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111TH CONGRESS
1st Session

HOUSE COMMITTEE PRINT NO. 3

TITLE 38—UNITED STATES CODE
VETERANS' BENEFITS

AS AMENDED THROUGH P.L. 111-5, Enacted February 17, 2009

AND THE

SERVICEMEMBERS CIVIL RELIEF ACT

AS AMENDED THROUGH P.L. 110-389, Enacted October 10, 2008

MAY 1, 2009.—Printed for the use of the Committee on Veterans' Affairs of the House of Representatives

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TITLE 38, UNITED STATES CODE — VETERANS' BENEFITS

[As Amended Through P.L. 111-5, Enacted February 17, 2009]

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For changes after the closing date of this document (February 17, 2009) to any section of title 38, United States Code, see the United States Code Classification Tables published by the Office of the Law Revision Counsel of the House of Representatives at **http://uscode.house.gov/classification/tables.shtml**

TITLE 38—VETERANS' BENEFITS

[This table of parts and chapters and the following table of sections are not part of the statutory text of title 38 and are included for the convenience of the reader.]

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[As Amended Through P.L. 111–5, Enacted February 17, 2009]

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§ 101. Definitions

For the purposes of this title—

(1) The terms "Secretary" and "Department" mean the Secretary of Veterans Affairs and the Department of Veterans Affairs, respectively.

(2) The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(3) The term "surviving spouse" means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran's death, and who lived with the veteran continuously from the date of marriage to the date of the veteran's death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.

(4)(A) The term "child" means (except for purposes of chapter 19 of this title (other than with respect to a child who is an insurable dependent under subparagraph (B) or (C) of section 1965(10) of such chapter)and section 8502(b) of this title) a person who is unmarried and—

(i) who is under the age of eighteen years;

(ii) who, before attaining the age of eighteen years, became permanently incapable of self-support; or

(iii) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution;

and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Secretary to be the father of such child. A person shall be deemed, as of the date of death of a veteran, to be the legally adopted child of such veteran if such person was at the time of the veteran's death living in the veteran's household and was legally adopted by the veteran's surviving spouse before August 26, 1961, or within two years after the veteran's death; however, this sentence shall not apply if at the time of the veteran's death, such person was receiving regular contributions toward the person's support from some individual other than the veteran or the veteran's spouse, or from any public or private welfare organization which furnishes services or assistance for children. A person with respect to whom an interlocutory decree of adoption has been issued by an appropriate adoption authority shall be recognized thereafter as a legally adopted child, unless and until that decree is rescinded, if the child remains in the custody of the adopting parent or parents during the interlocutory period. A person who has been placed for adoption under an agreement entered into by the adopting parent or parents with any agency authorized under law to so act shall be recognized thereafter as a legally adopted child, unless and until such agreement is terminated, if the child remains in the custody of the adopting parent or parents during the period of placement for adoption under such agreement. A person described in clause (ii) of the first sentence of this subparagraph who was a member of a veteran's household at the time the person became 18 years of age and who is adopted by the veteran shall be recognized as a legally adopted child of the veteran regardless of the age of such person at the time of adoption.

(B) For the purposes of subparagraph (A) of this paragraph, in the case of an adoption under the laws of any jurisdiction other than a State (as defined in section 101(20) of this title and including the Commonwealth of the Northern Mariana Islands)—

(i) a person residing outside any of the States shall not be considered to be a legally adopted child of a veteran during the lifetime of such veteran (including for purposes of this subparagraph a Commonwealth Army veteran or new Philippine Scout, as defined in section 3566 of this title) unless such person—

(I) was less than eighteen years of age at the time of adoption;

(II) is receiving one-half or more of such person's annual support from such veteran;

(III) is not in the custody of such person's natural parent, unless such natural parent is such veteran's spouse; and

(IV) is residing with such veteran (or in the case of divorce following adoption, with the divorced spouse who is also an adoptive or natural parent) except for periods during which such person is residing apart from such veteran (or such divorced spouse) for purposes of full-time attendance at an educational institution or during which such person or such veteran (or such divorced spouse) is confined in a hospital, nursing home, other health-care facility, or other institution; and

(ii) a person shall not be considered to have been a legally adopted child of a veteran as of the date of such veteran's death and thereafter unless—

(I) at any time within the one-year period immediately preceding such veteran's death, such veteran was entitled to and was receiving a dependent's allowance or similar monetary benefit under this title for such person; or

(II) for a period of at least one year prior to such veteran's death, such person met the requirements of clause (i) of this subparagraph.

(5) The term "parent" means (except for purposes of chapter 19 of this title) a father, a mother, a father through adoption, a mother through adoption, or an individual who for a period of not less than one year stood in the relationship of a parent to a veteran at any time before the veteran's entry into active military, naval, or air service or if two persons stood in the relationship of a father or a mother for one year or more, the person who last stood in the relationship of father or mother before the veteran's last entry into active military, naval, or air service.

(6) The term "Spanish-American War" (A) means the period beginning on April 21, 1898, and ending on July 4, 1902, (B) includes the Philippine Insurrection and the Boxer Rebellion, and (C) in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on April 21, 1898, and ending on July 15, 1903.

(7) The term "World War I" (A) means the period beginning on April 6, 1917, and ending on November 11, 1918, and (B) in the case of a veteran who served with the United States military forces in Russia, means the period beginning on April 6, 1917, and ending on April 1, 1920.

(8) The term "World War II" means (except for purposes of chapters 31 and 37 of this title) the period beginning on December 7, 1941, and ending on December 31, 1946.

(9) The term "Korean conflict" means the period beginning on June 27, 1950, and ending on January 31, 1955.

(10) The term "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof.

(11) The term "period of war" means the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

(12) The term "veteran of any war" means any veteran who served in the active military, naval, or air service during a period of war.

(13) The term "compensation" means a monthly payment made by the Secretary to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957.

(14) The term "dependency and indemnity compensation" means a monthly payment made by the Secretary to a surviving spouse, child, or parent (A) because of a service-connected death occurring after December 31, 1956, or (B) pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.

(15) The term "pension" means a monthly or other periodic payment made by the Secretary to a veteran because of service, age, or non-service-connected disability, or to a surviving spouse or child of a veteran because of the non-service-connected death of the veteran.

(16) The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(17) The term "non-service-connected" means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(18) The term "discharge or release" includes (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

(19) The term "State home" means a home established by a State (other than a possession) for veterans disabled by age, disease, or otherwise who by reason of such disability are incapable of earning a living. Such term also includes such a home which furnishes nursing home care for veterans.

(20) The term "State" means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. For the purpose of section 2303 and chapters 34 and 35 of this title, such term also includes the Canal Zone.

(21) The term "active duty" means—

(A) full-time duty in the Armed Forces, other than active duty for training;

(B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full

military benefits" or (iii) at any time, for the purposes of chapter 13 of this title;

(C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (I) while on transfer to one of the Armed Forces, or (II) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (III) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title;

(D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and

(E) authorized travel to or from such duty or service.

(22) The term "active duty for training" means—

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits", or (iii) at any time, for the purposes of chapter 13 of this title;

(C) in the case of members of the Army National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law;

(D) duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 for a period of not less than four weeks and which must be completed by the member before the member is commissioned; and

(E) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term "inactive duty training" means—

(A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206 of title 37 or any other provision of law;

(B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(C) training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10.

In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, or (iii) duty performed as a temporary member of the Coast Guard Reserve.

(24) The term "active military, naval, or air service" includes—

(A) active duty;

(B) any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty; and

(C) any period of inactive duty training during which the individual concerned was disabled or died—

(i) from an injury incurred or aggravated in line of duty; or

(ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.

(25) The term "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force;

(D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard;

(E) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(F) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey.

(26) The term "Reserve" means a member of a reserve component of one of the Armed Forces.

(27) The term "reserve component" means, with respect to the Armed Forces—

(A) the Army Reserve;

(B) the Navy Reserve;

(C) the Marine Corps Reserve;

(D) the Air Force Reserve;

(E) the Coast Guard Reserve;

(F) the Army National Guard of the United States; and

(G) the Air National Guard of the United States.

(28) The term "nursing home care" means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require nursing care and related medical services, if such nursing care and medical services are prescribed by, or are performed under the general direction of, persons duly licensed to provide such care. Such term includes services furnished in skilled nursing care facilities, in intermediate care facilities, and in combined facilities. It does not include domiciliary care.

(29) The term "Vietnam era" means the following:

(A) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.

(B) The period beginning on August 5, 1964, and ending on May 7, 1975, in all other cases.

(30) The term "Mexican border period" means the period beginning on May 9, 1916, and ending on April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

(31) The term "spouse" means a person of the opposite sex who is a wife or husband.

(32) The term "former prisoner of war" means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in line of duty—

(A) by an enemy government or its agents, or a hostile force, during a period of war; or

(B) by a foreign government or its agents, or a hostile force, under circumstances which the Secretary finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(33) The term "Persian Gulf War" means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1106; Pub. L. 86–195, Aug. 25, 1959, 73 Stat. 424; Pub. L. 87–674, Sec. 1, Sept. 19, 1962, 76 Stat. 558; Pub. L. 87–815, Sec. 3, Oct. 15, 1962, 76 Stat. 927; Pub. L. 88–450, Sec. 4(c), (d), Aug. 19, 1964, 78 Stat. 504; Pub. L. 89–311, Sec. 2(c)(1), Oct. 31, 1965, 79 Stat. 1155; Pub. L. 89–358, Sec. 4(d), Mar. 3, 1966, 80 Stat. 24; Pub. L. 90–77, title II, Sec. 201, Aug. 31, 1967, 81 Stat. 181; Pub. L. 91–24, Sec. 1(a), (b), 16, June 11, 1969, 83 Stat. 33, 35; Pub. L. 91–262, Sec. 1, May 21, 1970, 84 Stat. 256; Pub. L. 91–588, Sec. 9(a), (b), Dec. 24, 1970, 84 Stat. 1584; Pub. L. 91–621, Sec. 6(a)(1), (2), Dec. 31, 1970, 84 Stat. 1864; Pub. L. 92–198, Sec. 5(a), Dec. 15, 1971, 85 Stat. 664; Pub. L. 92–540, title IV, Sec. 407, Oct. 24, 1972, 86 Stat. 1092; Pub. L. 94–169, title I, Sec. 101(1), Dec. 23, 1975, 89 Stat. 1013; Pub. L. 94–417, Sec. 1(b), Sept. 21, 1976, 90 Stat. 1277; Pub. L. 95–126, Sec. 3, Oct. 8, 1977, 91 Stat. 1108; Pub. L. 95–202, title III, Sec. 309(a), Nov. 23, 1977, 91 Stat. 1446; Pub. L. 95–588, title III, Sec. 301, Nov. 4, 1978, 92 Stat. 2506; Pub. L. 96–22, title IV, Sec. 401, June 13, 1979, 93 Stat. 62; Pub. L. 97–37, Sec. 3(a), Aug. 14, 1981, 95 Stat. 936; Pub. L. 97–295, Sec. 4(2), (95)(A), Oct. 12, 1982, 96 Stat. 1304, 1313; Pub. L. 97–306, title I, Sec. 113(a), Oct. 14, 1982, 96 Stat. 1432; Pub. L. 98–223, title II, Sec. 201, Mar. 2, 1984, 98 Stat. 41; Pub. L. 99–576, title VII, Sec. 702(1), Oct. 28, 1986, 100 Stat. 3301; Pub. L. 100–322, title I, Sec. 103(a), title III, Sec. 311, May 20, 1988, 102 Stat. 493, 534; Pub. L. 100–456, div. A, title VI, Sec. 633(c), Sept. 29, 1988, 102 Stat. 1987; Pub. L. 101–237, Sec. 2(a), Dec. 18, 1989, 103 Stat. 2062; Pub. L. 102–25, title III, Sec. 332, Apr. 6, 1991, 105 Stat. 88; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; Pub. L. 102–54, Sec. 14(a)(1), June 13, 1991, 105 Stat. 282; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–446, title XII, Sec. 1201(a)(1), Nov. 2, 1994, 108 Stat. 4682; Pub. L. 104–275, title V, Sec. 505(a), Oct. 9, 1996, 110 Stat. 3342; Pub. L. 106–419, title III, Sec. 301(a), Nov. 1, 2000, 114 Stat. 1852; Pub. L. 107–14, Sec. 4(a)(2), June 5, 2001, 115 Stat. 26; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 109–163, div. A, title V, Sec. 515(e)(1), Jan. 6, 2006, 119 Stat. 3236; Pub. L. 109–444, Sec. 8(b)(1), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109–461, title X, Secs. 1004(b)(1), 1006(b), Dec. 22, 2006, 120 Stat. 3466, 3468; Pub. L. 110–389, title IV, Sec. 402(b), Oct. 10, 2008, 122 Stat. 4174.)

§ 102. Dependent parents

(a) Dependency of a parent, which may arise before or after the death of a veteran, shall be determined in accordance with regulations prescribed by the Secretary.

(b) Dependency of a parent shall not be denied (1) solely because of remarriage, or (2) in any case in any State where the monthly income for a mother or father does not exceed minimum levels which the Secretary shall prescribe by regulation, giving due regard to the marital status of the mother or father and additional members of the family whom the mother or father is under a moral or legal obligation to support.

(c) For the purposes of this section, in determining monthly income the Secretary shall not consider any payments under laws administered by the Secretary because of disability or death or payments of bonus or similar cash gratuity by any State based upon service in the Armed Forces.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1109; Pub. L. 89–358, Sec. 4(e), (f), Mar. 3, 1966, 80 Stat. 24; Pub. L. 92–540, title IV, Sec. 408, Oct. 24, 1972, 86 Stat. 1092; Pub. L. 94–432, title IV, Sec. 402, Sept. 30, 1976, 90 Stat. 1372; Pub. L. 99–576, title VII, Sec. 701(1), Oct. 28, 1986, 100 Stat. 3289; Pub. L. 102–54, Sec. 14(a)(2), June 13, 1991, 105 Stat. 282; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

§ 103. Special provisions relating to marriages

(a) Whenever, in the consideration of any claim filed by a person as the widow or widower of a veteran for gratuitous death benefits under laws administered by the Secretary, it is established by evidence satisfactory to the Secretary that such person, without knowledge of any legal impediment, entered into a marriage with such veteran which, but for a legal impediment, would have been valid, and thereafter cohabited with the veteran for one year or more immediately before the veteran's death, or for any period of time if a child was born of the purported marriage or was born to them before such marriage, the purported marriage shall be deemed to be a valid marriage, but only if no claim has been filed by a legal widow or widower of such veteran who is found to be entitled to such benefits. No duplicate payments shall be made by virtue of this subsection.

(b) Where a surviving spouse has been legally married to a veteran more than once, the date of original marriage will be used in determining whether the statutory requirement as to date of marriage has been met.

(c) In determining whether or not a person is or was the spouse of a veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.

(d)(1) The remarriage of the surviving spouse of a veteran shall not bar the furnishing of benefits to such person as the surviving spouse of the veteran if the remarriage is void, or has been annulled by a court with basic authority to render annulment decrees unless the Secretary determines that the annulment was secured through fraud by either party or collusion.

(2)(A) The remarriage of the surviving spouse of a veteran shall not bar the furnishing of benefits specified in paragraph (5) to such person as the surviving spouse of the veteran if the remarriage has been terminated by death or divorce unless the Secretary determines that the divorce was secured through fraud or collusion.

(B) The remarriage after age 57 of the surviving spouse of a veteran shall not bar the furnishing of benefits specified in paragraph (5) to such person as the surviving spouse of the veteran. Notwithstanding the previous sentence, the remarriage after age 55 of the surviving spouse of a veteran shall not bar the furnishing of benefits under section 1781 of this title to such person as the surviving spouse of the veteran.

(3) If the surviving spouse of a veteran ceases living with another person and holding himself or herself out openly to the public as that person's spouse, the bar to granting that person benefits as the surviving spouse of the veteran shall not apply in the case of the benefits specified in paragraph (5).

(4) The first month of eligibility for benefits for a surviving spouse by reason of paragraph (2)(A) or (3) shall be the month after—

(A) the month of the termination of such remarriage, in the case of a surviving spouse described in paragraph (2)(A); or

(B) the month of the cessation described in paragraph (3), in the case of a surviving spouse described in that paragraph.

(5) Paragraphs (2)(A) and (3) apply with respect to benefits under the following provisions of this title:

(A) Section 1311, relating to dependency and indemnity compensation.

(B) Section 1781, relating to medical care for survivors and dependents of certain veterans.

(C) Chapter 35, relating to educational assistance.

(D) Chapter 37, relating to housing loans.

(e) The marriage of a child of a veteran shall not bar recognition of such child as the child of the veteran for benefit purposes if the marriage is void, or has been annulled by a court with basic authority to render annulment decrees unless the Secretary determines that the annulment was secured through fraud by either party or collusion.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1109; Pub. L. 87–674, Sec. 2, Sept. 19, 1962, 76 Stat. 558; Pub. L. 90–77, title I, Sec. 101(b), Aug. 31, 1967, 81 Stat. 178; Pub. L. 91–376, Sec. 4, Aug. 12, 1970, 84 Stat. 789; Pub. L. 93–527, Sec. 9(a), Dec. 21, 1974, 88 Stat. 1705; Pub. L. 99–576, title VII, Sec. 701(2), Oct. 28, 1986, 100 Stat. 3290; Pub. L. 101–508, title VIII, Sec. 8004(a), Nov. 5, 1990, 104 Stat. 1388–343; Pub. L. 102–83, Sec. 4(a)(1), (2)(A)(i), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 106–117, title V, Sec. 502(a), Nov. 30, 1999, 113 Stat. 1574; Pub. L. 107–135, title II, Sec. 208(e)(1), Jan. 23, 2002, 115 Stat. 2463; Pub. L. 107–330, title I, Sec. 101(a), Dec. 6, 2002, 116 Stat. 2821; Pub. L. 108–183, title I, Sec. 101(a), title VII, Sec. 708(a)(1), Dec. 16, 2003, 117 Stat. 2652, 2673.)

§ 104. Approval of educational institutions

(a) For the purpose of determining whether or not benefits are payable under this title (except chapter 35 of this title) for a child over the age of eighteen years and under the age of twenty-three years who is attending a school, college, academy, seminary, tech-

nical institute, university, or other educational institution, the Secretary may approve or disapprove such educational institutions.

(b) The Secretary may not approve an educational institution under this section unless such institution has agreed to report to the Secretary the termination of attendance of any child. If any educational institution fails to report any such termination promptly, the approval of the Secretary shall be withdrawn.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1110; Pub. L. 91–24, Sec. 1(c), June 11, 1969, 83 Stat. 33; Pub. L. 99–576, title VII, Sec. 701(3), Oct. 28, 1986, 100 Stat. 3290; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 105. Line of duty and misconduct

(a) An injury or disease incurred during active military, naval, or air service will be deemed to have been incurred in line of duty and not the result of the veteran's own misconduct when the person on whose account benefits are claimed was, at the time the injury was suffered or disease contracted, in active military, naval, or air service, whether on active duty or on authorized leave, unless such injury or disease was a result of the person's own willful misconduct or abuse of alcohol or drugs. Venereal disease shall not be presumed to be due to willful misconduct if the person in service complies with the regulations of the appropriate service department requiring the person to report and receive treatment for such disease.

(b) The requirement for line of duty will not be met if it appears that at the time the injury was suffered or disease contracted the person on whose account benefits are claimed (1) was avoiding duty by deserting the service or by absenting himself or herself without leave materially interfering with the performance of military duties; (2) was confined under sentence of court-martial involving an unremitted dishonorable discharge; or (3) was confined under sentence of a civil court for a felony (as determined under the laws of the jurisdiction where the person was convicted by such court).

(c) For the purposes of any provision relating to the extension of a delimiting period under any education-benefit or rehabilitation program administered by the Secretary, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1110; Pub. L. 99–576, title VII, Sec. 701(4), Oct. 28, 1986, 100 Stat. 3290; Pub. L. 100–689, title I, Sec. 109, Nov. 18, 1988, 102 Stat. 4170; Pub. L. 101–508, title VIII, Sec. 8052(a)(1), Nov. 5, 1990, 104 Stat. 1388–351; Pub. L. 102–83, Sec. 4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

§ 106. Certain service deemed to be active service

(a)(1) Service as a member of the Women's Army Auxiliary Corps for ninety days or more by any woman who before October 1, 1943, was honorably discharged for disability incurred or aggravated in line of duty which rendered her physically unfit to perform further service in the Women's Army Auxiliary Corps or the Women's Army Corps shall be considered active duty for the purposes of all laws administered by the Secretary.

(2) Any person entitled to compensation or pension by reason of this subsection and to employees' compensation based upon the

same service under subchapter I of chapter 81 of title 5 must elect which benefit she will receive.

(b) Any person—

(1) who has applied for enlistment or enrollment in the active military, naval, or air service and has been provisionally accepted and directed or ordered to report to a place for final acceptance into such service; or

(2) who has been selected or drafted for service in the Armed Forces and has reported pursuant to the call of the person's local draft board and before rejection; or

(3) who has been called into the Federal service as a member of the National Guard, but has not been enrolled for the Federal service; and

who has suffered an injury or contracted a disease in line of duty while en route to or from, or at, a place for final acceptance or entry upon active duty, will, for the purposes of chapters 11, 13, 19, 21, 31, and 39 of this title, and for purposes of determining service-connection of a disability under chapter 17 of this title, be considered to have been on active duty and to have incurred such disability in the active military, naval, or air service.

(c) For the purposes of this title, an individual discharged or released from a period of active duty shall be deemed to have continued on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for that individual to proceed to that individual's home by the most direct route, and in any event that individual shall be deemed to have continued on active duty until midnight of the date of such discharge or release.

(d)(1) For the purposes of this title, any individual—

(A) who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive duty training; and

(B) who is disabled or dies from an injury or covered disease incurred while proceeding directly to or returning directly from such active duty for training or inactive duty training, as the case may be;

shall be deemed to have been on active duty for training or inactive duty training, as the case may be, at the time such injury or covered disease was incurred.

(2) In determining whether or not such individual was so authorized or required to perform such duty, and whether or not such individual was disabled or died from injury or covered disease so incurred, the Secretary shall take into account the hour on which such individual began so to proceed or to return; the hour on which such individual was scheduled to arrive for, or on which such individual ceased to perform, such duty; the method of travel employed; the itinerary; the manner in which the travel was performed; and the immediate cause of disability or death.

(3) Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this subsection, the burden of proof shall be on the claimant.

(4) For purposes of this subsection, the term "covered disease" means any of the following:

(A) Acute myocardial infarction.
(B) A cardiac arrest.
(C) A cerebrovascular accident.

(e) Each person who has incurred a disability as a result of an injury or disease described in subsection (b) shall be entitled to the same rights, privileges, and benefits under title 5 as a preference eligible described in section 2108(3)(C) of title 5.

(f) Service as a member of the Alaska Territorial Guard during World War II of any individual who was honorably discharged therefrom under section 8147 of the Department of Defense Appropriations Act, 2001, shall be considered active duty for purposes of all laws administered by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1110; Pub. L. 87–102, Sec. 1, July 21, 1961, 75 Stat. 219; Pub. L. 88–616, Oct. 2, 1964, 78 Stat. 994; Pub. L. 89–311, Sec. 5, Oct. 31, 1965, 79 Stat. 1156; Pub. L. 97–295, Sec. 4(3), Oct. 12, 1982, 96 Stat. 1305; Pub. L. 99–576, title VII, Sec. 701(5), Oct. 28, 1986, 100 Stat. 3291; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 106–259, title VIII, Sec. 8147(a), Aug. 9, 2000, 114 Stat. 705; Pub. L. 106–419, title III, Sec. 301(b), Nov. 1, 2000, 114 Stat. 1852.)

§ 107. Certain service deemed not to be active service

(a) Service before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, shall not be deemed to have been active military, naval, or air service for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the Armed Forces, except benefits under—

(1) contracts of National Service Life Insurance entered into before February 18, 1946;
(2) chapter 10 of title 37; and
(3) chapters 11, 13 (except section 1312(a)), 23, and 24 (to the extent provided for in section 2402(8)) of this title.

Except as provided in subsection (c) or (d), payments under such chapters shall be made at a rate of $0.50 for each dollar authorized, and where annual income is a factor in entitlement to benefits, the dollar limitations in the law specifying such annual income shall apply at a rate of $0.50 for each dollar. Any payments made before February 18, 1946, to any such member under such laws conferring rights, benefits, or privileges shall not be deemed to have been invalid by reason of the circumstance that such member's service was not service in the Armed Forces or any component thereof within the meaning of any such law.

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

(1) with respect to contracts of National Service Life Insurance entered into (A) before May 27, 1946, (B) under section

620 or 621 of the National Service Life Insurance Act of 1940, or (C) under section 1922 of this title; and

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

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

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

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

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

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

(B) is residing in the United States; and

(C) either—

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

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

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1111; Pub. L. 87–268, Sec. 1(b), Sept. 21, 1961, 75 Stat. 566; Pub. L. 89–641, Sec. 2(a), Oct. 11, 1966, 80 Stat. 885; Pub. L. 97–295, Sec. 4(4), Oct. 12, 1982, 96 Stat. 1305; Pub. L. 99–576, title VII, Sec. 701(6), Oct. 28, 1986, 100 Stat. 3291; Pub. L. 102–83, Sec. 4(a)(1), 5(c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 103–446, title V, Sec. 507(a), Nov. 2, 1994, 108 Stat. 4664; Pub. L. 106–377, Sec. 1(a)(1) [title V, Sec. 501(a)(1)], Oct. 27, 2000, 114 Stat. 1441, 1441A-57; Pub. L. 106–419, title III, Secs. 331(b), 332(a), Nov. 1, 2000, 114 Stat. 1856; Pub. L. 107–14, Sec. 8(a)(1), June 5, 2001, 115 Stat. 34; Pub. L. 107–330, title III, Sec. 308(g)(2), Dec. 6, 2002, 116 Stat. 2828; Pub. L. 108–183, title II, Secs. 211(a), 212(a), Dec. 16, 2003, 117 Stat. 2657, 2658.)

§ 108. Seven-year absence presumption of death

(a) No State law providing for presumption of death shall be applicable to claims for benefits under laws administered by the Secretary.

(b) If evidence satisfactory to the Secretary is submitted establishing the continued and unexplained absence of any individual from that individual's home and family for seven or more years, and establishing that after diligent search no evidence of that individual's existence after the date of disappearance has been found

or received, the death of such individual as of the date of the expiration of such period shall be considered as sufficiently proved.

(c) Except in a suit brought pursuant to section 1984 of this title, the finding of death made by the Secretary shall be final and conclusive.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1112; Pub. L. 99–576, title VII, Sec. 701(7), Oct. 28, 1986, 100 Stat. 3291; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403–406.)

§ 109. Benefits for discharged members of allied forces

(a)(1) In consideration of reciprocal services extended to the United States, the Secretary, upon request of the proper officials of the government of any nation allied or associated with the United States in World War I (except any nation which was an enemy of the United States during World War II), or in World War II, may furnish to discharged members of the armed forces of such government, under agreements requiring reimbursement in cash of expenses so incurred, at such rates and under such regulations as the Secretary may prescribe, medical, surgical, and dental treatment, hospital care, transportation and traveling expenses, prosthetic appliances, education, training, or similar benefits authorized by the laws of such nation for its veterans, and services required in extending such benefits. Hospitalization in a Department facility shall not be afforded under this section, except in emergencies, unless there are available beds surplus to the needs of veterans of this country. The Secretary may also pay the court costs and other expenses incident to the proceedings taken for the commitment of such discharged members who are mentally incompetent to institutions for the care or treatment of the insane.

(2) The Secretary, in carrying out the provisions of this subsection, may contract for necessary services in private, State, and other Government hospitals.

(3) All amounts received by the Department as reimbursement for such services shall be credited to the current appropriation of the Department from which expenditures were made under this subsection.

(b) Persons who served in the active service in the armed forces of any government allied with the United States in World War II and who at time of entrance into such active service were citizens of the United States shall, by virtue of such service, and if otherwise qualified, be entitled to the benefits of chapters 31 and 37 of this title in the same manner and to the same extent as veterans of World War II are entitled. No such benefit shall be extended to any person who is not a resident of the United States at the time of filing claim, or to any person who has applied for and received the same or any similar benefit from the government in whose armed forces such person served.

(c)(1) Any person who served during World War I or World War II as a member of any armed force of the Government of Czechoslovakia or Poland and participated while so serving in armed conflict with an enemy of the United States and has been a citizen of the United States for at least ten years shall, by virtue of such service, and upon satisfactory evidence thereof, be entitled to hospital and domiciliary care and medical services within the

United States under chapter 17 of this title to the same extent as if such service had been performed in the Armed Forces of the United States unless such person is entitled to, or would, upon application thereof, be entitled to, payment for equivalent care and services under a program established by the foreign government concerned for persons who served in its armed forces in World War I or World War II.

(2) In order to assist the Secretary in making a determination of proper service eligibility under this subsection, each applicant for the benefits thereof shall furnish an authenticated certification from the French Ministry of Defense or the British War Office as to records in either such Office which clearly indicate military service of the applicant in the Czechoslovakian or Polish armed forces and subsequent service in or with the armed forces of France or Great Britain during the period of World War I or World War II.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1112; Pub. L. 94–491, Oct. 14, 1976, 90 Stat. 2363; Pub. L. 99–576, title VII, Sec. 701(8), Oct. 28, 1986, 100 Stat. 3291; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 110. Preservation of disability ratings

A rating of total disability or permanent total disability which has been made for compensation, pension, or insurance purposes under laws administered by the Secretary, and which has been continuously in force for twenty or more years, shall not be reduced thereafter, except upon a showing that such rating was based on fraud. A disability which has been continuously rated at or above evaluation for twenty or more years for compensation purposes under laws administered by the Secretary shall not thereafter be rated at less than such evaluation, except upon a showing that such rating was based on fraud. The mentioned period shall be computed from the date determined by the Secretary as the date on which the status commenced for rating purposes.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1113; Pub. L. 87–825, Sec. 6, Oct. 15, 1962, 76 Stat. 950; Pub. L. 88–445, Sec. 1(a), (b), Aug. 19, 1964, 78 Stat. 464; Pub. L. 91–32, June 23, 1969, 83 Stat. 38; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

§ 111. Payments or allowances for beneficiary travel

(a) Under regulations prescribed by the President pursuant to the provisions of this section, the Secretary may pay the actual necessary expense of travel (including lodging and subsistence), or in lieu thereof an allowance based upon mileage traveled, of any person to or from a Department facility or other place in connection with vocational rehabilitation, counseling required by the Secretary pursuant to chapter 34 or 35 of this title, or for the purpose of examination, treatment, or care. In addition to the mileage allowance authorized by this section, there may be allowed reimbursement for the actual cost of ferry fares, and bridge, road, and tunnel tolls.

(b)(1) Except as provided in subsection (c) of this section and notwithstanding subsection (g)(2)(A) of this section or any other provision of law, if, with respect to any fiscal year, the Secretary exercises the authority under this section to make any payments, the Secretary shall make the payments provided for in this section

to or for the following persons for travel during such fiscal year for examination, treatment, or care for which the person is eligible:

(A) A veteran or other person whose travel is in connection with treatment or care for a service-connected disability.

(B) A veteran with a service-connected disability rated at 30 percent or more.

(C) A veteran receiving pension under section 1521 of this title.

(D) A veteran (i) whose annual income (as determined under section 1503 of this title) does not exceed the maximum annual rate of pension which would be payable to such veteran if such veteran were eligible for pension under section 1521 of this title, or (ii) who is determined, under regulations prescribed by the Secretary, to be unable to defray the expenses of the travel for which payment under this section is claimed.

(E) Subject to paragraph (3) of this subsection, a veteran or other person whose travel to or from a Department facility is medically required to be performed by a special mode of travel and who is determined under such regulations to be unable to defray the expenses of the travel for which payment under this section is claimed.

(F) A veteran whose travel to a Department facility is incident to a scheduled compensation and pension examination.

(2) The Secretary may make payments provided for in this section to or for any person not covered by paragraph (1) of this subsection for travel by such person for examination, treatment, or care. Such payments shall be made in accordance with regulations which the Secretary shall prescribe.

(3)(A) Except as provided in subparagraph (B) of this paragraph, the Secretary shall not make payments under this section for travel performed by a special mode of travel unless (i) the travel by such mode is medically required and is authorized by the Secretary before the travel begins, or (ii) the travel by such mode is in connection with a medical emergency of such a nature that the delay incident to obtaining authorization from the Secretary to use that mode of travel would have been hazardous to the person's life or health.

(B) In the case of travel by a person to or from a Department facility by special mode of travel, the Secretary may provide payment under this section to the provider of the transportation by special mode before determining the eligibility of such person for such payment if the Secretary determines that providing such payment is in the best interest of furnishing care and services. Such a payment shall be made subject to subsequently recovering from such person the amount of the payment if such person is determined to have been ineligible for payment for such travel.

(c)(1) Except as otherwise provided in this subsection, the Secretary, in making a payment under this section to or for a person described in subparagraph (A), (B), (C), or (D) of subsection (b)(1) of this section for travel for examination, treatment, or care, shall deduct from the amount otherwise payable an amount equal to $3 for each one-way trip.

(2) In the case of a person who is determined by the Secretary to be a person who is required to make six or more one-way trips

for needed examination, treatment, or care during the remainder of the calendar month in which the determination is made or during any subsequent calendar month during the one-year period following the last day of the month in which the determination is made, the amount deducted by the Secretary pursuant to paragraph (1) of this subsection from payments for trips made to or from such facility during any such month shall not exceed $18.

(3) No deduction shall be made pursuant to paragraph (1) of this subsection in the case of a person whose travel to or from a Department facility is performed by a special mode of travel for which payment under this section is authorized under subsection (b)(3) of this section.

(4) The Secretary may waive the deduction requirement of paragraph (1) of this subsection in the case of the travel of any veteran for whom the imposition of the deduction would cause severe financial hardship. The Secretary shall prescribe in regulations the conditions under which a finding of severe financial hardship is warranted for purposes of this paragraph.

(d) Payment of the following expenses or allowances in connection with vocational rehabilitation, counseling, or upon termination of examination, treatment, or care, may be made before the completion of travel:

(1) The mileage allowance authorized by subsection (a) of this section.

(2) Actual local travel expenses.

(3) The expense of hiring an automobile or ambulance, or the fee authorized for the services of a nonemployee attendant.

(e) When any person entitled to mileage under this section requires an attendant (other than an employee of the Department) in order to perform such travel, the attendant may be allowed expenses of travel upon the same basis as such person.

(f) The Secretary may provide for the purchase of printed reduced-fare requests for use by veterans and their authorized attendants when traveling at their own expense to or from any Department facility.

(g)(1) Subject to paragraph (3), in determining the amount of allowances or reimbursement to be paid under this section, the Secretary shall use the mileage reimbursement rate for the use of privately owned vehicles by Government employees on official business (when a Government vehicle is available), as prescribed by the Administrator of General Services under section 5707(b) of title 5.

(2) In no event shall payment be provided under this section—

(A) unless the person claiming reimbursement has been determined, pursuant to regulations which the Secretary shall prescribe, to be unable to defray the expenses of such travel (except with respect to a person receiving benefits for or in connection with a service-connected disability under this title, a veteran receiving or eligible to receive pension under section 1521 of this title, or a person whose annual income, determined in accordance with section 1503 of this title, does not exceed the maximum annual rate of pension which would be payable to such person if such person were eligible for pension under section 1521 of this title);

(B) to reimburse for the cost of travel by privately owned vehicle in any amount in excess of the cost of such travel by public transportation unless (i) public transportation is not reasonably accessible or would be medically inadvisable, or (ii) the cost of such travel is not greater than the cost of public transportation; and

(C) in excess of the actual expense incurred by such person as certified in writing by such person.

(3) Subject to the availability of appropriations, the Secretary may modify the amount of allowances or reimbursement to be paid under this section using a mileage reimbursement rate in excess of that prescribed under paragraph (1).

(h) The Secretary, in consultation and coordination with the Secretary of Transportation and appropriate representatives of veterans' service organizations, shall take all appropriate steps to facilitate the establishment and maintenance of a program under which such organizations, or individuals who are volunteering their services to the Department, would take responsibility for the transportation, without reimbursement from the Department, to Department facilities of veterans (primarily those residing in areas which are geographically accessible to such facilities) who seek services or benefits from the Department under chapter 17 or other provisions of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1113; Pub. L. 86–590, July 5, 1960, 74 Stat. 329; Pub. L. 89–358, Sec. 4(g), Mar. 3, 1966, 80 Stat. 24; Pub. L. 89–455, June 18, 1966, 80 Stat. 208; Pub. L. 94–581, title I, Sec. 101, Oct. 21, 1976, 90 Stat. 2842; Pub. L. 96–151, title II, Sec. 201(a), Dec. 20, 1979, 93 Stat. 1093; Pub. L. 97–295, Sec. 4(5), Oct. 12, 1982, 96 Stat. 1305; Pub. L. 100–322, title I, Sec. 108(a), (b)(1), (c)–(e)(1), May 20, 1988, 102 Stat. 496–498; Pub. L. 102–83, Sec. 4(a)(3), (4), (6), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–446, title XII, Sec. 1201(e)(1), Nov. 2, 1994, 108 Stat. 4685; Pub. L. 110–387, title IV, Sec. 401(a)(1), (b), Oct. 10, 2008, 122 Stat. 4122.)

§ 112. Presidential memorial certificate program

(a) At the request of the President the Secretary may conduct a program for honoring the memory of deceased veterans, discharged under honorable conditions, by preparing and sending to eligible recipients a certificate bearing the signature of the President and expressing the country's grateful recognition of the veteran's service in the Armed Forces. The award of a certificate to one eligible recipient will not preclude authorization of another certificate if a request is received from some other eligible recipient.

(b) For the purpose of this section an "eligible recipient" means the next of kin, a relative or friend upon request, or an authorized service representative acting on behalf of such relative or friend.

(c) A certificate may not be furnished under the program under subsection (a) on behalf of a deceased person described in section 2411(b) of this title.

(Added Pub. L. 89–88, Sec. 1(a), July 24, 1965, 79 Stat. 264; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 107–330, title II, Sec. 201(a), Dec. 6, 2002, 116 Stat. 2823.)

§ 113. Treatment of certain programs under sequestration procedures

(a) The following programs shall be exempt from sequestration or reduction under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other sequestration law and shall not be included in any report specifying reductions in Federal spending:

(1) Benefits under chapter 21 of this title, relating to specially adapted housing and mortgage-protection life insurance for certain veterans with service-connected disabilities.

(2) Benefits under section 2307 of this title, relating to burial benefits for veterans who die as the result of a service-connected disability.

(3) Benefits under chapter 39 of this title, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces.

