* \* \* \* \*

**§ 1503. Determinations with respect to annual income**

(a) In determining annual income under this chapter, all payments of any kind or from any source (including salary, retirement or annuity payments, or similar income, which has been waived, irrespective of whether the waiver was made pursuant to statute, contract, or otherwise) shall be included except—

(1) \* \* \*

(9) in the case of a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training, amounts equal to amounts paid by such veteran or surviving spouse for such course of education or vocational rehabilitation or training, including (A) amounts paid for tuition, fees, books, and materials, and (B) in the case of such a veteran or surviving spouse in need of regular aid and attendance, unreimbursed amounts paid for unusual transportation expenses in connection with the pursuit of such course of education or vocational rehabilitation or training, to the extent that such amounts exceed the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation, if reasonably available); [and]

(10) in the case of a child, any current-work income received during the year, to the extent that the total amount of such income does not exceed an amount equal to the sum of—

(A) \* \* \*

(B) if the child is pursuing a course of postsecondary education or vocational rehabilitation or training, the amount paid by such child for such course of education or vocational rehabilitation or training, including the amount paid for tuition, fees, books, and materials[.];

(11) *proceeds (in an amount equal to or less than the amount prescribed by the Secretary for purposes of this paragraph, subject to subsection (c)) of any life insurance policy of a veteran; and*

(12) *(12) any other non-recurring income (in an amount equal to or less than the amount prescribed by the Secretary for purposes of this paragraph, subject to subsection (c)) from any source.*

\* \* \* \* \*

(c) *In prescribing amounts for purposes of paragraph (11) or (12) of subsection (a), the Secretary shall take into consideration the amount of income from insurance proceeds or other non-recurring income, as the case may be, that is reasonable for individuals eligible for pension to consume for their maintenance.*

\* \* \* \* \*

#### **§ 2306. Headstones, markers, and burial receptacles**

\* \* \* \* \*

(c) A headstone or marker furnished under subsection (a) or (b) [of this section] may be of any material, including but not limited to marble, granite, bronze, or slate, requested by the person entitled to request such headstone or marker if the material requested is determined by the Secretary (1) to be cost effective, and (2) in a case in which the headstone or marker is to be placed in a national cemetery, to be aesthetically compatible with the area of the cemetery in which it is to be placed.

\* \* \* \* \*

(f) *In the case of the grave of an individual described in subsection (a) that has been marked by a privately-furnished headstone or marker, the Secretary may furnish, when requested, a bronze marker to commemorate the individual's military service. The bronze marker may be placed at the gravesite or at another location designated by the cemetery concerned as a location for the commemoration of the individual's military service.*

#### **§ 2307. Death from service-connected disability**

In any case in which a veteran dies as the result of a service-connected disability or disabilities, the Secretary, upon the request of the survivors of such veteran, shall pay the burial and funeral expenses incurred in connection with the death of the veteran in an amount not exceeding the greater of (1) [\$1,500] \$2,000, or (2) the amount authorized to be paid under section 8134(a) of title 5 in the case of a Federal employee whose death occurs as the result of an injury sustained in the performance of duty. Funeral and burial benefits provided under this section shall be in lieu of any benefits authorized under sections 2302 and 2303(a)(1) and (b) of this title.

\* \* \* \* \*

## CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

### SUBCHAPTER I—PURPOSES; DEFINITIONS

Sec.

3001. \* \* \*

3014A. *Accelerated payment of basic educational assistance for education leading to employment in high technology industry.*

\* \* \* \* \*

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

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

(1) who—

(A) after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and—

(i) \* \* \*

(ii) who serves in the Armed Forces and is discharged or released from active duty (I) for a service-connected disability, for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; (II) for the convenience of the Government, if, in the case of an individual with an obligated period of service of two years, the individual completes not less than 20 months of continuous active duty under that period of obligated service, or, in the case of an individual with an obligated period of service of at least three years, the individual completes not less than 30 months of continuous active duty under that period of obligated service; or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; [or]

(B) as of December 31, 1989, is eligible for educational assistance benefits under chapter 34 of this title and was on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and—