(4) Assistance and services under chapter 31 of this title, relating to training and rehabilitation for certain veterans with service-connected disabilities.

(5) Benefits under chapter 35 of this title, relating to educational assistance for survivors and dependents of certain veterans with service-connected disabilities.

(6) Benefits under subchapters I, II, and III of chapter 37 of this title, relating to housing loans for certain veterans and for the spouses and surviving spouses of certain veterans.

(b) The following accounts of the Department shall be exempt from sequestration or reduction under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other sequestration law and shall not be included in any report specifying reductions in Federal spending:

(1) The following life insurance accounts:

(A) The National Service Life Insurance Fund authorized by section 1920 of this title.

(B) The Service-Disabled Veterans Insurance Fund authorized by section 1922 of this title.

(C) The Veterans Special Life Insurance Fund authorized by section 1923 of this title.

(D) The Veterans Reopened Insurance Fund authorized by section 1925 of this title.

(E) The United States Government Life Insurance Fund authorized by section 1955 of this title.

(F) The Veterans Insurance and Indemnity appropriation authorized by section 1919 of this title.

(2) The following revolving fund accounts:

(A) The Department of Veterans Affairs Special Therapeutic and Rehabilitation Activities Fund established by section 1718(c) of this title.

(B) The Veterans' Canteen Service revolving fund authorized by section 7804 of this title.

(c)(1) A benefit under section 2301, 2302, 2303, 2306, or 2308 of this title that is subject to reduction under a sequestration order or sequestration law shall be paid in accordance with the rates de-

termined under the sequestration order or law (if any) in effect on the date of the death of the veteran concerned.

(2) A benefit paid to, or on behalf of, an eligible veteran for pursuit of a program of education or training under chapter 30, 31, 34, 35, or 36 of this title that is subject to a sequestration order or a sequestration law shall be paid in accordance with the rates determined under the sequestration order or law (if any) in effect during the period of education or training for which the benefit is paid.

(3) In implementation of a sequestration order or law with respect to each account from which a benefit described in paragraph (1) or (2) of this subsection is paid (including the making of determinations of the amounts by which such benefits are to be reduced), the total of the amounts (as estimated by the Secretary after consultation with the Director of the Congressional Budget Office) by which payments of such benefit will be reduced by reason of such paragraph after the last day of the period during which such order or law is in effect shall be deemed to be additional reductions in the payments of such benefit made, and in new budget authority for such payments, during such period.

(d) In computing the amount of new budget authority by which a budget account of the Department is to be reduced for a fiscal year under a report of the Director of the Office of Management and Budget, or under an order of the President under part C of the Balanced Budget and Emergency Deficit Control Act of 1985, the base from which the amount of the reduction for such account is determined shall be established without regard to any amount of new budget authority in such account (determined under section 251(a)(6) of such Act) for any of the programs listed in subsection (a) of this section.

(e) This section applies without regard to any other provision of law (whether enacted before, on, or after the date of the enactment of this section) unless such Act expressly provides that it is enacted as a limitation to this section.

(f) For the purposes of this section:

(1) The term "sequestration" means a reduction in spending authority and loan guarantee commitments generally throughout the Government under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other law.

(2) The term "sequestration law" means a law enacted with respect to a sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other law (under the procedures specified in that Act or otherwise).

(3) The term "sequestration order" means an order of the President issued under part C of such Act.

(Added Pub. L. 99–576, title VI, Sec. 601(a)(1), Oct. 28, 1986, 100 Stat. 3287; amended Pub. L. 100–198, Sec. 12(a), Dec. 21, 1987, 101 Stat. 1325; Pub. L. 100–322, title IV, Sec. 411(b), (c), May 20, 1988, 102 Stat. 547; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, Sec. 4(a)(2)(B)(i), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403–406.)

§ 114. Multiyear procurement

(a) The Secretary may enter into a multiyear contract for the procurement of supplies or services if the Secretary makes each of the following determinations:

(1) Appropriations are available for obligations that are necessary for total payments that would be required during the fiscal year in which the contract is entered into, plus the estimated amount of any cancellation charge payable under the contract.

(2) The contract is in the best interest of the United States by reason of the effect that use of a multiyear, rather than one-year, contract would have in—

(A) reducing costs;

(B) achieving economies in contract administration or in any other Department activities;

(C) increasing quality of performance by or service from the contractors; or

(D) encouraging effective competition.

(3) During the proposed contract period—

(A) there will be a continuing or recurring need for the supplies or services being procured;

(B) there is not a substantial likelihood of substantial changes in the need for such supplies or services in terms of the total quantity of such supplies or services or of the rate of delivery of such supplies or services; and

(C) the specifications for the supplies or services are expected to be reasonably stable.

(4) The risks relating to the prospective contractor's ability to perform in accordance with the specifications and other terms of the contract are not excessive.

(5) The use of a multiyear contract will not inhibit small business concerns in competing for the contract.

(6) In the case of the procurement of a pharmaceutical item for which a patent has expired less than four years before the date on which the solicitation of offers is issued, there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the result of the availability of generic equivalents increasing during the term of the contract.

(b)(1) A multiyear contract authorized by this section shall contain—

(A) a provision that the obligation of the United States under the contract during any fiscal year which is included in the contract period and is subsequent to the fiscal year during which the contract is entered into is contingent on the availability of sufficient appropriations (as determined by the Secretary pursuant to paragraph (2)(A) of this subsection) if, at the time the contract is entered into, appropriations are not available to cover the total estimated payments that will be required during the full term of the contract; and

(B) notwithstanding section 1502(a) of title 31, a provision for the payment of reasonable cancellation charges to compensate the contractor for nonrecurring, unrecovered costs, if

any, if the performance is cancelled pursuant to the provision required by subparagraph (A) of this paragraph.

(2)(A) If, during a fiscal year after the fiscal year during which a multiyear contract is entered into under this section, the Secretary determines that, in light of other funding needs involved in the operation of Department programs, the amount of funds appropriated for such subsequent fiscal year is not sufficient for such contract, the Secretary shall cancel such contract pursuant to the provisions required by paragraph (1)(A) of this subsection.

(B) Cancellation charges under a multiyear contract shall be paid from the appropriated funds which were originally available for performance of the contract or the payment of cancellation costs unless such funds are not available in an amount sufficient to pay the entire amount of the cancellation charges payable under the contract. In a case in which such funds are not available in such amount, funds available for the procurement of supplies and services for use for the same purposes as the supplies or services procured through such contract shall be used to the extent necessary to pay such cost.

(c) Nothing in this section shall be construed so as to restrict the Secretary's exercise of the right to terminate for convenience a contract under any other provision of law which authorizes multiyear contracting.

(d) The Secretary shall prescribe regulations for the implementation of this section.

(e) For the purposes of this section:

(1) The term "appropriations" has the meaning given that term in section 1511 of title 31.

(2) The term "multiyear contract" means a contract which by its terms is to remain in effect for a period which extends beyond the end of the fiscal year during which the contract is entered into but not beyond the end of the fourth fiscal year following such fiscal year. Such term does not include a contract for construction or for a lease of real property.

(3) The term "nonrecurring, unrecovered costs" means those costs reasonably incurred by the contractor in performing a multiyear contract which (as determined under regulations prescribed under subsection (d) of this section) are generally incurred on a one-time basis.

(Added Pub. L. 100–322, title IV, Sec. 404(a), May 20, 1988, 102 Stat. 545; amended Pub. L. 101–237, title VI, Sec. 601(a), (b)(1), Dec. 18, 1989, 103 Stat. 2094; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 115. Acquisition of real property

For the purposes of sections 314, 315, 316, and 2406 of this title and subchapter I of chapter 81 of this title, the Secretary may acquire and use real property—

(1) before title to the property is approved under section 3111 of title 40; and

(2) even though the property will be held in other than a fee simple interest in a case in which the Secretary determines that the interest to be acquired is sufficient for the purposes of the intended use.

(Added Pub. L. 102–86, title IV, Sec. 402(a), Aug. 14, 1991, 105 Stat. 422; amended Pub. L. 102–83, Sec. 5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1201(d)(1), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 107–217, Sec. 3(j)(1), Aug. 21, 2002, 116 Stat. 1300.)

§ 116. Reports to Congress: cost information

Whenever the Secretary submits to Congress, or any committee of Congress, a report that is required by law or by a joint explanatory statement of a committee of conference of the Congress, the Secretary shall include with the report—

(1) a statement of the cost of preparing the report; and

(2) a brief explanation of the methodology used in preparing that cost statement.

(Added Pub. L. 106–419, title IV, Sec. 403(d)(1)(A), Nov. 1, 2000, 114 Stat. 1864.)

CHAPTER 3 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART I—GENERAL PROVISIONS]

CHAPTER 3—DEPARTMENT OF VETERANS AFFAIRS

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§ 301. Department

(a) The Department of Veterans Affairs is an executive department of the United States.

(b) The purpose of the Department is to administer the laws providing benefits and other services to veterans and the dependents and the beneficiaries of veterans.

(c) The Department is composed of the following:

(1) The Office of the Secretary.

(2) The Veterans Health Administration.

(3) The Veterans Benefits Administration.

(4) The National Cemetery Administration.

(5) The Board of Veterans' Appeals.

(6) The Veterans' Canteen Service.

(7) The Board of Contract Appeals.

(8) Such other offices and agencies as are established or designated by law or by the President or the Secretary.

(9) Any office, agency, or activity under the control or supervision of any element named in paragraphs (1) through (8).

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 378; amended Pub. L. 105–368, title IV, Sec. 403(a)(2), Nov. 11, 1998, 112 Stat. 3338.)

§ 302. Seal

(a) The Secretary of Veterans Affairs shall cause a seal of office to be made for the Department of such device as the President shall approve. Judicial notice shall be taken of the seal.

(b) Copies of any public document, record, or paper belonging to or in the files of the Department, when authenticated by the seal and certified by the Secretary (or by an officer or employee of the Department to whom authority has been delegated in writing by the Secretary), shall be evidence equal with the original thereof.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 379.)

§ 303. Secretary of Veterans Affairs

There is a Secretary of Veterans Affairs, who is the head of the Department and is appointed by the President, by and with the advice and consent of the Senate. The Secretary is responsible for the proper execution and administration of all laws administered by the Department and for the control, direction, and management of the Department.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 379.)

§ 304. Deputy Secretary of Veterans Affairs

There is in the Department a Deputy Secretary of Veterans Affairs, who is appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall perform such functions as the Secretary shall prescribe. Unless the President designates another officer of the Government, the Deputy Secretary shall be Acting Secretary of Veterans Affairs during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 379.)

§ 305. Under Secretary for Health

(a)(1) There is in the Department an Under Secretary for Health, who is appointed by the President, by and with the advice and consent of the Senate.

(2) The Under Secretary for Health shall be appointed without regard to political affiliation or activity and solely—

(A) on the basis of demonstrated ability in the medical profession, in health-care administration and policy formulation, or in health-care fiscal management; and

(B) on the basis of substantial experience in connection with the programs of the Veterans Health Administration or programs of similar content and scope.

(b) The Under Secretary for Health is the head of, and is directly responsible to the Secretary for the operation of, the Veterans Health Administration.

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

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

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

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

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

(D) The Deputy Secretary of Veterans Affairs.

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

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

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

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

(Added and amended Pub. L. 102–83, Sec. 2(a), 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 379, 404; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–446, title XII, Sec. 1201(c)(1), (e)(2), Nov. 2, 1994, 108 Stat. 4683, 4685; Pub. L. 108–422, title V, Sec. 503, Nov. 30, 2004, 118 Stat. 2396; Pub. L. 109–461, title II, Sec. 210(a), Dec. 22, 2006, 120 Stat. 3418.)

§ 306. Under Secretary for Benefits

(a) There is in the Department an Under Secretary for Benefits, who is appointed by the President, by and with the advice and consent of the Senate. The Under Secretary for Benefits shall be appointed without regard to political affiliation or activity and solely on the basis of demonstrated ability in—

(1) fiscal management; and

(2) the administration of programs within the Veterans Benefits Administration or programs of similar content and scope.

(b) The Under Secretary for Benefits is the head of, and is directly responsible to the Secretary for the operations of, the Veterans Benefits Administration.

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

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

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

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

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

(D) The Deputy Secretary of Veterans Affairs.

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

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

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

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

(Added and amended Pub. L. 102–83, Sec. 2(a), 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 380, 404; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–446, title XII, Sec. 1201(c)(2), (e)(2), Nov. 2, 1994, 108 Stat. 4683, 4685; Pub. L. 109–461, title II, Sec. 210(b), Dec. 22, 2006, 120 Stat. 3418.)

§ 307. Under Secretary for Memorial Affairs

There is in the Department an Under Secretary for Memorial Affairs, who is appointed by the President, by and with the advice and consent of the Senate. The Under Secretary is the head of the National Cemetery Administration as established in section 2400 of this title and shall perform such functions as may be assigned by the Secretary.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 381; amended Pub. L. 105–368, title IV, Sec. 403(a)(3), (c)(1)(A), Nov. 11, 1998, 112 Stat. 3338.)

§ 308. Assistant Secretaries; Deputy Assistant Secretaries

(a) There shall be in the Department not more than seven Assistant Secretaries. Each Assistant Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The Secretary shall assign to the Assistant Secretaries responsibility for the administration of such functions and duties as the Secretary considers appropriate, including the following functions:

(1) Budgetary and financial functions.

(2) Personnel management and labor relations functions.

(3) Planning, studies, and evaluations.

(4) Management, productivity, and logistic support functions.

(5) Information management functions as required by section 3506 of title 44.

(6) Capital facilities and real property program functions.

(7) Equal opportunity functions.

(8) Functions regarding the investigation of complaints of employment discrimination within the Department.

(9) Functions regarding intergovernmental, public, and consumer information and affairs.

(10) Procurement functions.

(11) Operations, preparedness, security, and law enforcement functions.

(c) Whenever the President nominates an individual for appointment as an Assistant Secretary, the President shall include in the communication to the Senate of the nomination a statement of the particular functions of the Department specified in subsection (b), and any other functions of the Department, the individual will exercise upon taking office.

(d)(1) There shall be in the Department such number of Deputy Assistant Secretaries, not exceeding 19, as the Secretary may determine. Each Deputy Assistant Secretary shall be appointed by the Secretary and shall perform such functions as the Secretary prescribes.

(2) At least two-thirds of the number of positions established and filled under paragraph (1) shall be filled by individuals who have at least five years of continuous service in the Federal civil service in the executive branch immediately preceding their appointment as a Deputy Assistant Secretary. For purposes of determining such continuous service of an individual, there shall be excluded any service by such individual in a position—

(A) of a confidential, policy-determining, policy-making, or policy-advocating character;

(B) in which such individual served as a noncareer appointee in the Senior Executive Service, as such term is defined in section 3132(a)(7) of title 5; or

(C) to which such individual was appointed by the President.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 381; amended Pub. L. 107–287, Sec. 5(a)–(c), Nov. 7, 2002, 116 Stat. 2030.)

§ 309. Chief Financial Officer

The Secretary shall designate the Assistant Secretary whose functions include budgetary and financial functions as the Chief Financial Officer of the Department. The Chief Financial Officer shall advise the Secretary on financial management of the Department and shall exercise the authority and carry out the functions specified in section 902 of title 31.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 382.)

§ 310. Chief Information Officer

(a) The Chief Information Officer for the Department is designated pursuant to section 3506(a)(2) of title 44.

(b) The Chief Information Officer performs the duties provided for chief information officers of executive agencies under chapter 35 of title 44 and subtitle III of title 40.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 382; Pub. L. 104–106, div. E, title LVI, Sec. 5604, Feb. 10, 1996, 110 Stat. 700; Pub. L. 104–208, div. A, title I, Sec. 101(f) [title VIII, Sec. 808(c)], Sept. 30, 1996, 110 Stat. 3009–394; Pub. L. 105–85, div. A, title X, Sec. 1073(h)(3), Nov. 18, 1997, 111 Stat. 1907; Pub. L. 107–217, Sec. 3(j)(2), Aug. 21, 2002, 116 Stat. 1300.)

§ 311. General Counsel

There is in the Department the Office of the General Counsel. There is at the head of the office a General Counsel, who is appointed by the President, by and with the advice and consent of the Senate. The General Counsel is the chief legal officer of the Department and provides legal assistance to the Secretary concerning the programs and policies of the Department.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 383.)

§ 312. Inspector General

(a) There is in the Department an Inspector General, who is appointed by the President, by and with the advice and consent of the Senate, as provided in the Inspector General Act of 1978 (5 U.S.C. App.). The Inspector General performs the functions, has the responsibilities, and exercises the powers specified in that Act.

(b)(1) The Secretary shall provide for not less than 40 full-time positions in the Office of Inspector General in addition to the number of such positions in that office on March 15, 1989.

(2) The President shall include in the budget transmitted to the Congress for each fiscal year pursuant to section 1105 of title 31 an estimate of the amount for the Office of Inspector General that is sufficient to provide for a number of full-time positions in that office that is not less than the number of full-time positions in that office on March 15, 1989, plus 40.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 383; amended Pub. L. 103–446, title XII, Sec. 1201(e)(3), (g)(1), Nov. 2, 1994, 108 Stat. 4685, 4687.)

§ 312A. Director of Construction and Facilities Management

(a) IN GENERAL.—(1) There is in the Department a Director of Construction and Facilities Management, who shall be appointed by the Secretary.

(2) The position of Director of Construction and Facilities Management is a career reserved position, as such term is defined in section 3132(a)(8) of title 5.

(3) The Director shall provide direct support to the Secretary in matters covered by the responsibilities of the Director under subsection (c).

(4) The Director shall report to the Deputy Secretary in the discharge of the responsibilities of the Director under subsection (c).

(b) QUALIFICATIONS.—Each individual appointed as Director of Construction and Facilities Management shall be an individual who—

(1) holds an undergraduate or master's degree in architectural design or engineering; and

(2) has substantive professional experience in the area of construction project management.

(c) RESPONSIBILITIES.—(1) The Director of Construction and Facilities Management shall—

(A) be responsible for overseeing and managing the planning, design, construction, and operation of facilities and infrastructure of the Department, including major and minor construction projects; and

(B) perform such other functions as the Secretary shall prescribe.

(2) In carrying out the oversight and management of construction and operation of facilities and infrastructure under this section, the Director shall be responsible for the following:

(A) Development and updating of short-range and long-range strategic capital investment strategies and plans of the Department.

(B) Planning, design, and construction of facilities for the Department, including determining architectural and engineering requirements and ensuring compliance of the Department with applicable laws relating to the construction program of the Department.

(C) Management of the short-term and long-term leasing of real property by the Department.

(D) Repair and maintenance of facilities of the Department, including custodial services, building management and administration, and maintenance of roads, grounds, and infrastructure.

(E) Management of procurement and acquisition processes relating to the construction and operation of facilities of the Department, including the award of contracts related to design, construction, furnishing, and supplies and equipment.

(Added Pub. L. 109–461, title VIII, Sec. 811(a), Dec. 22, 2006, 120 Stat. 3446.)

§ 313. Availability of appropriations

(a) Funds appropriated to the Department may remain available until expended.

(b) Funds appropriated to the Department may not be used for a settlement of more than $1,000,000 on a construction contract unless—

(1) the settlement is audited by an entity outside the Department for reasonableness and appropriateness of expenditures; and

(2) the settlement is provided for specifically in an appropriation law.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 383.)

§ 314. Central Office

The Central Office of the Department shall be in the District of Columbia.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 383.)

§ 315. Regional offices

(a) The Secretary may establish such regional offices and such other field offices within the United States, its Territories, Commonwealths, and possessions, as the Secretary considers necessary.

(b) The Secretary may maintain a regional office in the Republic of the Philippines until December 31, 2009.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 384; amended Pub. L. 102–291, Sec. 1(a), May 20, 1992, 106 Stat. 178; Pub. L. 103–210, Sec. 2(c), Dec. 20, 1993, 107 Stat. 2497; Pub. L. 103–446, title V, Sec. 502, Nov. 2, 1994, 108 Stat. 4663; Pub. L. 106–117, title VIII, Sec. 802, Nov. 30, 1999, 113 Stat. 1586; Pub. L. 108–183, title II, Sec. 213, Dec. 16, 2003, 117 Stat. 2658.)

§ 316. Colocation of regional offices and medical centers

(a) To provide for a more economical, efficient, and effective operation of such regional offices, the Secretary shall provide for the colocation of at least three regional offices with medical centers of the Department—

(1) on real property under the jurisdiction of the Department of Veterans Affairs at such medical centers; or

(2) on real property that is adjacent to such a medical center and is under the jurisdiction of the Department as a result of being conveyed to the United States for the purpose of such colocation.

(b)(1) In carrying out this section and notwithstanding any other provision of law, the Secretary may lease, with or without compensation and for a period of not to exceed 35 years, to another party at not more than seven locations any of the real property described in paragraph (1) or (2) of subsection (a).

(2) Such real property shall be used as the site of a facility—

(A) constructed and owned by the lessee of such real property; and

(B) leased under subsection (c)(1) to the Department for such use and such other activities as the Secretary determines are appropriate.

(c)(1) The Secretary may enter into a lease for the use of any facility described in subsection (b)(2) for not more than 35 years under such terms and conditions as may be in the best interests of the Department.

(2) Each agreement for such a lease shall provide—

(A) that the obligation of the United States to make payments under the agreement is subject to the availability of appropriations for that purpose; and

(B) that the ownership of the facility shall vest in the United States at the end of such lease.

(d)(1) The Secretary may sublease any space in such a facility to another party at a rate not less than—

(A) the rental rate paid by the Secretary for such space under subsection (c); plus

(B) the amount the Secretary pays for the costs of administering such facility (including operation, maintenance, utility, and rehabilitation costs) which are attributable to such space.

(2) In any such sublease, the Secretary shall include such terms relating to default and nonperformance as the Secretary considers appropriate to protect the interests of the United States.

(e) The Secretary shall use the receipts of any payment for the lease of real property under subsection (b) for the payment of the lease of a facility under subsection (c).

(f)(1) Subject to paragraph (3)(A), the Secretary shall, not later than April 18, 1990, issue an invitation for offers with respect to three colocations to be carried out under this section. The invitation shall include, with respect to each such colocation, at least the following:

(A) Identification of the site to be developed.

(B) Minimum office space requirements for regional office activities.

(C) Design criteria of the facility to be constructed.

(D) A plan for meeting the security and parking needs for the facility and its occupants and visitors.

(E) A statement of current and projected rents and other costs for regional office activities.

(F) The estimated cost of construction of the facility concerned, the estimated annual cost of leasing space for regional office activities in the facility, and the estimated total annual cost of leasing all space in such facility.

(G) A plan for securing appropriate licenses, easements, and rights-of-way.

(H) A list of terms and conditions the Secretary has approved for inclusion in the lease agreement for the facility concerned.

(2) Subject to paragraph (3)(B), the Secretary shall—

(A) not later than one year after the date on which the invitation is issued under paragraph (1), enter into an agreement to carry out one colocation under this subsection; and

(B) within 180 days after entering into the agreement referred to in subparagraph (A), enter into agreements to carry out two additional colocations,

unless the Secretary determines that it is not economically feasible for the Department to undertake them, taking into consideration all of the tangible and intangible benefits associated with such colocations.

(3) The Secretary shall—

(A) at least 10 days before the issuance or other publication of the invitation referred to in paragraph (1), submit a copy of the invitation to the Committees on Veterans' Affairs of the Senate and House of Representatives; and

(B) at least 30 days before entering into an agreement under paragraph (2), submit a copy to the Committees on Veterans' Affairs of the Senate and House of Representatives of the proposals selected by the Secretary from those received in response to the invitation issued under paragraph (1).

(g) The authority to enter into an agreement under this section shall expire on September 30, 1992.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 384.)

§ 317. Center for Minority Veterans

(a) There is in the Department a Center for Minority Veterans. There is at the head of the Center a Director.

(b) The Director shall be a career or noncareer appointee in the Senior Executive Service. The Director shall be appointed for a term of six years.

(c) The Director reports directly to the Secretary or the Deputy Secretary concerning the activities of the Center.

(d) The Director shall perform the following functions with respect to veterans who are minorities:

(1) Serve as principal adviser to the Secretary on the adoption and implementation of policies and programs affecting veterans who are minorities.

(2) Make recommendations to the Secretary, the Under Secretary for Health, the Under Secretary for Benefits, and other Department officials for the establishment or improvement of programs in the Department for which veterans who are minorities are eligible.

(3) Promote the use of benefits authorized by this title by veterans who are minorities and the conduct of outreach activities to veterans who are minorities, in conjunction with outreach activities carried out under chapter 77 of this title.

(4) Disseminate information and serve as a resource center for the exchange of information regarding innovative and successful programs which improve the services available to veterans who are minorities.

(5) Conduct and sponsor appropriate social and demographic research on the needs of veterans who are minorities and the extent to which programs authorized under this title meet the needs of those veterans, without regard to any law concerning the collection of information from the public.

(6) Analyze and evaluate complaints made by or on behalf of veterans who are minorities about the adequacy and timeliness of services provided by the Department and advise the appropriate official of the Department of the results of such analysis or evaluation.

(7) Consult with, and provide assistance and information to, officials responsible for administering Federal, State, local, and private programs that assist veterans, to encourage those officials to adopt policies which promote the use of those programs by veterans who are minorities.

(8) Advise the Secretary when laws or policies have the effect of discouraging the use of benefits by veterans who are minorities.

(9) Publicize the results of medical research which are of particular significance to veterans who are minorities.

(10) Advise the Secretary and other appropriate officials on the effectiveness of the Department's efforts to accomplish the goals of section 492B of the Public Health Service Act (42 U.S.C. 289a-2) with respect to the inclusion of minorities in clinical research and on particular health conditions affecting the health of members of minority groups which should be studied as part of the Department's medical research program and promote cooperation between the Department and other sponsors of medical research of potential benefit to veterans who are minorities.

(11) Provide support and administrative services to the Advisory Committee on Minority Veterans provided for under section 544 of this title.

(12) Perform such other duties consistent with this section as the Secretary shall prescribe.

(e) The Secretary shall ensure that the Director is furnished sufficient resources to enable the Director to carry out the functions of the Center in a timely manner.

(f) The Secretary shall include in documents submitted to Congress by the Secretary in support of the President's budget for each fiscal year—

(1) detailed information on the budget for the Center;

(2) the Secretary's opinion as to whether the resources (including the number of employees) proposed in the budget for that fiscal year are adequate to enable the Center to comply with its statutory and regulatory duties; and

(3) a report on the activities and significant accomplishments of the Center during the preceding fiscal year.

(g) In this section—

(1) The term "veterans who are minorities" means veterans who are minority group members.

(2) The term "minority group member" has the meaning given such term in section 544(d) of this title.

(Added Pub. L. 103–446, title V, Sec. 509(a), Nov. 2, 1994, 108 Stat. 4665; amended Pub. L. 104–275, title V, Sec. 501(a)–(c), Oct. 9, 1996, 110 Stat. 3340.)

§ 318. Center for Women Veterans

(a) There is in the Department a Center for Women Veterans. There is at the head of the Center a Director.

(b) The Director shall be a career or noncareer appointee in the Senior Executive Service. The Director shall be appointed for a term of six years.

(c) The Director reports directly to the Secretary or the Deputy Secretary concerning the activities of the Center.

(d) The Director shall perform the following functions with respect to veterans who are women:

(1) Serve as principal adviser to the Secretary on the adoption and implementation of policies and programs affecting veterans who are women.

(2) Make recommendations to the Secretary, the Under Secretary for Health, the Under Secretary for Benefits, and other Department officials for the establishment or improvement of programs in the Department for which veterans who are women are eligible.

(3) Promote the use of benefits authorized by this title by veterans who are women and the conduct of outreach activities to veterans who are women, in conjunction with outreach activities carried out under chapter 77 of this title.

(4) Disseminate information and serve as a resource center for the exchange of information regarding innovative and successful programs which improve the services available to veterans who are women.

(5) Conduct and sponsor appropriate social and demographic research on the needs of veterans who are women and

the extent to which programs authorized under this title meet the needs of those veterans, without regard to any law concerning the collection of information from the public.

(6) Analyze and evaluate complaints made by or on behalf of veterans who are women about the adequacy and timeliness of services provided by the Department and advise the appropriate official of the Department of the results of such analysis or evaluation.

(7) Consult with, and provide assistance and information to, officials responsible for administering Federal, State, local, and private programs that assist veterans, to encourage those officials to adopt policies which promote the use of those programs by veterans who are women.

(8) Advise the Secretary when laws or policies have the effect of discouraging the use of benefits by veterans who are women.

(9) Publicize the results of medical research which are of particular significance to veterans who are women.

(10) Advise the Secretary and other appropriate officials on the effectiveness of the Department's efforts to accomplish the goals of section 492B of the Public Health Service Act (42 U.S.C. 289a-2) with respect to the inclusion of women in clinical research and on particular health conditions affecting women's health which should be studied as part of the Department's medical research program and promote cooperation between the Department and other sponsors of medical research of potential benefit to veterans who are women.

(11) Provide support and administrative services to the Advisory Committee on Women Veterans established under section 542 of this title.

(12) Perform such other duties consistent with this section as the Secretary shall prescribe.

(e) The Secretary shall ensure that the Director is furnished sufficient resources to enable the Director to carry out the functions of the Center in a timely manner.

(f) The Secretary shall include in documents submitted to Congress by the Secretary in support of the President's budget for each fiscal year—

(1) detailed information on the budget for the Center;

(2) the Secretary's opinion as to whether the resources (including the number of employees) proposed in the budget for that fiscal year are adequate to enable the Center to comply with its statutory and regulatory duties; and

(3) a report on the activities and significant accomplishments of the Center during the preceding fiscal year.

(Added Pub. L. 103–446, title V, Sec. 509(a), Nov. 2, 1994, 108 Stat. 4666; amended Pub. L. 104–275, title V, Sec. 501(a), (d), Oct. 9, 1996, 110 Stat. 3340, 3341.)

§ 319. Office of Employment Discrimination Complaint Adjudication

(a)(1) There is in the Department an Office of Employment Discrimination Complaint Adjudication. There is at the head of the Office a Director.

(2) The Director shall be a career appointee in the Senior Executive Service.

(3) The Director reports directly to the Secretary or the Deputy Secretary concerning matters within the responsibility of the Office.

(b)(1) The Director is responsible for making the final agency decision within the Department on the merits of any employment discrimination complaint filed by an employee, or an applicant for employment, with the Department. The Director shall make such decisions in an impartial and objective manner.

(2) No person may make any ex parte communication to the Director or to any employee of the Office with respect to a matter on which the Director has responsibility for making a final agency decision.

(c) Whenever the Director has reason to believe that there has been retaliation against an employee by reason of the employee asserting rights under an equal employment opportunity law, the Director shall report the suspected retaliatory action directly to the Secretary or Deputy Secretary, who shall take appropriate action thereon.

(d)(1) The Office shall employ a sufficient number of attorneys and other personnel as are necessary to carry out the functions of the Office. Attorneys shall be compensated at a level commensurate with attorneys employed by the Office of the General Counsel.

(2) The Secretary shall ensure that the Director is furnished sufficient resources in addition to personnel under paragraph (1) to enable the Director to carry out the functions of the Office in a timely manner.

(3) The Secretary shall ensure that any performance appraisal of the Director of the Office of Employment Discrimination Complaint Adjudication or of any employee of the Office does not take into consideration the record of the Director or employee in deciding cases for or against the Department.

(Added Pub. L. 105–114, title I, Sec. 102(a)(1), Nov. 21, 1997, 111 Stat. 2280.)

§ 320. Department of Veterans Affairs-Department of Defense Joint Executive Committee

(a) JOINT EXECUTIVE COMMITTEE.—(1) There is established an interagency committee to be known as the Department of Veterans Affairs-Department of Defense Joint Executive Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee is composed of—

(A) the Deputy Secretary of Veterans Affairs and such other officers and employees of the Department of Veterans Affairs as the Secretary of Veterans Affairs may designate; and

(B) the Under Secretary of Defense for Personnel and Readiness and such other officers and employees of the Department of Defense as the Secretary of Defense may designate.

(b) ADMINISTRATIVE MATTERS.—(1) The Deputy Secretary of Veterans Affairs and the Under Secretary of Defense shall determine the size and structure of the Committee, as well as the administrative and procedural guidelines for the operation of the Committee.

(2) The two Departments shall supply appropriate staff and resources to provide administrative support and services. Support for such purposes shall be provided at a level sufficient for the efficient operation of the Committee, including a subordinate Health Executive Committee, a subordinate Benefits Executive Committee, and such other committees or working groups as considered necessary by the Deputy Secretary and Under Secretary.

(c) RECOMMENDATIONS.—(1) The Committee shall recommend to the Secretaries strategic direction for the joint coordination and sharing efforts between and within the two Departments under section 8111 of this title and shall oversee implementation of those efforts.

(2) The Committee shall submit to the two Secretaries and to Congress an annual report containing such recommendations as the Committee considers appropriate.

(d) FUNCTIONS.—In order to enable the Committee to make recommendations in its annual report under subsection (c)(2), the Committee shall do the following:

(1) Review existing policies, procedures, and practices relating to the coordination and sharing of resources between the two Departments.

(2) Identify changes in policies, procedures, and practices that, in the judgment of the Committee, would promote mutually beneficial coordination, use, or exchange of use of services and resources of the two Departments, with the goal of improving the quality, efficiency and effectiveness of the delivery of benefits and services to veterans, service members, military retirees, and their families through an enhanced Department of Veterans Affairs and Department of Defense partnership.

(3) Identify and assess further opportunities for the coordination and collaboration between the Departments that, in the judgment of the Committee, would not adversely affect the range of services, the quality of care, or the established priorities for benefits provided by either Department.

(4) Review the plans of both Departments for the acquisition of additional resources, especially new facilities and major equipment and technology, in order to assess the potential effect of such plans on further opportunities for the coordination and sharing of resources.

(5) Review the implementation of activities designed to promote the coordination and sharing of resources between the Departments.

(Added Pub. L. 108–136, div. A, title V, Sec. 583(a)(1), Nov. 24, 2003, 117 Stat. 1490.)

§ 321. Office of Survivors Assistance

(a) ESTABLISHMENT.—The Secretary shall establish in the Department an Office of Survivors Assistance (in this section referred to as the "Office") to serve as a resource regarding all benefits and services furnished by the Department—

(1) to survivors and dependents of deceased veterans; and

(2) to survivors and dependents of deceased members of the Armed Forces.

(b) ADVISORY DUTIES.—The Office shall serve as a primary advisor to the Secretary on all matters related to the policies, programs, legislative issues, and other initiatives affecting the survivors and dependents described in subsection (a).

(c) GUIDANCE FROM STAKEHOLDERS.—In establishing the Office, the Secretary shall seek guidance from interested stakeholders.

(d) RESOURCES.—The Secretary shall ensure that appropriate personnel, funding, and other resources are provided to the Office to carry out its responsibilities.

(e) INCLUSION OF INFORMATION ON OFFICE IN ANNUAL REPORT ON DEPARTMENT ACTIVITIES.—The Secretary shall include in each annual Performance and Accountability report submitted by the Secretary to Congress a description of the activities of the Office during the fiscal year covered by such report.

(Added Pub. L. 110–389, title II, Sec. 222(a), Oct. 10, 2008, 122 Stat. 4156.)

§ 322. Office of National Veterans Sports Programs and Special Events

(a) ESTABLISHMENT.—There is in the Department an Office of National Veterans Sports Programs and Special Events. There is at the head of the Office a Director, who shall report to an appropriate official of the Veterans Benefits Administration, as determined by the Secretary, or to the Deputy Secretary or Secretary.

(b) RESPONSIBILITIES OF DIRECTOR.—Subject to the direction of the Secretary, the Director—

(1) shall establish and carry out qualifying programs and events;

(2) may provide for sponsorship by the Department of qualifying programs and events;

(3) may provide for, facilitate, and encourage participation by disabled veterans in qualifying programs and events;

(4) shall, to the extent feasible, cooperate with the United States Paralympics, Inc., and its partners to promote the participation of disabled veterans and disabled members of the Armed Forces in sporting events sponsored by the United States Paralympics, Inc., and its partners;

(5) shall seek sponsorships and donations from the private sector to defray costs of carrying out the responsibilities of the Director to the maximum extent feasible; and

(6) may carry out such other responsibilities as the Secretary determines are appropriate.

(c) QUALIFYING PROGRAM OR EVENT.—For purposes of this section, a qualifying program or event is a sports program or other event in which disabled veterans and disabled members of the Armed Forces participate and that is approved by the Secretary as being consistent with the goals and missions of the Department.

(d) MONTHLY ASSISTANCE ALLOWANCE.—(1) Subject to the availability of appropriations for such purpose, the Secretary may provide a monthly assistance allowance to a veteran with a disability invited by the United States Paralympics, Inc., to compete for a slot on, or selected for, the Paralympic Team for any month in which the veteran is training or competing in any event sanc-

tioned by the United States Paralympics, Inc., or who is residing at a United States Paralympics, Inc., training center.

(2) The amount of the monthly assistance payable to a veteran under paragraph (1) shall be equal to the monthly amount of subsistence allowance that would be payable to the veteran under chapter 31 of this title if the veteran were eligible for and entitled to rehabilitation under such chapter.

(3) In providing assistance under this subsection, the Secretary shall give priority to veterans with service-connected disabilities.

(4) There is authorized to be appropriated to carry out this subsection $2,000,000 for each of fiscal years 2010 through 2013.

(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as a limitation on disabled sports and special events supported by the Department as of the date of the enactment of this section.

(Added Pub. L. 110–389, title VII, Sec. 703(a), Oct. 10, 2008, 122 Stat. 4183.)

Chapter 5 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART I—GENERAL PROVISIONS]

CHAPTER 5—AUTHORITY AND DUTIES OF THE SECRETARY

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SUBCHAPTER I—GENERAL AUTHORITIES

§ 501. Rules and regulations

(a) The Secretary has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department and are consistent with those laws, including—

(1) regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws;

(2) the forms of application by claimants under such laws;

(3) the methods of making investigations and medical examinations; and

(4) the manner and form of adjudications and awards.

(b) Any rule, regulation, guideline, or other published interpretation or order (and any amendment thereto) issued pursuant to the authority granted by this section or any other provision of this title shall contain citations to the particular section or sections of statutory law or other legal authority upon which such issuance is based. The citation to the authority shall appear immediately following each substantive provision of the issuance.

(c) In applying section 552(a)(1) of title 5 to the Department, the Secretary shall ensure that subparagraphs (C), (D), and (E) of that section are complied with, particularly with respect to opinions and interpretations of the General Counsel.

(d) The provisions of section 553 of title 5 shall apply, without regard to subsection (a)(2) of that section, to matters relating to loans, grants, or benefits under a law administered by the Secretary.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 386.)