(i) \* \* \*



(ii) after June 30, 1985, is discharged or released from active duty (I) for a service-connected disability, for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability, as described in subparagraph (A)(ii)(I) of this paragraph; (II) for the convenience of the Government, if the individual completed not less than 30 months of continuous active duty after that date, or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; or

*(C) as of December 31, 1989, is eligible for educational assistance benefits under chapter 34 of this title and—*

*(i) was not on active duty on October 19, 1984;*

*(ii) reenlists or reenters on a period of active duty after the date specified in clause (i); and*

*(iii) after July 1, 1985, either—*

*(I) serves at least three years of continuous active duty in the Armed Forces; or*

*(II) is discharged or released from active duty (aa) for a service-connected disability, for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability, as described in subparagraph (A)(ii)(I) of this paragraph, (bb) for the convenience of the Government, if the individual completed not less than 30 months of continuous active duty after that date, or (cc) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy;*

\* \* \* \* \*

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

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

(1) who—

(A) after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and—

(i) \* \* \*

(ii) subject to subsection (b) of this section and beginning within one year after completion of the service on active duty described in subclause (i) of this clause, serves at least four years of continuous duty in the Selected Reserve during which the individual participates satisfactorily in training as required by the Secretary concerned; **[or]**

(B) as of December 31, 1989, is eligible for educational assistance under chapter 34 of this title and was on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and—

(i) \* \* \*

(ii) after June 30, 1985, subject to subsection (b) of this section and beginning within one year after completion of such two years of service, serves at least four continuous years in the Selected Reserve during which the individual participates satisfactorily in training as prescribed by the Secretary concerned; or

(C) as of December 31, 1989, is eligible for educational assistance under chapter 34 of this title and—

(i) was not on active duty on October 19, 1984;

(ii) reenlists or reenters on a period of active duty after the date specified in clause (i); and

(iii) after July 1, 1985—

(I) serves at least two years of continuous active duty in the Armed Forces, subject to subsection (b) of this section, characterized by the Secretary concerned as honorable service; and

(II) subject to subsection (b) of this section and beginning within one year after completion of such two years of service, serves at least four continuous years in the Selected Reserve during which the individual participates satisfactorily in training as prescribed by the Secretary concerned;

\* \* \* \* \*

#### **§ 3014. Payment of basic educational assistance**

\* \* \* \* \*

(c)(1)(A) Notwithstanding any other provision of this chapter and subject to subparagraph (B), an individual entitled to basic educational assistance under this subchapter may elect to receive an accelerated payment of the basic educational assistance allowance.

(B) The Secretary may not make an accelerated payment under this subsection for a course to an individual who has received an advance payment under section 3014A or 3680(d) of this title for the same enrollment period.

(2)(A) Pursuant to an election under paragraph (1), the Secretary shall make an accelerated payment to an individual for a course in a lump-sum amount equal to the lesser of—

(i) the amount of the educational assistance allowance for the month, or fraction thereof, in which the course begins plus the educational assistance allowance for each of the succeeding four months; or

(ii)(I) in the case of a course offered on a quarter, semester, or term basis, the amount of aggregate monthly educational assistance allowance otherwise payable under this subchapter for the course for the entire quarter, semester, or term; or

(II) in the case of a course that is not offered on a quarter, semester, or term basis, the amount of aggregate monthly educational assistance allowance otherwise payable under this subchapter for the entire course.

(B) In the case of an adjustment under section 3015(h) of this title in the monthly rate of basic educational assistance that occurs during a period for which an accelerated payment is made under this subsection, the Secretary shall pay—

(i) on an accelerated basis the amount of the allowance otherwise payable under this subchapter for the period without regard to the adjustment under that section; and

(ii) on the date of the adjustment any additional amount of the allowance that is payable for the period as a result of the adjustment.

(3) For each accelerated payment made to an individual under this subsection, the individual's entitlement under this subchapter shall be charged at the same rate at which the entitlement would be charged if the individual had received a monthly educational assistance allowance for the period of educational pursuit covered by the accelerated payment.