§ 502. Judicial review of rules and regulations

An action of the Secretary to which section 552(a)(1) or 553 of title 5 (or both) refers is subject to judicial review. Such review shall be in accordance with chapter 7 of title 5 and may be sought only in the United States Court of Appeals for the Federal Circuit. However, if such review is sought in connection with an appeal brought under the provisions of chapter 72 of this title, the provisions of that chapter shall apply rather than the provisions of chapter 7 of title 5.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 386; amended Pub. L. 110–389, title I, Sec. 102, Oct. 10, 2008, 122 Stat. 4148.)

§ 503. Administrative error; equitable relief

(a) If the Secretary determines that benefits administered by the Department have not been provided by reason of administrative error on the part of the Federal Government or any of its employees, the Secretary may provide such relief on account of such error as the Secretary determines equitable, including the payment of moneys to any person whom the Secretary determines is equitably entitled to such moneys.

(b) If the Secretary determines that a veteran, surviving spouse, child of a veteran, or other person has suffered loss as a consequence of reliance upon a determination by the Department of eligibility or entitlement to benefits, without knowledge that it was erroneously made, the Secretary may provide such relief on account of such error as the Secretary determines is equitable, including the payment of moneys to any person whom the Secretary determines is equitably entitled to such moneys.

(c) Not later than April 1 of each year, the Secretary shall submit to Congress a report containing a statement as to the disposition of each case recommended to the Secretary for equitable relief under this section during the preceding calendar year. No report shall be required under this subsection after December 31, 2009.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 386; amended Pub. L. 106–419, title IV, Sec. 403(c)(1), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 109–233, title IV, Sec. 403, June 15, 2006, 120 Stat. 411.)

§ 505. Opinions of Attorney General

The Secretary may require the opinion of the Attorney General on any question of law arising in the administration of the Department.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 387.)

§ 510. Authority to reorganize offices

(a) Except to the extent inconsistent with law, the Secretary may—

(1) consolidate, eliminate, abolish, or redistribute the functions of the Administrations, offices, facilities, or activities in the Department;

(2) create new Administrations, offices, facilities, or activities in the Department; and

(3) fix the functions of any such Administration, office, facility, or activity and the duties and powers of their respective executive heads.

(b) The Secretary may not in any fiscal year implement an administrative reorganization described in subsection (c) unless the Secretary first submits to the appropriate committees of the Congress a report containing a detailed plan and justification for the administrative reorganization. No action to carry out such reorganization may be taken after the submission of such report until the end of a 45-day period following the date of the submission of the report, not less than 30 days of which shall be days during which Congress shall have been in continuous session. For purposes of the preceding sentence, continuity of a session of Congress is broken only by adjournment sine die, and there shall be excluded from the computation of any period of continuity of session any day during which either House of Congress is not in session during an adjournment of more than three days to a day certain.

(c) An administrative reorganization described in this subsection is an administrative reorganization of a covered field office or facility that involves a reduction during any fiscal year in the number of full-time equivalent employees with permanent duty stations at such office or facility—

(1) by 15 percent or more; or

(2) by a percent which, when added to the percent reduction made in the number of such employees with permanent duty stations at such office or facility during the preceding fiscal year, is 25 percent or more.

(d)(1) Not less than 30 days before the date on which the implementation of any administrative reorganization described in paragraph (2) of a unit in the Central Office is to begin, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a notification regarding the reorganization.

(2) Paragraph (1) applies to an administrative reorganization of any unit of the Central Office that is the duty station for 30 or more employees if the reorganization involves a reduction in any

fiscal year in the number of full-time equivalent employees with permanent duty station in such unit by 50 percent or more.

(e) For purposes of this section, the term "administrative reorganization" does not include a consolidation or redistribution of functions at a covered field office or facility, or between components of the Veterans Benefits Administration and the Veterans Health Administration at a Department medical and regional office center, if after the consolidation or redistribution the same number of full-time equivalent employees continues to perform the affected functions at that field office, facility, or center.

(f) For purposes of this section:

(1) The term "covered field office or facility" means a Department office or facility outside the Central Office that is the permanent duty station for 25 or more employees or that is a free-standing outpatient clinic.

(2) The term "detailed plan and justification" means, with respect to an administrative reorganization, a written report that, at a minimum, includes the following:

(A) Specification of the number of employees by which each covered office or facility affected is to be reduced, the responsibilities of those employees, and the means by which the reduction is to be accomplished.

(B) Identification of any existing or planned office or facility at which the number of employees is to be increased and specification of the number and responsibilities of the additional employees at each such office or facility.

(C) A description of the changes in the functions carried out at any existing office or facility and the functions to be assigned to an office or facility not in existence on the date that the plan and justification are submitted pursuant to subsection (b).

(D) An explanation of the reasons for the determination that the reorganization is appropriate and advisable in terms of the statutory missions and long-term goals of the Department.

(E) A description of the effects that the reorganization may have on the provision of benefits and services to veterans and dependents of veterans (including the provision of benefits and services through offices and facilities of the Department not directly affected by the reorganization).

(F) Estimates of the costs of the reorganization and of the cost impact of the reorganization, together with analyses supporting those estimates.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 387; amended Pub. L. 104–262, title III, Sec. 304, Oct. 9, 1996, 110 Stat. 3194.)

§ 511. Decisions of the Secretary; finality

(a) The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any such question shall be final and conclusive

and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.

(b) The second sentence of subsection (a) does not apply to—

(1) matters subject to section 502 of this title;

(2) matters covered by sections 1975 and 1984 of this title;

(3) matters arising under chapter 37 of this title; and

(4) matters covered by chapter 72 of this title.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 388.)

§ 512. Delegation of authority; assignment of functions and duties

(a) Except as otherwise provided by law, the Secretary may assign functions and duties, and delegate, or authorize successive redelegation of, authority to act and to render decisions, with respect to all laws administered by the Department, to such officers and employees as the Secretary may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Secretary.

(b) There shall be included on the technical and administrative staff of the Secretary such staff officers, experts, inspectors, and assistants (including legal assistants) as the Secretary may prescribe.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 389.)

§ 513. Contracts and personal services

The Secretary may, for purposes of all laws administered by the Department, accept uncompensated services, and enter into contracts or agreements with private or public agencies or persons (including contracts for services of translators without regard to any other law), for such necessary services (including personal services) as the Secretary may consider practicable. The Secretary may also enter into contracts or agreements with private concerns or public agencies for the hiring of passenger motor vehicles or aircraft for official travel whenever, in the Secretary's judgment, such arrangements are in the interest of efficiency or economy.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 389.)

§ 515. Administrative settlement of tort claims

(a)(1) Notwithstanding the limitations contained in section 2672 of title 28, the Secretary may settle a claim for money damages against the United States cognizable under section 1346(b) or 2672 of title 28 or section 7316 of this title to the extent the authority to do so is delegated to the Secretary by the Attorney General. Such delegation may not exceed the authority delegated by the Attorney General to United States attorneys to settle claims for money damages against the United States.

(2) For purposes of this subsection, the term "settle", with respect to a claim, means consider, ascertain, adjust, determine, and dispose of the claim, whether by full or partial allowance or by disallowance.

(b) The Secretary may pay tort claims, in the manner authorized in the first paragraph of section 2672 of title 28, when such

claims arise in foreign countries in connection with Department operations abroad. A claim may not be allowed under this subsection unless it is presented in writing to the Secretary within two years after the claim accrues.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 389.)

§ 516. Equal employment responsibilities

(a) The Secretary shall provide that the employment discrimination complaint resolution system within the Department be established and administered so as to encourage timely and fair resolution of concerns and complaints. The Secretary shall take steps to ensure that the system is administered in an objective, fair, and effective manner and in a manner that is perceived by employees and other interested parties as being objective, fair, and effective.

(b) The Secretary shall provide—

(1) that employees responsible for counseling functions associated with employment discrimination and for receiving, investigating, and processing complaints of employment discrimination shall be supervised in those functions by, and report to, an Assistant Secretary or a Deputy Assistant Secretary for complaint resolution management; and

(2) that employees performing employment discrimination complaint resolution functions at a facility of the Department shall not be subject to the authority, direction, and control of the Director of the facility with respect to those functions.

(c) The Secretary shall ensure that all employees of the Department receive adequate education and training for the purposes of this section and section 319 of this title.

(d) The Secretary shall, when appropriate, impose disciplinary measures, as authorized by law, in the case of employees of the Department who engage in unlawful employment discrimination, including retaliation against an employee asserting rights under an equal employment opportunity law.

(e)(1)(A) Not later than 45 days after the end of each calendar quarter, the Assistant Secretary for Human Resources and Administration shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report summarizing the employment discrimination complaints filed against the individuals referred to in paragraph (2) during such quarter.

(B) Subparagraph (A) shall apply in the case of complaints filed against individuals on the basis of such individuals' personal conduct and shall not apply in the case of complaints filed solely on the basis of such individuals' positions as officials of the Department.

(2) Paragraph (1) applies to the following officers and employees of the Department:

(A) The Secretary.

(B) The Deputy Secretary of Veterans Affairs.

(C) The Under Secretary for Health and the Under Secretary for Benefits.

(D) Each Assistant Secretary of Veterans Affairs and each Deputy Assistant Secretary of Veterans Affairs.

(E) The Under Secretary of Veterans Affairs for Memorial Affairs.

(F) The General Counsel of the Department.

(G) The Chairman of the Board of Veterans' Appeals.

(H) The Chairman of the Board of Contract Appeals of the Department.

(I) The director and the chief of staff of each medical center of the Department.

(J) The director of each Veterans Integrated Services Network.

(K) The director of each regional office of the Department.

(L) Each program director of the Central Office of the Department.

(3) Each report under this subsection—

(A) may not disclose information which identifies the individuals filing, or the individuals who are the subject of, the complaints concerned or the facilities at which the discrimination identified in such complaints is alleged to have occurred;

(B) shall summarize such complaints by type and by equal employment opportunity field office area in which filed; and

(C) shall include copies of such complaints, with the information described in subparagraph (A) redacted.

(4) Not later than April 1 each year, the Assistant Secretary shall submit to the committees referred to in paragraph (1)(A) a report on the complaints covered by paragraph (1) during the preceding year, including the number of such complaints filed during that year and the status and resolution of the investigation of such complaints.

(f) The Secretary shall ensure that an employee of the Department who seeks counseling relating to employment discrimination may elect to receive such counseling from an employee of the Department who carries out equal employment opportunity counseling functions on a full-time basis rather than from an employee of the Department who carries out such functions on a part-time basis.

(g) The number of employees of the Department whose duties include equal employment opportunity counseling functions as well as other, unrelated functions may not exceed 40 full-time equivalent employees. Any such employee may be assigned equal employment opportunity counseling functions only at Department facilities in remote geographic locations (as determined by the Secretary). The Secretary may waive the limitation in the preceding sentence in specific cases.

(h) The provisions of this section shall be implemented in a manner consistent with procedures applicable under regulations prescribed by the Equal Employment Opportunity Commission.

(Added Pub. L. 105–114, title I, Sec. 101(a)(1), Nov. 21, 1997, 111 Stat. 2278; amended Pub. L. 105–368, title IV, Sec. 403(d)(2), Nov. 11, 1998, 112 Stat. 3339; Pub. L. 108–170, title IV, Sec. 405(a), Dec. 6, 2003, 117 Stat. 2063.)

SUBCHAPTER II—SPECIFIED FUNCTIONS

§ 521. Assistance to certain rehabilitation activities

(a) The Secretary may assist any organization named in or approved under section 5902 of this title in providing recreational ac-

tivities which would further the rehabilitation of disabled veterans. Such assistance may be provided only if—

(1) the activities are available to disabled veterans on a national basis; and

(2) a significant percentage of the individuals participating in the activities are eligible for rehabilitative services under chapter 17 of this title.

(b) The Secretary may accept from any appropriate source contributions of funds and of other assistance to support the Secretary's provision of assistance for such activities.

(c)(1) Subject to paragraph (2), the Secretary may authorize the use, for purposes approved by the Secretary in connection with the activity involved, of the seal and other official symbols of the Department and the name "Department of Veterans Affairs" by—

(A) any organization which provides an activity described in subsection (a) with assistance from the Secretary; and

(B) any individual or entity from which the Secretary accepts a significant contribution under subsection (b) or an offer of such a contribution.

(2) The use of such seal or name of any official symbol of the Department in an advertisement may be authorized by the Secretary under this subsection only if—

(A) the Secretary has approved the advertisement; and

(B) the advertisement contains a clear statement that no product, project, or commercial line of endeavor referred to in the advertisement is endorsed by the Department of Veterans Affairs.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 390.)

§ 521A. Assistance for United States Paralympics, Inc

(a) AUTHORIZATION TO PROVIDE ASSISTANCE.—The Secretary may award grants to the United States Paralympics, Inc., to plan, develop, manage, and implement an integrated adaptive sports program for disabled veterans and disabled members of the Armed Forces.

(b) OVERSIGHT BY SECRETARY.—As a condition of receiving a grant under this section, the United States Paralympics, Inc., shall permit the Secretary to conduct such oversight of the use of grant funds as the Secretary determines is appropriate. The United States Paralympics, Inc., shall be responsible for the use of grant funds provided under this section.

(c) APPLICATION REQUIREMENT.—(1) Before the Secretary may award a grant to the United States Paralympics, Inc., under this section, the United States Paralympics, Inc., shall submit to the Secretary an application that describes the activities to be carried out with the grant, including information on specific measurable goals and objectives to be achieved using grant funds.

(2) The application shall include—

(A) a detailed description of all partnerships referred to in paragraph (3) at the national and local levels that will be participating in such activities and the amount of grant funds that the United States Paralympics, Inc., proposes to make available for each of such partnerships; and

(B) for any fiscal year for which a grant is sought, the amount of private donations received by the United States Paralympics, Inc., expected to be expended to support operations during that fiscal year.

(3) Partnerships referred to in this paragraph are agreements between the United States Paralympics, Inc., and organizations with significant experience in the training and support of disabled athletes and the promotion of disabled sports at the local and national levels. Such organizations may include Disabled Sports USA, Blaze Sports, Paralyzed Veterans of America, and Disabled American Veterans. The agreements shall detail the scope of activities and funding to be provided by the United States Paralympics, Inc., to the partner.

(d) USE OF FUNDS.—(1) The United States Paralympics, Inc., with the assistance and cooperation of the Secretary and the heads of other appropriate Federal and State departments and agencies and partnerships referred to in subsection (c)(3), shall use a grant under this section to reimburse grantees with which the United States Paralympics, Inc., has entered into a partnership under subsection (c) for the direct costs of recruiting, supporting, equipping, encouraging, scheduling, facilitating, supervising, and implementing the participation of disabled veterans and disabled members of the Armed Forces in the activities described in paragraph (3) by supporting a program described in paragraph (2).

(2) A program described in this paragraph is a sports program that—

(A) promotes basic physical activity, games, recreation, training, and competition;

(B) is approved by the Secretary; and

(C)(i) provides services and activities described in paragraph (3) for disabled veterans and disabled members of the Armed Forces; and

(ii) may also provide services and activities described in paragraph (3) for individuals with disabilities who are not veterans or members of the Armed Forces, or both; except that funds made available to carry out this section may not be used to support those individuals with disabilities who are not veterans or members of the Armed Forces.

(3) Activities described in this paragraph are—

(A) instruction, participation, and competition in Paralympic sports;

(B) training and technical assistance to program administrators, coaches, recreational therapists, instructors, Department employees, and other appropriate individuals; and

(C) coordination, Paralympic classification of athletes, athlete assessment, sport-specific training techniques, program development (including programs at the local level), sports equipment, supplies, program evaluation, and other activities related to the implementation and operation of the program.

(4) A grant made under this section may include, at the discretion of the Secretary, an amount for the administrative expenses of the United States Paralympics, Inc., but not to exceed five percent of the amount of the grant.

(5) Funds made available by the United States Paralympics, Inc., to a grantee under subsection (c) may include an amount for administrative expenses, but not to exceed ten percent of the amount of such funds.

(e) OUTREACH REQUIREMENT.—As a condition of receiving a grant under this section, the United States Paralympics, Inc., shall agree to conduct a joint outreach campaign with the Secretary of Veterans Affairs to inform all eligible veterans and separating members of the Armed Forces with physical disabilities about the existence of the integrated adaptive sports program, as appropriate, and shall provide for, facilitate, and encourage participation of such veterans and separating members of the Armed Forces in programs under this section to the extent possible.

(f) COORDINATION.—The Secretary shall ensure access to and use of appropriate Department sports, recreation, and fitness facilities by disabled veterans and disabled members of the Armed Forces participating in the integrated adaptive sports program to the maximum extent possible. The Secretary shall ensure that such access does not adversely affect any other assistance provided to veterans.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $8,000,000 for each of fiscal years 2010 through 2013 to carry out this section. Amounts appropriated pursuant to this subsection shall remain available without fiscal year limitation.

(h) SEPARATE ACCOUNTING.—The Department shall have a separate line item in budget proposals of the Department for funds to be appropriated to carry out this section. Funds appropriated to carry out this section shall not be commingled with any other funds appropriated to the Department.

(i) LIMITATION ON USE OF FUNDS.—Except as provided in paragraphs (4) and (5) of subsection (d), funds appropriated to carry out this section may not be used to support or provide services to individuals who are not disabled veterans or disabled members of the Armed Forces.

(j) ANNUAL REPORT TO SECRETARY.—(1) As a condition of receiving a grant under this section, the United States Paralympics, Inc., shall agree that by not later than 60 days after the last day of a fiscal year for which a grant is provided under this section, the United States Paralympics, Inc., shall submit to the Secretary a report setting forth in detail the use of the grant funds during that fiscal year, including the number of veterans who participated in the integrated adaptive sports program, including any programs carried out through a partnership under subsection (c)(3), and the administrative expenses of the integrated adaptive sports program.

(2) A report under this subsection may be audited by the Secretary.

(3) For any fiscal year after fiscal year 2010, the eligibility of the United States Paralympics, Inc., to receive a grant under this section shall be contingent upon the submission of the report under paragraph (1) for the preceding fiscal year.

(k) ANNUAL REPORT TO CONGRESS.—For any fiscal year during which the Secretary provides assistance under this section, the Sec-

retary shall submit to Congress a report on the use of funds provided under this section.

(l) TERMINATION.—The Secretary may only provide assistance under this section during fiscal years 2010 through 2013.

(Added Pub. L. 110–389, title VII, Sec. 702(a), Oct. 10, 2008, 122 Stat. 4181.)

§ 522. Studies of rehabilitation of disabled persons

(a) The Secretary may conduct studies and investigations, and prepare reports, relative to the rehabilitation of disabled persons, the relative abilities, aptitudes, and capacities of the several groups of the variously handicapped, and how their potentialities can best be developed and their services best used in gainful and suitable employment including the rehabilitation programs of foreign nations.

(b) In carrying out this section, the Secretary (1) may cooperate with such public and private agencies as the Secretary considers advisable; and (2) may employ consultants who shall receive a reasonable per diem, as prescribed by the Secretary, for each day actually employed, plus necessary travel and other expenses.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 390.)

§ 523. Coordination and promotion of other programs affecting veterans and their dependents

(a) The Secretary shall seek to achieve (1) the maximum feasible effectiveness, coordination, and interrelationship of services among all programs and activities affecting veterans and their dependents carried out by and under all other departments, agencies, and instrumentalities of the executive branch, and (2) the maximum feasible coordination of such programs with programs carried out under this title. The Secretary shall actively promote the effective implementation, enforcement, and application of all provisions of law and regulations providing for special consideration, emphasis, or preference for veterans.

(b) The Secretary shall seek to achieve the effective coordination of the provision, under laws administered by the Department, of benefits and services (and information about such benefits and services) with appropriate programs (and information about such programs) conducted by State and local governmental agencies and by private entities at the State and local level. In carrying out this subsection, the Secretary shall place special emphasis on veterans who are 65 years of age or older.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 390.)

§ 525. Publication of laws relating to veterans

(a) The Secretary may compile and publish all Federal laws relating to veterans' relief, including laws administered by the Department as well as by other agencies of the Government. Such compilation and publication shall be in such form as the Secretary considers advisable for the purpose of making currently available in convenient form for the use of the Department and full-time representatives of the several service organizations an annotated, indexed, and cross-referenced statement of the laws providing veterans' relief.

(b) The Secretary may maintain such compilation on a current basis either by the publication, from time to time, of supplementary documents or by complete revision of the compilation.

(c) The distribution of the compilation to the representatives of the several service organizations shall be as determined by the Secretary.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 391.)

§ 527. Evaluation and data collection

(a) The Secretary, pursuant to general standards which the Secretary shall prescribe in regulations, shall measure and evaluate on a continuing basis the effect of all programs authorized under this title, in order to determine their effectiveness in achieving stated goals in general, and in achieving such goals in relation to their cost, their effect on related programs, and their structure and mechanisms for delivery of services. Such information as the Secretary may consider necessary for purposes of such evaluations shall be made available to the Secretary, upon request, by all departments, agencies, and instrumentalities of the executive branch.

(b) In carrying out this section, the Secretary shall collect, collate, and analyze on a continuing basis full statistical data regarding participation (including the duration thereof), provision of services, categories of beneficiaries, planning and construction of facilities, acquisition of real property, proposed excessing of land, accretion and attrition of personnel, and categorized expenditures attributable thereto, under all programs carried out under this title.

(c) The Secretary shall make available to the public, and on a regular basis provide to the appropriate committees of the Congress, copies of all completed evaluative research studies and summaries of evaluations of program impact and effectiveness carried out, and tabulations and analyses of all data collected, under this section.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 391.)

§ 529. Annual report to Congress

The Secretary shall submit annually, at the close of each fiscal year, a report in writing to Congress. Each such report shall—

(1) give an account of all moneys received and disbursed by the Department for such fiscal year;

(2) describe the work done during such fiscal year; and

(3) state the activities of the Department for such fiscal year.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 391.)

§ 530. Annual report on program and expenditures for domestic response to weapons of mass destruction

(a) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report, to be submitted each year at the time that the President submits the budget for the next fiscal year under section 1105 of title 31, on the activities of the Department relating to preparation for, and participation in, a domestic medical response to an attack involving weapons of mass destruction.

(b) Each report under subsection (a) shall include the following:

(1) A statement of the amounts of funds and the level of personnel resources (stated in terms of full-time equivalent employees) expected to be used by the Department during the next fiscal year in preparation for a domestic medical response to an attack involving weapons of mass destruction, including the anticipated source of those funds and any anticipated shortfalls in funds or personnel resources to achieve the tasks assigned the Department by the President in connection with preparation for such a response.

(2) A detailed statement of the funds expended and personnel resources (stated in terms of full-time equivalent employees) used during the fiscal year preceding the fiscal year during which the report is submitted in preparation for a domestic medical response to an attack involving weapons of mass destruction or in response to such an attack, including identification of the source of those funds and a description of how those funds were expended.

(3) A detailed statement of the funds expended and expected to be expended, and the personnel resources (stated in terms of full-time equivalent employees) used and expected to be used, during the fiscal year during which the report is submitted in preparation for a domestic medical response to an attack involving weapons of mass destruction or in response to such an attack, including identification of the source of funds expended and a description of how those funds were expended.

(c) This section shall expire on January 1, 2009.

(Added Pub. L. 105–368, title IX, Sec. 906(a), Nov. 11, 1998, 112 Stat. 3361.)

§ 531. Requirement relating to naming of Department property

Except as expressly provided by law, a facility, structure, or real property of the Department, and a major portion (such as a wing or floor) of any such facility, structure, or real property, may be named only for the geographic area in which the facility, structure, or real property is located.

(Added Pub. L. 105–368, title X, Sec. 1001(a)(1), Nov. 11, 1998, 112 Stat. 3363.)

§ 532. Authority to advertise in national media

The Secretary may purchase advertising in national media outlets for the purpose of promoting awareness of benefits under laws administered by the Secretary, including promoting awareness of assistance provided by the Secretary, including assistance for programs to assist homeless veterans, to promote veteran-owned small businesses, and to provide opportunities for employment in the Department of Veterans Affairs and for education, training, compensation, pension, vocational rehabilitation, and healthcare benefits, and mental healthcare (including the prevention of suicide among veterans).

(Added Pub. L. 110–389, title VIII, Sec. 809(a), Oct. 10, 2008, 122 Stat. 4189.)

SUBCHAPTER III—ADVISORY COMMITTEES

§ 541. Advisory Committee on Former Prisoners of War

(a)(1) The Secretary shall establish an advisory committee to be known as the Advisory Committee on Former Prisoners of War (hereinafter in this section referred to as the "Committee").

(2)(A) The members of the Committee shall be appointed by the Secretary from the general public and shall include—

(i) appropriate representatives of veterans who are former prisoners of war;

(ii) individuals who are recognized authorities in fields pertinent to disabilities prevalent among former prisoners of war, including authorities in epidemiology, mental health, nutrition, geriatrics, and internal medicine; and

(iii) appropriate representatives of disabled veterans.

(B) The Committee shall also include, as ex officio members, the Under Secretary for Health and the Under Secretary for Benefits, or their designees.

(3) The Secretary shall determine the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that the term of service of any such member may not exceed three years.

(b) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the administration of benefits under this title for veterans who are former prisoners of war and the needs of such veterans with respect to compensation, health care, and rehabilitation.

(c)(1) Not later than July 1 of each odd-numbered year through 2009, the Committee shall submit to the Secretary a report on the programs and activities of the Department that pertain to veterans who are former prisoners of war. Each such report shall include—

(A) an assessment of the needs of such veterans with respect to compensation, health care, and rehabilitation;

(B) a review of the programs and activities of the Department designed to meet such needs; and

(C) such recommendations (including recommendations for administrative and legislative action) as the Committee considers to be appropriate.

(2) The Secretary shall, within 60 days after receiving each report under paragraph (1), submit to the Congress a copy of the report, together with any comments concerning the report that the Secretary considers appropriate.

(3) The Committee may also submit to the Secretary such other reports and recommendations as the Committee considers appropriate.

(4) The Secretary shall submit with each annual report submitted to the Congress pursuant to section 529 of this title a summary of all reports and recommendations of the Committee submitted to the Secretary since the previous annual report of the Secretary submitted to the Congress pursuant to that section.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 392; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106–419, title IV, Sec. 403(c)(2), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 108–454, title VIII, Sec. 803, Dec. 10, 2004, 118 Stat. 3626.)

§ 542. Advisory Committee on Women Veterans

(a)(1) The Secretary shall establish an advisory committee to be known as the Advisory Committee on Women Veterans (hereinafter in this section referred to as "the Committee").

(2)(A) The Committee shall consist of members appointed by the Secretary from the general public, including—

(i) representatives of women veterans;

(ii) individuals who are recognized authorities in fields pertinent to the needs of women veterans, including the gender-specific health-care needs of women; and

(iii) representatives of both female and male veterans with service-connected disabilities, including at least one female veteran with a service-connected disability and at least one male veteran with a service-connected disability.

(B) The Committee shall include, as ex officio members—

(i) the Secretary of Labor (or a representative of the Secretary of Labor designated by the Secretary after consultation with the Assistant Secretary of Labor for Veterans' Employment);

(ii) the Secretary of Defense (or a representative of the Secretary of Defense designated by the Secretary of Defense after consultation with the Defense Advisory Committee on Women in the Services); and

(iii) the Under Secretary for Health and the Under Secretary for Benefits, or their designees.

(C) The Secretary may invite representatives of other departments and agencies of the United States to participate in the meetings and other activities of the Committee.

(3) The Secretary shall determine the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that a term of service of any such member may not exceed three years. The Secretary may reappoint any such member for additional terms of service.

(b) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the administration of benefits by the Department for women veterans, reports and studies pertaining to women veterans and the needs of women veterans with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by the Department, including the Center for Women Veterans.

(c)(1) Not later than July 1 of each even-numbered year, the Committee shall submit to the Secretary a report on the programs and activities of the Department that pertain to women veterans. Each such report shall include—

(A) an assessment of the needs of women veterans with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by the Department;

(B) a review of the programs and activities of the Department designed to meet such needs; and

(C) such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate.

(2) The Secretary shall, within 60 days after receiving each report under paragraph (1), submit to the Congress a copy of the report, together with any comments concerning the report that the Secretary considers appropriate.

(3) The Committee may also submit to the Secretary such other reports and recommendations as the Committee considers appropriate.

(4) The Secretary shall submit with each annual report submitted to the Congress pursuant to section 529 of this title a summary of all reports and recommendations of the Committee submitted to the Secretary since the previous annual report of the Secretary submitted pursuant to such section.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 393; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104–275, title V, Sec. 501(e)(1), Oct. 9, 1996, 110 Stat. 3341; Pub. L. 106–419, title IV, Sec. 403(c)(3), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 109–444, Sec. 5, Dec. 21, 2006, 120 Stat. 3308; Pub. L. 109–461, title II, Sec. 208(b), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3413, 3468; Pub. L. 110–387, title VIII, Sec. 808, Oct. 10, 2008, 122 Stat. 4141.)

§ 543. Advisory Committee on Prosthetics and Special-Disabilities Programs

(a) There is in the Department an advisory committee known as the Advisory Committee on Prosthetics and Special-Disabilities Programs (hereinafter in this section referred to as the "Committee").

(b) The objectives and scope of activities of the Committee shall relate to—

(1) prosthetics and special-disabilities programs administered by the Secretary;

(2) the coordination of programs of the Department for the development and testing of, and for information exchange regarding, prosthetic devices;

(3) the coordination of Department and non-Department programs that involve the development and testing of prosthetic devices; and

(4) the adequacy of funding for the prosthetics and special-disabilities programs of the Department.

(c) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee on the matters described in subsection (b).

(d) Not later than January 15 of 1993, 1994, and 1995, the Committee shall submit to the Secretary and the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the effectiveness of the prosthetics and special-disabilities programs administered by the Secretary during the preceding fiscal year. Not more than 60 days after the date on which any such report is received by the Secretary, the Secretary shall submit a report to such committees commenting on the report of the Committee.

(e) As used in this section, the term "special-disabilities programs" includes all programs administered by the Secretary for—

(1) spinal-cord-injured veterans;

(2) blind veterans;

(3) veterans who have lost or lost the use of extremities;

(4) hearing-impaired veterans; and

(5) other veterans with serious incapacities in terms of daily life functions.

(Added Pub. L. 102–405, title I, Sec. 105(b)(1), Oct. 9, 1992, 106 Stat. 1975.)

§ 544. Advisory Committee on Minority Veterans

(a)(1) The Secretary shall establish an advisory committee to be known as the Advisory Committee on Minority Veterans (hereinafter in this section referred to as "the Committee").

(2)(A) The Committee shall consist of members appointed by the Secretary from the general public, including—

(i) representatives of veterans who are minority group members;

(ii) individuals who are recognized authorities in fields pertinent to the needs of veterans who are minority group members;

(iii) veterans who are minority group members and who have experience in a military theater of operations; and

(iv) veterans who are minority group members and who do not have such experience.

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

(i) The Secretary of Labor (or a representative of the Secretary of Labor designated by the Secretary after consultation with the Assistant Secretary of Labor for Veterans' Employment).

(ii) The Secretary of Defense (or a representative of the Secretary of Defense designated by the Secretary of Defense).

(iii) The Secretary of the Interior (or a representative of the Secretary of the Interior designated by the Secretary of the Interior).

(iv) The Secretary of Commerce (or a representative of the Secretary of Commerce designated by the Secretary of Commerce).

(v) The Secretary of Health and Human Services (or a representative of the Secretary of Health and Human Services designated by the Secretary of Health and Human Services).

(vi) The Under Secretary for Health and the Under Secretary for Benefits, or their designees.

(C) The Secretary may invite representatives of other departments and agencies of the United States to participate in the meetings and other activities of the Committee.

(3) The Secretary shall determine the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that a term of service of any such member may not exceed three years. The Secretary may reappoint any such member for additional terms of service.

(4) The Committee shall meet as often as the Secretary considers necessary or appropriate, but not less often than twice each fiscal year.

(b) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the administration of benefits by the Department for veterans who are minority group members, reports and studies pertaining to such veterans and the needs of such veterans with respect to compensation,

health care, rehabilitation, outreach, and other benefits and programs administered by the Department, including the Center for Minority Veterans.

(c)(1) Not later than July 1 of each year, the Committee shall submit to the Secretary a report on the programs and activities of the Department that pertain to veterans who are minority group members. Each such report shall include—

(A) an assessment of the needs of veterans who are minority group members with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by the Department;

(B) a review of the programs and activities of the Department designed to meet such needs; and

(C) such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate.

(2) The Secretary shall, within 60 days after receiving each report under paragraph (1), submit to Congress a copy of the report, together with any comments concerning the report that the Secretary considers appropriate.

(3) The Committee may also submit to the Secretary such other reports and recommendations as the Committee considers appropriate.

(4) The Secretary shall submit with each annual report submitted to the Congress pursuant to section 529 of this title a summary of all reports and recommendations of the Committee submitted to the Secretary since the previous annual report of the Secretary submitted pursuant to such section.

(d) In this section, the term "minority group member" means an individual who is—

(1) Asian American;

(2) Black;

(3) Hispanic;

(4) Native American (including American Indian, Alaskan Native, and Native Hawaiian); or

(5) Pacific-Islander American.

(e) The Committee shall cease to exist December 31, 2014.

(Added Pub. L. 103–446, title V, Sec. 510(a), Nov. 2, 1994, 108 Stat. 4668; amended Pub. L. 104–275, title V, Sec. 501(e)(2), (f), Oct. 9, 1996, 110 Stat. 3341; Pub. L. 106–117, title VIII, Sec. 803, Nov. 30, 1999, 113 Stat. 1586; Pub. L. 108–183, title VII, Sec. 703, Dec. 16, 2003, 117 Stat. 2671; Pub. L. 110–389, title VIII, Sec. 808, Oct. 10, 2008, 122 Stat. 4189.)

§ 545. Advisory Committee on the Readjustment of Veterans

(a)(1) There is in the Department the Advisory Committee on the Readjustment of Veterans (hereinafter in this section referred to as the "Committee").

(2) The Committee shall consist of not more than 18 members appointed by the Secretary from among individuals who—

(A) have demonstrated significant civic or professional achievement; and

(B) have experience with the provision of veterans benefits and services by the Department.

(3) The Secretary shall seek to ensure that members appointed to the Committee include individuals from a wide variety of geographic areas and ethnic backgrounds, individuals from veterans service organizations, individuals with combat experience, and women.

(4) The Secretary shall determine the terms of service and pay and allowances of the members of the Committee, except that a term of service may not exceed two years. The Secretary may reappoint any member for additional terms of service.

(b)(1) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the provision by the Department of benefits and services to veterans in order to assist veterans in the readjustment to civilian life.

(2)(A) In providing advice to the Secretary under this subsection, the Committee shall—

(i) assemble and review information relating to the needs of veterans in readjusting to civilian life;

(ii) provide information relating to the nature and character of psychological problems arising from service in the Armed Forces;

(iii) provide an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting veterans in readjusting to civilian life; and

(iv) provide on-going advice on the most appropriate means of responding to the readjustment needs of veterans in the future.

(B) In carrying out its duties under subparagraph (A), the Committee shall take into special account the needs of veterans who have served in a theater of combat operations.

(c)(1) Not later than March 31 of each year,

the Committee shall submit to the Secretary a report on the programs and activities of the Department that relate to the readjustment of veterans to civilian life. Each such report shall include—

(A) an assessment of the needs of veterans with respect to readjustment to civilian life;

(B) a review of the programs and activities of the Department designed to meet such needs; and

(C) such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate.

(2) Not later than 90 days after the receipt of a report under paragraph (1), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Secretary considers appropriate.

(3) The Committee may also submit to the Secretary such other reports and recommendations as the Committee considers appropriate.

(4) The Secretary shall submit with each annual report submitted to the Congress pursuant to section 529 of this title a summary of all reports and recommendations of the Committee sub-

mitted to the Secretary since the previous annual report of the Secretary submitted pursuant to that section.

(d)(1) Except as provided in paragraph (2), the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the activities of the Committee under this section.

(2) Section 14 of such Act shall not apply to the Committee.

(Added Pub. L. 104–262, title III, Sec. 333(a)(1), Oct. 9, 1996, 110 Stat. 3199; amended Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

§ 546. Advisory Committee on Disability Compensation

(a) ESTABLISHMENT.—(1) There is in the Department the Advisory Committee on Disability Compensation (in this section referred to as the "Committee").

(2) The Committee shall consist of not more than 18 members appointed by the Secretary from among individuals who—

(A) have experience with the provision of disability compensation by the Department; or

(B) are leading medical or scientific experts in relevant fields.

(3)(A) Except as provided in subparagraph (B), the Secretary shall determine the terms of service and pay and allowances of the members of the Committee.

(B) A term of service may not exceed four years and shall be staggered to ensure that the dates for the termination of the members' terms are not all the same.

(C) The Secretary may reappoint any member for one or more additional terms of service.

(4) The Secretary shall select a Chair from among the members of the Committee.

(b) RESPONSIBILITIES OF COMMITTEE.—(1) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the maintenance and periodic readjustment of the schedule for rating disabilities under section 1155 of this title.

(2)(A) In providing advice to the Secretary under this subsection, the Committee shall—

(i) assemble and review relevant information relating to the needs of veterans with disabilities;

(ii) provide information relating to the nature and character of disabilities arising from service in the Armed Forces;

(iii) provide an on-going assessment of the effectiveness of the schedule for rating disabilities; and

(iv) provide on-going advice on the most appropriate means of responding to the needs of veterans relating to disability compensation in the future.

(B) In carrying out its duties under subparagraph (A), the Committee shall take into special account the needs of veterans who have served in a theater of combat operations.

(c) RESOURCES.—The Secretary shall ensure that appropriate personnel, funding, and other resources are provided to the Committee to carry out its responsibilities.

(d) BIENNIAL REPORTS TO THE SECRETARY.—(1) Not later than October 31, 2010, and not less frequently than every two years thereafter, the Committee shall submit to the Secretary a report on

the programs and activities of the Department that relate to the payment of disability compensation. Each such report shall include—

(A) an assessment of the needs of veterans with respect to disability compensation; and

(B) such recommendations (including recommendations for administrative or legislative action) as the Committee considers appropriate.

(2) The Committee may submit to the Secretary such other reports and recommendations as the Committee considers appropriate.

(e) BIENNIAL REPORTS TO CONGRESS.—(1) Not later than 90 days after the receipt of a report required under subsection (d)(1), the Secretary shall transmit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a copy of such report, together with such comments and recommendations concerning such report as the Secretary considers appropriate.