(4) The Secretary shall prescribe regulations to carry out this subsection. The regulations shall include the requirements, conditions, and methods for the request, issuance, delivery, certification of receipt and use, and recovery of overpayment of an accelerated payment under this subsection.

\* \* \* \* \*

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

(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 industry (as determined pursuant to regulations prescribed by the Secretary); 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 basic educational assistance allowance otherwise payable to the individual under section 3015 of this title.

(c)(1) The amount of the accelerated payment of basic educational assistance made to an individual 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 basic educational assistance to which the individual remains entitled under this chapter at the time of the 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 basic educational assistance allowance is elected by an individual under subsection (a) shall certify to the Secretary the amount of the established charges for the program of education.

(d) An accelerated payment of basic educational assistance made to an individual 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 individual’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 basic educational assistance made to an individual under this section, the individual’s entitlement to basic educational assistance under this chapter shall be charged the number of months (and any fraction thereof) determined by dividing the amount of the accelerated payment by the full-time monthly rate of basic educational assistance allowance otherwise payable to the individual under section 3015 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 basic educational assistance allowance otherwise payable to an individual under section 3015 of this title increases during the enrollment period of a program of education for which an accelerated payment of basic educational assistance is made under this section, the charge to the individual’s entitlement to basic educational assistance under this chapter shall be determined by prorating the entitlement chargeable, in the matter 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 under this section for a program of education to an individual who has received an advance payment under section 3014(c) or 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 under this section.*”.

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

(a) \* \* \*

(1) at the monthly rate of ~~[\$650 (as increased from time to time under subsection (h))]~~ *\$700, for months beginning after September 30, 2001, but before September 30, 2002, \$800 for months beginning after September 30, 2002, but before September 30, 2003, and \$950 for months beginning after September 30, 2003, but before September 30, 2004, and as increased from time to time under subsection (h) after September 30, 2004, for an approved program of education pursued on a full-time basis; or*

\* \* \* \* \*

(b) In the case of an individual entitled to an educational assistance allowance under section 3011 or 3018 of this title whose obligated period of active duty on which such entitlement is based is two years, a basic educational assistance allowance under this chapter shall (except as provided in the succeeding subsections of this section) be paid—

(1) at the monthly rate of ~~[\$528 (as increased from time to time under subsection (h))]~~ *\$569, for months beginning after September 30, 2001, but before September 30, 2002, \$650 for months beginning after September 30, 2002, but before September 30, 2003, and \$772 for months beginning after September 30, 2003, but before September 30, 2004, and as increased from time to time under subsection (h) after September 30, 2004, for an approved program of education pursued on a full-time basis; or*

\* \* \* \* \*

**§ 3031. Time limitation for use of eligibility and entitlement**

(a) Except as provided in subsections (b) through (g), and subject to subsection (h), of this section, the period during which an individual entitled to educational assistance under this chapter may use such individual's entitlement expires at the end of the 10-year period beginning on the date of such individual's last discharge or release from active duty, except that such 10-year period shall begin—

(1) in the case of an individual who becomes entitled to such assistance under clause (A) or (B) of section 3012(a)(1) of this title, on the later of the date of such individual's last discharge or release from active duty or the date on which the four-year requirement described in clause (A)(ii) or (B)(ii), respectively, of such section 3012(a)(1) is met; ~~and~~

(2) in the case of an individual who becomes entitled to such assistance under section 3011(a)(1)(B), on the later of the date of such individual's last discharge or release from active duty or January 1, 1990~~and~~

(3) *in the case of an individual who becomes entitled to such assistance under section 3011(a)(1)(C) or 3012(a)(1)(C) of this title, on the date of the enactment of this paragraph.*

\* \* \* \* \*

(e)(1) Except as provided in paragraph (2) of this subsection, in the case of an individual described in ~~section 3011(a)(1)(B) or 3012(a)(1)(B)~~ *section 3011(a)(1)(B), 3011(a)(1)(C), 3012(a)(1)(B), or 3012(a)(1)(C)* of this title who is entitled to basic educational assistance under this chapter, the 10-year period prescribed in subsection (a) of this section shall be reduced by an amount of time equal to the amount of time that such individual was not serving on active duty during the period beginning on January 1, 1977, and ending on June 30, 1985.

\* \* \* \* \*

#### **§ 3120. Program of independent living services and assistance**

\* \* \* \* \*

(e) ~~Programs of independent living services and assistance shall be initiated for no more than five hundred veterans in each fiscal year, and the first priority in the provision of such programs~~ *First priority in the provision of programs of independent living services and assistance under this section shall be afforded to veterans for whom the reasonable feasibility of achieving a vocational goal is precluded solely as a result of a service-connected disability.*

\* \* \* \* \*

#### **§ 3452. Definitions**

For the purposes of this chapter and chapter 36 of this title—

\* \* \* \* \*

(c) The term “educational institution” means any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers’ college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults. For the period ending on September 30, 1996, such term includes any entity that provides training required for completion of any State-approved alternative teacher certification program (as determined by the Secretary). *Such term also includes any private entity (that meets such requirements as the Secretary may establish) that offers, either directly or under an agreement with another entity (that meets such requirements), a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation (as determined by the Secretary).*

\* \* \* \* \*

#### **§ 3501. Definitions**

(a) For the purposes of this chapter and chapter 36 of this title—

\* \* \* \* \*

(6) The term “educational institution” means any public or private secondary school, vocational school, correspondence school, business school, junior college, teachers’ college, college, normal school, professional school, university, or scientific or technical institution, or any other institution if it furnishes education at the secondary school level or above. *Such term also includes any private entity (that meets such requirements as the Secretary may establish) that offers, either directly or under an agreement with another entity (that meets such requirements), a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation (as determined by the Secretary).*

\* \* \* \* \*

#### **§ 3680. Payment of educational assistance or subsistence allowances**

\* \* \* \* \*

##### **Determination of Enrollment, Pursuit, and Attendance**

[(g) The Secretary may, pursuant to regulations which the Secretary shall prescribe, determine and define enrollment in, pursuit of, and attendance at, any program of education or training or course by an eligible veteran or eligible person for any period for which the veteran or person receives an educational assistance or subsistence allowance under this chapter for pursuing such program or course. Subject to such reports and proof as the Secretary may require to show an eligible veteran’s or eligible person’s enrollment in and satisfactory pursuit of such person’s program, the Secretary may withhold payment of benefits to such eligible veteran or eligible person until the required proof is received and the amount of the payment is approximately adjusted. The Secretary may accept such veteran’s or person’s monthly certification of enrollment in and satisfactory pursuit of such veteran’s or person’s program as sufficient proof of the certified matters.]

*(g)(1) The Secretary may, pursuant to regulations which the Secretary shall prescribe, determine and define with respect to an eligible veteran and eligible person the following:*

*(A) Enrollment in a course or a program of education or training.*

*(B) Pursuit of a course or program of education or training.*

*(C) Attendance at a course or program of education and training.*

*(2) The Secretary may withhold payment of benefits to an eligible veteran or eligible person until the Secretary receives such proof as the Secretary may require of enrollment in and satisfactory pursuit of a program of education by the eligible veteran or eligible person. The Secretary shall adjust the payment withheld, when necessary, on the basis of the proof the Secretary receives.*

*(3) In the case of an individual other than an individual described in paragraph (4), the Secretary may accept the individual’s monthly certification of enrollment in and satisfactory pursuit of a program of education as sufficient proof of the certified matters.*

(4) *In the case of an individual who has received an accelerated payment of basic educational assistance under section 3014A of this title during an enrollment period for a program of education, the Secretary may accept the individual's certification of enrollment in and satisfactory pursuit of the program of education as sufficient proof of the certified matters if the certification is submitted after the enrollment period has ended.*

\* \* \* \* \*

### **§ 3702. Basic entitlement**

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

\* \* \* \* \*

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

(E) For the period beginning on October 28, 1992, and ending on **September 30, 2007** *September 30, 2011*, each veteran described in section 3701(b)(5) of this title.