(2) The Secretary shall submit with each report required under paragraph (1) a summary of all reports and recommendations of the Committee submitted to the Secretary under subsection (d)(2) since the previous report transmitted by the Secretary under paragraph (1) of this subsection.

(f) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—(1) Except as provided in paragraph (2), the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the activities of the Committee under this section.

(Added Pub. L. 110–389, title II, Sec. 214(a), Oct. 10, 2008, 122 Stat. 4152.)

Chapter 7 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART I—GENERAL PROVISIONS]

CHAPTER 7—EMPLOYEES

Sec.
701. Placement of employees in military installations.
703. Miscellaneous authorities respecting employees.
705. Telephone service for medical officers and facility directors.
707. Benefits for employees at overseas offices who are United States citizens.
709. Employment restrictions.
711. Grade reductions.
[712. Repealed.]

§ 701. Placement of employees in military installations

The Secretary may place employees of the Department in such Army, Navy, and Air Force installations as may be considered advisable for the purpose of adjudicating disability claims of, and giving aid and advice to, members of the Armed Forces who are about to be discharged or released from active military, naval, or air service.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 394.)

§ 703. Miscellaneous authorities respecting employees

(a) The Secretary may furnish and launder such wearing apparel as may be prescribed for employees in the performance of their official duties.

(b) The Secretary may transport children of Department employees located at isolated stations to and from school in available Government-owned automotive equipment.

(c) The Secretary may provide recreational facilities, supplies, and equipment for the use of patients in hospitals and employees in isolated installations.

(d) The Secretary may provide for the preparation, shipment, installation, and display of exhibits, photographic displays, moving pictures, and other visual educational information and descriptive material. For the purposes of the preceding sentence, the Secretary may purchase or rent equipment.

(e) The Secretary may reimburse employees for the cost of repairing or replacing their personal property damaged or destroyed by patients or domiciliary members while such employees are engaged in the performance of their official duties.

(f)(1) The Secretary, upon determining that an emergency situation exists and that such action is necessary for the effective conduct of the affairs of the Department, may use Government-owned, or leased, vehicles to transport employees to and from their place of employment and the nearest adequate public transportation or,

if such public transportation is either unavailable or not feasible to use, to and from their place of employment and their home.

(2) The Secretary shall establish reasonable rates to cover the cost of the service rendered under this subsection, and all proceeds collected therefrom shall be applied to the applicable appropriation.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 394.)

§ 705. Telephone service for medical officers and facility directors

The Secretary may pay for official telephone service and rental in the field whenever incurred in case of official telephones for directors of centers, hospitals, independent clinics, domiciliaries, and medical officers of the Department where such telephones are installed in private residences or private apartments or quarters, when authorized under regulations prescribed by the Secretary.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 395.)

§ 707. Benefits for employees at overseas offices who are United States citizens

(a) The Secretary may, under such rules and regulations as may be prescribed by the President or the President's designee, provide to personnel of the Department who are United States citizens and are assigned by the Secretary to the Department offices in the Republic of the Philippines allowances and benefits similar to those provided by the following provisions of law:

(1) Section 905 of the Foreign Service Act of 1980 (relating to allowances to provide for the proper representation of the United States).

(2) Sections 901(1), (2), (3), (4), (7), (8), (9), (11), and expenses).

(3) Section 901(13) of the Foreign Service Act of 1980 (relating to transportation of automobiles).

(4) Section 903 of the Foreign Service Act of 1980 (relating to the return of personnel to the United States on leave of absence).

(5) Section 904(d) of the Foreign Service Act of 1980 (relating to payments by the United States of expenses for treating illness or injury of officers or employees and dependents requiring hospitalization).

(6) Section 5724a(c) of title 5 (relating to subsistence expenses for 60 days in connection with the return to the United States of the employee and such employee's immediate family).

(7) Section 5724a(d) of title 5 (relating to the sale and purchase of the residence or settlement of an unexpired lease of the employee when transferred from one station to another station and both stations are in the United States, its territories or possessions, or the Commonwealth of Puerto Rico).

(b) The authority in subsection (a) supplements, but is not in lieu of, other allowances and benefits for overseas employees of the Department provided by title 5 and the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.).

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 395; amended Pub. L. 104–201, div. A, title XVII, Sec. 1723(a)(2), Sept. 23, 1996, 110 Stat. 2759.)

§ 709. Employment restrictions

(a)(1) Notwithstanding section 3134(d) of title 5, the number of Senior Executive Service positions in the Department which are filled by noncareer appointees in any fiscal year may not at any time exceed 5 percent of the average number of senior executives employed in Senior Executive Service positions in the Department during the preceding fiscal year.

(2) For purposes of this subsection, the average number of senior executives employed in Senior Executive Service positions in the Department during a fiscal year shall be equal to 25 percent of the sum of the total number of senior executives employed in Senior Executive Service positions in the Department on the last day of each quarter of such fiscal year.

(b) The number of positions in the Department which may be excepted from the competitive service, on a temporary or permanent basis, because of their confidential or policy-determining character may not at any time exceed the equivalent of 15 positions.

(c)(1) Political affiliation or activity may not be taken into account in connection with the appointment of any person to any position in or to perform any service for the Department or in the assignment or advancement of any employee in the Department.

(2) Paragraph (1) shall not apply—

(A) to the appointment of any person by the President under this title, other than the appointment of the Under Secretary for Health, the Under Secretary for Benefits, and the Inspector General; or

(B) to the appointment of any person to (i) a Senior Executive Service position as a noncareer appointee, or (ii) a position that is excepted from the competitive service, on a temporary or permanent basis, because of the confidential or policy-determining character of the position.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 395; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 711. Grade reductions

(a) The Secretary may not implement a grade reduction described in subsection (b) unless the Secretary first submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing a detailed plan for such reduction and a detailed justification for the plan. The report shall include a determination by the Secretary (together with data supporting such determination) that, in the personnel area concerned, the Department has a disproportionate number of employees at the salary grade or grades selected for reduction in comparison to the number of such employees at the salary levels involved who perform comparable functions in other departments and agencies of the Federal Government and in non-Federal entities. Any grade reduction described in such report may not take effect until the end of a period of 90 calendar days (not including any day on which either House of Congress is not in session) after the report is received by the committees.

(b) A grade reduction referred to in subsection (a) is a systematic reduction, for the purpose of reducing the average salary cost

for Department employees described in subsection (c), in the number of such Department employees at a specific grade level.

(c) The employees referred to in subsection (b) are—

(1) health-care personnel who are determined by the Secretary to be providing either direct patient-care services or services incident to direct patient-care services;

(2) individuals who meet the definition of professional employee as set forth in section 7103(a)(15) of title 5; and

(3) individuals who are employed as computer specialists.

(d) Not later than the 45th day after the Secretary submits a report under subsection (a), the Comptroller General shall, upon request of either of such Committees, submit to such committees a report on the Secretary's compliance with such subsection. The Comptroller General shall include in the report the Comptroller General's opinion as to the accuracy of the Secretary's determination (and of the data supporting such determination) made under such subsection.

(e) In the case of Department employees not described in subsection (c), the Secretary may not in any fiscal year implement a systematic reduction for the purpose of reducing the average salary cost for such Department employees that will result in a reduction in the number of such Department employees at any specific grade level at a rate greater than the rate of the reductions systematically being made in the numbers of employees at such grade level in all other agencies and departments of the Federal Government combined.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 396; amended Pub. L. 103–446, title XII, Sec. 1201(e)(5), Nov. 2, 1994, 108 Stat. 4685; Pub. L. 104–316, title I, Sec. 119, Oct. 19, 1996, 110 Stat. 3836.)

[§ 712. Repealed. Pub. L. 107–103, title V, Sec. 509(a)(1), Dec. 27, 2001, 115 Stat. 997]

Chapter 9 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART I—GENERAL PROVISIONS]

CHAPTER 9—SECURITY AND LAW ENFORCEMENT ON PROPERTY UNDER THE JURISDICTION OF THE DEPARTMENT

Sec.
901. Authority to prescribe rules for conduct and penalties for violations.
902. Enforcement and arrest authority of Department police officers.
903. Uniform allowance.
904. Equipment and weapons.
905. Use of facilities and services of other law enforcement agencies.

§ 901. Authority to prescribe rules for conduct and penalties for violations

(a)(1) The Secretary shall prescribe regulations to provide for the maintenance of law and order and the protection of persons and property on Department property.

(2) In this chapter, the term "Department property" means land and buildings that are under the jurisdiction of the Department and are not under control of the Administrator of General Services.

(b) Regulations under subsection (a) shall include—

(1) rules for conduct on Department property; and

(2) the penalties, within the limits specified in subsection (c), for violations of such rules.

(c) Whoever violates any rule prescribed by regulation under subsection (b)(1) shall be fined in accordance with title 18 or imprisoned not more than six months, or both. The Secretary may prescribe by regulation a maximum fine less than that which would otherwise apply under the preceding sentence or a maximum term of imprisonment of a shorter period than that which would otherwise apply under the preceding sentence, or both. Any such regulation shall apply notwithstanding any provision of title 18 or any other law to the contrary.

(d) The rules prescribed under subsection (a), together with the penalties for violations of such rules, shall be posted conspicuously on property to which they apply.

(e) The Secretary shall consult with the Attorney General before prescribing regulations under this section.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 397.)

§ 902. Enforcement and arrest authority of Department police officers

(a)(1) Employees of the Department who are Department police officers shall, with respect to acts occurring on Department property, enforce—

(A) Federal laws;

(B) the rules prescribed under section 901 of this title; and

(C) subject to paragraph (2), traffic and motor vehicle laws of a State or local government within the jurisdiction of which such Department property is located.

(2) A law described in subparagraph (C) of paragraph (1) may be enforced under such subparagraph only as authorized by an express grant of authority under applicable State or local law. Any such enforcement shall be by the issuance of a citation for violation of such law.

(3) Subject to regulations prescribed under subsection (b), a Department police officer may make arrests on Department property for a violation of a Federal law or any rule prescribed under section 901(a) of this title.

(b) The Secretary shall prescribe regulations with respect to Department police officers. Such regulations shall include—

(1) policies with respect to the exercise by Department police officers of the enforcement and arrest authorities provided by this section;

(2) the scope and duration of training that is required for Department police officers, with particular emphasis on dealing with situations involving patients; and

(3) rules limiting the carrying and use of weapons by Department police officers.

(c) The Secretary shall consult with the Attorney General before prescribing regulations under paragraph (1) of subsection (b).

(d) Rates of basic pay for Department police officers may be increased by the Secretary under section 7455 of this title.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 397.)

§ 903. Uniform allowance

(a) The Secretary may pay an allowance under this section for the purchase of uniforms to any Department police officer who is required to wear a prescribed uniform in the performance of official duties.

(b) The amount of the allowance that the Secretary may pay under this section—

(1) may be based on estimated average costs or actual costs;

(2) may vary by geographic regions; and

(3) except as provided in subsection (c), may not exceed $200 in a fiscal year for any police officer.

(c) The amount of an allowance under this section may be increased to an amount up to $400 for not more than one fiscal year in the case of any Department police officer. In the case of a person who is appointed as a Department police officer on or after January 1, 1990, an allowance in an amount established under this subsection shall be paid at the beginning of such person's employment

as such an officer. In the case of any other Department police officer, an allowance in an amount established under this subsection shall be paid upon the request of the officer.

(d) A police officer who resigns as a police officer less than one year after receiving an allowance in an amount established under this section shall repay to the Department a pro rata share of the amount paid, based on the number of months the officer was actually employed as such an officer during the twelve-month period following the date on which such officer began such employment or the date on which the officer submitted a request for such an allowance, as the case may be.

(e) An allowance may not be paid to a Department police officer under this section and under section 5901 of title 5 for the same fiscal year.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 398.)

§ 904. Equipment and weapons

The Secretary shall furnish Department police officers with such weapons and related equipment as the Secretary determines to be necessary and appropriate.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 399.)

§ 905. Use of facilities and services of other law enforcement agencies

With the permission of the head of the agency concerned, the Secretary may use the facilities and services of Federal, State, and local law enforcement agencies when it is economical and in the public interest to do so.

(Added Pub. L. 102–83, Sec. 2(a), Aug. 6, 1991, 105 Stat. 399.)

Chapter 11 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

PART II—GENERAL BENEFITS

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CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

SUBCHAPTER I—GENERAL

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1101. Definitions.
1102. Special provisions relating to surviving spouses.
1103. Special provisions relating to claims based upon effects of tobacco products.
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SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

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SUBCHAPTER III—WARTIME DEATH COMPENSATION

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SUBCHAPTER IV—PEACETIME DISABILITY COMPENSATION

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1163. Trial work periods and vocational rehabilitation for certain veterans with total disability ratings.

SUBCHAPTER I—GENERAL

§ 1101. Definitions

For the purposes of this chapter—

(1) The term "veteran" includes a person who died in the active military, naval, or air service.

(2) The term "period of war" includes, in the case of any veteran—

(A) any period of service performed by such veteran after November 11, 1918, and before July 2, 1921, if such veteran served in the active military, naval, or air service after April 5, 1917, and before November 12, 1918; and

(B) any period of continuous service performed by such veteran after December 31, 1946, and before July 26, 1947, if such period began before January 1, 1947.

(3) The term "chronic disease" includes—

Anemia, primary
Arteriosclerosis
Arthritis
Atrophy, progressive muscular
Brain hemorrhage
Brain thrombosis
Bronchiectasis
Calculi of the kidney, bladder, or gallbladder
Cardiovascular-renal disease, including hypertension
Cirrhosis of the liver
Coccidioidomycosis
Diabetes mellitus
Encephalitis lethargica residuals
Endocarditis
Endocrinopathies
Epilepsies
Hansen's disease
Hodgkin's disease
Leukemia
Lupus erythematosus, systemic
Myasthenia gravis
Myelitis
Myocarditis
Nephritis
Organic diseases of the nervous system
Osteitis deformans (Paget's disease)
Osteomalacia
Palsy, bulbar
Paralysis agitans
Psychoses
Purpura idiopathic, hemorrhagic
Raynaud's disease
Sarcoidosis
Scleroderma
Sclerosis, amyotrophic lateral
Sclerosis, multiple
Syringomyelia
Thromboangiitis obliterans (Buerger's disease)

Tuberculosis, active

Tumors, malignant, or of the brain or spinal cord or peripheral nerves

Ulcers, peptic (gastric or duodenal)

and such other chronic diseases as the Secretary may add to this list.

(4) The term "tropical disease" includes—

Amebiasis
Blackwater fever
Cholera
Dracontiasis
Dysentery
Filiariasis
Hansen's disease
Leishmaniasis, including kala-azar
Loiasis
Malaria
Onchocerciasis
Oroya fever
Pinta
Plague
Schistosomiasis
Yaws
Yellow fever

and such other tropical diseases as the Secretary may add to this list.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1118, Sec. 301; Pub. L. 94–433, title IV, Sec. 401(2), (3), 404(1), Sept. 30, 1976, 90 Stat. 1377, 1378; Pub. L. 98–160, title VII, Sec. 702(2), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 100–322, title III, Sec. 313, May 20, 1988, 102 Stat. 535; renumbered Sec. 1101 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1102. Special provisions relating to surviving spouses

(a) No compensation shall be paid to the surviving spouse of a veteran under this chapter unless such surviving spouse was married to such veteran—

(1) before the expiration of fifteen years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(b) Subsection (a) shall not be applicable to any surviving spouse who, with respect to date of marriage, could have qualified as a surviving spouse for death compensation under any law administered by the Secretary in effect on December 31, 1957.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1119, Sec. 302; Pub. L. 86–491, June 8, 1960, 74 Stat. 161; Pub. L. 90–77, title I, Sec. 101(a), Aug. 31, 1967, 81 Stat. 178; Pub. L. 94–433, title IV, Sec. 404(2)–(4), Sept. 30, 1976, 90 Stat. 1378; renumbered Sec. 1102 and amended Pub. L. 102–83, Sec. 4(a)(1), 5(a), Aug. 6, 1991, 105 Stat. 403, 406.)

§ 1103. Special provisions relating to claims based upon effects of tobacco products

(a) Notwithstanding any other provision of law, a veteran's disability or death shall not be considered to have resulted from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service for purposes of this title on the basis that it resulted from injury or disease attributable to the use of tobacco products by the veteran during the veteran's service.

(b) Nothing in subsection (a) shall be construed as precluding the establishment of service connection for disability or death from a disease or injury which is otherwise shown to have been incurred or aggravated in active military, naval, or air service or which became manifest to the requisite degree of disability during any applicable presumptive period specified in section 1112 or 1116 of this title.

(Added Pub. L. 105–178, title VIII, Sec. 8202(a)(1), as added Pub. L. 105–206, title IX, Sec. 9014(a), July 22, 1998, 112 Stat. 865.)

§ 1104. Cost-of-living adjustments

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

(b) For purposes of this section, the term "social security increase" means the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased for any fiscal year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(Added Pub. L. 105–33, title VIII, Sec. 8031(a)(1), Aug. 5, 1997, 111 Stat. 668, Sec. 1103; renumbered Sec. 1104, Pub. L. 105–368, title X, Sec. 1005(a), Nov. 11, 1998, 112 Stat. 3364; amended Pub. L. 107–103, title II, Sec. 205, Dec. 27, 2001, 115 Stat. 990; Pub. L. 108–183, title VII, Sec. 706, Dec. 16, 2003, 117 Stat. 2672.)

SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

§ 1110. Basic entitlement

For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1119, Sec. 310; Pub. L. 101–508, title VIII, Sec. 8052(a)(2), Nov. 5, 1990, 104 Stat. 1388–351; renumbered Sec. 1110, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–178, title VIII, Sec.

8202(a), June 9, 1998, 112 Stat. 492; Pub. L. 105–206, title IX, Sec. 9014(a), July 22, 1998, 112 Stat. 865.)

§ 1111. Presumption of sound condition

For the purposes of section 1110 of this title, every veteran shall be taken to have been in sound condition when examined, accepted, and enrolled for service, except as to defects, infirmities, or disorders noted at the time of the examination, acceptance, and enrollment, or where clear and unmistakable evidence demonstrates that the injury or disease existed before acceptance and enrollment and was not aggravated by such service.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1119, Sec. 311; renumbered Sec. 1111 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 1112. Presumptions relating to certain diseases and disabilities

(a) For the purposes of section 1110 of this title, and subject to the provisions of section 1113 of this title, in the case of any veteran who served for ninety days or more during a period of war—

(1) a chronic disease becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service;

(2) a tropical disease, and the resultant disorders or disease originating because of therapy, administered in connection with such diseases, or as a preventative thereof, becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service, or at a time when standard or accepted treatises indicate that the incubation period thereof commenced during such service;

(3) active tuberculous disease developing a 10 percent degree of disability or more within three years from the date of separation from such service;

(4) multiple sclerosis developing a 10 percent degree of disability or more within seven years from the date of separation from such service;

(5) Hansen's disease developing a 10 percent degree of disability or more within three years from the date of separation from such service;

shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.

(b)(1) For the purposes of section 1110 of this title and subject to the provisions of section 1113 of this title, in the case of a veteran who is a former prisoner of war—

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

(B) if the veteran was detained or interned as a prisoner of war for not less than thirty days, a disease specified in paragraph (3) which became manifest to a degree of 10 percent or more after active military, naval, or air service shall be consid-

ered to have been incurred in or aggravated by such service, notwithstanding that there is no record of such disease during the period of service.

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

(A) Psychosis.

(B) Any of the anxiety states.

(C) Dysthymic disorder (or depressive neurosis).

(D) Organic residuals of frostbite, if the Secretary determines that the veteran was detained or interned in climatic conditions consistent with the occurrence of frostbite.

(E) Post-traumatic osteoarthritis.

(F) Osteoporosis, if the Secretary determines that the veteran has post-traumatic stress disorder (PTSD).

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

(A) Avitaminosis.

(B) Beriberi (including beriberi heart disease).

(C) Chronic dysentery.

(D) Helminthiasis.

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

(F) Pellagra.

(G) Any other nutritional deficiency.

(H) Cirrhosis of the liver.

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

(J) Irritable bowel syndrome.

(K) Peptic ulcer disease.

(L) Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure and arrhythmia).

(M) Stroke and its complications.

(c)(1) For the purposes of section 1110 of this title, and subject to the provisions of section 1113 of this title, a disease specified in paragraph (2) of this subsection becoming manifest in a radiation-exposed veteran shall be considered to have been incurred in or aggravated during active military, naval, or air service, notwithstanding that there is no record of evidence of such disease during a period of such service.

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

(A) Leukemia (other than chronic lymphocytic leukemia).

(B) Cancer of the thyroid.

(C) Cancer of the breast.

(D) Cancer of the pharynx.

(E) Cancer of the esophagus.

(F) Cancer of the stomach.

(G) Cancer of the small intestine.

(H) Cancer of the pancreas.

(I) Multiple myeloma.

(J) Lymphomas (except Hodgkin's disease).

(K) Cancer of the bile ducts.

(L) Cancer of the gall bladder.

(M) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).

(N) Cancer of the salivary gland.

(O) Cancer of the urinary tract.

(P) Bronchiolo-alveolar carcinoma.

(Q) Cancer of the bone.

(R) Cancer of the brain.

(S) Cancer of the colon.

(T) Cancer of the lung.

(U) Cancer of the ovary.

(3) For the purposes of this subsection:

(A) The term "radiation-exposed veteran" means (i) a veteran who, while serving on active duty, participated in a radiation-risk activity, or (ii) an individual who, while a member of a reserve component of the Armed Forces, participated in a radiation-risk activity during a period of active duty for training or inactive duty training.

(B) The term "radiation-risk activity" means any of the following:

(i) Onsite participation in a test involving the atmospheric detonation of a nuclear device (without regard to whether the nation conducting the test was the United States or another nation).

(ii) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(iii) Internment as prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which (as determined by the Secretary) resulted in an opportunity for exposure to ionizing radiation comparable to that of veterans described in clause (ii) of this subparagraph.

(iv) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)).

(4) A radiation-exposed veteran who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of compensation to which that veteran is entitled by reason of paragraph (1), but there shall be deducted from payment of such compensation the amount of the payment under that Act.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1120, Sec. 312; Pub. L. 86–187, Aug. 25, 1959, 73 Stat. 418; Pub. L. 86–188, Aug. 25, 1959, 73 Stat. 418; Pub. L. 87–645, Sec. 3, Sept. 7, 1962, 76 Stat. 442; Pub. L. 91–376, Sec. 3(a), (b), Aug. 12, 1970, 84 Stat. 788, 789; Pub. L. 97–37, Sec. 4(a), Aug. 14, 1981, 95 Stat. 936; Pub. L. 98–223, title I, Sec. 101(c), 111, Mar. 2, 1984, 98 Stat. 38, 40; Pub. L. 99–576, title I, Sec. 108(a), Oct. 28, 1986, 100 Stat. 3252; Pub. L. 100–321, Sec. 2(a), May 20, 1988, 102 Stat. 485; Pub. L. 100–322, title III, Sec. 312, May 20, 1988, 102 Stat. 534; renumbered Sec. 1112 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–86, title I, Sec. 104(a), 105, Aug. 14, 1991, 105 Stat. 415; Pub. L. 102–578, Sec. 2(a), Oct. 30, 1992, 106 Stat. 4774; Pub. L. 103–446, title V, Sec. 501(a), Nov. 2, 1994, 108 Stat. 4663; Pub. L. 106–117, title

V, Sec. 503, Nov. 30, 1999, 113 Stat. 1575; Pub. L. 108–183, title II, Sec. 201, Dec. 16, 2003, 117 Stat. 2656; Pub. L. 108–454, title III, Secs. 302(a), 306(a), (b), Dec. 10, 2004, 118 Stat. 3610, 3612; Pub. L. 109–233, title IV, Sec. 401, June 15, 2006, 120 Stat. 407; Pub. L. 110–389, title I, Sec. 106, Oct. 10, 2008, 122 Stat. 4149.)

§ 1113. Presumptions rebuttable

(a) Where there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases or disabilities within the purview of section 1112, 1116, 1117, or 1118 of this title, has been suffered between the date of separation from service and the onset of any such diseases or disabilities, or the disability is due to the veteran's own willful misconduct, service-connection pursuant to section 1112, 1116, or 1118 of this title, or payments of compensation pursuant to section 1117 of this title, will not be in order.

(b) Nothing in section 1112, 1116, 1117, or 1118 of this title, subsection (a) of this section, or section 5 of Public Law 98–542 (38 U.S.C. 1154 note) shall be construed to prevent the granting of service-connection for any disease or disorder otherwise shown by sound judgment to have been incurred in or aggravated by active military, naval, or air service.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1120, Sec. 313; Pub. L. 102–4, Sec. 2(b), Feb. 6, 1991, 105 Stat. 13; renumbered Sec. 1113 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title I, Sec. 106(b), title V, Sec. 501(b)(1), Nov. 2, 1994, 108 Stat. 4651, 4663; Pub. L. 105–277, div. C, title XVI, Sec. 1602(b), Oct. 21, 1998, 112 Stat. 2681–744.)

§ 1114. Rates of wartime disability compensation

For the purposes of section 1110 of this title—

(a) if and while the disability is rated 10 percent the monthly compensation shall be $117;

(b) if and while the disability is rated 20 percent the monthly compensation shall be $230;

(c) if and while the disability is rated 30 percent the monthly compensation shall be $356;

(d) if and while the disability is rated 40 percent the monthly compensation shall be $512;

(e) if and while the disability is rated 50 percent the monthly compensation shall be $728;

(f) if and while the disability is rated 60 percent the monthly compensation shall be $921;

(g) if and while the disability is rated 70 percent the monthly compensation shall be $1,161;

(h) if and while the disability is rated 80 percent the monthly compensation shall be $1,349;

(i) if and while the disability is rated 90 percent the monthly compensation shall be $1,517;

(j) if and while the disability is rated as total the monthly compensation shall be $2,527;

(k) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of one or more creative organs, or one foot, or one hand, or both buttocks, or blindness of one eye, having only light perception, has suffered complete organic aphonia with constant inability to communicate by speech, or deafness of both ears, having ab-

sence of air and bone conduction, or, in the case of a woman veteran, has suffered the anatomical loss of 25 percent or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy) or has received radiation treatment of breast tissue, the rate of compensation therefor shall be $91 per month for each such loss or loss of use independent of any other compensation provided in subsections (a) through (j) or subsection (s) of this section but in no event to exceed $3,145 per month; and in the event the veteran has suffered one or more of the disabilities heretofore specified in this subsection, in addition to the requirement for any of the rates specified in subsections (l) through (n) of this section, the rate of compensation shall be increased by $91 per month for each such loss or loss of use, but in no event to exceed $4,412 per month;

(l) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both feet, or of one hand and one foot, or is blind in both eyes, with 5/200 visual acuity or less, or is permanently bedridden or with such significant disabilities as to be in need of regular aid and attendance, the monthly compensation shall be $3,145;

(m) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both hands, or of both legs at a level, or with complications, preventing natural knee action with prostheses in place, or of one arm and one leg at levels, or with complications, preventing natural elbow and knee action with prostheses in place, or has suffered blindness in both eyes having only light perception, or has suffered blindness in both eyes, rendering such veteran so significantly disabled as to be in need of regular aid and attendance, the monthly compensation shall be $3,470;

(n) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both arms at levels, or with complications, preventing natural elbow action with prostheses in place, has suffered the anatomical loss of both legs so near the hip as to prevent the use of prosthetic appliances, or has suffered the anatomical loss of one arm and one leg so near the shoulder and hip as to prevent the use of prosthetic appliances, or has suffered the anatomical loss of both eyes, or has suffered blindness without light perception in both eyes, the monthly compensation shall be $3,948;

(o) if the veteran, as the result of service-connected disability, has suffered disability under conditions which would entitle such veteran to two or more of the rates provided in one or more subsections (l) through (n) of this section, no condition being considered twice in the determination, or if the veteran has suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 60 percent or more disabling and the veteran has also suffered service-connected total blindness with 20/200 visual acuity or less, or if the veteran has suffered service-connected total deafness in one ear or bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 40 per-

cent or more disabling and the veteran has also suffered service-connected blindness having only light perception or less, or if the veteran has suffered the anatomical loss of both arms so near the shoulder as to prevent the use of prosthetic appliances, the monthly compensation shall be $4,412;

(p) in the event the veteran's service-connected disabilities exceed the requirements for any of the rates prescribed in this section, the Secretary may allow the next higher rate or an intermediate rate, but in no event in excess of $4,412. In the event the veteran has suffered service-connected blindness with 5/200 visual acuity or less and (1) has also suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at no less than 30 percent disabling, the Secretary shall allow the next higher rate, or (2) has also suffered service-connected total deafness in one ear or service-connected anatomical loss or loss of use of one hand or one foot, the Secretary shall allow the next intermediate rate, but in no event in excess of $4,412. In the event the veteran has suffered service-connected blindness, having only light perception or less, and has also suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 10 or 20 percent disabling, the Secretary shall allow the next intermediate rate, but in no event in excess of $4,412. In the event the veteran has suffered the anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities, the Secretary shall allow the next higher rate or intermediate rate, but in no event in excess of $4,412. Any intermediate rate under this subsection shall be established at the arithmetic mean, rounded down to the nearest dollar, between the two rates concerned;

[(q) Repealed. Pub. L. 90–493, Sec. 4(a), Aug. 19, 1968, 82 Stat. 809.]

(r) Subject to section 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—

(1) the veteran shall be paid a monthly aid and attendance allowance at the rate of $1,893; or

(2) if the veteran, in addition to such need for regular aid and attendance, is in need of a higher level of care, such veteran shall be paid a monthly aid and attendance allowance at the rate of $2,820, in lieu of the allowance authorized in clause (1) of this subsection, if the Secretary finds that the veteran, in the absence of the provision of such care, would require hospitalization, nursing home care, or other residential institutional care.

For the purposes of clause (2) of this subsection, need for a higher level of care shall be considered to be need for personal health-care services provided on a daily basis in the veteran's home by a person who is licensed to provide such services or

who provides such services under the regular supervision of a licensed health-care professional. The existence of the need for such care shall be determined by a physician employed by the Department or, in areas where no such physician is available, by a physician carrying out such function under contract or fee arrangement based on an examination by such physician. For the purposes of section 1134 of this title, such allowance shall be considered as additional compensation payable for disability.

(s) If the veteran has a service-connected disability rated as total, and (1) has additional service-connected disability or disabilities independently ratable at 60 percent or more, or, (2) by reason of such veteran's service-connected disability or disabilities, is permanently housebound, then the monthly compensation shall be $2,829. For the purpose of this subsection, the requirement of "permanently housebound" will be considered to have been met when the veteran is substantially confined to such veteran's house (ward or clinical areas, if institutionalized) or immediate premises due to a service-connected disability or disabilities which it is reasonably certain will remain throughout such veteran's lifetime.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1120, Sec. 314; Pub. L. 85–782, Sec. 2, Aug. 27, 1958, 72 Stat. 936; Pub. L. 86–663, Sec. 1, July 14, 1960, 74 Stat. 528; Pub. L. 87–645, Sec. 1(a), 2(a), Sept. 7, 1962, 76 Stat. 441; Pub. L. 88–20, Sec. 1, May 15, 1963, 77 Stat. 17; Pub. L. 88–22, Sec. 1, May 15, 1963, 77 Stat. 18; Pub. L. 89–311, Sec. 1(a), 3(d), (e), Oct. 31, 1965, 79 Stat. 1154, 1155; Pub. L. 90–77, title IV, Sec. 401, Aug. 31, 1967, 81 Stat. 190; Pub. L. 90–493, Sec. 1(a), 4(a), Aug. 19, 1968, 82 Stat. 808, 809; Pub. L. 91–376, Sec. 1(a), Aug. 12, 1970, 84 Stat. 787; Pub. L. 92–328, title I, Sec. 101(a), June 30, 1972, 86 Stat. 393; Pub. L. 93–295, title I, Sec. 101(a), May 31, 1974, 88 Stat. 181; Pub. L. 94–71, title I, Sec. 101(a), Aug. 5, 1975, 89 Stat. 395; Pub. L. 94–433, title I, Sec. 101(a), title IV, Sec. 401(4), (5), 404(6)–(8), Sept. 30, 1976, 90 Stat. 1374, 1377, 1378; Pub. L. 95–117, title I, Sec. 101(a), Oct. 3, 1977, 91 Stat. 1063; Pub. L. 95–479, title I, Sec. 101(a)–(d), Oct. 18, 1978, 92 Stat. 1560, 1561; Pub. L. 96–128, title I, Sec. 101(a), 104, 105, Nov. 28, 1979, 93 Stat. 982, 984; Pub. L. 96–385, title I, Sec. 101(a), Oct. 7, 1980, 94 Stat. 1528; Pub. L. 97–66, title I, Sec. 101(a), 104, Oct. 17, 1981, 95 Stat. 1026, 1027; Pub. L. 97–253, title IV, Sec. 404(a), 405(b), Sept. 8, 1982, 96 Stat. 803; Pub. L. 97–306, title I, Sec. 101(a), 107, 111(a), (b), Oct. 14, 1982, 96 Stat. 1429, 1431, 1432; Pub. L. 98–223, title I, Sec. 101(a), 112, Mar. 2, 1984, 98 Stat. 37, 40; Pub. L. 98–543, title I, Sec. 101(a), Oct. 24, 1984, 98 Stat. 2735; Pub. L. 99–238, title I, Sec. 101(a), Jan. 13, 1986, 99 Stat. 1765; Pub. L. 99–576, title I, Sec. 101(a), 109(b), Oct. 28, 1986, 100 Stat. 3250, 3253; Pub. L. 100–227, title I, Sec. 101(a), Dec. 31, 1987, 101 Stat. 1552; Pub. L. 100–687, div. B, title XI, Sec. 1101(a), Nov. 18, 1988, 102 Stat. 4123; Pub. L. 101–237, title I, Sec. 101(a), Dec. 18, 1989, 103 Stat. 2062; Pub. L. 102–3, Sec. 2(a), Feb. 6, 1991, 105 Stat. 7; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1114 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–152, Sec. 2(a), Nov. 12, 1991, 105 Stat. 985; Pub. L. 103–78, Sec. 1, Aug. 13, 1993, 107 Stat. 767; Pub. L. 103–140, Sec. 2, Nov. 11, 1993, 107 Stat. 1485; Pub. L. 105–98, Sec. 2(a), Nov. 19, 1997, 111 Stat. 2155; Pub. L. 106–118, Sec. 2(a), Nov. 30, 1999, 113 Stat. 1601; Pub. L. 106–419, title III, Sec. 302, Nov. 1, 2000, 114 Stat. 1853; Pub. L. 107–94, Sec. 2(a), Dec. 21, 2001, 115 Stat. 900; Pub. L. 107–103, title II, Sec. 204(b)(1), Dec. 27, 2001, 115 Stat. 990; Pub. L. 107–330, title I, Sec. 102, title III, Sec. 309(a), Dec. 6, 2002, 116 Stat. 2821, 2829; Pub. L. 108–454, title III, Sec. 307(a), Dec. 10, 2004, 118 Stat. 3612; Pub. L. 109–111, Sec. 2(a), Nov. 22, 2005, 119 Stat. 2362; Pub. L. 109–233, title V, Sec. 502(1), (2), June 15, 2006, 120 Stat. 415; Pub. L. 109–444, Sec. 9(a), Dec. 21, 2006, 120 Stat. 3314; Pub. L. 109–461, title X, Secs. 1005(a), 1006(b), Dec. 22, 2006, 120 Stat. 3466, 3468; Pub. L. 110–157, title I, Sec. 101, Dec. 26, 2007, 121 Stat. 1831; Pub. L. 110–324, Sec. 3(a), Sept. 24, 2008, 122 Stat. 3550.)

§ 1115. Additional compensation for dependents

Any veteran entitled to compensation at the rates provided in section 1114 of this title, and whose disability is rated not less than 30 percent, shall be entitled to additional compensation for dependents in the following monthly amounts:

(1) If and while rated totally disabled and—

(A) has a spouse but no child, $142;

(B) has a spouse and one or more children, $245 plus $71 for each child in excess of one;

(C) has no spouse but one or more children, $96 plus $71 for each child in excess of one;

(D) has a parent dependent upon such veteran for support, then, in addition to the above amounts, $114 for each parent so dependent;

(E) notwithstanding the other provisions of this paragraph, the monthly payable amount on account of a spouse who is (i) a patient in a nursing home or (ii) blind, or so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person, shall be $271 for a totally disabled veteran and proportionate amounts for partially disabled veterans in accordance with paragraph (2) of this section; and

(F) notwithstanding the other provisions of this paragraph, the monthly amount payable on account of each child who has attained the age of eighteen years and who is pursuing a course of instruction at an approved educational institution shall be $227 for a totally disabled veteran and proportionate amounts for partially disabled veterans in accordance with paragraph (2) of this section.