\* \* \* \* \*

### **§ 3703. Basic provisions relating to loan guaranty and insurance**

(a)(1)(A) Any loan to a veteran eligible for benefits under this chapter, if made for any of the purposes specified in section 3710 of this title and in compliance with the provisions of this chapter, is automatically guaranteed by the United States in an amount not to exceed the lesser of—

(i)(I) in the case of any loan of not more than \$45,000, 50 percent of the loan;

\* \* \* \* \*

(IV) in the case of any loan of more than \$144,000 for a purpose specified in clause (1), (2), (3), (6), or (8) of section 3710(a) of this title, the lesser of **[\$50,750]** *\$63,175* or 25 percent of the loan; or

\* \* \* \* \*

(B) The maximum amount of guaranty entitlement available to a veteran for purposes specified in section 3710 of this title shall be \$36,000, or in the case of a loan described in subparagraph (A)(i)(IV) of this paragraph, **[\$50,750]** *\$63,175*, reduced by the amount of entitlement previously used by the veteran under this chapter and not restored as a result of the exclusion in section 3702(b) of this title.

\* \* \* \* \*

### **§ 3720. Powers of Secretary**

\* \* \* \* \*

(h)(1) \* \* \*

(2) The Secretary may not under this subsection guarantee the payment of principal and interest on certificates or other securities issued or approved after **December 31, 2008** *December 31, 2011*.

\* \* \* \* \*



### § 3729. Loan fee

\* \* \* \* \*

(b) DETERMINATION OF FEE.—(1) \* \* \*

(2) \* \* \*

LOAN FEE TABLE

Type of loan	Active duty veteran	Reservist	Other obligor
(A)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed before <b>October 1, 2008</b> <i>October 1, 2011</i> ) .....	2.00	2.75	NA
(A)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after <b>October 1, 2008</b> <i>October 1, 2011</i> ) .....	1.25	2.00	NA
(B)(i) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed before <b>October 1, 2008</b> <i>October 1, 2011</i> ) .....	3.00	3.00	NA
(B)(ii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after <b>October 1, 2008</b> <i>October 1, 2011</i> ) .....	1.25	2.00	NA
(C)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed before <b>October 1, 2008</b> <i>October 1, 2011</i> ) .....	1.50	2.25	NA
(C)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after <b>October 1, 2008</b> <i>October 1, 2011</i> ) .....	0.75	1.50	NA
(D)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed before <b>October 1, 2008</b> <i>October 1, 2011</i> ) .....	1.25	2.00	NA
(D)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after <b>October 1, 2008</b> <i>October 1, 2011</i> ) .....	0.50	1.25	NA

\* \* \* \* \*

### § 3732. Procedure on default

\* \* \* \* \*

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

\* \* \* \* \*

(11) This subsection shall apply to loans closed before **October 1, 2008** *October 1, 2011*.

\* \* \* \* \*

### § 3761. Pilot program

\* \* \* \* \*

(c) No loans may be made under this subchapter after [December 31, 2001] *December 31, 2005*.

\* \* \* \* \*

**§ 3762. Direct housing loans to Native American veterans**

\* \* \* \* \*

(j) Not later than February 1 of each year through [2002] *2006*, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report relating to the implementation of the pilot program under this subchapter during the fiscal year preceding the date of the report. Each such report shall include the following:

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

[(a) REQUIRED INFORMATION AND EVIDENCE.—] Upon receipt of a complete or substantially complete application, the Secretary shall notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.

[(b) TIME LIMITATION.—(1) In the case of information or evidence that the claimant is notified under subsection (a) is to be provided by the claimant, if such information or evidence is not received by the Secretary within 1 year from the date of such notification, no benefit may be paid or furnished by reason of the claimant's application.

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

\* \* \* \* \*

**CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS**

**SUBCHAPTER I—CLAIMS**

Sec.