(2) If and while rated partially disabled, but not less than 30 percent, in an amount having the same ratio to the amount specified in paragraph (1) of this section as the degree of disability bears to total disability. The amounts payable under this paragraph, if not a multiple of $1, shall be rounded down to the nearest dollar.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1121, Sec. 315; Pub. L. 86–499, Sec. 1, June 8, 1960, 74 Stat. 165; Pub. L. 89–137, Sec. 1(b), Aug. 26, 1965, 79 Stat. 576; Pub. L. 89–311, Sec. 2(a), (b), Oct. 31, 1965, 79 Stat. 1154, 1155; Pub. L. 91–376, Sec. 2, Aug. 12, 1970, 84 Stat. 788; Pub. L. 92–328, title I, Sec. 102, June 30, 1972, 86 Stat. 394; Pub. L. 93–295, title I, Sec. 102, May 31, 1974, 88 Stat. 181; Pub. L. 94–71, title I, Sec. 102, Aug. 5, 1975, 89 Stat. 396; Pub. L. 94–433, title I, Sec. 102, title IV, Sec. 404(9)–(11), Sept. 30, 1976, 90 Stat. 1375, 1378; Pub. L. 95–117, title I, Sec. 102, Oct. 3, 1977, 91 Stat. 1064; Pub. L. 95–479, title I, Sec. 102, Oct. 18, 1978, 92 Stat. 1562; Pub. L. 96–128, title I, Sec. 102, Nov. 28, 1979, 93 Stat. 983; Pub. L. 96–385, title I, Sec. 102, Oct. 7, 1980, 94 Stat. 1529; Pub. L. 97–66, title I, Sec. 102, Oct. 17, 1981, 95 Stat. 1027; Pub. L. 97–253, title IV, Sec. 404(b), 405(c), Sept. 8, 1982, 96 Stat. 803; Pub. L. 97–306, title I, Sec. 102, 107, Oct. 14, 1982, 96 Stat. 1430, 1431; Pub. L. 98–223, title I, Sec. 102, Mar. 2, 1984, 98 Stat. 38; Pub. L. 98–543, title I, Sec. 102, Oct. 24, 1984, 98 Stat. 2736; Pub. L. 99–238, title I, Sec. 102, Jan. 13, 1986, 99 Stat. 1766; Pub. L. 99–576, title I, Sec. 102, Oct. 28, 1986, 100 Stat. 3251; Pub. L. 100–227, title I, Sec. 102, Dec. 31, 1987, 101 Stat. 1553; Pub. L. 100–687, div. B, title XI, Sec. 1102, Nov. 18, 1988, 102 Stat. 4123; Pub. L. 101–237, title I, Sec. 102, Dec. 18, 1989, 103 Stat. 2063; Pub. L. 102–3, Sec. 3, Feb. 6, 1991, 105 Stat. 8; renumbered Sec. 1115 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–152, Sec. 3, Nov. 12, 1991, 105 Stat. 986; Pub. L. 103–78, Sec. 2, Aug. 13, 1993, 107 Stat. 768; Pub. L. 103–140, Sec. 3, Nov. 11, 1993, 107 Stat. 1486; Pub. L. 105–98, Sec. 3, Nov. 19, 1997, 111 Stat. 2156; Pub. L. 106–118, Sec. 3, Nov. 30, 1999, 113 Stat. 1602; Pub. L. 107–

94, Sec. 3, Dec. 21, 2001, 115 Stat. 901; Pub. L. 107–330, title III, Sec. 309(b), Dec. 6, 2002, 116 Stat. 2830; Pub. L. 108–454, title III, Sec. 307(b), Dec. 10, 2004, 118 Stat. 3613; Pub. L. 109–111, Sec. 2(b), Nov. 22, 2005, 119 Stat. 2363; Pub. L. 109–233, title V, Sec. 502(3), June 15, 2006, 120 Stat. 415; Pub. L. 109–444, Sec. 9(b), Dec. 21, 2006, 120 Stat. 3314; Pub. L. 109–461, title X, Secs. 1005(b), 1006(b), Dec. 22, 2006, 120 Stat. 3467, 3468; Pub. L. 110–324, Sec. 3(b), Sept. 24, 2008, 122 Stat. 3551.)

§ 1116. Presumptions of service connection for diseases associated with exposure to certain herbicide agents; presumption of exposure for veterans who served in the Republic of Vietnam

(a)(1) For the purposes of section 1110 of this title, and subject to section 1113 of this title—

(A) a disease specified in paragraph (2) of this subsection becoming manifest as specified in that paragraph in 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

(B) each additional disease (if any) that (i) the Secretary determines in regulations prescribed under this section warrants a presumption of service-connection by reason of having positive association with exposure to an herbicide agent, and (ii) becomes manifest within the period (if any) prescribed in such regulations in 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 while so serving was exposed to that herbicide agent,

shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

(2) The diseases referred to in paragraph (1)(A) of this subsection are the following:

(A) Non-Hodgkin's lymphoma becoming manifest to a degree of disability of 10 percent or more.

(B) Each soft-tissue sarcoma becoming manifest to a degree of disability of 10 percent or more other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma.

(C) Chloracne or another acneform disease consistent with chloracne becoming manifest to a degree of disability of 10 percent or more within one year after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975.

(D) Hodgkin's disease becoming manifest to a degree of disability of 10 percent or more.

(E) Porphyria cutanea tarda becoming manifest to a degree of disability of 10 percent or more within a year after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975.

(F) Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea) becoming manifest to a degree of disability of 10 percent or more.

(G) Multiple myeloma becoming manifest to a degree of disability of 10 percent or more.

(H) Diabetes Mellitus (Type 2).

(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.

(b)(1) Whenever the Secretary determines, on the basis of sound medical and scientific evidence, that a positive association exists between (A) the exposure of humans to an herbicide agent, and (B) the occurrence of a disease in humans, the Secretary shall prescribe regulations providing that a presumption of service connection is warranted for that disease for the purposes of this section.

(2) In making determinations for the purpose of this subsection, the Secretary shall take into account (A) reports received by the Secretary from the National Academy of Sciences under section 3 of the Agent Orange Act of 1991, and (B) all other sound medical and scientific information and analyses available to the Secretary. In evaluating any study for the purpose of making such determinations, the Secretary shall take into consideration whether the results are statistically significant, are capable of replication, and withstand peer review.

(3) An association between the occurrence of a disease in humans and exposure to an herbicide agent shall be considered to be positive for the purposes of this section if the credible evidence for the association is equal to or outweighs the credible evidence against the association.

(c)(1)(A) Not later than 60 days after the date on which the Secretary receives a report from the National Academy of Sciences under section 3 of the Agent Orange Act of 1991, the Secretary shall determine whether a presumption of service connection is warranted for each disease covered by the report. If the Secretary determines that such a presumption is warranted, the Secretary, not later than 60 days after making the determination, shall issue proposed regulations setting forth the Secretary's determination.

(B) If the Secretary determines that a presumption of service connection is not warranted, the Secretary, not later than 60 days after making the determination, shall publish in the Federal Register a notice of that determination. The notice shall include an explanation of the scientific basis for that determination. If the disease already is included in regulations providing for a presumption of service connection, the Secretary, not later than 60 days after publication of the notice of a determination that the presumption is not warranted, shall issue proposed regulations removing the presumption for the disease.

(2) Not later than 90 days after the date on which the Secretary issues any proposed regulations under this subsection, the Secretary shall issue final regulations. Such regulations shall be effective on the date of issuance.

(d) Whenever a disease is removed from regulations prescribed under this section—

(1) a veteran who was awarded compensation for such disease on the basis of the presumption provided in subsection (a) before the effective date of the removal shall continue to be entitled to receive compensation on that basis; and

(2) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from such disease on the basis of such presumption shall continue to be entitled to receive dependency and indemnity compensation on such basis.

(e) Subsections (b) through (d) shall cease to be effective on September 30, 2015.

(f) 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 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, 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.

(Added Pub. L. 102–4, Sec. 2(a)(1), Feb. 6, 1991, 105 Stat. 11, Sec. 316; renumbered Sec. 1116 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title V, Sec. 505, title XII, Sec. 1201(e)(6), Nov. 2, 1994, 108 Stat. 4664, 4685; Pub. L. 104–275, title V, Sec. 505(b), Oct. 9, 1996, 110 Stat. 3342; Pub. L. 106–419, title IV, Sec. 404(a)(1), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 107–103, title II, Sec. 201(a)(1)(A), (b)–(c)(2)(A), (d)(1), Dec. 27, 2001, 115 Stat. 987, 988.)

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

(a)(1) The Secretary may pay compensation under this subchapter to a Persian Gulf veteran with a qualifying chronic disability that became manifest—

(A) during service on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War; or

(B) to a degree of 10 percent or more during the presumptive period prescribed under subsection (b).

(2) For purposes of this subsection, the term 'qualifying chronic disability' means a chronic disability resulting from any of the following (or any combination of any of the following):

(A) An undiagnosed illness.

(B) A medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs or symptoms.

(C) Any diagnosed illness that the Secretary determines in regulations prescribed under subsection (d) warrants a presumption of service-connection.

(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)(1) Whenever the Secretary determines under section 1118(c) of this title that a presumption of service connection previously established under this section is no longer warranted—

(A) a veteran who was awarded compensation under this section on the basis of the presumption shall continue to be entitled to receive compensation under this section on that basis; and

(B) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from the disease on the basis of the presumption before that date shall continue to be entitled to receive dependency and indemnity compensation on that basis.

(2) This subsection shall cease to be effective on September 30, 2011.

(d)(1) The Secretary shall prescribe regulations to carry out this section.

(2) Those regulations shall include the following:

(A) A description of the period and geographical area or areas of military service in connection with which compensation under this section may be paid.

(B) A description of the illnesses for which compensation under this section may be paid.

(C) A description of any relevant medical characteristic (such as a latency period) associated with each such illness.

(e) 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) 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.

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

(1) Fatigue.

(2) Unexplained rashes or other dermatological signs or symptoms.

(3) Headache.

(4) Muscle pain.

(5) Joint pain.

(6) Neurological signs and symptoms.

(7) Neuropsychological signs or symptoms.

(8) Signs or symptoms involving the upper or lower respiratory system.

(9) Sleep disturbances.

(10) Gastrointestinal signs or symptoms.

(11) Cardiovascular signs or symptoms.

(12) Abnormal weight loss.

(13) Menstrual disorders.

(h)(1) If the Secretary determines with respect to a medical research project sponsored by the Department that it is necessary for the conduct of the project that Persian Gulf veterans in receipt of compensation under this section or section 1118 of this title participate in the project without the possibility of loss of service connection under either such section, the Secretary shall provide that service connection granted under either such section for disability of a veteran who participated in the research project may not be terminated. Except as provided in paragraph (2), notwithstanding any other provision of law any grant of service-connection protected under this subsection shall remain service-connected for purposes of all provisions of law under this title.

(2) Paragraph (1) does not apply in a case in which—

(A) the original award of compensation or service connection was based on fraud; or

(B) it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge.

(3) The Secretary shall publish in the Federal Register a list of medical research projects sponsored by the Department for which service connection granted under this section or section 1118 of this title may not be terminated pursuant to paragraph (1).

(Added Pub. L. 103–446, title I, Sec. 106(a)(1), Nov. 2, 1994, 108 Stat. 4650; amended Pub. L. 105–277, div. C, title XVI, Sec. 1602(c), Oct. 21, 1998, 112 Stat. 2681–744; Pub. L. 107–103, title II, Secs. 202(a), (b)(1), (d)(1), 203(a), Dec. 27, 2001, 115 Stat. 988, 989; Pub. L. 109–233, title V, Sec. 503(1), June 15, 2006, 120 Stat. 415.)

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

(a)(1) For purposes of section 1110 of this title, and subject to section 1113 of this title, each illness, if any, described in paragraph (2) shall be considered to have been incurred in or aggravated by service referred to in that paragraph, notwithstanding that there is no record of evidence of such illness during the period of such service.

(2) An illness referred to in paragraph (1) is any diagnosed or undiagnosed illness that—

(A) the Secretary determines in regulations prescribed under this section to warrant a presumption of service connection by reason of having a positive association with exposure to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War; and

(B) becomes manifest within the period, if any, prescribed in such regulations in a veteran who served on active duty in that theater of operations during that war and by reason of such service was exposed to such agent, hazard, or medicine or vaccine.

(3) For purposes of this subsection, a veteran who served on active duty in the Southwest Asia theater of operations during the Persian Gulf War and has an illness described in paragraph (2) shall be presumed to have been exposed by reason of such service to the agent, hazard, or medicine or vaccine associated with the illness in the regulations prescribed under this section unless there is conclusive evidence to establish that the veteran was not exposed to the agent, hazard, or medicine or vaccine by reason of such service.

(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(g) of this title.

(b)(1)(A) Whenever the Secretary makes a determination described in subparagraph (B), the Secretary shall prescribe regulations providing that a presumption of service connection is warranted for the illness covered by that determination for purposes of this section.

(B) A determination referred to in subparagraph (A) is a determination based on sound medical and scientific evidence that a positive association exists between—

(i) the exposure of humans or animals to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War; and

(ii) the occurrence of a diagnosed or undiagnosed illness in humans or animals.

(2)(A) In making determinations for purposes of paragraph (1), the Secretary shall take into account—

(i) the reports submitted to the Secretary by the National Academy of Sciences under section 1603 of the Persian Gulf War Veterans Act of 1998; and

(ii) all other sound medical and scientific information and analyses available to the Secretary.

(B) In evaluating any report, information, or analysis for purposes of making such determinations, the Secretary shall take into consideration whether the results are statistically significant, are capable of replication, and withstand peer review.

(3) An association between the occurrence of an illness in humans or animals and exposure to an agent, hazard, or medicine or vaccine shall be considered to be positive for purposes of this subsection if the credible evidence for the association is equal to or outweighs the credible evidence against the association.

(c)(1) Not later than 60 days after the date on which the Secretary receives a report from the National Academy of Sciences under section 1603 of the Persian Gulf War Veterans Act of 1998, the Secretary shall determine whether or not a presumption of service connection is warranted for each illness, if any, covered by the report.

(2) If the Secretary determines under this subsection that a presumption of service connection is warranted, the Secretary shall, not later than 60 days after making the determination, issue proposed regulations setting forth the Secretary's determination.

(3)(A) If the Secretary determines under this subsection that a presumption of service connection is not warranted, the Secretary shall, not later than 60 days after making the determination, publish in the Federal Register a notice of the determination. The notice shall include an explanation of the scientific basis for the determination.

(B) If an illness already presumed to be service connected under this section is subject to a determination under subparagraph (A), the Secretary shall, not later than 60 days after publication of the notice under that subparagraph, issue proposed regulations removing the presumption of service connection for the illness.

(4) Not later than 90 days after the date on which the Secretary issues any proposed regulations under this subsection, the Secretary shall issue final regulations. Such regulations shall be effective on the date of issuance.

(d) Whenever the presumption of service connection for an illness under this section is removed under subsection (c)—

(1) a veteran who was awarded compensation for the illness on the basis of the presumption before the effective date of the removal of the presumption shall continue to be entitled to receive compensation on that basis; and

(2) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from the illness on the basis of the presumption before that date shall continue to be entitled to receive dependency and indemnity compensation on that basis.

(e) Subsections (b) through (d) shall cease to be effective on September 30, 2011.

(Added Pub. L. 105–277, div. C, title XVI, Sec. 1602(a)(1), Oct. 21, 1998, 112 Stat. 2681–742; amended Pub. L. 107–103, title II, Sec. 202(b)(2), (d)(1), Dec. 27, 2001, 115 Stat. 989.)

SUBCHAPTER III—WARTIME DEATH COMPENSATION

§ 1121. Basic entitlement

The surviving spouse, child or children, and dependent parent or parents of any veteran who died before January 1, 1957 as the result of injury or disease incurred in or aggravated by active military, naval, or air service, in line of duty, during a period of war, shall be entitled to receive compensation at the monthly rates specified in section 1122 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1122, Sec. 321; Pub. L. 92–197, Sec. 6, Dec. 15, 1971, 85 Stat. 662; Pub. L. 94–433, title IV, Sec. 404(12), Sept. 30, 1976, 90 Stat. 1378; renumbered Sec. 1121 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 1122. Rates of wartime death compensation

(a) The monthly rates of death compensation shall be as follows:

(1) Surviving spouse but no child, $87;

(2) Surviving spouse with one child, $121 (with $29 for each additional child);

(3) No surviving spouse but one child, $67;

(4) No surviving spouse but two children, $94 (equally divided);

(5) No surviving spouse but three children, $122 (equally divided) (with $23 for each additional child, total amount to be equally divided);

(6) Dependent parent, $75;

(7) Both dependent parents, $40 each.

(b) The monthly rate of death compensation payable to a surviving spouse or dependent parent under subsection (a) of this section shall be increased by $79 if the payee is (1) a patient in a nursing home or (2) blind, or so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1122, Sec. 322; Pub. L. 91–96, Sec. 7, Oct. 27, 1969, 83 Stat. 146; Pub. L. 91–588, Sec. 3(a), Dec. 24, 1970, 84 Stat. 1583; Pub. L. 92–197, Sec. 9, Dec. 15, 1971, 85 Stat. 662; Pub. L. 93–295, title II, Sec. 204, May 31, 1974, 88 Stat. 183; Pub. L. 94–169, title II, Sec. 202, Dec. 23, 1975, 89 Stat. 1021; Pub. L. 94–432, title IV, Sec. 401, Sept. 30, 1976, 90 Stat. 1372; Pub. L. 94–433, title IV, Sec. 404(13)–(17), Sept. 30, 1976, 90 Stat. 1378, 1379; Pub. L. 95–204, title III, Sec. 301, Dec. 2, 1977, 91 Stat. 1459; renumbered Sec. 1122, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 109–233, title V, Sec. 502(3), June 15, 2006, 120 Stat. 415.)

SUBCHAPTER IV—PEACETIME DISABILITY COMPENSATION

§ 1131. Basic entitlement

For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1122, Sec. 331; Pub. L. 101–508, title VIII, Sec. 8052(a)(3), Nov. 5, 1990, 104 Stat. 1388–351; renumbered Sec. 1131, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–178, title VIII, Sec. 8202(b), June 9, 1998, 112 Stat. 492; Pub. L. 105–206, title IX, Sec. 9014(a), July 22, 1998, 112 Stat. 865.)

§ 1132. Presumption of sound condition

For the purposes of section 1131 of this title, every person employed in the active military, naval, or air service for six months or more shall be taken to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at the time of the examination, acceptance and enrollment, or where evidence or medical judgment is such as to warrant a finding that the disease or injury existed before acceptance and enrollment.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1122, Sec. 332; renumbered Sec. 1132 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 1133. Presumptions relating to certain diseases

(a) For the purposes of section 1131 of this title, and subject to the provisions of subsections (b) and (c) of this section, any veteran who served for six months or more and contracts a tropical disease or a resultant disorder or disease originating because of therapy administered in connection with a tropical disease, or as a preventative thereof, shall be deemed to have incurred such disability in the active military, naval, or air service when it is shown to exist within one year after separation from active service, or at a time when standard and accepted treatises indicate that the incubation period thereof commenced during active service.

(b) Service-connection shall not be granted pursuant to subsection (a), in any case where the disease or disorder is shown by clear and unmistakable evidence to have had its inception before or after active military, naval, or air service.

(c) Nothing in this section shall be construed to prevent the granting of service-connection for any disease or disorder otherwise shown by sound judgment to have been incurred in or aggravated by active military, naval, or air service.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1123, Sec. 333; renumbered Sec. 1133 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 1134. Rates of peacetime disability compensation

For the purposes of section 1131 of this title, the compensation payable for the disability shall be that specified in section 1114 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1123, Sec. 334; Pub. L. 92–328, title I, Sec. 108(a), June 30, 1972, 86 Stat. 396; renumbered Sec. 1134 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 1135. Additional compensation for dependents

Any veteran entitled to compensation at the rates provided in section 1134 of this title, and whose disability is rated not less than 30 percent, shall be entitled to additional monthly compensation for dependents as provided in section 1115 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1123, Sec. 335; Pub. L. 92–328, title I, Sec. 108(b), June 30, 1972, 86 Stat. 396; Pub. L. 98–543, title I, Sec. 112(a), Oct. 24, 1984, 98 Stat. 2740; renumbered Sec. 1135 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

[§ 1136. Vacant]

§ 1137. Wartime presumptions for certain veterans

For the purposes of this subchapter and subchapter V of this chapter and notwithstanding the provisions of sections 1132 and 1133 of this subchapter, the provisions of sections 1111, 1112, and 1113 of this chapter shall be applicable in the case of any veteran who served in the active military, naval, or air service after December 31, 1946.

(Added Pub. L. 89–358, Sec. 7(a), Mar. 3, 1966, 80 Stat. 27, Sec. 337; amended Pub. L. 93–295, title II, Sec. 205, May 31, 1974, 88 Stat. 183; renumbered Sec. 1137 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

SUBCHAPTER V—PEACETIME DEATH COMPENSATION

§ 1141. Basic entitlement

The surviving spouse, child or children, and dependent parent or parents of any veteran who died before January 1, 1957, as the result of injury or disease incurred in or aggravated by active military, naval, or air service, in line of duty, during other than a period of war, shall be entitled to receive compensation as hereinafter provided in this subchapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1123, Sec. 341; Pub. L. 92–197, Sec. 6, Dec. 15, 1971, 85 Stat. 662; Pub. L. 94–433, title IV, Sec. 404(18), Sept. 30, 1976, 90 Stat. 1379; renumbered Sec. 1141, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1142. Rates of peacetime death compensation

For the purposes of section 1141 of this title, the monthly rates of death compensation payable shall be those specified in section 1122 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1124, Sec. 342; Pub. L. 93–295, title II, Sec. 206(a), May 31, 1974, 88 Stat. 183; renumbered Sec. 1142 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

[§ 1143. Vacant]

SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

§ 1151. Benefits for persons disabled by treatment or vocational rehabilitation

(a) Compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded for a qualifying additional disability or a qualifying death of a veteran in the same manner as if such additional disability or death were service-connected. For purposes of this section, a disability or death is a qualifying additional disability or qualifying death if the disability or death was not the result of the veteran's willful misconduct and—

(1) the disability or death was caused by hospital care, medical or surgical treatment, or examination furnished the veteran under any law administered by the Secretary, either by a Department employee or in a Department facility as defined in section 1701(3)(A) of this title, and the proximate cause of the disability or death was—

(A) carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination; or

(B) an event not reasonably foreseeable; or

(2) the disability or death was proximately caused (A) by the provision of training and rehabilitation services by the Secretary (including by a service-provider used by the Secretary for such purpose under section 3115 of this title) as part of an approved rehabilitation program under chapter 31 of this title, or (B) by participation in a program (known as a "compensated work therapy program") under section 1718 of this title.

(b)(1) Where an individual is, on or after December 1, 1962, awarded a judgment against the United States in a civil action

brought pursuant to section 1346(b) of title 28 or, on or after December 1, 1962, enters into a settlement or compromise under section 2672 or 2677 of title 28 by reason of a disability or death treated pursuant to this section as if it were service-connected, then (except as otherwise provided in paragraph (2)) no benefits shall be paid to such individual for any month beginning after the date such judgment, settlement, or compromise on account of such disability or death becomes final until the aggregate amount of benefits which would be paid but for this subsection equals the total amount included in such judgment, settlement, or compromise.

(2) In the case of a judgment, settlement, or compromise covered by paragraph (1) that becomes final on or after the date of the enactment of this paragraph and that includes an amount that is specifically designated for a purpose for which benefits are provided under chapter 21 or 39 of this title (hereinafter in this paragraph referred to as the "offset amount"), if such judgment, settlement, or compromise becomes final before the date of the award of benefits under chapter 21 or 39 for the purpose for which the offset amount was specifically designated—

(A) the amount of such award shall be reduced by the offset amount; and

(B) if the offset amount is greater than the amount of such award, the excess amount received pursuant to the judgment, settlement or compromise, shall be offset against benefits otherwise payable under this chapter.

(c) A qualifying additional disability under this section shall be treated in the same manner as if it were a service-connected disability for purposes of the following provisions of this title:

(1) Chapter 21, relating to specially adapted housing.

(2) Chapter 39, relating to automobiles and adaptive equipment.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1124, Sec. 351; Pub. L. 87–825, Sec. 3, Oct. 15, 1962, 76 Stat. 950; Pub. L. 91–24, Sec. 3, June 11, 1969, 83 Stat. 33; Pub. L. 94–433, title IV, Sec. 404(19), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98–223, title II, Sec. 213(1), Mar. 2, 1984, 98 Stat. 46; renumbered Sec. 1151 and amended Pub. L. 102–83, Sec. 4(a)(1), 5(a), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 104–204, title IV, Sec. 422(a), Sept. 26, 1996, 110 Stat. 2926; Pub. L. 106–419, title III, Sec. 303, Nov. 1, 2000, 114 Stat. 1853; Pub. L. 108–454, title III, Sec. 304(a), (c), Dec. 10, 2004, 118 Stat. 3611.)

§ 1152. Persons heretofore having a compensable status

The death and disability benefits of this chapter shall, notwithstanding the service requirements thereof, be granted to persons heretofore recognized by law as having a compensable status, including persons whose claims are based on war or peacetime service rendered before April 21, 1898.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1124, Sec. 352; renumbered Sec. 1152, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1153. Aggravation

A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1124, Sec. 353; renumbered Sec. 1153, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1154. Consideration to be accorded time, place, and circumstances of service

(a) The Secretary shall include in the regulations pertaining to service-connection of disabilities (1) additional provisions in effect requiring that in each case where a veteran is seeking service-connection for any disability due consideration shall be given to the places, types, and circumstances of such veteran's service as shown by such veteran's service record, the official history of each organization in which such veteran served, such veteran's medical records, and all pertinent medical and lay evidence, and (2) the provisions required by section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98–542; 98 Stat. 2727).

(b) In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran. Service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each case shall be recorded in full.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1124, Sec. 354; Pub. L. 94–433, title IV, Sec. 404(20), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98–542, Sec. 4, Oct. 24, 1984, 98 Stat. 2727; Pub. L. 102–54, Sec. 14(b)(1), June 13, 1991, 105 Stat. 282; renumbered Sec. 1154 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1155. Authority for schedule for rating disabilities

The Secretary shall adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations. The schedule shall be constructed so as to provide ten grades of disability and no more, upon which payments of compensation shall be based, namely, 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent, and total, 100 percent. The Secretary shall from time to time readjust this schedule of ratings in accordance with experience. However, in no event shall such a readjustment in the rating schedule cause a veteran's disability rating in effect on the effective date of the readjustment to be reduced unless an improvement in the veteran's disability is shown to have occurred.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1125, Sec. 355; Pub. L. 98–223, title I, Sec. 101(c), Mar. 2, 1984, 98 Stat. 38; renumbered Sec. 1155 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–86, title I, Sec. 103(a), Aug. 14, 1991, 105 Stat. 414.)

§ 1156. Temporary disability ratings

(a) ASSIGNMENT OF TEMPORARY RATINGS.—(1) For the purpose of providing disability compensation under this chapter to veterans, the Secretary shall assign a temporary disability rating to a veteran as follows:

(A) To a veteran who—

(i) was discharged or released from active duty not more than 365 days before the date such veteran submits a claim for disability compensation under this chapter;

(ii) has one or more disabilities for which a rating of total is not immediately assignable—

(I) under the regular provisions of the schedule of ratings; or

(II) on the basis of individual unemployability; and

(iii) has one or more—

(I) severe disabilities that result in substantially gainful employment not being feasible or advisable; or

(II) healed, unhealed, or incompletely healed wounds or injuries that make material impairment of employability likely.

(B) To a veteran who, as a result of a highly stressful in-service event, has a mental disorder that is severe enough to bring about the veteran's discharge or release from active duty.

(C) To a veteran who has a service-connected disability that requires hospital treatment or observation in a Department of Veterans Affairs or approved hospital for a period in excess of 21 days.

(D) To a veteran who has a service-connected disability that has required convalescent care or treatment at hospital discharge (regular discharge or release to non-bed care) or outpatient release that meets the requirements of regulations prescribed by the Secretary.

(2) With respect to a veteran described in paragraph (1)(A), the Secretary may assign a temporary disability rating to such veteran regardless of whether such veteran has obtained a medical examination or a medical opinion concerning such veteran's disability.

(3) With respect to a veteran described in paragraph (1)(B), the Secretary shall schedule a medical examination for such veteran not later than six months after the separation or discharge of such veteran from active duty.

(b) TERMINATION OF TEMPORARY DISABILITY RATINGS.—(1) Except as provided in paragraph (2), a temporary disability rating assigned to a veteran under this section shall remain in effect as follows:

(A) For a veteran who is assigned a temporary disability rating under subsection (a)(1)(A), until the later of the date that is—

(i) 12 months after the date of discharge or release from active duty; or

(ii) provided in regulations prescribed by the Secretary.

(B) For a veteran who is assigned a temporary disability rating under subsection (a)(1)(B), until the date on which a rating decision is issued to such veteran following the medical examination scheduled under subsection (a)(3).

(C) For a veteran who is assigned a temporary disability rating under subsection (a)(1)(C), until the later of the date that is—

(i) the last day of the month in which the veteran is discharged from the hospital as described in such subsection (a)(1)(C); or

(ii) provided in regulations prescribed by the Secretary.

(D) For a veteran who is assigned a temporary disability rating under subsection (a)(1)(D), until the date that is provided in regulations prescribed by the Secretary.

(2) The Secretary may extend a temporary disability rating assigned to a veteran under subsection (a) beyond the applicable termination date under paragraph (1) if the Secretary determines that such an extension is appropriate.

(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out the provisions of this section.

(d) CONSTRUCTION.—Nothing in this section shall be construed to preclude the Secretary from providing a temporary disability rating under an authority other than this section.

(Added Pub. L. 110–389, title II, Sec. 211(a), Oct. 10, 2008, 122 Stat. 4149.)

§ 1157. Combination of certain ratings

The Secretary shall provide for the combination of ratings and pay compensation at the rates prescribed in subchapter II of this chapter to those veterans who served during a period of war and during any other time, who have suffered disability in line of duty in each period of service.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1125, Sec. 357; renumbered Sec. 1157 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1158. Disappearance

Where a veteran receiving compensation under this chapter disappears, the Secretary may pay the compensation otherwise payable to the veteran to such veteran's spouse, children, and parents. Payments made to such spouse, child, or parent under the preceding sentence shall not exceed the amounts payable to each if the veteran had died from service-connected disability.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1125, Sec. 358; Pub. L. 86–212, Sept. 1, 1959, 73 Stat. 436; Pub. L. 94–433, title IV, Sec. 404(21), Sept. 30, 1976, 90 Stat. 1379; renumbered Sec. 1158 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1159. Protection of service connection

Service connection for any disability or death granted under this title which has been in force for ten or more years shall not be severed on or after January 1, 1962, except upon a showing that the original grant of service connection was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The men-

tioned period shall be computed from the date determined by the Secretary as the date on which the status commenced for rating purposes.

(Added Pub. L. 86–501, Sec. 1, June 10, 1960, 74 Stat. 195, Sec. 359; amended Pub. L. 87–825, Sec. 6, Oct. 15, 1962, 76 Stat. 950; renumbered Sec. 1159 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1160. Special consideration for certain cases of loss of paired organs or extremities

(a) Where a veteran has suffered—

(1) impairment of vision in one eye as a result of service-connected disability and impairment of vision in the other eye as a result of non-service-connected disability not the result of the veteran's own willful misconduct and—

(A) the impairment of vision in each eye is rated at a visual acuity of 20/200 or less; or

(B) the peripheral field of vision for each eye is 20 degrees or less;

(2) the loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of non-service-connected disability not the result of the veteran's own willful misconduct;

(3) deafness compensable to a degree of 10 percent or more in one ear as a result of service-connected disability and deafness in the other ear as the result of non-service-connected disability not the result of the veteran's own willful misconduct;

(4) the loss or loss of use of one hand or one foot as a result of service-connected disability and the loss or loss of use of the other hand or foot as a result of non-service-connected disability not the result of the veteran's own willful misconduct; or

(5) permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a non-service-connected disability of the other lung that is not the result of the veteran's own willful misconduct,

the Secretary shall assign and pay to the veteran the applicable rate of compensation under this chapter as if the combination of disabilities were the result of service-connected disability.

(b) If a veteran described in subsection (a) of this section receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the non-service-connected disability described in such subsection, the increase in the rate of compensation otherwise payable under this section shall not be paid for any month following a month in which any such money or property is received until such time as the total of the amount of such increase that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received.

(Added Pub. L. 87–610, Sec. 1, Aug. 28, 1962, 76 Stat. 406, Sec. 360; amended Pub. L. 89–311, Sec. 3(a), (b), Oct. 31, 1965, 79 Stat. 1155; Pub. L. 94–433, title IV, Sec. 404(22), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98–160, title VII, Sec. 702(3), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 99–576, title I, Sec. 109(a)(1), Oct. 28, 1986, 100 Stat. 3253; renumbered Sec. 1160 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 107–330, title I, Sec. 103, Dec. 6,

2002, 116 Stat. 2822; Pub. L. 110–157, title I, Sec. 102, Dec. 26, 2007, 121 Stat. 1831.)

§ 1161. Payment of disability compensation in disability severance cases

The deduction of disability severance pay from disability compensation, to the extent required by section 1212(d) of title 10, shall be made at a monthly rate not in excess of the rate of compensation to which the former member would be entitled based on the degree of such former member's disability as determined on the initial Department rating.

(Added Pub. L. 91–241, May 7, 1970, 84 Stat. 203, Sec. 361; amended Pub. L. 94–433, title IV, Sec. 404(23), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98–160, title VII, Sec. 702(4), Nov. 21, 1983, 97 Stat. 1009; renumbered Sec. 1161 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), 5(a), Aug. 6, 1991, 105 Stat. 404, 406; Pub. L. 110–181, div. A, title XVI, Sec. 1646(c), as added Pub. L. 110–389, title I, Sec. 103(a)(2), Oct. 10, 2008, 122 Stat. 4148.)

§ 1162. Clothing allowance

The Secretary under regulations which the Secretary shall prescribe, shall pay a clothing allowance of $677 per year to each veteran who—

(1) because of a service-connected disability, wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the clothing of the veteran; or

(2) uses medication which (A) a physician has prescribed for a skin condition which is due to a service-connected disability, and (B) the Secretary determines causes irreparable damage to the veteran's outergarments.

(Added Pub. L. 92–328, title I, Sec. 103(a), June 30, 1972, 86 Stat. 394, Sec. 362; amended Pub. L. 94–71, title I, Sec. 103, Aug. 5, 1975, 89 Stat. 396; Pub. L. 94–433, title III, Sec. 301, title IV, Sec. 404(24), Sept. 30, 1976, 90 Stat. 1377, 1379; Pub. L. 95–117, title III, Sec. 301, Oct. 3, 1977, 91 Stat. 1065; Pub. L. 95–479, title I, Sec. 103, Oct. 18, 1978, 92 Stat. 1562; Pub. L. 96–128, title I, Sec. 103, Nov. 28, 1979, 93 Stat. 984; Pub. L. 96–385, title I, Sec. 103, Oct. 7, 1980, 94 Stat. 1529; Pub. L. 97–66, title I, Sec. 103, Oct. 17, 1981, 95 Stat. 1027; Pub. L. 97–253, title IV, Sec. 405(d), Sept. 8, 1982, 96 Stat. 804; Pub. L. 97–306, title I, Sec. 103, 107, Oct. 14, 1982, 96 Stat. 1430, 1431; Pub. L. 98–223, title I, Sec. 103, Mar. 2, 1984, 98 Stat. 38; Pub. L. 98–543, title I, Sec. 103, Oct. 24, 1984, 98 Stat. 2736; Pub. L. 99–238, title I, Sec. 103, Jan. 13, 1986, 99 Stat. 1766; Pub. L. 99–576, title I, Sec. 103, Oct. 28, 1986, 100 Stat. 3251; Pub. L. 100–227, title I, Sec. 103, Dec. 31, 1987, 101 Stat. 1553; Pub. L. 100–687, div. B, title XI, Sec. 1103, Nov. 18, 1988, 102 Stat. 4124; Pub. L. 101–237, title I, Sec. 103, 112, Dec. 18, 1989, 103 Stat. 2063, 2065; Pub. L. 102–3, Sec. 4, Feb. 6, 1991, 105 Stat. 8; renumbered Sec. 1162, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–152, Sec. 4, Nov. 12, 1991, 105 Stat. 986; Pub. L. 103–78, Sec. 3, Aug. 13, 1993, 107 Stat. 768; Pub. L. 103–140, Sec. 4, Nov. 11, 1993, 107 Stat. 1486; Pub. L. 105–98, Sec. 4, Nov. 19, 1997, 111 Stat. 2156; Pub. L. 106–118, Sec. 4, Nov. 30, 1999, 113 Stat. 1602; Pub. L. 107–94, Sec. 4, Dec. 21, 2001, 115 Stat. 901; Pub. L. 107–330, title III, Sec. 309(c), Dec. 6, 2002, 116 Stat. 2830; Pub. L. 108–454, title III, Sec. 307(c), Dec. 10, 2004, 118 Stat. 3613; Pub. L. 109–111, Sec. 2(c), Nov. 22, 2005, 119 Stat. 2363; Pub. L. 109–444, Sec. 9(c), Dec. 21, 2006, 120 Stat. 3315; Pub. L. 109–461, title X, Secs. 1005(c), 1006(b), Dec. 22, 2006, 120 Stat. 3467, 3468; Pub. L. 110–324, Sec. 3(c), Sept. 24, 2008, 122 Stat. 3551.)

§ 1163. Trial work periods and vocational rehabilitation for certain veterans with total disability ratings

(a)(1) The disability rating of a qualified veteran who begins to engage in a substantially gainful occupation after January 31,

1985, may not be reduced on the basis of the veteran having secured and followed a substantially gainful occupation unless the veteran maintains such an occupation for a period of 12 consecutive months.

(2) For purposes of this section, the term "qualified veteran" means a veteran who has a service-connected disability, or service-connected disabilities, not rated as total but who has been awarded a rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities.

(b) The Secretary shall make counseling services described in section 3104(a)(2) of this title and placement and postplacement services described in section 3104(a)(5) of this title available to each qualified veteran (whether or not the veteran is participating in a vocational rehabilitation program under chapter 31 of this title).

(c)(1) In the case of each award after January 31, 1985, of a rating of total disability described in subsection (a)(2) of this section to a veteran, the Secretary shall provide to the veteran, at the time that notice of the award is provided to the veteran, a statement providing—

(A) notice of the provisions of this section;

(B) information explaining the purposes and availability of and eligibility for, and the procedures for pursuing, a vocational rehabilitation program under chapter 31 of this title; and

(C) a summary description of the scope of services and assistance available under that chapter.

(2) After providing the notice required under paragraph (1) of this subsection, the Secretary shall offer the veteran the opportunity for an evaluation under section 3106(a) of this title.

(Added Pub. L. 98–543, title I, Sec. 111(a)(1), Oct. 24, 1984, 98 Stat. 2738, Sec. 363; amended Pub. L. 100–687, div. B, title XIII, Sec. 1301, Nov. 18, 1988, 102 Stat. 4127; renumbered Sec. 1163 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–291, Sec. 2(a), May 20, 1992, 106 Stat. 178; Pub. L. 102–568, title IV, Sec. 401(a)–(d)(1), Oct. 29, 1992, 106 Stat. 4336.)

Chapter 13 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART II—GENERAL BENEFITS]

CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

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SUBCHAPTER I—GENERAL

§ 1301. Definitions

As used in this chapter-

The term "veteran" includes a person who died in the active military, naval, or air service.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1126, Sec. 401; Pub. L. 91–24, Sec. 4(a), June 11, 1969, 83 Stat. 33; Pub. L. 91–96, Sec. 5, Oct. 27, 1969, 83 Stat. 145; renumbered Sec. 1301, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1302. Determination of pay grade

(a) With respect to a veteran who died in the active military, naval, or air service, such veteran's pay grade shall be determined as of the date of such veteran's death or as of the date of a promotion after death while in a missing status.

(b) With respect to a veteran who did not die in the active military, naval, or air service, such veteran's pay grade shall be determined as of—

(1) the time of such veteran's last discharge or release from active duty under conditions other than dishonorable; or

(2) the time of such veteran's discharge or release from any period of active duty for training or inactive duty training, if such veteran's death results from service-connected disability incurred during such period and if such veteran was not thereafter discharged or released under conditions other than dishonorable from active duty.

(c) The pay grade of any veteran described in section 106(b) of this title shall be that to which such veteran would have been assigned upon final acceptance or entry upon active duty.

(d) If a veteran has satisfactorily served on active duty for a period of six months or more in a pay grade higher than that specified in subsection (a) or (b) and any subsequent discharge or release from active duty was under conditions other than dishonorable, the higher pay grade shall be used if it will result in greater monthly payments to such veteran's surviving spouse under this chapter. The determination as to whether an individual has served satisfactorily for the required period in a higher pay grade shall be made by the Secretary of the department in which such higher pay grade was held.

(e) The pay grade of any person not otherwise described in this section, but who had a compensable status on the date of such person's death under laws administered by the Secretary, shall be determined by the head of the department under which such person performed the services by which such person obtained such status (taking into consideration such person's duties and responsibilities) and certified to the Secretary. For the purposes of this chapter, such person shall be deemed to have been on active duty while performing such services.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1126, Sec. 402; Pub. L. 86–492, June 8, 1960, 74 Stat. 161; Pub. L. 89–622, Sec. 1, Oct. 4, 1966, 80 Stat. 873; Pub. L. 91–96, Sec. 1, Oct. 27, 1969, 83 Stat. 144; Pub. L. 92–169, Sec. 2, Nov. 24, 1971, 85 Stat. 489; Pub. L. 94–433, title IV, Sec. 405(1)–(3), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 102–54, Sec. 14(b)(2), June 13, 1991, 105 Stat. 283; renumbered Sec. 1302 and amended Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 403–406.)

§ 1303. Cost-of-living adjustments

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

(b) For purposes of this section, the term "social security increase" means the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased for any fiscal year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(Added Pub. L. 105–33, title VIII, Sec. 8031(b)(1), Aug. 5, 1997, 111 Stat. 668; amended Pub. L. 107–103, title II, Sec. 205, Dec. 27, 2001, 115 Stat. 990; Pub. L. 108–183, title VII, Sec. 706, Dec. 16, 2003, 117 Stat. 2672.)

§ 1304. Special provisions relating to surviving spouses

No dependency and indemnity compensation shall be paid to the surviving spouse of a veteran dying after December 31, 1956, unless such surviving spouse was married to such veteran—

(1) before the expiration of fifteen years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1127, Sec. 404; Pub. L. 90–77, title I, Sec. 101(a), Aug. 31, 1967, 81 Stat. 178; Pub. L. 94–433, title IV, Sec. 405(4), (5), Sept. 30, 1976, 90 Stat. 1379; renumbered Sec. 1304, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

SUBCHAPTER II—DEPENDENCY AND INDEMNITY COMPENSATION

§ 1310. Deaths entitling survivors to dependency and indemnity compensation

(a) When any veteran dies after December 31, 1956, from a service-connected or compensable disability, the Secretary shall pay dependency and indemnity compensation to such veteran's surviving spouse, children, and parents. The standards and criteria for determining whether or not a disability is service-connected shall be those applicable under chapter 11 of this title.

(b) Dependency and indemnity compensation shall not be paid to the surviving spouse, children, or parents of any veteran dying after December 31, 1956, unless such veteran (1) was discharged or released under conditions other than dishonorable from the period of active military, naval, or air service in which the disability causing such veteran's death was incurred or aggravated, or (2) died while in the active military, naval, or air service.

(c) A person who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of dependency and indemnity compensation to which that person is otherwise entitled, but there shall be deducted from payment of such dependency and indemnity compensation the amount of the payment under that Act.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1127, Sec. 410; Pub. L. 94–433, title IV, Sec. 405(7), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 95–479, title II, Sec. 204, Oct. 18, 1978, 92 Stat. 1564; Pub. L. 97–306, title I, Sec. 112(a), Oct. 14, 1982, 96 Stat. 1432; Pub. L. 100–687, div. B, title XIV, Sec. 1403(b), Nov. 18, 1988, 102 Stat. 4131; renumbered Sec. 1310 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 108–454, title III, Sec. 302(b), Dec. 10, 2004, 118 Stat. 3610.)

§ 1311. Dependency and indemnity compensation to a surviving spouse

(a)(1) Dependency and indemnity compensation shall be paid to a surviving spouse at the monthly rate of $1,091.

(2) The rate under paragraph (1) shall be increased by $233 in the case of the death of a veteran who at the time of death was

in receipt of or was entitled to receive (or but for the receipt of retired pay or retirement pay was entitled to receive) compensation for a service-connected disability that was rated totally disabling for a continuous period of at least eight years immediately preceding death. In determining the period of a veteran's disability for purposes of the preceding sentence, only periods in which the veteran was married to the surviving spouse shall be considered.

(3) In the case of dependency and indemnity compensation paid to a surviving spouse that is predicated on the death of a veteran before January 1, 1993, the monthly rate of such compensation shall be the amount based on the pay grade of such veteran, as set forth in the following table, if the amount is greater than the total amount determined with respect to that veteran under paragraphs (1) and (2):

Pay grade	Monthly rate	Pay grade	Monthly rate
E–1	$1,091	W–4	$1,305
E–2	$1,091	O–1	$1,153
E–3	$1,091	O–2	$1,191
E–4	$1,091	O–3	$1,274
E–5	$1,091	O–4	$1,349
E–6	$1,091	O–5	$1,485
E–7	$1,129	O–6	$1,674
E–8	$1,191	O–7	$1,808
E–9	$1,242[1]	O–8	$1,985
W–1	$1,153	O–9	$2,123
W–2	$1,198	O–10	$2,328[2]
W–3	$1,234		

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $1,342.

[2] If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $2,499.

(b) If there is a surviving spouse with one or more children below the age of eighteen of a deceased veteran, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $271 for each such child.

(c) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $271 if the spouse is (1) a patient in a nursing home or (2) blind, or so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person.

(d) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $128 if the surviving spouse is, by reason of disability, permanently housebound but does not qualify for the aid and attendance allowance under subsection (c) of this section. For the purposes of this subsection, the requirement of "permanently housebound" will be con-

sidered to have been met when the surviving spouse is substantially confined to such surviving spouse's home (ward or clinical areas, if institutionalized) or immediate premises by reason of a disability or disabilities which it is reasonably certain will remain throughout such surviving spouse's lifetime.

(e) In the case of an individual who is eligible for dependency and indemnity compensation under this section by reason of section 103(d)(2)(B) of this title who is also eligible for benefits under another provision of law by reason of such individual's status as the surviving spouse of a veteran, then, notwithstanding any other provision of law (other than section 5304(b)(3) of this title), no reduction in benefits under such other provision of law shall be made by reason of such individual's eligibility for benefits under this section.

(f)(1) Subject to paragraphs (2) and (3), if there is a surviving spouse with one or more children below the age of 18, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $250, regardless of the number of such children.

(2) Dependency and indemnity compensation shall be increased under this subsection only for months occurring during the two-year period beginning on the date on which entitlement to dependency and indemnity compensation commenced.

(3) The increase in dependency and indemnity compensation of a surviving spouse under this subsection shall cease beginning with the first month commencing after the month in which all children of the surviving spouse have attained the age of 18.

(4) Dependency and indemnity compensation under this subsection is in addition to any other dependency and indemnity compensation payable under this chapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1127, Sec. 411; Pub. L. 87–268, Sec. 1(b), Sept. 21, 1961, 75 Stat. 566; Pub. L. 88–21, Sec. 1, May 15, 1963, 77 Stat. 17; Pub. L. 88–134, Sec. 1, Oct. 5, 1963, 77 Stat. 223; Pub. L. 91–24, Sec. 4(b), June 11, 1969, 83 Stat. 33; Pub. L. 91–96, Sec. 3, Oct. 27, 1969, 83 Stat. 144; Pub. L. 91–588, Sec. 3(a), Dec. 24, 1970, 84 Stat. 1583; Pub. L. 92–197, Sec. 1, Dec. 15, 1971, 85 Stat. 660; Pub. L. 92–455, Sec. 4, Oct. 2, 1972, 86 Stat. 761; Pub. L. 93–295, title II, Sec. 201, May 31, 1974, 88 Stat. 182; Pub. L. 94–71, title II, Sec. 201, Aug. 5, 1975, 89 Stat. 396; Pub. L. 94–433, title II, Sec. 201, Sept. 30, 1976, 90 Stat. 1375; Pub. L. 95–117, title II, Sec. 201, Oct. 3, 1977, 91 Stat. 1064; Pub. L. 95–479, title II, Sec. 201, Oct. 18, 1978, 92 Stat. 1562; Pub. L. 96–128, title II, Sec. 201, Nov. 28, 1979, 93 Stat. 984; Pub. L. 96–385, title II, Sec. 201, Oct. 7, 1980, 94 Stat. 1529; Pub. L. 97–66, title II, Sec. 201, Oct. 17, 1981, 95 Stat. 1028; Pub. L. 97–253, title IV, Sec. 405(e), Sept. 8, 1982, 96 Stat. 804; Pub. L. 97–306, title I, Sec. 104, 107, Oct. 14, 1982, 96 Stat. 1430, 1431; Pub. L. 98–223, title I, Sec. 104, Mar. 2, 1984, 98 Stat. 38; Pub. L. 98–543, title I, Sec. 104, Oct. 24, 1984, 98 Stat. 2736; Pub. L. 99–238, title I, Sec. 104, Jan. 13, 1986, 99 Stat. 1766; Pub. L. 99–576, title I, Sec. 104, Oct. 28, 1986, 100 Stat. 3251; Pub. L. 100–180, div. A, title XIII, Sec. 1314(d)((1)), Dec. 4, 1987, 101 Stat. 1176; Pub. L. 100–227, title I, Sec. 104, Dec. 31, 1987, 101 Stat. 1554; Pub. L. 100–687, div. B, title XI, Sec. 1104, Nov. 18, 1988, 102 Stat. 4124; Pub. L. 101–237, title I, Sec. 104, Dec. 18, 1989, 103 Stat. 2063; Pub. L. 102–3, Sec. 5, Feb. 6, 1991, 105 Stat. 9; renumbered Sec. 1311 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–152, Sec. 5, Nov. 12, 1991, 105 Stat. 986; Pub. L. 102–568, title I, Sec. 102(a), (b), Oct. 29, 1992, 106 Stat. 4321, 4322; Pub. L. 103–78, Sec. 4, Aug. 13, 1993, 107 Stat. 768; Pub. L. 103–140, Sec. 5, Nov. 11, 1993, 107 Stat. 1486; Pub. L. 105–98, Sec. 5, Nov. 19, 1997, 111 Stat. 2156; Pub. L. 105–178, title VIII, Sec. 8207(a), June 9, 1998, 112 Stat. 495; Pub. L. 106–117, title V, Sec. 502(b), Nov. 30, 1999, 113 Stat. 1574; Pub. L. 106–118, Sec. 5, Nov. 30, 1999, 113 Stat. 1602; Pub. L. 107–94, Sec. 5, Dec. 21, 2001, 115 Stat. 901; Pub. L. 107–330, title III, Sec. 309(d), Dec. 6, 2002, 116 Stat. 2830; Pub. L. 108–183, title I, Sec. 101(b), Dec. 16, 2003, 117 Stat. 2652; Pub. L. 108–454, title III, Secs. 301(a), 307(d), Dec. 10, 2004, 118 Stat. 3610, 3613; Pub. L.

109–111, Sec. 2(d), Nov. 22, 2005, 119 Stat. 2363; Pub. L. 109–233, title V, Sec. 502(3), June 15, 2006, 120 Stat. 415; Pub. L. 109–361, Sec. 4, Oct. 16, 2006, 120 Stat. 2063; Pub. L. 109–444, Sec. 9(d), Dec. 21, 2006, 120 Stat. 3315; Pub. L. 109–461, title X, Secs. 1005(d), 1006(b), Dec. 22, 2006, 120 Stat. 3467, 3468; Pub. L. 110–324, Sec. 3(d), Sept. 24, 2008, 122 Stat. 3551.)

§ 1312. Benefits in certain cases of in-service or service-connected deaths

(a) In the case of any veteran—

(1) who dies after December 31, 1956, and is not a fully and currently insured individual (as defined in section 214 of the Social Security Act (42 U.S.C. 414)) at the time of such veteran's death; and

(2) whose death occurs—

(A) while on active duty, active duty for training, or inactive duty training; or

(B) as the result of a service-connected disability incurred after September 15, 1940; and

(3) who leaves one or more survivors who are not entitled for any month to monthly benefits under section 202 of the Social Security Act (42 U.S.C. 402) on the basis of such veteran's wages and self-employment income but who would, upon application therefor, be entitled to such benefits if such veteran had been fully and currently insured at the time of such veteran's death;

the Secretary shall pay for such month benefits under this section to each such survivor in an amount equal to the amount of the benefits which would have been paid for such month to such survivor under title II of the Social Security Act (42 U.S.C. 401 et seq.), if such veteran had been both fully and currently insured at the time of such veteran's death and if such survivor had filed application therefor on the same date on which application for benefits under this section is filed with the Secretary.

(b) In any case where the amount of dependency and indemnity compensation payable under this chapter to a surviving spouse who has children is less than the amount of pension which would be payable to (1) such surviving spouse, or (2) such children if the surviving spouse were not entitled, under chapter 15 of this title had the death occurred under circumstances authorizing payment of death pension, the Secretary shall pay dependency and indemnity compensation to such surviving spouse in an amount equal to such amount of pension.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1128, Sec. 412; Pub. L. 87–268, Sec. 1(a), Sept. 21, 1961, 75 Stat. 566; Pub. L. 89–466, June 22, 1966, 80 Stat. 217; Pub. L. 94–433, title IV, Sec. 405(9), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98–223, title II, Sec. 213(2), Mar. 2, 1984, 98 Stat. 46; Pub. L. 102–54, Sec. 14(b)(3), June 13, 1991, 105 Stat. 283; renumbered Sec. 1312 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1313. Dependency and indemnity compensation to children

(a) Whenever there is no surviving spouse of a deceased veteran entitled to dependency and indemnity compensation, dependency and indemnity compensation shall be paid in equal shares to the children of the deceased veteran at the following monthly rates:

(1) one child, $462;

(2) two children, $663;

(3) three children, $865; and

(4) more than three children, $865, plus $165 for each child in excess of three.

(b) If dependency and indemnity compensation has been awarded under this section to a veteran's child or children and the entitlement to dependency and indemnity compensation under this section of an additional child of that veteran who is over the age of eighteen years and who had previously been entitled to dependency and indemnity compensation under this section before becoming eighteen years of age is later reestablished effective retroactively upon determination that such child is pursuing a course of instruction at an approved educational institution, the amount payable retroactively to the additional child is the amount equal to the difference between the total of the increased award payable under this section to the children of the deceased veteran for the retroactive period and the prior total award for such purpose for that period.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1128, Sec. 413; Pub. L. 88–21, Sec. 2, May 15, 1963, 77 Stat. 17; Pub. L. 89–730, Sec. 4, Nov. 2, 1966, 80 Stat. 1159; Pub. L. 91–262, Sec. 2, May 21, 1970, 84 Stat. 256; Pub. L. 92–197, Sec. 2, Dec. 15, 1971, 85 Stat. 660; Pub. L. 93–295, title II, Sec. 202, May 31, 1974, 88 Stat. 182; Pub. L. 94–71, title II, Sec. 202, Aug. 5, 1975, 89 Stat. 397; Pub. L. 94–433, title II, Sec. 202, Sept. 30, 1976, 90 Stat. 1376; Pub. L. 95–117, title II, Sec. 202, Oct. 3, 1977, 91 Stat. 1065; Pub. L. 95–479, title II, Sec. 202, Oct. 18, 1978, 92 Stat. 1563; Pub. L. 96–128, title II, Sec. 202, Nov. 28, 1979, 93 Stat. 985; Pub. L. 96–385, title II, Sec. 202, Oct. 7, 1980, 94 Stat. 1530; Pub. L. 97–66, title II, Sec. 202, 204(a), Oct. 17, 1981, 95 Stat. 1029; Pub. L. 97–253, title IV, Sec. 405(f), Sept. 8, 1982, 96 Stat. 804; Pub. L. 97–306, title I, Sec. 105, 107, Oct. 14, 1982, 96 Stat. 1431; Pub. L. 98–223, title I, Sec. 105, Mar. 2, 1984, 98 Stat. 39; Pub. L. 98–543, title I, Sec. 105, Oct. 24, 1984, 98 Stat. 2737; Pub. L. 99–238, title I, Sec. 105, Jan. 13, 1986, 99 Stat. 1767; Pub. L. 99–576, title I, Sec. 105, title VII, Sec. 703(a)(1), Oct. 28, 1986, 100 Stat. 3252, 3302; Pub. L. 100–227, title I, Sec. 105, Dec. 31, 1987, 101 Stat. 1554; Pub. L. 100–687, div. B, title XI, Sec. 1105(a), Nov. 18, 1988, 102 Stat. 4124; Pub. L. 101–237, title I, Sec. 105(a), Dec. 18, 1989, 103 Stat. 2064; Pub. L. 102–3, Sec. 6(a), Feb. 6, 1991, 105 Stat. 9; renumbered Sec. 1313, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–152, Sec. 6(a), Nov. 12, 1991, 105 Stat. 987; Pub. L. 103–78, Sec. 5(a), Aug. 13, 1993, 107 Stat. 768; Pub. L. 103–140, Sec. 6(a), Nov. 11, 1993, 107 Stat. 1487; Pub. L. 105–98, Sec. 6(a), Nov. 19, 1997, 111 Stat. 2157; Pub. L. 106–118, Sec. 6(a), Nov. 30, 1999, 113 Stat. 1603; Pub. L. 107–94, Sec. 6(a), Dec. 21, 2001, 115 Stat. 902; Pub. L. 107–330, title III, Sec. 309(e)(1), Dec. 6, 2002, 116 Stat. 2831; Pub. L. 108–454, title III, Sec. 307(e)(1), Dec. 10, 2004, 118 Stat. 3614; Pub. L. 109–111, Sec. 2(e)(1), Nov. 22, 2005, 119 Stat. 2364; Pub. L. 109–444, Sec. 9(e)(1), Dec. 21, 2006, 120 Stat. 3315; Pub. L. 109–461, title X, Secs. 1005(e)(1), 1006(b), Dec. 22, 2006, 120 Stat. 3468; Pub. L. 110–324, Sec. 3(e)(1), Sept. 24, 2008, 122 Stat. 3552.)

§ 1314. Supplemental dependency and indemnity compensation to children

(a) In the case of a child entitled to dependency and indemnity compensation who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, the dependency and indemnity compensation paid monthly to such child shall be increased by $271.

(b) If dependency and indemnity compensation is payable monthly to a person as a surviving spouse and there is a child (of such person's deceased spouse) who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, dependency and indemnity compensation shall be

paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the surviving spouse, in the amount of $462.

(c) If dependency and indemnity compensation is payable monthly to a person as a surviving spouse and there is a child (of such person's deceased spouse), who has attained the age of eighteen and who, while under the age of twenty-three, is pursuing a course of instruction at an educational institution approved under section 104 of this title, dependency and indemnity compensation shall be paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the surviving spouse, in the amount of $230.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1128, Sec. 414; Pub. L. 88–21, Sec. 3, May 15, 1963, 77 Stat. 17; Pub. L. 89–311, Sec. 2(c)(2), Oct. 31, 1965, 79 Stat. 1155; Pub. L. 89–730, Sec. 5, Nov. 2, 1966, 80 Stat. 1159; Pub. L. 91–262, Sec. 3, May 21, 1970, 84 Stat. 256; Pub. L. 92–197, Sec. 3, Dec. 15, 1971, 85 Stat. 661; Pub. L. 93–295, title II, Sec. 203, May 31, 1974, 88 Stat. 183; Pub. L. 94–71, title II, Sec. 203, Aug. 5, 1975, 89 Stat. 397; Pub. L. 94–433, title II, Sec. 203, title IV, Sec. 405(10), Sept. 30, 1976, 90 Stat. 1376, 1380; Pub. L. 95–117, title II, Sec. 203, Oct. 3, 1977, 91 Stat. 1065; Pub. L. 95–479, title II, Sec. 203, Oct. 18, 1978, 92 Stat. 1563; Pub. L. 96–128, title II, Sec. 203, Nov. 28, 1979, 93 Stat. 985; Pub. L. 96–385, title II, Sec. 203, Oct. 7, 1980, 94 Stat. 1530; Pub. L. 97–66, title II, Sec. 203, Oct. 17, 1981, 95 Stat. 1029; Pub. L. 97–253, title IV, Sec. 405(g), Sept. 8, 1982, 96 Stat. 804; Pub. L. 97–306, title I, Sec. 106, 107, Oct. 14, 1982, 96 Stat. 1431; Pub. L. 98–223, title I, Sec. 106, Mar. 2, 1984, 98 Stat. 39; Pub. L. 98–543, title I, Sec. 106, Oct. 24, 1984, 98 Stat. 2737; Pub. L. 99–238, title I, Sec. 106, Jan. 13, 1986, 99 Stat. 1767; Pub. L. 99–576, title I, Sec. 106, Oct. 28, 1986, 100 Stat. 3252; Pub. L. 100–227, title I, Sec. 106, Dec. 31, 1987, 101 Stat. 1555; Pub. L. 100–687, div. B, title XI, Sec. 1105(b), Nov. 18, 1988, 102 Stat. 4124; Pub. L. 101–237, title I, Sec. 105(b), Dec. 18, 1989, 103 Stat. 2064; Pub. L. 102–3, Sec. 6(b), Feb. 6, 1991, 105 Stat. 9; renumbered Sec. 1314, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–152, Sec. 6(b), Nov. 12, 1991, 105 Stat. 987; Pub. L. 103–78, Sec. 5(b), Aug. 13, 1993, 107 Stat. 769; Pub. L. 103–140, Sec. 6(b), Nov. 11, 1993, 107 Stat. 1487; Pub. L. 105–98, Sec. 6(b), Nov. 19, 1997, 111 Stat. 2157; Pub. L. 106–118, Sec. 6(b), Nov. 30, 1999, 113 Stat. 1603; Pub. L. 107–94, Sec. 6(b), Dec. 21, 2001, 115 Stat. 902; Pub. L. 107–330, title III, Sec. 309(e)(2), Dec. 6, 2002, 116 Stat. 2831; Pub. L. 108–454, title III, Sec. 307(e)(2), Dec. 10, 2004, 118 Stat. 3614; Pub. L. 109–111, Sec. 2(e)(2), Nov. 22, 2005, 119 Stat. 2364; Pub. L. 109–444, Sec. 9(e)(2), Dec. 21, 2006, 120 Stat. 3315; Pub. L. 109–461, title X, Secs. 1005(e)(2), 1006(b), Dec. 22, 2006, 120 Stat. 3468; Pub. L. 110–324, Sec. 3(e)(2), Sept. 24, 2008, 122 Stat. 3552.)

§ 1315. Dependency and indemnity compensation to parents

(a)(1) Except as provided in paragraph (2), dependency and indemnity compensation shall be paid monthly to parents of a deceased veteran in the amounts prescribed by this section.

(2) Under regulations prescribed by the Secretary, benefits under this section may be paid less frequently than monthly if the amount of the annual benefit is less than 4 percent of the maximum annual rate payable under this section.

(b)(1) Except as provided in paragraph (4) of this subsection, if there is only one parent, the monthly rate of dependency and indemnity compensation paid to such parent shall be $163, as increased from time to time under section 5312(b)(1) of this title and reduced by an amount, based upon the amount of such parent's annual income, determined in accordance with regulations which the Secretary shall prescribe under section 5312(b)(2) of this title.

(2) In no case may the amount of dependency and indemnity compensation payable to any parent under this subsection be less than $5 monthly.

(3) In no case may dependency and indemnity compensation be paid under paragraph (1) of this subsection to any parent if the annual income of such parent exceeds $4,038, as increased from time to time under section 5312 of this title.

(4) If there is only one parent and such parent has remarried and is living with such parent's spouse, dependency and indemnity compensation shall be paid to such parent under either paragraph (1) of this subsection or under subsection (d) of this section, whichever will result in the greater amount of such compensation being paid to such parent. In such a case of remarriage the total combined annual income of the parent and such parent's spouse shall be counted in determining the monthly rate of dependency and indemnity compensation under the appropriate formula.

(c)(1) Except as provided in subsection (d) of this section, if there are two parents, but they are not living together, the monthly rate of dependency and indemnity compensation paid to each such parent shall be $115, as increased from time to time under section 5312(b)(1) of this title and reduced by an amount, based upon the amount of such parent's annual income, determined in accordance with regulations which the Secretary shall prescribe under section 5312(b)(2) of this title.

(2) In no case may the amount of dependency and indemnity compensation payable to any parent under this subsection be less than $5 monthly.

(3) In no case may dependency and indemnity compensation be paid under paragraph (1) of this subsection to any parent if the annual income of such parent exceeds $4,038, as increased from time to time under section 5312 of this title.

(d)(1) If there are two parents who are living together, or if a parent has remarried and is living with such parent's spouse, the monthly rate of dependency and indemnity compensation paid to such parent shall be $109, as increased from time to time under section 5312(b)(1) of this title and reduced by an amount, based upon the amount of the combined annual income of the parents or the parent and the parent's spouse, determined in accordance with regulations which the Secretary shall prescribe under section 5312(b)(2) of this title.

(2) In no case may the amount of dependency and indemnity compensation payable to any parent under this subsection be less than $5 monthly.

(3) In no case may dependency and indemnity compensation be paid under this subsection to a parent if the total combined annual income of the parent and such parent's spouse exceeds $5,430, as increased from time to time under section 5312 of this title.

(e) The Secretary may require as a condition of granting or continuing dependency and indemnity compensation to a parent that such parent, other than one who has attained seventy-two years of age and has been paid dependency and indemnity compensation during two consecutive calendar years, file for a calendar year with the Secretary (on the form prescribed by the Secretary) a report showing the total income which such parent expects to receive in that year and the total income which such parent received in the preceding year. The parent or parents shall notify the Secretary whenever there is a material change in annual income.

(f)(1) In determining income under this section, all payments of any kind or from any source shall be included, except—

(A) payments of the six-months' death gratuity;

(B) donations from public or private relief or welfare organizations;

(C) payments under this chapter (except section 1312(a)) and chapters 11 and 15 of this title and under the first sentence of section 9(b) of the Veterans' Pension Act of 1959;

(D) lump-sum death payments under title II of the Social Security Act (42 U.S.C. 401 et seq.);

(E) payments of bonus or similar cash gratuity by any State based upon service in the Armed Forces;

(F) payments under policies of servicemembers' group life insurance, United States Government life insurance or national service life insurance, and payments of servicemen's indemnity;

(G) 10 percent of the amount of payments to an individual under public or private retirement, annuity, endowment, or similar plans or programs;

(H) amounts equal to amounts paid by a parent of a deceased veteran for—

(i) a deceased spouse's just debts,

(ii) the expenses of the spouse's last illness to the extent such expenses are not reimbursed under chapter 51 of this title, and

(iii) the expenses of the spouse's burial to the extent that such expenses are not reimbursed under chapter 23 or chapter 51 of this title;

(I) reimbursements of any kind for any casualty loss (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this clause may not exceed the greater of the fair market value or the reasonable replacement value of the property involved at the time immediately preceding the loss;

(J) amounts equal to amounts paid by a parent of a deceased veteran for—

(i) the expenses of the veteran's last illness, and

(ii) the expenses of such veteran's burial to the extent that such expenses are not reimbursed under chapter 23 of this title;

(K) profit realized from the disposition of real or personal property other than in the course of a business;

(L) payments received for discharge of jury duty or obligatory civic duties;

(M) payments of annuities elected under subchapter I of chapter 73 of title 10.

(2) Where a fraction of a dollar is involved, annual income shall be fixed at the next lower dollar.

(3) The Secretary may provide by regulation for the exclusion from income under this section of amounts paid by a parent for unusual medical expenses.

(g) The monthly rate of dependency and indemnity compensation payable to a parent shall be increased by $85, as increased from time to time under section 5312 of this title, if such parent

is (1) a patient in a nursing home or (2) blind, or so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1129, Sec. 415; Pub. L. 87–268, Sec. 1(b), Sept. 21, 1961, 75 Stat. 566; Pub. L. 88–21, Sec. 4, May 15, 1963, 77 Stat. 17; Pub. L. 89–730, Sec. 1, 2, Nov. 2, 1966, 80 Stat. 1157, 1158; Pub. L. 90–275, Sec. 2, Mar. 28, 1968, 82 Stat. 66; Pub. L. 91–588, Sec. 2, 8(a), Dec. 24, 1970, 84 Stat. 1582, 1584; Pub. L. 92–197, Sec. 4, Dec. 15, 1971, 85 Stat. 661; Pub. L. 92–425, Sec. 6(1), Sept. 21, 1972, 86 Stat. 713; Pub. L. 93–177, Sec. 4, Dec. 6, 1973, 87 Stat. 695; Pub. L. 93–527, Sec. 7, Dec. 21, 1974, 88 Stat. 1704; Pub. L. 94–169, title II, Sec. 201, Dec. 23, 1975, 89 Stat. 1019; Pub. L. 94–432, title III, Sec. 301, Sept. 30, 1976, 90 Stat. 1371; Pub. L. 95–204, title II, Sec. 201, Dec. 2, 1977, 91 Stat. 1457; Pub. L. 95–588, title II, Sec. 201, Nov. 4, 1978, 92 Stat. 2505; Pub. L. 96–466, title VI, Sec. 605(c)(1), Oct. 17, 1980, 94 Stat. 2211; Pub. L. 97–295, Sec. 4(10), Oct. 12, 1982, 96 Stat. 1305; Pub. L. 100–687, div. B, title XIV, Sec. 1402(a), Nov. 18, 1988, 102 Stat. 4129; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1315 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–86, title I, Sec. 102, Aug. 14, 1991, 105 Stat. 414; Pub. L. 103–271, Sec. 9(a), July 1, 1994, 108 Stat. 743; Pub. L. 104–275, title IV, Sec. 405(c)(1), Oct. 9, 1996, 110 Stat. 3340; Pub. L. 109–233, title V, Sec. 502(3), June 15, 2006, 120 Stat. 415.)

§ 1316. Dependency and indemnity compensation in cases of prior deaths

(a)(1) Any person who is eligible as a surviving spouse or child for death compensation by reason of a death occurring before January 1, 1957, may receive dependency and indemnity compensation upon application therefor.

(2) Any person who is eligible as a parent, or, but for such person's annual income, would be eligible as a parent, for death compensation by reason of a death occurring before January 1, 1957, may receive dependency and indemnity compensation upon application therefor; however, the annual income limitations established by section 1315 of this title shall apply to each such parent.

(b)(1) Whenever the surviving spouse of a veteran has been granted dependency and indemnity compensation by reason of this section, payments to such surviving spouse and to the children of the veteran shall thereafter be made under this chapter, and shall not thereafter be made to them by reason of the death of the veteran under (A) other provisions of law administered by the Secretary providing for the payment of compensation or pension, or (B) subchapter I of chapter 81 of title 5.

(2) Whenever the child or parent of any veteran is granted dependency and indemnity compensation, payments shall not thereafter be made to such child or parent by reason of the death of the veteran under (A) other provisions of law administered by the Secretary providing for the payment of compensation or pension, or (B) subchapter I of chapter 81 of title 5.

(c) If children of a deceased individual are receiving death compensation, and all such children have not applied for dependency and indemnity compensation, (1) dependency and indemnity compensation paid to each child who has applied therefor shall not exceed the amounts which would be paid if the application had been made by, or on behalf of, all such children, and (2) benefits paid under other provisions of law administered by the Secretary providing for the payment of compensation or pension, or under subchapter I of chapter 81 of title 5, to each child who has not so ap-

plied therefor shall not exceed the amounts which would be paid to such child if no such application had been made.

(d) If there are two parents of a deceased individual eligible for benefits by reason of subsection (a), and an application for dependency and indemnity compensation is not made by both parents, (1) dependency and indemnity compensation paid to the parent who applies therefor shall not exceed the amounts which would be paid to such parent if both parents had so applied, and (2) benefits paid under other provisions of law administered by the Secretary providing for the payment of compensation, or under subchapter I of chapter 81 of title 5, to the parent who has not so applied therefor shall not exceed the amounts which would be paid to such parent if no such application had been made.

(e)(1) Except as provided in paragraphs (3) and (4), no person who, on January 1, 1957, was a principal or contingent beneficiary of any payments under the Servicemen's Indemnity Act of 1951 may receive any such payments based upon the death giving rise to such payments after such person has been granted dependency and indemnity compensation based upon that death. No principal or contingent beneficiary who has assigned such beneficiary's interest in payments under the Servicemen's Indemnity Act of 1951 after June 28, 1956, may receive any payments under this chapter based upon the death giving rise to such payments until the portion of the indemnity so assigned is no longer payable to any person.

(2) Where a beneficiary is barred from the receipt of payments under the Servicemen's Indemnity Act of 1951 by virtue of the first sentence of paragraph (1), no payments of the portion of indemnity in which such beneficiary had an interest shall be made to any other beneficiary.

(3) In the case of a child who has applied for dependency and indemnity compensation pursuant to this section or prior corresponding provisions of law, and who is or becomes a beneficiary under the Servicemen's Indemnity Act of 1951 by reason of the death giving rise to such child's eligibility for dependency and indemnity compensation, the Secretary shall determine and pay to such child for each month, or part thereof, payments under this chapter or under such Act, whichever payment the Secretary determines to be the greater amount.

(4) Notwithstanding paragraph (2), where a child receives dependency and indemnity compensation under this chapter, and thereafter dies, the portion of servicemen's indemnity in which such child had an interest may be paid (subject to paragraph (3)) to another child of the person by reason of whose death such servicemen's indemnity was payable.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1130, Sec. 416; Pub. L. 94–433, title IV, Sec. 405(11)–(16), Sept. 30, 1976, 90 Stat. 1380; Pub. L. 97–295, Sec. 4(11), Oct. 12, 1982, 96 Stat. 1305; renumbered Sec. 1316 and amended Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406.)

§ 1317. Restriction on payments under this chapter

(a) Except as provided in subsection (b), no person eligible for dependency and indemnity compensation by reason of any death occurring after December 31, 1956, shall be eligible by reason of

such death for any payments under (1) provisions of law administered by the Secretary providing for the payment of death compensation or death pension, or (2) subchapter I of chapter 81 of title 5.

(b) A surviving spouse who is eligible for dependency and indemnity compensation may elect to receive death pension instead of such compensation.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1132, Sec. 417; Pub. L. 91–291, Sec. 13(a), (b), June 25, 1970, 84 Stat. 332; Pub. L. 92–197, Sec. 5, Dec. 15, 1971, 85 Stat. 662; Pub. L. 97–295, Sec. 4(11), Oct. 12, 1982, 96 Stat. 1305; renumbered Sec. 1317 and amended Pub. L. 102–83, Sec. 4(a)(1), 5(a), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 103–446, title I, Sec. 111(a), Nov. 2, 1994, 108 Stat. 4654.)

§ 1318. Benefits for survivors of certain veterans rated totally disabled at time of death

(a) The Secretary shall pay benefits under this chapter to the surviving spouse and to the children of a deceased veteran described in subsection (b) of this section in the same manner as if the veteran's death were service connected.

(b) A deceased veteran referred to in subsection (a) of this section is a veteran who dies, not as the result of the veteran's own willful misconduct, and who was in receipt of or entitled to receive (or but for the receipt of retired or retirement pay was entitled to receive) compensation at the time of death for a service-connected disability rated totally disabling if—

(1) the disability was continuously rated totally disabling for a period of 10 or more years immediately preceding death;

(2) the disability was continuously rated totally disabling for a period of not less than five years from the date of such veteran's discharge or other release from active duty; or

(3) the veteran was a former prisoner of war who died after September 30, 1999, and the disability was continuously rated totally disabling for a period of not less than one year immediately preceding death.

(c) Benefits may not be paid under this chapter by reason of this section to a surviving spouse of a veteran unless—

(1) the surviving spouse was married to the veteran for one year or more immediately preceding the veteran's death; or

(2) a child was born of the marriage or was born to them before the marriage.

(d) If a surviving spouse or a child receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the death of a veteran described in subsection (a) of this section, benefits under this chapter payable to such surviving spouse or child by virtue of this section shall not be paid for any month following a month in which any such money or property is received until such time as the total amount of such benefits that would otherwise have been payable equals the total of the amount of the money received and the fair market value of the property received.

(e) For purposes of sections 1448(d) and 1450(c) of title 10, eligibility for benefits under this chapter by virtue of this section

shall be deemed eligibility for dependency and indemnity compensation under section 1311(a) of this title.

(Added Pub. L. 100–687, div. B, title XIV, Sec. 1403(a)(1), Nov. 18, 1988, 102 Stat. 4130, Sec. 418; amended Pub. L. 101–237, title I, Sec. 113, Dec. 18, 1989, 103 Stat. 2065; renumbered Sec. 1318 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 106–117, title V, Sec. 501(b), Nov. 30, 1999, 113 Stat. 1573; Pub. L. 106–419, title IV, Sec. 404(a)(2), Nov. 1, 2000, 114 Stat. 1864.)

SUBCHAPTER III—CERTIFICATIONS

§ 1321. Certifications with respect to pay grade

The Secretary concerned shall, at the request of the Secretary, certify to the Secretary the pay grade of deceased persons with respect to whose deaths applications for benefits are filed under this chapter. The certification of the Secretary concerned shall be binding upon the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1132, Sec. 421; Pub. L. 91–96, Sec. 4, Oct. 27, 1969, 83 Stat. 145; Pub. L. 94–433, title IV, Sec. 405(17), Sept. 30, 1976, 90 Stat. 1380; renumbered Sec. 1321 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1322. Certifications with respect to social security entitlement

(a) Determinations required by section 1312(a) of this title (other than a determination required by section 1312(a)(2) of this title) as to whether any survivor described in section 1312(a)(3) of this title of a deceased individual would be entitled to benefits under section 202 of the Social Security Act (42 U.S.C. 402) for any month and as to the amount of the benefits which would be paid for such month, if the deceased veteran had been a fully and currently insured individual at the time of such veteran's death, shall be made by the Commissioner of Social Security, and shall be certified by the Commissioner to the Secretary upon request of the Secretary.

(b) The Secretary shall pay to the Commissioner of Social Security an amount equal to the costs which will be incurred in making determinations and certifications under subsection (a). Such payments shall be made with respect to the costs incurred during such period (but not shorter than a calendar quarter) as the Secretary and the Commissioner may prescribe, with the amount of such payments to be made on the basis of estimates made by the Commissioner after consultation with the Secretary. The amount payable for any period shall be increased or reduced to compensate for any underpayment or overpayment, as the case may be, of the costs incurred in any preceding period.