5100. Definition of “claimant”.

#### SUBCHAPTER II—EFFECTIVE DATES

\* \* \* \* \*

5313B. *Prohibition on providing certain benefits with respect to veterans who are fugitive felons.*

\* \* \* \* \*

#### § 5112. Effective dates of reductions and discontinuances

\* \* \* \* \*

(b) The effective date of a reduction or discontinuance of compensation, dependency and indemnity compensation, or pension—

\* \* \* \* \*

(4) by reason of—

[(A) change in income shall (except as provided in section 5312 of this title) be the last day of the month in which the change occurred; and]

(A) *change in recurring income will be the last day of the calendar year in which the change occurred (with the pension rate for the following calendar year based on all anticipated countable income);*

\* \* \* \* \*

[(c) *The effective date of a discontinuance under section 5503(b)(1)(A) of this title of pension, compensation, or emergency of-ficers’ retirement pay by reason of hospital treatment or institutional or domiciliary care shall be the last day of the first month of such treatment or care during which the value of the veteran’s estate, as determined under such section, equals or exceeds \$1,500.*]

\* \* \* \* \*

#### § 5313B. *Prohibition on providing certain benefits with respect to veterans who are fugitive felons*

(a) *A veteran described in subsection (b), or dependent of the veteran, who is otherwise eligible for a benefit described in subsection (c) may not be paid or otherwise provided such benefit during any period in which the veteran is a fugitive as described in subsection (b).*

(b)(1) *A veteran described in this subsection is a veteran who is a fugitive by reason of—*

(A) *fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the veteran flees; or*

(B) *violating a condition of probation or parole imposed under Federal or State law.*

(2) *For purposes of this subsection, the term “felony” includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.*

(c) *A benefit described in this subsection is any benefit under the following:*

(1) *Chapter 11 of this title.*

(2) *Chapter 13 of this title.*

- (3) Chapter 15 of this title.
- (4) Chapter 17 of this title.
- (5) Chapter 19 of this title.
- (6) Chapters 30, 31, 32, 34, and 35 of this title.
- (7) Chapter 37 of this title.

(d)(1) *The Secretary shall furnish to any Federal, State, or local law enforcement official, upon the written request of such official, the most current address maintained by the Secretary of a veteran who is eligible for a benefit described in subsection (c) if such official—*

*(A) provides the Secretary such information as the Secretary may require to fully identify the veteran;*

*(B) identifies the veteran as being a fugitive described in subsection (b); and*

*(C) certifies to the Secretary that the location and apprehension of the veteran is within the official duties of such official.*

(2) *The Secretary shall enter into memoranda of understanding with Federal law enforcement agencies, and may enter into agreements with State and local law enforcement agencies, for purposes of furnishing information to such agencies under paragraph (1).*

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

#### **§ 5503. Hospitalized veterans and estates of incompetent institutionalized veterans**

\* \* \* \* \*

[(b)(1)(A) In any case in which a veteran having neither spouse nor child is being furnished hospital treatment or institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, is rated by the Secretary in accordance with regulations as being incompetent, and the veteran's estate (excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home), from any source equals or exceeds the amount equal to five times the section 1114(j) rate, further payments of pension, compensation, or emergency officers' retirement pay shall not be made until the estate is reduced to one-half that amount.

[(B) The amount which would be payable but for this paragraph shall be paid to the veteran in a lump sum; however, no payment of a lump sum herein authorized shall be made to the veteran until after the expiration of six months following a finding of competency and in the event of the veteran's death before payment of such lump sum no part thereof shall be payable.

[(C) The Secretary may waive the discontinuance under this paragraph of payments to a veteran with respect to not more than 60 days of care of the veteran during any calendar year if the Sec-

retary determines that the waiver is necessary in order to avoid a hardship for the veteran. Any such waiver shall be made pursuant to regulations which the Secretary shall prescribe.

[(D)] For purposes of this paragraph, the term "section 1114(j) rate" means the monthly rate of compensation in effect under section 1114(j) of this title for a veteran with a service-connected disability rated as total.

[(2)] Where any benefit is discontinued by reason of paragraph (1) of this subsection the Secretary may nevertheless apportion and pay to the dependent parents of the veteran on the basis of need all or any part of the benefit which would otherwise be payable to or for such incompetent veteran. Paragraph (1) of this subsection shall not prevent the payment, out of any remaining amounts discontinued under that paragraph, on account of any veteran of so much of the veteran's pension, compensation, or retirement pay as equals the amount charged to the veteran for the veteran's current care and maintenance in the institution in which treatment or care is furnished the veteran, but not more than the amount determined by the Secretary to be the proper charge as fixed by any applicable statute or valid administrative regulation.

[(3)] All or any part of the pension, compensation, or retirement pay payable on account of any incompetent veteran who is being furnished hospital treatment, institutional or domiciliary care may, in the discretion of the Secretary, be paid to the chief officer of the institution wherein the veteran is being furnished such treatment or care, to be properly accounted for by such chief officer and to be used for the benefit of the veteran.

[(c)] Any veteran subject to the provisions of subsection (b) shall be deemed to be single and without dependents in the absence of satisfactory evidence to the contrary. In no event shall increased compensation, pension, or retirement pay of such veteran be granted for any period more than one year before receipt of satisfactory evidence showing such veteran has a spouse, child, or dependent parent.]

[(d)] (b) Notwithstanding any other provision of this section or any other provision of law, no reduction shall be made in the pension of any veteran for any part of the period during which the veteran is furnished hospital treatment, or institutional or domiciliary care, for Hansen's disease, by the United States or any political subdivision thereof.

[(e)] (c) Where any veteran in receipt of an aid and attendance allowance described in section 1114(r) of this title is hospitalized at Government expense, such allowance shall be discontinued from the first day of the second calendar month which begins after the date of the veteran's admission for such hospitalization for so long as such hospitalization continues. Any discontinuance required by administrative regulation, during hospitalization of a veteran by the Department, of increased pension based on need of regular aid and attendance or additional compensation based on need of regular aid and attendance as described in subsection (l) or (m) of section 1114 of this title, shall not be effective earlier than the first day of the second calendar month which begins after the date of the veterans' admission for hospitalization. In case a veteran affected by this subsection leaves a hospital against medical advice and is thereafter admitted to hospitalization within six months

from the date of such departure, such allowance, increased pension, or additional compensation, as the case may be, shall be discontinued from the date of such readmission for so long as such hospitalization continues.

[(f)](d)(1) For the purposes of this subsection—

\* \* \* \* \*

(7) This subsection expires on [September 30, 2008] *September 30, 2011*.

\* \* \* \* \*

## CHAPTER 72—UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

### SUBCHAPTER I—ORGANIZATION AND JURISDICTION

Sec.

7251. \* \* \*

\* \* \* \* \*

### SUBCHAPTER III—MISCELLANEOUS PROVISIONS

\* \* \* \* \*

[7285. Practice fee.]

7285. *Registration fees.*

\* \* \* \* \*

7287. *Administration.*

### § 7253. Composition

\* \* \* \* \*

(b) *APPOINTMENT*.—The judges of the Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. A person may not be appointed to the Court who is not a member in good standing of the bar of a Federal court or of the highest court of a State. Not more than the number equal to the next whole number greater than one-half of the number of judges of the Court may be members of the same political party.

(c) *TERM OF OFFICE*.—The term of office of the judges of the Court of Appeals for Veterans Claims shall be 15 years. A judge who is nominated by the President for appointment to an additional term on the Court without a break in service and whose term of office expires while that nomination is pending before the Senate may continue in office for up to 1 year while that nomination is pending.

\* \* \* \* \*

[(f)(1)] (f) *REMOVAL*.—(1) A judge of the Court may be removed from office by the President on grounds of misconduct, neglect of duty, or engaging in the practice of law. A judge of the Court may not be removed from office by the President on any other ground.

\* \* \* \* \*

(g)(1) *RULES*.—The Court shall prescribe rules, consistent with the provisions of section 372(c) of title 28, establishing procedures

for the filing of complaints with respect to the conduct of any judge of the Court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, the Court shall have the powers granted to a judicial council under such section.