(c) Except with respect to determinations made under subsection (a) of this section, the Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section and section 1312(a) of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1132, Sec. 422; Pub. L. 87–268, Sec. 1(b), (c), Sept. 21, 1961, 75 Stat. 566; Pub. L. 94–433, title IV, Sec. 405(18), Sept. 30, 1976, 90 Stat. 1380; Pub. L. 97–295, Sec. 4(12), (95)(A), Oct. 12, 1982, 96 Stat. 1305, 1313; renumbered Sec. 1322 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(A), (E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 108–183, title VII, Sec. 708(c)(1), Dec. 16, 2003, 117 Stat. 2673.)

§ 1323. Certifications with respect to circumstances of death

Whenever the Secretary determines on the basis of a claim for benefits filed with the Secretary that a death occurred under the circumstances referred to in section 1476(a) of title 10, the Secretary shall certify that fact to the Secretary concerned. In all other cases, the Secretary shall make the determination referred to in such section at the request of the Secretary concerned.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1133, Sec. 423; Pub. L. 94–433, title IV, Sec. 405(19), Sept. 30, 1976, 90 Stat. 1380; Pub. L. 102–54, Sec. 14(b)(4), June 13, 1991, 105 Stat. 283; renumbered Sec. 1323 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), (3)(A), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

Chapter 15 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

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SUBCHAPTER I—GENERAL

§ 1501. Definitions

For the purposes of this chapter—

(1) The term "Indian Wars" means the campaigns, engagements, and expeditions of the United States military forces against Indian tribes or nations, service in which has been recognized heretofore as pensionable service.

(2) The term "World War I" includes, in the case of any veteran, any period of service performed by such veteran after November 11, 1918, and before July 2, 1921, if such veteran served in the active military, naval, or air service after April 5, 1917, and before November 12, 1918.

(3) The term "Civil War veteran" includes a person who served in the military or naval forces of the Confederate States of America during the Civil War, and the term "active military or naval service" includes active service in those forces.

(4) The term "period of war" means the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1134, Sec. 501; Pub. L. 94–169, title I, Sec. 106(1), Dec. 23, 1975, 89 Stat. 1017; Pub. L. 95–588, title I, Sec. 101, Nov. 4, 1978, 92 Stat. 2497; Pub. L. 102–25, title III, Sec. 333(a), Apr. 6, 1991, 105 Stat. 88; renumbered Sec. 1501, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1502. Determinations with respect to disability

(a) For the purposes of this chapter, a person shall be considered to be permanently and totally disabled if such person is any of the following:

(1) A patient in a nursing home for long-term care because of disability.

(2) Disabled, as determined by the Commissioner of Social Security for purposes of any benefits administered by the Commissioner.

(3) Unemployable as a result of disability reasonably certain to continue throughout the life of the person.

(4) Suffering from—

(A) any disability which is sufficient to render it impossible for the average person to follow a substantially gainful occupation, but only if it is reasonably certain that such disability will continue throughout the life of the person; or

(B) any disease or disorder determined by the Secretary to be of such a nature or extent as to justify a determination that persons suffering therefrom are permanently and totally disabled.

(b) For the purposes of this chapter, a person shall be considered to be in need of regular aid and attendance if such person is (1) a patient in a nursing home or (2) blind, or so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person.

(c) For the purposes of this chapter, the requirement of "permanently housebound" will be considered to have been met when the veteran is substantially confined to such veteran's house (ward or clinical areas, if institutionalized) or immediate premises due to a disability or disabilities which it is reasonably certain will remain throughout such veteran's lifetime.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1134, Sec. 502; Pub. L. 88–664, Sec. 6(b), Oct. 13, 1964, 78 Stat. 1095; Pub. L. 90–77, title I, Sec. 102, Aug. 31, 1967, 81 Stat. 178; Pub. L. 94–169, title I, Sec. 106(2), Dec. 23, 1975, 89 Stat. 1017; Pub. L. 94–432, title II, Sec. 201, Sept. 30, 1976, 90 Stat. 1369; Pub. L. 101–508, title VIII, Sec. 8002(a), Nov. 5, 1990, 104 Stat. 1388–342; renumbered Sec. 1502 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 107–103, title II, Sec. 206(a), Dec. 27, 2001, 115 Stat. 990; Pub. L. 109–233, title V, Sec. 502(3), June 15, 2006, 120 Stat. 415.)

§ 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) donations from public or private relief or welfare organizations;

(2) payments under this chapter;

(3) amounts equal to amounts paid by a spouse of a veteran for the expenses of such veteran's last illness, and by a surviving spouse or child of a deceased veteran for—

(A) such veteran's just debts,

(B) the expenses of such veteran's last illness, and

(C) the expenses of such veteran's burial to the extent such expenses are not reimbursed under chapter 23 of this title;

(4) amounts equal to amounts paid—

(A) by a veteran for the last illness and burial of such veteran's deceased spouse or child, or

(B) by the spouse of a living veteran or the surviving spouse of a deceased veteran for the last illness and burial of a child of such veteran;

(5) reimbursements of any kind for any casualty loss (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this clause may not exceed the greater of the fair market value or reasonable replacement value of the property involved at the time immediately preceding the loss;

(6) profit realized from the disposition of real or personal property other than in the course of a business;

(7) amounts in joint accounts in banks and similar institutions acquired by reason of death of other joint owner;

(8) amounts equal to amounts paid by a veteran, veterans' spouse, or surviving spouse or by or on behalf of a veteran's child for unreimbursed medical expenses, to the extent that such amounts exceed 5 percent of the maximum annual rate of pension (including any amount of increased pension payable on account of family members but not including any amount of pension payable because a person is in need of regular aid and

attendance or because a person is permanently housebound) payable to such veteran, surviving spouse, or child;

(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);

(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) the lowest amount of gross income for which an income tax return is required under section 6012(a) of the Internal Revenue Code of 1986, to be filed by an individual who is not married (as determined under section 7703 of such Code), is not a surviving spouse (as defined in section 2(a) of such Code), and is not a head of household (as defined in section 2(b) of such Code); and

(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; and

(11) lump-sum proceeds of any life insurance policy on a veteran, for purposes of pension under subchapter III of this chapter.

(b) Where a fraction of a dollar is involved, annual income shall be fixed at the next lower dollar.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1134, Sec. 503; Pub. L. 86–211, Sec. 2(a), Aug. 29, 1959, 73 Stat. 432; Pub. L. 87–268, Sec. 1(b), Sept. 21, 1961, 75 Stat. 566; Pub. L. 88–664, Sec. 1, Oct. 13, 1964, 78 Stat. 1094; Pub. L. 90–77, title I, Sec. 103, Aug. 31, 1967, 81 Stat. 178; Pub. L. 91–588, Sec. 7, Dec. 24, 1970, 84 Stat. 1584; Pub. L. 92–198, Sec. 2, Dec. 15, 1971, 85 Stat. 664; Pub. L. 92–425, Sec. 6(2), Sept. 21, 1972, 86 Stat. 713; Pub. L. 94–169, title I, Sec. 101(2)(A), 106(3)–(8), Dec. 23, 1975, 89 Stat. 1013, 1017; Pub. L. 95–588, title I, Sec. 102, Nov. 4, 1978, 92 Stat. 2497; Pub. L. 97–295, Sec. 4(13), Oct. 12, 1982, 96 Stat. 1305; Pub. L. 100–687, div. B, title XIV, Sec. 1402(b), Nov. 18, 1988, 102 Stat. 4130; Pub. L. 102–54, Sec. 14(b)(5), June 13, 1991, 105 Stat. 283; renumbered Sec. 1503 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 108–454, title III, Sec. 303, Dec. 10, 2004, 118 Stat. 3611.)

§ 1504. Persons heretofore having a pensionable status

The pension benefits of subchapters II and III of this chapter shall, notwithstanding the service requirements of such subchapters, be granted to persons heretofore recognized by law as having a pensionable status.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1134, Sec. 504; renumbered Sec. 1504, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1505. Payment of pension during confinement in penal institutions

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

(b) Where any veteran is disqualified for pension for any period solely by reason of subsection (a) of this section, the Secretary may apportion and pay to such veteran's spouse or children the pension which such veteran would receive for that period but for this section.

(c) Where any surviving spouse or child of a veteran is disqualified for pension for any period solely by reason of subsection (a) of this section, the Secretary may (1) if the surviving spouse is so disqualified, pay to the child, or children, the pension which would be payable if there were no such surviving spouse or (2) if a child is so disqualified, pay to the surviving spouse or other children, as applicable, the pension which would be payable if there were no such child.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1134, Sec. 505; Pub. L. 94–169, title I, Sec. 106(9)–(11), Dec. 23, 1975, 89 Stat. 1017; renumbered Sec. 1505 and amended Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 109–461, title X, Sec. 1002(a), Dec. 22, 2006, 120 Stat. 3464.)

§ 1506. Resource reports and overpayment adjustments

As a condition of granting or continuing pension under section 1521, 1541, or 1542 of this title, the Secretary—

(1) may require from any person who is an applicant for or a recipient of pension such information, proofs, and evidence as the Secretary determines to be necessary in order to determine the annual income and the value of the corpus of the estate of such person, and of any spouse or child for whom the person is receiving or is to receive increased pension (such a child is hereinafter in this subsection referred to as a "dependent child"), and, in the case of a child applying for or in receipt of pension under section 1542 of this title (hereinafter in this subsection referred to as a "surviving child"), of any person with whom such child is residing who is legally responsible for such child's support;

(2) may require that any such applicant or recipient file for a calendar year with the Department (on such form as may be prescribed for such purpose by the Secretary) a report showing—

(A) the annual income which such applicant or recipient (and any such spouse or dependent child) received during the preceding year, the corpus of the estate of such applicant or recipient (and of any such spouse or dependent child) at the end of such year, and in the case of a surviving child, the income and corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support;

(B) such applicant's or recipient's estimate for the then current year of the annual income such applicant or recipient (and any such spouse or dependent child) expects to receive and of any expected increase in the value of the corpus of the estate of such applicant or recipient (and for any such spouse or dependent child); and

(C) in the case of a surviving child, an estimate for the then current year of the annual income of any person with whom such child is residing who is legally responsible for such child's support and of any expected increase in the value of the corpus of the estate of such person;

(3) shall require that any such applicant or recipient promptly notify the Secretary whenever there is a material change in the annual income of such applicant or recipient (or of any such spouse or dependent child) or a material change in the value of the corpus of the estate of such applicant or recipient (or of any such spouse or dependent child), and in the case of a surviving child, a material change in the annual income or value of the corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support; and

(4) shall require that any such applicant or recipient applying for or in receipt of increased pension on account of a person who is a spouse or child of such applicant or recipient promptly notify the Secretary if such person ceases to meet the applicable definition of spouse or child.

(Added Pub. L. 86–211, Sec. 2(b), Aug. 29, 1959, 73 Stat. 432, Sec. 506; amended Pub. L. 88–664, Sec. 2, Oct. 13, 1964, 78 Stat. 1094; Pub. L. 91–588, Sec. 6, Dec. 24, 1970, 84 Stat. 1584; Pub. L. 94–169, title I, Sec. 106(12)–(14), Dec. 23, 1975, 89 Stat. 1017; Pub. L. 95–588, title I, Sec. 103, Nov. 4, 1978, 92 Stat. 2498; Pub. L. 96–466, title VI, Sec. 605(c)(2), Oct. 17, 1980, 94 Stat. 2211; renumbered Sec. 1506 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–271, Sec. 9(b), July 1, 1994, 108 Stat. 743.)

§ 1507. Disappearance

Where a veteran receiving pension under subchapter II of this chapter disappears, the Secretary may pay the pension otherwise payable to such veteran's spouse and children. In applying the provisions of this section, the Secretary may presume, without reports pursuant to section 1506(a) of this title, that the status of the veteran at the time of disappearance, with respect to permanent and total disability, income, and net worth, continues unchanged. Payments made to a spouse or child under this section shall not exceed the amount to which each would be entitled if the veteran died of a non-service-connected disability.

(Added Pub. L. 89–467, Sec. 1(a), June 22, 1966, 80 Stat. 218, Sec. 507; amended Pub. L. 94–169, title I, Sec. 106(15), Dec. 23, 1975, 89 Stat. 1017; renumbered Sec. 1507 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1508. Frequency of payment of pension benefits

(a) Except as provided under subsection (b) of this section, benefits under sections 1521, 1541, and 1542 of this title shall be paid monthly.

(b) Under regulations which the Secretary shall prescribe, benefits under sections 1521, 1541, and 1542 of this title may be paid less frequently than monthly if the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under section 1521(b) of this title.

(Added Pub. L. 95–588, title I, Sec. 104(a), Nov. 4, 1978, 92 Stat. 2499, Sec. 508; amended Pub. L. 102–54, Sec. 14(b)(6), June 13, 1991, 105 Stat. 283; renumbered Sec. 1508 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

SUBCHAPTER II—VETERANS' PENSIONS

SERVICE PENSION

[§ 1510. Vacant]

§ 1511. Indian War veterans

(a) The Secretary shall pay to each veteran of the Indian Wars who meets the service requirements of this section a pension at the following monthly rate:

(1) $101.59; or

(2) $135.45 if the veteran is in need of regular aid and attendance.

(b) A veteran meets the service requirements of this section if such veteran served in one of the Indian Wars—

(1) for thirty days or more; or

(2) for the duration of such Indian War;

in any military organization, whether or not such service was the result of regular muster into the service of the United States, if such service was under the authority or by the approval of the United States or any State.

(c)(1) Any veteran eligible for pension under this section shall, if such veteran so elects, be paid pension at the rates prescribed by section 1521 of this title, and under the conditions (other than the service requirements) applicable to pension paid under that section to veterans of World War I. If pension is paid pursuant to such an election, the election shall be irrevocable, except as provided in paragraph (2).

(2) The Secretary shall pay each month to each veteran of the Indian Wars who is receiving, or entitled to receive, pension based on a need of regular aid and attendance, whichever amount is greater (A) that provided by paragraph (2) of subsection (a) of this section, or (B) that which is payable to the veteran under section 1521 of this title if such veteran has elected, or would be payable if such veteran were to elect, to receive pension under such section pursuant to paragraph (1) of this subsection. Each change in the amount of pension payment required by this paragraph shall be effective as of the first day of the month during which the facts of the particular case warrant such change, and shall be made without specific application therefor.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1135, Sec. 511; Pub. L. 86–670, Sec. 1, July 14, 1960, 74 Stat. 545; Pub. L. 90–77, title I, Sec. 111(a), Aug. 31, 1967, 81 Stat. 181; Pub. L. 94–169, title I, Sec. 106(16), Dec. 23, 1975, 89 Stat. 1017; renumbered Sec. 1511 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1512. Spanish-American War veterans

(a)(1) The Secretary shall pay to each veteran of the Spanish-American War who meets the service requirements of this subsection a pension at the following monthly rate:

(A) $101.59; or

(B) $135.45 if the veteran is in need of regular aid and attendance.

(2) A veteran meets the service requirements of this subsection if such veteran served in the active military or naval service—

(A) for ninety days or more during the Spanish-American War;

(B) during the Spanish-American War and was discharged or released from such service for a service-connected disability; or

(C) for a period of ninety consecutive days or more and such period began or ended during the Spanish-American War.

(3)(A) Any veteran eligible for pension under this subsection shall, if such veteran so elects, be paid pension at the rates prescribed by section 1521 of this title (except the rate provided under subsection (g) of such section), and under the conditions (other than the service requirements) applicable to pension paid under that section to veterans of a period of war. If pension is paid pursuant to such an election, the election shall be irrevocable.

(B) The Secretary shall pay each month to each Spanish-American War veteran who is receiving, or entitled to receive, pension based on a need of regular aid and attendance, whichever amount is greater (i) that provided by subparagraph (B) of subsection (a)(1) of this section, or (ii) that which is payable to the veteran under section 1521 of this title as in effect on December 31, 1978, under regulations which the Secretary shall prescribe. Each change in the amount of pension payment required by this subparagraph shall be effective as of the first day of the month during which the facts of the particular case warrant such change, and shall be made without specific application therefor.

(b)(1) The Secretary shall pay to each veteran of the Spanish-American War who does not meet the service requirements of subsection (a), but who meets the service requirements of this subsection, a pension at the following monthly rate:

(A) $67.73; or

(B) $88.04 if the veteran is in need of regular aid and attendance.

(2) A veteran meets the service requirements of this subsection if such veteran served in the active military or naval service—

(A) for seventy days or more during the Spanish-American War; or

(B) for a period of seventy consecutive days or more and such period began or ended during the Spanish-American War.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1135, Sec. 512; Pub. L. 86–670, Sec. 2, July 14, 1960, 74 Stat. 545; Pub. L. 90–77, title I, Sec. 111(b), Aug. 31, 1967, 81 Stat. 181; Pub. L. 94–169, title I, Sec. 106(17), Dec. 23, 1975, 89 Stat. 1017; Pub. L. 95–588, title I, Sec. 105, Nov. 4, 1978, 92 Stat. 2500; renumbered Sec. 1512 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1513. Veterans 65 years of age and older

(a) The Secretary shall pay to each veteran of a period of war who is 65 years of age or older and who meets the service requirements of section 1521 of this title (as prescribed in subsection (j) of that section) pension at the rates prescribed by section 1521 of this title and under the conditions (other than the permanent and total disability requirement) applicable to pension paid under that section.

(b) If a veteran is eligible for pension under both this section and section 1521 of this title, pension shall be paid to the veteran only under section 1521 of this title.

(Added Pub. L. 107–103, title II, Sec. 207(a)(1), Dec. 27, 2001, 115 Stat. 991; amended Pub. L. 109–233, title V, Sec. 503(2), June 15, 2006, 120 Stat. 416.)

NON-SERVICE-CONNECTED DISABILITY PENSION

§ 1521. Veterans of a period of war

(a) The Secretary shall pay to each veteran of a period of war who meets the service requirements of this section (as prescribed in subsection (j) of this section) and who is permanently and totally disabled from non-service-connected disability not the result of the veteran's willful misconduct, pension at the rate prescribed by this section, as increased from time to time under section 5312 of this title.

(b) If the veteran is unmarried (or married but not living with or reasonably contributing to the support of such veteran's spouse) and there is no child of the veteran in the custody of the veteran or to whose support the veteran is reasonably contributing, and unless the veteran is entitled to pension at the rate provided by subsection (d)(1) or (e) of this section, pension shall be paid to the veteran at the annual rate of $3,550, reduced by the amount of the veteran's annual income.

(c) If the veteran is married and living with or reasonably contributing to the support of such veteran's spouse, or if there is a child of the veteran in the custody of the veteran or to whose support the veteran is reasonably contributing, pension shall be paid to the veteran at the annual rate of $4,651, unless the veteran is entitled to pension at the rate provided by subsection (d)(2), (e), or (f) of this section. If the veteran has two or more such family members, such annual rate shall be increased by $600 for each such family member in excess of one. The rate payable shall be reduced by the amount of the veteran's annual income and, subject to subsection (h)(1) of this section, the amount of annual income of such family members.

(d)(1) If the veteran is in need of regular aid and attendance, the annual rate of pension payable to the veteran under subsection (b) of this section shall be $5,680, reduced by the amount of the veteran's annual income.

(2) If the veteran is in need of regular aid and attendance, the annual rate of pension payable to the veteran under subsection (c) of this section shall be $6,781. If such veteran has two or more family members, as described in subsection (c) of this section, the annual rate of pension shall be increased by $600 for each such family member in excess of one. The rate payable shall be reduced

by the amount of the veteran's annual income and, subject to subsection (h)(1) of this section, the amount of annual income of such family members.

(e) If the veteran has a disability rated as permanent and total and (1) has additional disability or disabilities independently ratable at 60 per centum or more, or (2) by reason of a disability or disabilities, is permanently housebound but does not qualify for pension at the aid and attendance rate provided by subsection (d) of this section, the annual rate of pension payable to the veteran under subsection (b) of this section shall be $4,340 and the annual rate of pension payable to the veteran under subsection (c) of this section shall be $5,441. If such veteran has two or more family members, as described in subsection (c) of this section, the annual rate of pension shall be increased by $600 for each such family member in excess of one. The rate payable shall be reduced by the amount of the veteran's annual income and, subject to subsection (h)(1) of this section, the annual income of such family members.

(f)(1) If two veterans are married to one another and each meets the disability and service requirements prescribed in subsections (a) and (j), respectively, of this section, or the age and service requirements prescribed in section 1513 of this title, the annual rate of pension payable to such veterans shall be a combined annual rate of $4,651.

(2) If either such veteran is in need of regular aid and attendance, the annual rate provided by paragraph (1) of this subsection shall be $6,781. If both such veterans are in need of regular aid and attendance, such rate shall be $8,911.

(3) If either such veteran would be entitled (if not married to a veteran) to pension at the rate provided by subsection (e) of this section, the annual rate provided by paragraph (1) of this subsection shall be $5,441. If both such veterans would be entitled (if not married to one another) to such rate, such rate shall be $6,231.

(4) If one such veteran is in need of regular aid and attendance and the other would be entitled (if not married to a veteran) to the rate provided for under subsection (e) of this section, the annual rate provided by paragraph (1) of this subsection shall be $7,571.

(5) The annual rate provided by paragraph (1), (2), (3), or (4) of this subsection, as appropriate, shall (A) be increased by $600 for each child of such veterans (or of either such veteran) who is in the custody of either or both such veterans or to whose support either such veteran is, or both such veterans are, reasonably contributing, and (B) be reduced by the amount of the annual income of both such veterans and, subject to subsection (h)(1) of this section, the annual income of each such child.

(g) The annual rate of pension payable under subsection (b), (c), (d), (e), or (f) of this section to any veteran who is a veteran of a period of war shall be increased by $800 if veterans of such period of war were not provided educational benefits or home loan benefits similar to those provided to veterans of later periods of war under chapters 34 and 37, respectively, of this title or under prior corresponding provisions of law.

(h) For the purposes of this section:

(1) In determining the annual income of a veteran, if there is a child of the veteran who is in the custody of the veteran

or to whose support the veteran is reasonably contributing, that portion of the annual income of the child that is reasonably available to or for the veteran shall be considered to be income of the veteran, unless in the judgment of the Secretary to do so would work a hardship on the veteran.

(2) A veteran shall be considered as living with a spouse, even though they reside apart, unless they are estranged.

(i) If the veteran is entitled under this section to pension on the basis of such veteran's own service and is also entitled to pension on the basis of any other person's service, the Secretary shall pay such veteran only the greater benefit.

(j) A veteran meets the service requirements of this section if such veteran served in the active military, naval, or air service—

(1) for ninety days or more during a period of war;

(2) during a period of war and was discharged or released from such service for a service-connected disability;

(3) for a period of ninety consecutive days or more and such period began or ended during a period of war; or

(4) for an aggregate of ninety days or more in two or more separate periods of service during more than one period of war.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1136, Sec. 521; Pub. L. 86–211, Sec. 3(a), Aug. 29, 1959, 73 Stat. 433; Pub. L. 87–101, Sec. 1, July 21, 1961, 75 Stat. 218; Pub. L. 88–664, Sec. 3(a), (b), 5, 6(a), 7, Oct. 13, 1964, 78 Stat. 1094, 1095; Pub. L. 90–77, title I, Sec. 104, title II, Sec. 202(a)–(c), Aug. 31, 1967, 81 Stat. 179, 182; Pub. L. 90–275, Sec. 1(a), (b), Mar. 28, 1968, 82 Stat. 64, 65; Pub. L. 91–588, Sec. 1(a), (b), 3(b), 9(c), Dec. 24, 1970, 84 Stat. 1580, 1583, 1584; Pub. L. 92–198, Sec. 1(a), (b), 5(b), Dec. 15, 1971, 85 Stat. 663, 664; Pub. L. 93–177, Sec. 1(a), (b), Dec. 6, 1973, 87 Stat. 694; Pub. L. 93–527, Sec. 2, Dec. 21, 1974, 88 Stat. 1702; Pub. L. 94–169, title I, Sec. 102, 106(18), Dec. 23, 1975, 89 Stat. 1014, 1018; Pub. L. 94–432, title II, Sec. 202, Sept. 30, 1976, 90 Stat. 1369; Pub. L. 95–204, title I, Sec. 101, Dec. 2, 1977, 91 Stat. 1455; Pub. L. 95–588, title I, Sec. 106(a), Nov. 4, 1978, 92 Stat. 2500; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1521 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 107–103, title II, Sec. 207(b)(1), Dec. 27, 2001, 115 Stat. 991.)

§ 1522. Net worth limitation

(a) The Secretary shall deny or discontinue the payment of pension to a veteran under section 1513 or 1521 of this title when the corpus of the estate of the veteran or, if the veteran has a spouse, the corpus of the estates of the veteran and of the veteran's spouse is such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance.

(b) The Secretary shall deny or discontinue the payment of increased pension under subsection (c), (d), (e), or (f) of section 1521 of this title on account of a child when the corpus of such child's estate is such that under all the circumstances, including consideration of the veteran's and spouse's income, and the income of the veteran's children, it is reasonable that some part of the corpus of such child's estate be consumed for the child's maintenance. During the period such denial or discontinuance remains in effect, such child shall not be considered as the veteran's child for purposes of this chapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1136, Sec. 522; Pub. L. 86–211, Sec. 3(b), Aug. 29, 1959, 73 Stat. 434; Pub. L. 95–588, title I, Sec. 107, Nov. 4, 1978, 92 Stat. 2502; renumbered Sec. 1522 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 107–103, title II, Sec. 207(b)(2), Dec. 27, 2001, 115 Stat. 991.)

§ 1523. Combination of ratings

(a) The Secretary shall provide that, for the purpose of determining whether or not a veteran is permanently and totally disabled, ratings for service-connected disabilities may be combined with ratings for non-service-connected disabilities.

(b) Where a veteran, by virtue of subsection (a), is found to be entitled to a pension under section 1521 of this title, and is entitled to compensation for a service-connected disability, the Secretary shall pay such veteran the greater benefit.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1136, Sec. 523; Pub. L. 94–169, title I, Sec. 106(19), Dec. 23, 1975, 89 Stat. 1018; renumbered Sec. 1523 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1524. Vocational training for certain pension recipients

(a)(1) In the case of a veteran under age 45 who is awarded a pension during the program period, the Secretary shall, based on information on file with the Department of Veterans Affairs, make a preliminary finding whether such veteran, with the assistance of a vocational training program under this section, has a good potential for achieving employment. If such potential is found to exist, the Secretary shall solicit from the veteran an application for vocational training under this section. If the veteran thereafter applies for such training, the Secretary shall provide the veteran with an evaluation, which may include a personal interview, to determine whether the achievement of a vocational goal is reasonably feasible.

(2) If a veteran who is 45 years of age or older and is awarded pension during the program period, or a veteran who was awarded pension before the beginning of the program period, applies for vocational training under this section and the Secretary makes a preliminary finding on the basis of information in the application that, with the assistance of a vocational training program under subsection (b) of this section, the veteran has a good potential for achieving employment, the Secretary shall provide the veteran with an evaluation in order to determine whether the achievement of a vocational goal by the veteran is reasonably feasible. Any such evaluation shall include a personal interview by a Department employee trained in vocational counseling.

(3) For the purposes of this section, the term "program period" means the period beginning on February 1, 1985, and ending on December 31, 1995.

(b)(1) If the Secretary, based upon an evaluation under subsection (a) of this section, determines that the achievement of a vocational goal by a veteran is reasonably feasible, the veteran shall be offered and may elect to pursue a vocational training program under this subsection. If the veteran elects to pursue such a program, the program shall be designed in consultation with the veteran in order to meet the veteran's individual needs and shall be

set forth in an individualized written plan of vocational rehabilitation of the kind described in section 3107 of this title.

(2)(A) Subject to subparagraph (B) of this paragraph, a vocational training program under this subsection shall consist of vocationally oriented services and assistance of the kind provided under chapter 31 of this title and such other services and assistance of the kind provided under that chapter as are necessary to enable the veteran to prepare for and participate in vocational training or employment.

(B) A vocational training program under this subsection—

(i) may not exceed 24 months unless, based on a determination by the Secretary that an extension is necessary in order for the veteran to achieve a vocational goal identified (before the end of the first 24 months of such program) in the written plan formulated for the veteran, the Secretary grants an extension for a period not to exceed 24 months;

(ii) may not include the provision of any loan or subsistence allowance or any automobile adaptive equipment of the kind provided under chapter 39 of this title; and

(iii) may include a program of education at an institution of higher learning (as defined in sections 3452(b) and 3452(f), respectively, of this title) only in a case in which the Secretary determines that the program involved is predominantly vocational in content.

(3) When a veteran completes a vocational training program under this subsection, the Secretary may provide the veteran with counseling of the kind described in section 3104(a)(2) of this title, placement and postplacement services of the kind described in section 3104(a)(5) of this title, and training of the kind described in section 3104(a)(6) of this title during a period not to exceed 18 months beginning on the date of such completion.

(4) A veteran may not begin pursuit of a vocational training program under this subsection after the later of (A) December 31, 1995, or (B) the end of a reasonable period of time, as determined by the Secretary, following either the evaluation of the veteran under subsection (a) of this section or the award of pension to the veteran as described in subsection (a)(2) of this section. Any determination by the Secretary of such a reasonable period of time shall be made pursuant to regulations which the Secretary shall prescribe.

(c) In the case of a veteran who has been determined to have a permanent and total non-service-connected disability and who, not later than one year after the date the veteran's eligibility for counseling under subsection (b)(3) of this section expires, secures employment within the scope of a vocational goal identified in the veteran's individualized written plan of vocational rehabilitation (or in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under such plan), the evaluation of the veteran as having a permanent and total disability may not be terminated by reason of the veteran's capacity to engage in such employment until the veteran first maintains such employment for a period of not less than 12 consecutive months.

(d) A veteran who pursues a vocational training program under subsection (b) of this section shall have the benefit of the provisions of subsection (a) of section 1525 of this title beginning at such time as the veteran's entitlement to pension is terminated by reason of income from work or training (as defined in subsection (b)(1) of that section) without regard to the date on which the veteran's entitlement to pension is terminated.

(e) Payments by the Secretary for education, training, and other services and assistance under subsection (b) of this section (other than the services of Department employees) shall be made from the Department appropriations account from which payments for pension are made.

(Added Pub. L. 98–543, title III, Sec. 301(a)(1), Oct. 24, 1984, 98 Stat. 2744, Sec. 524; amended Pub. L. 99–576, title VII, Sec. 703(b)(1), Oct. 28, 1986, 100 Stat. 3303; Pub. L. 100–227, title II, Sec. 202, Dec. 31, 1987, 101 Stat. 1555; Pub. L. 100–687, div. B, title XIII, Sec. 1303(a), (b), Nov. 18, 1988, 102 Stat. 4128; Pub. L. 101–237, title I, Sec. 114, Dec. 18, 1989, 103 Stat. 2065; renumbered Sec. 1524 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–291, Sec. 2(b), May 20, 1992, 106 Stat. 178; Pub. L. 102–568, title IV, Sec. 402(a)–(c)(2)(A), Oct. 29, 1992, 106 Stat. 4337; Pub. L. 103–446, title XII, Sec. 1201(g)(2), Nov. 2, 1994, 108 Stat. 4687.)

§ 1525. Protection of health-care eligibility

(a) In the case of a veteran whose entitlement to pension is terminated after January 31, 1985, by reason of income from work or training, the veteran shall retain for a period of three years beginning on the date of such termination all eligibility for care and services under such chapter that the veteran would have had if the veteran's entitlement to pension had not been terminated. Care and services for which such a veteran retains eligibility include, when applicable, drugs and medicines under section 1712(d) of this title.

(b) For purposes of this section, the term "terminated by reason of income from work or training" means terminated as a result of the veteran's receipt of earnings from activity performed for remuneration or with gain, but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension.

(Added Pub. L. 98–543, title III, Sec. 301(a)(1), Oct. 24, 1984, 98 Stat. 2746, Sec. 525; amended Pub. L. 99–272, title XIX, Sec. 19011(d)(1), Apr. 7, 1986, 100 Stat. 378; Pub. L. 99–576, title VII, Sec. 703(b)(2), Oct. 28, 1986, 100 Stat. 3303; Pub. L. 100–687, div. B, title XIII, Sec. 1303(c), Nov. 18, 1988, 102 Stat. 4128; renumbered Sec. 1525 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–291, Sec. 2(c), May 20, 1992, 106 Stat. 178; Pub. L. 102–568, title IV, Sec. 403(a), (b)(1), Oct. 29, 1992, 106 Stat. 4337; Pub. L. 104–262, title I, Sec. 101(e)(1), Oct. 9, 1996, 110 Stat. 3180.)

SUBCHAPTER III—PENSIONS TO SURVIVING SPOUSES AND CHILDREN

WARS BEFORE WORLD WAR I

[§ 1531. Vacant]

§ 1532. Surviving spouses of Civil War veterans

(a) The Secretary shall pay to the surviving spouse of each Civil War veteran who met the service requirements of this section a pension at the following monthly rate:

(1) $40.64 if such surviving spouse is below seventy years of age; or

(2) $70 if such surviving spouse is seventy years of age or older.

(b) If there is a child of the veteran, the rate of pension paid to the surviving spouse under subsection (a) shall be increased by $8.13 per month for each such child.

(c) A veteran met the service requirements of this section if such veteran served for ninety days or more in the active military or naval service during the Civil War, as heretofore defined under public laws administered by the Veterans' Administration, or if such veteran was discharged or released from such service upon a surgeon's certificate of disability.

(d) No pension shall be paid to a surviving spouse of a veteran under this section unless such surviving spouse was married to such veteran—

(1) before June 27, 1905; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1137, Sec. 532; Pub. L. 90–77, title I, Sec. 101(a), 105, Aug. 31, 1967, 81 Stat. 178, 179; Pub. L. 94–169, title I, Sec. 106(20)–(23), Dec. 23, 1975, 89 Stat. 1018; Pub. L. 102–54, Sec. 14(b)(7), June 13, 1991, 105 Stat. 283; renumbered Sec. 1532 and amended Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 103–446, title XII, Sec. 1201(a)(2), Nov. 2, 1994, 108 Stat. 4682.)

§ 1533. Children of Civil War veterans

Whenever there is no surviving spouse entitled to pension under section 1532 of this title, the Secretary shall pay to the children of each Civil War veteran who met the service requirements of section 1532 of this title a pension at the monthly rate of $73.13 for one child, plus $8.13 for each additional child, with the total amount equally divided.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1137, Sec. 533; Pub. L. 94–169, title I, Sec. 106(25), Dec. 23, 1975, 89 Stat. 1018; renumbered Sec. 1533 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1534. Surviving spouses of Indian War veterans

(a) The Secretary shall pay to the surviving spouse of each Indian War veteran who met the service requirements of section 1511 of this title a pension at the following monthly rate:

(1) $40.64 if such surviving spouse is below seventy years of age; or

(2) $70 if such surviving spouse is seventy years of age or older.

(b) If there is a child of the veteran, the rate of pension paid to the surviving spouse under subsection (a) shall be increased by $8.13 per month for each such child.

(c) No pension shall be paid to a surviving spouse of a veteran under this section unless such surviving spouse was married to such veteran—

(1) before March 4, 1917; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1137, Sec. 534; Pub. L. 90–77, title I, Sec. 101(a), 105, Aug. 31, 1967, 81 Stat. 178, 179; Pub. L. 94–169, title I, Sec. 106(26)–(29), Dec. 23, 1975, 89 Stat. 1018; Pub. L. 102–54, Sec. 14(b)(7), June 13, 1991, 105 Stat. 283; renumbered Sec. 1534 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1535. Children of Indian War veterans

Whenever there is no surviving spouse entitled to pension under section 1534 of this title, the Secretary shall pay to the children of each Indian War veteran who met the service requirements of section 1511 of this title a pension at the monthly rate of $73.13 for one child, plus $8.13 for each additional child, with the total amount equally divided.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1137, Sec. 535; Pub. L. 94–169, title I, Sec. 106(31), Dec. 23, 1975, 89 Stat. 1018; renumbered Sec. 1535 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1536. Surviving spouses of Spanish-American War veterans

(a) The Secretary shall pay to the surviving spouse of each Spanish-American War veteran who met the service requirements of section 1512(a) of this title a pension at the monthly rate of $70, unless such surviving spouse was the spouse of the veteran during such veteran's service in the Spanish-American War, in which case the monthly rate shall be $75.

(b) If there is a child of the veteran, the rate of pension paid to the surviving spouse under subsection (a) shall be increased by $8.13 per month for each such child.

(c) No pension shall be paid to a surviving spouse of a veteran under this section unless such surviving spouse was married to such veteran—

(1) before January 1, 1938; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(d)(1) Any surviving spouse eligible for pension under this section shall, if such surviving spouse so elects, be paid pension at the rates prescribed by section 1541 of this title, and under the conditions (other than the service requirements) applicable to pension paid under that section to surviving spouses of veterans of a period of war. If pension is paid pursuant to such an election, the election shall be irrevocable.

(2) The Secretary shall pay each month to the surviving spouse of each Spanish-American War veteran who is receiving, or entitled

to receive, pension based on a need of regular aid and attendance, whichever amount is greater (A) that which is payable to such surviving spouse under subsections (a) and (b) of this section as increased by section 544 of this title, as in effect on December 31, 1978; or (B) that which is payable under section 1541 of this title, as in effect on December 31, 1978, as increased by such section 544, as in effect on such date, to a surviving spouse of a World War I veteran with the same annual income and corpus of estate. Each change in the amount of pension required by this paragraph shall be effective as of the first day of the month during which the facts of the particular case warrant such change, and shall be made without specific application therefor.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1138, Sec. 536; Pub. L. 90–77, title I, Sec. 101(a), 105, Aug. 31, 1967, 81 Stat. 178, 179; Pub. L. 92–328, title I, Sec. 107, June 30, 1972, 86 Stat. 395; Pub. L. 94–169, title I, Sec. 106(32)–(37), Dec. 23, 1975, 89 Stat. 1018, 1019; Pub. L. 95–588, title I, Sec. 108, Nov. 4, 1978, 92 Stat. 2502; renumbered Sec. 1536 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1537. Children of Spanish-American War veterans

Whenever there is no surviving spouse entitled to pension under section 1536 of this title, the Secretary shall pay to the children of each Spanish-American War veteran who met the service requirements of section 1512(a) of this title a pension at the monthly rate of $73.13 for one child, plus $8.13 for each additional child, with the total amount equally divided.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1138, Sec. 537; Pub. L. 94–169, title I, Sec. 106(39), Dec. 23, 1975, 89 Stat. 1019; renumbered Sec. 1537 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

OTHER PERIODS OF WAR

§ 1541. Surviving spouses of veterans of a period of war

(a) The Secretary shall pay to the surviving spouse of each veteran of a period of war who met the service requirements prescribed in section 1521(j) of this title, or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability, pension at the rate prescribed by this section, as increased from time to time under section 5312 of this title.