\* \* \* \* \*

*(h) TEMPORARY EXPANSION OF COURT.—(1) Notwithstanding subsection (a) and subject to the provisions of this subsection, the authorized number of judges of the Court from the date of the enactment of this subsection until August 15, 2005, is nine judges.*

*(2) Of the two additional judges authorized by this subsection—*

*(A) only one judge may be appointed pursuant to a nomination made in 2001 or 2002;*

*(B) only one judge may be appointed pursuant to a nomination made in 2003; and*

*(C) if no judge is appointed pursuant to a nomination covered by subparagraph (A), a nomination covered by subparagraph (B), or neither a nomination covered by subparagraph (A) nor a nomination covered by subparagraph (B), the number of judges authorized by this subsection but not appointed as described in subparagraph (A), (B), or both, as the case may be, may be appointed pursuant to a nomination or nominations made in 2004, but only if such nomination or nominations, as the case may be, are made before September 30, 2004.*

*(3) The term of office and eligibility for retirement of a judge appointed under this subsection, other than a judge described in paragraph (4), shall be governed by the provisions of section 1012 of the Court of Appeals for Veterans Claims Amendments of 1999 (title X of Public Law 106–117; 113 Stat. 1590; 38 U.S.C. 7296 note) if the judge is one of the first two judges appointed to the Court after November 30, 1999.*

*(4) A judge of the Court as of the date of the enactment of this subsection who was appointed before 1991 may accept appointment as a judge of the Court under this subsection notwithstanding that the term of office of the judge on the Court has not yet expired under this section.*

\* \* \* \* \*

## **【§ 7285. Practice fee】**

### **§ 7285. Registration fees**

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

*(a) The Court of Appeals for Veterans Claims may impose registration fees as follows:*

*(1) Periodic registration fees on persons admitted to practice before the Court, in such frequency and amount (not to exceed \$30 per year) as the Court may provide.*

*(2) Registration fees on persons (other than judges of the Court) participating at judicial conferences convened pursuant*

*to section 7286 of this title, and at other Court-sponsored activities.*

(b) Amounts received by the Court under subsection (a) of this section shall be available to the Court for the purposes of (1) **employing independent counsel** *conducting investigations and proceedings, including the employment of independent counsel, to pursue disciplinary matters, and (2) defraying* **administrative costs for the implementation of the standards of proficiency prescribed for practice before the Court** *the expenses of judicial conferences convened pursuant to section 7286 of this title, and of other Court-sponsored activities covered by paragraph (2) of that subsection, and the expenses of other activities and programs of the Court intended to support and foster communications and relationships between the Court and persons practicing before the Court, or the study, understanding, public commemoration, or improvement of veterans law or of the work of the Court.*

\* \* \* \* \*

#### **§ 7287. Administration**

*Notwithstanding any other provision of law, the Court of Appeals for Veterans Claims may exercise, for purposes of management, administration, and expenditure of funds of the Court, the authorities provided for such purposes by any provision of law (including any limitation with respect to such provision of law) applicable to a court of the United States (as that term is defined in section 451 of title 28), except to the extent that such provision of law is inconsistent with a provision of this chapter.*

\* \* \* \* \*

#### **§ 7296. Retirement of judges**

\* \* \* \* \*

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

\* \* \* \* \*

(2) *A judge who is not reappointed following the expiration of the term for which appointed may retire upon the completion of that term if the judge has served as a judge of the Court for 15 years or more. [In order to retire under this paragraph, a judge must, not earlier than 9 months preceding the date of the expiration of the judge's term of office and not later than 6 months preceding such date, advise the President in writing that the judge is willing to accept reappointment to the Court.]*

\* \* \* \* \*

## **AGENT ORANGE ACT OF 1991**

\* \* \* \* \*

### **SEC. 3. AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES.**

\* \* \* \* \*

(i) **SUNSET.**—This section shall cease to be effective **[10 years]** 20 years after the last day of the fiscal year in which the National



Academy of Sciences transmits to the Secretary the first report under subsection (g).

\* \* \* \* \*

## **VETERANS' JUDICIAL REVIEW ACT**

\* \* \* \* \*

**[Sections 402 and 403 are repealed.]**

\* \* \* \* \*