(b) If no child of the veteran is in the custody of the surviving spouse, pension shall be paid to the surviving spouse at the annual rate of $2,379, reduced by the amount of the surviving spouse's annual income.

(c) If there is a child of the veteran in the custody of the surviving spouse, pension shall be paid to the surviving spouse at the annual rate of $3,116. If the surviving spouse has custody of two or more such children, the annual pension rate shall be increased by $600 for each such child in excess of one. In each case, the rate payable shall be reduced by the amount of the surviving spouse's annual income and, subject to subsection (g) of this section, the annual income of each such child.

(d)(1) If a surviving spouse who is entitled to pension under subsection (b) of this section is in need of regular aid and attendance, the annual rate of pension payable to such surviving spouse

shall be $3,806, reduced by the amount of the surviving spouse's annual income.

(2) If a surviving spouse who is entitled to pension under subsection (c) of this section is in need of regular aid and attendance, the annual rate of pension payable to the surviving spouse shall be $4,543. If there are two or more children of the veteran in such surviving spouse's custody, the annual rate of pension shall be increased by $600 for each such child in excess of one. The rate payable shall be reduced by the amount of the surviving spouse's annual income and, subject to subsection (g) of this section, the annual income of each such child.

(e)(1) If the surviving spouse is permanently housebound but does not qualify for pension at the aid and attendance rate provided by subsection (d) of this section, the annual rate of pension payable to such surviving spouse under subsection (b) of this section shall be $2,908 and the annual rate of pension payable to such surviving spouse under subsection (c) of this section shall be $3,645. If there are two or more children of the veteran in such surviving spouse's custody, the annual rate of pension shall be increased by $600 for each such child in excess of one. The rate payable shall be reduced by the amount of the surviving spouse's annual income and, subject to subsection (g) of this section, the income of any child of the veteran for whom the surviving spouse is receiving increased pension.

(2) For purposes of paragraph (1) of this subsection, the requirement of "permanently housebound" shall be met when the surviving spouse is substantially confined to such surviving spouse's house (ward or clinical areas, if institutionalized) or immediate premises by reason of a disability or disabilities reasonably certain to remain throughout such surviving spouse's lifetime.

(f) No pension shall be paid under this section to a surviving spouse of a veteran unless the spouse was married to the veteran—

(1) before (A) December 14, 1944, in the case of a surviving spouse of a Mexican border period or World War I veteran, (B) January 1, 1957, in the case of a surviving spouse of a World War II veteran, (C) February 1, 1965, in the case of a surviving spouse of a Korean conflict veteran, (D) May 8, 1985, in the case of a surviving spouse of a Vietnam era veteran, or (E) January 1, 2001, in the case of a surviving spouse of a veteran of the Persian Gulf War;

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(g) In determining the annual income of a surviving spouse for the purposes of this section, if there is a child of the veteran in the custody of the surviving spouse, that portion of the annual income of the child that is reasonably available to or for the surviving spouse shall be considered to be income of the surviving spouse, unless in the judgment of the Secretary to do so would work a hardship on the surviving spouse.

(h) As used in this section and section 1542 of this title, the term "veteran" includes a person who has completed at least two years of honorable active military, naval, or air service, as certified

by the Secretary concerned, but whose death in such service was not in line of duty.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1138, Sec. 541; Pub. L. 86–211, Sec. 4, Aug. 29, 1959, 73 Stat. 434; Pub. L. 88–664, Sec. 3(c), (d), Oct. 13, 1964, 78 Stat. 1095; Pub. L. 90–77, title I, Sec. 101(a), 106, title II, Sec. 202(d)–(f), Aug. 31, 1967, 81 Stat. 178, 179, 182; Pub. L. 90–275, Sec. 1(c), (d), Mar. 28, 1968, 82 Stat. 65, 66; Pub. L. 91–588, Sec. 1(c), (d), 9(d), Dec. 24, 1970, 84 Stat. 1581, 1584; Pub. L. 92–198, Sec. 1(c)–(e), Dec. 15, 1971, 85 Stat. 663, 664; Pub. L. 93–177, Sec. 1(c), (d), 2, Dec. 6, 1973, 87 Stat. 695; Pub. L. 93–527, Sec. 3, Dec. 21, 1974, 88 Stat. 1703; Pub. L. 94–169, title I, Sec. 101(2)(B), (C), (H), 103, 106(40), Dec. 23, 1975, 89 Stat. 1013, 1014, 1016, 1019; Pub. L. 94–432, title II, Sec. 203, Sept. 30, 1976, 90 Stat. 1370; Pub. L. 95–204, title I, Sec. 102, Dec. 2, 1977, 91 Stat. 1456; Pub. L. 95–588, title I, Sec. 109(a), Nov. 4, 1978, 92 Stat. 2503; Pub. L. 102–25, title III, Sec. 333(b), Apr. 6, 1991, 105 Stat. 88; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1541 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1542. Children of veterans of a period of war

The Secretary shall pay to each child (1) who is the child of a deceased veteran of a period of war who met the service requirements prescribed in section 1521(j) of this title, or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability, and (2) who is not in the custody of a surviving spouse eligible for pension under section 1541 of this title, pension at the annual rate of $600, as increased from time to time under section 5312 of this title and reduced by the amount of such child's annual income; or, if such child is residing with a person who is legally responsible for such child's support, at an annual rate equal to the amount by which the appropriate annual rate provided under section 1541(c) of this title exceeds the sum of the annual income of such child and such person, but in no event may such annual rate of pension exceed the amount by which $600, as increased from time to time under section 5312 of this title, exceeds the annual income of such child. The appropriate annual rate under such section 1541(c) for the purposes of the preceding sentence shall be determined in accordance with regulations which the Secretary shall prescribe.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1138, Sec. 542; Pub. L. 86–211, Sec. 4, Aug. 29, 1959, 73 Stat. 435; Pub. L. 88–664, Sec. 4, Oct. 13, 1964, 78 Stat. 1095; Pub. L. 90–77, title I, Sec. 107, title II, Sec. 202(g), (h), Aug. 31, 1967, 81 Stat. 180, 182; Pub. L. 91–588, Sec. 3(c), 9(e), Dec. 24, 1970, 84 Stat. 1583, 1585; Pub. L. 92–198, Sec. 1(f), Dec. 15, 1971, 85 Stat. 664; Pub. L. 93–177, Sec. 3, Dec. 6, 1973, 87 Stat. 695; Pub. L. 93–527, Sec. 4, Dec. 21, 1974, 88 Stat. 1703; Pub. L. 94–169, title I, Sec. 101(2)(D), 104, Dec. 23, 1975, 89 Stat. 1014, 1016; Pub. L. 94–432, title II, Sec. 204, Sept. 30, 1976, 90 Stat. 1371; Pub. L. 95–204, title I, Sec. 103, Dec. 2, 1977, 91 Stat. 1457; Pub. L. 95–588, title I, Sec. 110(a), Nov. 4, 1978, 92 Stat. 2504; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1542 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1543. Net worth limitation

(a)(1) The Secretary shall deny or discontinue payment of pension to a surviving spouse under section 1541 of this title when the corpus of the estate of the surviving spouse is such that under all the circumstances, including consideration of the income of the surviving spouse and the income of any child from whom the surviving spouse is receiving increased pension, it is reasonable that some

part of the corpus of such estate be consumed for the surviving spouse's maintenance.

(2) The Secretary shall deny or discontinue the payment of increased pension under subsection (c), (d), or (e) of section 1541 of this title on account of a child when the corpus of such child's estate is such that under all the circumstances, including consideration of the income of the surviving spouse and such child and the income of any other child for whom the surviving spouse is receiving increased pension, it is reasonable that some part of the corpus of the child's estate be consumed for the child's maintenance. During the period such denial or discontinuance remains in effect, such child shall not be considered as the surviving spouse's child for purposes of this chapter.

(b) The Secretary shall deny or discontinue payment of pension to a child under section 1542 of this title when the corpus of the estate of the child is such that under all the circumstances, including consideration of the income of the child, the income of any person with whom such child is residing who is legally responsible for such child's support, and the corpus of the estate of such person, it is reasonable that some part of the corpus of such estates be consumed for the child's maintenance.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1138, Sec. 543; Pub. L. 86–211, Sec. 4, Aug. 29, 1959, 73 Stat. 435; Pub. L. 94–169, title I, Sec. 101(2)(E), Dec. 23, 1975, 89 Stat. 1014; Pub. L. 95–588, title I, Sec. 111, Nov. 4, 1978, 92 Stat. 2504; renumbered Sec. 1543 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

[SURVIVING SPOUSES OF VETERANS OF ALL PERIODS OF WAR-REPEALED]

[§ 1544. Vacant]

SUBCHAPTER IV—ARMY, NAVY, AIR FORCE, AND COAST GUARD MEDAL OF HONOR ROLL

§ 1560. Medal of Honor Roll; persons eligible

(a) There shall be in the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Department of Homeland Security, respectively, a roll designated as the "Army, Navy, Air Force, and Coast Guard Medal of Honor Roll".

(b) Upon written application to the Secretary concerned, that Secretary shall enter and record on such roll the name of each surviving person who has served on active duty in the armed forces of the United States and who has been awarded a medal of honor for distinguishing such person conspicuously by gallantry and intrepidity at the risk of such person's life above and beyond the call of duty while so serving.

(c) Applications for entry on such roll shall be made in the form and under regulations prescribed by the Secretary concerned, and shall indicate whether or not the applicant desires to receive the special pension provided by section 1562 of this title. Proper blanks and instructions shall be furnished by the Secretary concerned, without charge upon the request of any person claiming the benefits of this subchapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1139, Sec. 560; Pub. L. 87–138, Sec. 1, Aug. 14, 1961, 75 Stat. 338; Pub. L. 88–77, Sec. 5(1), July 25, 1963, 77 Stat. 95; Pub. L. 88–651, Oct. 13, 1964, 78 Stat. 1078; Pub. L. 89–311, Sec. 4, Oct. 31, 1965, 79 Stat. 1156; Pub. L. 91–24, Sec. 5, June 11, 1969, 83 Stat. 33; Pub. L. 94–169, title I, Sec. 106(41), Dec. 23, 1975, 89 Stat. 1019; renumbered Sec. 1560 and amended Pub. L. 102–83, Sec. 4(b)(4)(A), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 405, 406; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315.)

§ 1561. Certificate

(a) The Secretary concerned shall determine whether or not each applicant is entitled to have such person's name entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll. If the official award of the Medal of Honor to the applicant, or the official notice to such person thereof, shows that the Medal of Honor was awarded to the applicant for an act described in section 1560 of this title, such award or notice shall be sufficient to entitle the applicant to have such person's name entered on such roll without further investigation; otherwise all official correspondence, orders, reports, recommendations, requests, and other evidence on file in any public office or department shall be considered.

(b) Each person whose name is entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll shall be furnished a certificate of service and of the act of heroism, gallantry, bravery, or intrepidity for which the Medal of Honor was awarded, of enrollment on such roll, and, if such person has indicated such person's desire to receive the special pension provided by section 1562 of this title, of such person's right to such special pension.

(c) The Secretary concerned shall deliver to the Secretary a certified copy of each certificate issued under subsection (b) in which the right of the person named in the certificate to the special pension provided by section 1562 of this title is set forth. Such copy shall authorize the Secretary to pay such special pension to the person named in the certificate.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1139, Sec. 561; Pub. L. 87–138, Sec. 2(a), Aug. 14, 1961, 75 Stat. 338; Pub. L. 88–77, Sec. 5(2), July 25, 1963, 77 Stat. 95; Pub. L. 94–169, title I, Sec. 106(42), (43), Dec. 23, 1975, 89 Stat. 1019; renumbered Sec. 1561 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1562. Special provisions relating to pension

(a) The Secretary shall pay monthly to each person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll, and a copy of whose certificate has been delivered to the Secretary under subsection (c) of section 1561 of this title, a special pension at the rate of $1,000, as adjusted from time to time under subsection (e), beginning as of the date of application therefor under section 1560 of this title.

(b) The receipt of special pension shall not deprive any person of any other pension or other benefit, right, or privilege to which such person is or may hereafter be entitled under any existing or subsequent law. Special pension shall be paid in addition to all other payments under laws of the United States.

(c) Special pension shall not be subject to any attachment, execution, levy, tax lien, or detention under any process whatever.

(d) If any person has been awarded more than one medal of honor, such person shall not receive more than one special pension.

(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).

(f)(1) The Secretary shall pay, in a lump sum, to each person who is in receipt of special pension payable under this section an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.

(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension for such month under laws for eligibility for special pension (with the exception of the eligibility law requiring a person to have been awarded a Medal of Honor) in effect at the beginning of such month.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1140, Sec. 562; Pub. L. 87–138, Sec. 3, Aug. 14, 1961, 75 Stat. 339; Pub. L. 88–77, Sec. 5(2), July 25, 1963, 77 Stat. 95; Pub. L. 94–169, title I, Sec. 106(44), (45), Dec. 23, 1975, 89 Stat. 1019; Pub. L. 95–479, title III, Sec. 302, Oct. 18, 1978, 92 Stat. 1565; renumbered Sec. 1562 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–161, Sec. 1(a), Nov. 30, 1993, 107 Stat. 1967; Pub. L. 105–368, title III, Sec. 301(a), Nov. 11, 1998, 112 Stat. 3332; Pub. L. 107–330, title III, Sec. 304(a)–(c), Dec. 6, 2002, 116 Stat. 2826.)

Chapter 17 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART II—GENERAL BENEFITS]

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

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SUBCHAPTER I—GENERAL

§ 1701. Definitions

For the purposes of this chapter—

(1) The term "disability" means a disease, injury, or other physical or mental defect.

(2) The term "veteran of any war" includes any veteran awarded the Medal of Honor.

(3) The term "facilities of the Department" means—

(A) facilities over which the Secretary has direct jurisdiction;

(B) Government facilities for which the Secretary contracts; and

(C) public or private facilities at which the Secretary provides recreational activities for patients receiving care under section 1710 of this title.

(4) The term "non-Department facilities" means facilities other than Department facilities.

(5) The term "hospital care" includes—

(A)(i) medical services rendered in the course of the hospitalization of any veteran, and (ii) travel and incidental expenses pursuant to the provisions of section 111 of this title;

(B) such mental health services, consultation, professional counseling, marriage and family counseling, and training for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as the Secretary considers appropriate for the effective treatment and rehabilitation of a veteran or dependent or survivor of a veteran receiving care under the last sentence of section 1781(b) of this title; and

(C)(i) medical services rendered in the course of the hospitalization of a dependent or survivor of a veteran receiving care under the last sentence of section 1781(b) of this title, and (ii) travel and incidental expenses for such dependent or survivor under the terms and conditions set forth in section 111 of this title.

(6) The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services, the following:

(A) Surgical services.

(B) Dental services and appliances as described in sections 1710 and 1712 of this title.

(C) Optometric and podiatric services.

(D) Preventive health services.

(E) Noninstitutional extended care services, including alternatives to institutional extended care that the Secretary may furnish directly, by contract, or through provision of case management by another provider or payer.

(F) In the case of a person otherwise receiving care or services under this chapter—

(i) wheelchairs, artificial limbs, trusses, and similar appliances;

(ii) special clothing made necessary by the wearing of prosthetic appliances; and

(iii) such other supplies or services as the Secretary determines to be reasonable and necessary.

(G) Travel and incidental expenses pursuant to section 111 of this title.

(7) The term "domiciliary care" includes necessary medical services and travel and incidental expenses pursuant to the provisions of section 111 of this title.

(8) The term "rehabilitative services" means such professional, counseling, and guidance services and treatment programs as are necessary to restore, to the maximum extent possible, the physical, mental, and psychological functioning of an ill or disabled person.

(9) The term "preventive health services" means—

(A) periodic medical and dental examinations;

(B) patient health education (including nutrition education);

(C) maintenance of drug use profiles, patient drug monitoring, and drug utilization education;

(D) mental health preventive services;

(E) substance abuse prevention measures;

(F) immunizations against infectious disease;

(G) prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature;

(H) genetic counseling concerning inheritance of genetically determined diseases;

(I) routine vision testing and eye care services;

(J) periodic reexamination of members of likely target populations (high-risk groups) for selected diseases and for functional decline of sensory organs, together with attendant appropriate remedial intervention; and

(K) such other health-care services as the Secretary may determine to be necessary to provide effective and economical preventive health care.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1141, Sec. 601; Pub. L. 86–598, July 7, 1960, 74 Stat. 335; Pub. L. 86–639, Sec. 2, July 12, 1960, 74 Stat. 472; Pub. L. 88–481, Aug. 22, 1964, 78 Stat. 593; Pub. L. 90–612, Sec. 2, Oct. 21, 1968, 82 Stat. 1202; Pub. L. 93–82, title I, Sec. 101, Aug. 2, 1973, 87 Stat. 179; Pub. L. 94–581, title I, Sec. 102, title II, Sec. 202(b), Oct. 21, 1976, 90 Stat. 2843, 2855; Pub. L. 95–520, Sec. 5, Oct. 26, 1978, 92 Stat. 1820; Pub. L. 96–22, title I, Sec. 102(c), title II, Sec. 201(a), June 13, 1979, 93 Stat. 48, 54; Pub. L. 96–151, title II, Sec. 201(b), 202, Dec. 20, 1979, 93 Stat. 1093, 1094; Pub. L. 97–72, title I, Sec. 101, Nov. 3, 1981, 95 Stat. 1047; Pub. L. 97–251, Sec. 4, Sept. 8, 1982, 96 Stat. 716; Pub. L. 98–105, Sept. 30, 1983, 97 Stat. 730; Pub. L. 98–160, title I, Sec. 106(a), Nov. 21, 1983, 97 Stat. 998; Pub. L. 98–528, title I, Sec. 103(a), Oct. 19, 1984, 98 Stat. 2688; Pub. L. 99–108, Sec. 2, Sept. 30, 1985, 99 Stat. 481; Pub. L. 99–166, title I, Sec. 102(a), Dec. 3, 1985, 99 Stat. 943; Pub. L. 99–272, title XIX, Sec. 19011(d)(2), 19012(a), Apr. 7, 1986, 100 Stat. 378, 380; Pub. L. 99–576, title II, Sec. 203, Oct. 28, 1986, 100 Stat. 3255; Pub. L. 100–322, title I, Sec. 131, May 20, 1988, 102 Stat. 506; Pub. L. 102–54, Sec. 14(b)(8), June 13, 1991, 105 Stat. 283; renumbered Sec. 1701 and amended Pub. L. 102–83, Sec. 4(a)(2)(E), (3)–(5), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–585, title V, Sec. 513, Nov. 4, 1992, 106 Stat. 4958; Pub. L. 103–446, title XII, Sec. 1202(b)(1), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 104–262, title I, Secs. 101(d)(1), 103(a), Oct. 9, 1996, 110 Stat. 3179, 3182; Pub. L. 106–117, title I, Sec. 101(b), Nov. 30, 1999, 113 Stat. 1548; Pub. L. 107–135, title II, Sec. 208(a)(1), (e)(2), Jan. 23, 2002, 115 Stat. 2461, 2463; Pub. L. 107–330, title III, Sec. 308(g)(3), Dec. 6, 2002, 116 Stat. 2828; Pub. L. 108–170, title I, Secs. 104(a), 106(a), Dec. 6, 2003, 117 Stat. 2044, 2045; Pub. L. 110–387, title III, Sec. 301(a)(1), title VIII, Sec. 801, Oct. 10, 2008, 122 Stat. 4120, 4140.)

§ 1702. Presumptions: psychosis after service in World War II and following periods of war; mental illness after service in the Persian Gulf War

(a) PSYCHOSIS.—For the purposes of this chapter, any veteran of World War II, the Korean conflict, the Vietnam era, or the Persian Gulf War who developed an active psychosis (1) within two years after discharge or release from the active military, naval, or air service, and (2) before July 26, 1949, in the case of a veteran of World War II, before February 1, 1957, in the case of a veteran of the Korean conflict, before May 8, 1977, in the case of a Vietnam era veteran, or before the end of the two-year period beginning on the last day of the Persian Gulf War, in the case of a veteran of the Persian Gulf War, shall be deemed to have incurred such disability in the active military, naval, or air service.

(b) MENTAL ILLNESS.—For purposes of this chapter, any veteran of the Persian Gulf War who develops an active mental illness

(other than psychosis) shall be deemed to have incurred such disability in the active military, naval, or air service if such veteran develops such disability—

(1) within two years after discharge or release from the active military, naval, or air service; and

(2) before the end of the two-year period beginning on the last day of the Persian Gulf War.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1141, Sec. 602; Pub. L. 90–77, title II, Sec. 203(a), Aug. 31, 1967, 81 Stat. 183; Pub. L. 97–295, Sec. 4(16), Oct. 12, 1982, 96 Stat. 1306; Pub. L. 99–576, title VII, Sec. 701(20), Oct. 28, 1986, 100 Stat. 3292; Pub. L. 102–25, title III, Sec. 334(b), Apr. 6, 1991, 105 Stat. 88; renumbered Sec. 1702, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; amended Pub. L. 110–181, div. A, title XVII, Sec. 1708(a)(1), (2), Jan. 28, 2008, 122 Stat. 493, 494.)

§ 1703. Contracts for hospital care and medical services in non-Department facilities

(a) When Department facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Secretary, as authorized in section 1710 of this title, may contract with non-Department facilities in order to furnish any of the following:

(1) Hospital care or medical services to a veteran for the treatment of—

(A) a service-connected disability;

(B) a disability for which a veteran was discharged or released from the active military, naval, or air service; or

(C) a disability of a veteran who has a total disability permanent in nature from a service-connected disability.

(2) Medical services for the treatment of any disability of—

(A) a veteran described in section 1710(a)(1)(B) of this title;

(B) a veteran who (i) has been furnished hospital care, nursing home care, domiciliary care, or medical services, and (ii) requires medical services to complete treatment incident to such care or services; or

(C) a veteran described in section 1710(a)(2)(E) of this title, or a veteran who is in receipt of increased pension, or additional compensation or allowances based on the need of regular aid and attendance or by reason of being permanently housebound (or who, but for the receipt of retired pay, would be in receipt of such pension, compensation, or allowance), if the Secretary has determined, based on an examination by a physician employed by the Department (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in Department facilities.

(3) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving medical services in a Department facility or nursing home care under section 1720 of this title until such time following the furnishing of care in the non-De-

partment facility as the veteran can be safely transferred to a Department facility.

(4) Hospital care for women veterans.

(5) Hospital care, or medical services that will obviate the need for hospital admission, for veterans in a State (other than the Commonwealth of Puerto Rico) not contiguous to the contiguous States, except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of the Department in Government and non-Department facilities in each such noncontiguous State shall be consistent with the patient load or incidence of the furnishing of medical services for veterans hospitalized or treated by the Department within the 48 contiguous States and the Commonwealth of Puerto Rico.

(6) Diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent Department out-patient clinics to obviate the need for hospital admission.

(7) Outpatient dental services and treatment, and related dental appliances, for a veteran described in section 1712(a)(1)(F) of this title.

(8) Diagnostic services (on an inpatient or outpatient basis) for observation or examination of a person to determine eligibility for a benefit or service under laws administered by the Secretary.

(b) In the case of any veteran for whom the Secretary contracts to furnish care or services in a non-Department facility pursuant to a provision of subsection (a) of this section, the Secretary shall periodically review the necessity for continuing such contractual arrangement pursuant to such provision.

(c) The Secretary shall include in the budget documents which the Secretary submits to Congress for any fiscal year a detailed report on the furnishing of contract care and services during the most recently completed fiscal year under this section, sections 1712A, 1720, 1720A, 1724, and 1732 of this title, and section 115 of the Veterans' Benefits and Services Act of 1988 (Public Law 100–322; 102 Stat. 501).

(d)(1) The Secretary shall conduct a program of recovery audits for fee basis contracts and other medical services contracts for the care of veterans under this section, and for beneficiaries under sections 1781, 1782, and 1783 of this title, with respect to overpayments resulting from processing or billing errors or fraudulent charges in payments for non-Department care and services. The program shall be conducted by contract.

(2) Amounts collected, by setoff or otherwise, as the result of an audit under the program conducted under this subsection shall be available, without fiscal year limitation, for the purposes for which funds are currently available to the Secretary for medical care and for payment to a contractor of a percentage of the amount collected as a result of an audit carried out by the contractor.

(3) The Secretary shall allocate all amounts collected under this subsection with respect to a designated geographic service area

of the Veterans Health Administration, net of payments to the contractor, to that region.

(4) The authority of the Secretary under this subsection terminates on September 30, 2013.

(Added Pub. L. 99–272, title XIX, Sec. 19012(b)(1), Apr. 7, 1986, 100 Stat. 380, Sec. 603; amended Pub. L. 99–166, title I, Sec. 102(b)(1), Dec. 3, 1985, 99 Stat. 943; Pub. L. 99–272, title XIX, Sec. 19012(c)(5)(A), Apr. 7, 1986, 100 Stat. 382; Pub. L. 100–322, title I, Sec. 101(e)(3), 104, 112(a), May 20, 1988, 102 Stat. 492, 493, 499; Pub. L. 100–687, div. B, title XV, Sec. 1503(a)(1), Nov. 18, 1988, 102 Stat. 4133; Pub. L. 102–54, Sec. 14(b)(9), June 13, 1991, 105 Stat. 283; renumbered Sec. 1703 and amended Pub. L. 102–83, Sec. 4(a)(1), (3)–(5), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 102–585, title V, Sec. 501, Nov. 4, 1992, 106 Stat. 4955; Pub. L. 104–262, title I, Sec. 104(b), Oct. 9, 1996, 110 Stat. 3184; Pub. L. 108–422, title VI, Sec. 601, Nov. 30, 2004, 118 Stat. 2396; Pub. L. 109–13, div. A, title VI, Sec. 6080, May 11, 2005, 119 Stat. 302; Pub. L. 110–387, title VIII, Sec. 802, Oct. 10, 2008, 122 Stat. 4141.)

§ 1704. Preventive health services: annual report

Not later than October 31 each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on preventive health services. Each such report shall include the following:

(1) A description of the programs and activities of the Department with respect to preventive health services during the preceding fiscal year, including a description of the following:

(A) The programs conducted by the Department—

(i) to educate veterans with respect to health promotion and disease prevention; and

(ii) to provide veterans with preventive health screenings and other clinical services, with such description setting forth the types of resources used by the Department to conduct such screenings and services and the number of veterans reached by such screenings and services.

(B) The means by which the Secretary addressed the specific preventive health services needs of particular groups of veterans (including veterans with service-connected disabilities, elderly veterans, low-income veterans, women veterans, institutionalized veterans, and veterans who are at risk for mental illness).

(C) The manner in which the provision of such services was coordinated with the activities of the Medical and Prosthetic Research Service of the Department and the National Center for Preventive Health.

(D) The manner in which the provision of such services was integrated into training programs of the Department, including initial and continuing medical training of medical students, residents, and Department staff.

(E) The manner in which the Department participated in cooperative preventive health efforts with other governmental and private entities (including State and local health promotion offices and not-for-profit organizations).

(F) The specific research carried out by the Department with respect to the long-term relationships among screening activities, treatment, and morbidity and mortality outcomes.

(G) The cost effectiveness of such programs and activities, including an explanation of the means by which the costs and benefits (including the quality of life of veterans who participate in such programs and activities) of such programs and activities are measured.

(2) A specific description of research activities on preventive health services carried out during that period using employees, funds, equipment, office space, or other support services of the Department, with such description setting forth—

(A) the source of funds for those activities;

(B) the articles or publications (including the authors of the articles and publications) in which those activities are described;

(C) the Federal, State, or local governmental entity or private entity, if any, with which such activities were carried out; and

(D) the clinical, research, or staff education projects for which funding applications were submitted (including the source of the funds applied for) and upon which a decision is pending or was denied.

(3) An accounting of the expenditure of funds during that period by the National Center for Preventive Health under section 7318 of this title.

(Added Pub. L. 102–585, title V, Sec. 512(a), Nov. 4, 1992, 106 Stat. 4957.)

§ 1705. Management of health care: patient enrollment system

(a) In managing the provision of hospital care and medical services under section 1710(a) of this title, the Secretary, in accordance with regulations the Secretary shall prescribe, shall establish and operate a system of annual patient enrollment. The Secretary shall manage the enrollment of veterans in accordance with the following priorities, in the order listed:

(1) Veterans with service-connected disabilities rated 50 percent or greater.

(2) Veterans with service-connected disabilities rated 30 percent or 40 percent.

(3) Veterans who are former prisoners of war or who were awarded the Purple Heart, veterans with service-connected disabilities rated 10 percent or 20 percent, and veterans described in subparagraphs (B) and (C) of section 1710(a)(2) of this title.

(4) Veterans who are in receipt of increased pension based on a need of regular aid and attendance or by reason of being permanently housebound and other veterans who are catastrophically disabled.

(5) Veterans not covered by paragraphs (1) through (4) who are unable to defray the expenses of necessary care as determined under section 1722(a) of this title.

(6) All other veterans eligible for hospital care, medical services, and nursing home care under section 1710(a)(2) of this title.

(7) Veterans described in section 1710(a)(3) of this title who are eligible for treatment as a low-income family under section 3(b) of the United States Housing Act of 1937 (42

U.S.C. 1437a(b)) for the area in which such veterans reside, regardless of whether such veterans are treated as single person families under paragraph (3)(A) of such section 3(b) or as families under paragraph (3)(B) of such section 3(b).

(8) Veterans described in section 1710(a)(3) of this title who are not covered by paragraph (7).

(b) In the design of an enrollment system under subsection (a), the Secretary—

(1) shall ensure that the system will be managed in a manner to ensure that the provision of care to enrollees is timely and acceptable in quality;

(2) may establish additional priorities within each priority group specified in subsection (a), as the Secretary determines necessary; and

(3) may provide for exceptions to the specified priorities where dictated by compelling medical reasons.

(c)(1) The Secretary may not provide hospital care or medical services to a veteran under paragraph (2) or (3) of section 1710(a) of this title unless the veteran enrolls in the system of patient enrollment established by the Secretary under subsection (a).

(2) The Secretary shall provide hospital care and medical services under section 1710(a)(1) of this title, and under subparagraph (B) of section 1710(a)(2) of this title, for the 12-month period following such veteran's discharge or release from service, to any veteran referred to in such sections for a disability specified in the applicable subparagraph of such section, notwithstanding the failure of the veteran to enroll in the system of patient enrollment referred to in subsection (a) of this section.

(Added Pub. L. 104–262, title I, Sec. 104(a)(1), Oct. 9, 1996, 110 Stat. 3182; amended Pub. L. 106–117, title I, Sec. 112(2), Nov. 30, 1999, 113 Stat. 1556; Pub. L. 107–135, title II, Sec. 202(a), Jan. 23, 2002, 115 Stat. 2457; Pub. L. 107–330, title III, Sec. 308(g)(4), Dec. 6, 2002, 116 Stat. 2828.)

§ 1706. Management of health care: other requirements

(a) In managing the provision of hospital care and medical services under section 1710(a) of this title, the Secretary shall, to the extent feasible, design, establish and manage health care programs in such a manner as to promote cost-effective delivery of health care services in the most clinically appropriate setting.

(b)(1) In managing the provision of hospital care and medical services under such section, the Secretary shall ensure that the Department (and each geographic service area of the Veterans Health Administration) maintains its capacity to provide for the specialized treatment and rehabilitative needs of disabled veterans (including veterans with spinal cord dysfunction, blindness, amputations, and mental illness) within distinct programs or facilities of the Department that are dedicated to the specialized needs of those veterans in a manner that (A) affords those veterans reasonable access to care and services for those specialized needs, and (B) ensures that overall capacity of the Department to provide such services is not reduced below the capacity of the Department (and each geographic service area of the Veterans Health Administration), nationwide, to provide those services, as of October 9, 1996. The Secretary shall carry out this paragraph in consultation with the

Advisory Committee on Prosthetics and Special Disabilities Programs and the Committee on Care of Severely Chronically Mentally Ill Veterans.

(2) For purposes of paragraph (1), the capacity of the Department (and each geographic service area of the Veterans Health Administration) to provide for the specialized treatment and rehabilitative needs of disabled veterans (including veterans with spinal cord dysfunction, traumatic brain injury, blindness, prosthetics and sensory aids, and mental illness) within distinct programs or facilities shall be measured for seriously mentally ill veterans as follows (with all such data to be provided by geographic service area and totaled nationally):

(A) For mental health intensive community-based care, the number of discrete intensive care teams constituted to provide such intensive services to seriously mentally ill veterans and the number of veterans provided such care.

(B) For opioid substitution programs, the number of patients treated annually and the amounts expended.

(C) For dual-diagnosis patients, the number treated annually and the amounts expended.

(D) For substance-use disorder programs—

(i) the number of beds (whether hospital, nursing home, or other designated beds) employed and the average bed occupancy of such beds;

(ii) the percentage of unique patients admitted directly to outpatient care during the fiscal year who had two or more additional visits to specialized outpatient care within 30 days of their first visit, with a comparison from 1996 until the date of the report;

(iii) the percentage of unique inpatients with substance-use disorder diagnoses treated during the fiscal year who had one or more specialized clinic visits within three days of their index discharge, with a comparison from 1996 until the date of the report;

(iv) the percentage of unique outpatients seen in a facility or geographic service area during the fiscal year who had one or more specialized clinic visits, with a comparison from 1996 until the date of the report; and

(v) the rate of recidivism of patients at each specialized clinic in each geographic service area of the Veterans Health Administration.

(E) For mental health programs, the number and type of staff that are available at each facility to provide specialized mental health treatment, including satellite clinics, outpatient programs, and community-based outpatient clinics, with a comparison from 1996 to the date of the report.

(F) The number of such clinics providing mental health care, the number and type of mental health staff at each such clinic, and the type of mental health programs at each such clinic.

(G) The total amounts expended for mental health during the fiscal year.

(3) For purposes of paragraph (1), the capacity of the Department (and each geographic service area of the Veterans Health Ad-

ministration) to provide for the specialized treatment and rehabilitative needs of disabled veterans within distinct programs or facilities shall be measured for veterans with spinal cord dysfunction, traumatic brain injury, blindness, or prosthetics and sensory aids as follows (with all such data to be provided by geographic service area and totaled nationally):

(A) For spinal cord injury and dysfunction specialized centers and for blind rehabilitation specialized centers, the number of staffed beds and the number of full-time equivalent employees assigned to provide care at such centers.

(B) For prosthetics and sensory aids, the annual amount expended.

(C) For traumatic brain injury, the number of patients treated annually and the amounts expended.

(4) In carrying out paragraph (1), the Secretary may not use patient outcome data as a substitute for, or the equivalent of, compliance with the requirement under that paragraph for maintenance of capacity.

(5)(A) Not later than April 1 of each year through 2008, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Secretary's compliance, by facility and by service-network, with the requirements of this subsection. Each such report shall include information on recidivism rates associated with substance-use disorder treatment.

(B) In preparing each report under subparagraph (A), the Secretary shall use standardized data and data definitions.

(C) Each report under subparagraph (A) shall be audited by the Inspector General of the Department, who shall submit to Congress a certification as to the accuracy of each such report.

(6)(A) To ensure compliance with paragraph (1), the Under Secretary for Health shall prescribe objective standards of job performance for employees in positions described in subparagraph (B) with respect to the job performance of those employees in carrying out the requirements of paragraph (1). Those job performance standards shall include measures of workload, allocation of resources, and quality-of-care indicators.

(B) Positions described in this subparagraph are positions in the Veterans Health Administration that have responsibility for allocating and managing resources applicable to the requirements of paragraph (1).

(C) The Under Secretary shall develop the job performance standards under subparagraph (A) in consultation with the Advisory Committee on Prosthetics and Special Disabilities Programs and the Committee on Care of Severely Chronically Mentally Ill Veterans.

(c) The Secretary shall ensure that each primary care health care facility of the Department develops and carries out a plan to provide mental health services, either through referral or direct provision of services, to veterans who require such services.

(Added Pub. L. 104–262, title I, Sec. 104(a)(1), Oct. 9, 1996, 110 Stat. 3183; Pub. L. 105–368, title IX, 903(a), title X, Sec. 1005(b)(2), Nov. 11, 1998, 112 Stat. 3360, 3365; Pub. L. 107–95, Sec. 8(a), Dec. 21, 2001, 115 Stat. 919; Pub. L. 107–135, title

II, Sec. 203, Jan. 23, 2002, 115 Stat. 2458; Pub. L. 109–461, title II, Sec. 208(a), Dec. 22, 2006, 120 Stat. 3413.)

§ 1707. Limitations

(a) Funds appropriated to carry out this chapter may not be used for purposes that are inconsistent with the Assisted Suicide Funding Restriction Act of 1997 (42 U.S.C. 14401 et seq.).

(b) The Secretary may furnish sensori-neural aids only in accordance with guidelines prescribed by the Secretary.

(Added Pub. L. 105–12, Sec. 9(i)(1), Apr. 30, 1997, 111 Stat. 27; amended Pub. L. 107–135, title II, Sec. 208(a)(2), (f)(2), Jan. 23, 2002, 115 Stat. 2462, 2464; Pub. L. 107–330, title III, Sec. 308(g)(5), Dec. 6, 2002, 116 Stat. 2829.)

§ 1708. Temporary lodging

(a) The Secretary may furnish persons described in subsection (b) with temporary lodging in a Fisher house or other appropriate facility in connection with the examination, treatment, or care of a veteran under this chapter or, as provided for under subsection (e)(5), in connection with benefits administered under this title.

(b) Persons to whom the Secretary may provide lodging under subsection (a) are the following:

(1) A veteran who must travel a significant distance to receive care or services under this title.

(2) A member of the family of a veteran and others who accompany a veteran and provide the equivalent of familial support for such veteran.

(c) In this section, the term "Fisher house" means a housing facility that—

(1) is located at, or in proximity to, a Department medical facility;

(2) is available for residential use on a temporary basis by patients of that facility and others described in subsection (b)(2); and

(3) is constructed by, and donated to the Secretary by, the Zachary and Elizabeth M. Fisher Armed Services Foundation.

(d) The Secretary may establish charges for providing lodging under this section. The proceeds from such charges shall be credited to the medical services account and shall be available until expended for the purposes of providing such lodging.

(e) The Secretary shall prescribe regulations to carry out this section. Such regulations shall include provisions—

(1) limiting the duration of lodging provided under this section;

(2) establishing standards and criteria under which charges are established for such lodging under subsection (d);

(3) establishing criteria for persons considered to be accompanying a veteran under subsection (b)(2);

(4) establishing criteria for the use of the premises of temporary lodging facilities under this section; and

(5) establishing any other limitations, conditions, and priorities that the Secretary considers appropriate with respect to lodging under this section.

(Added Pub. L. 106–419, title II, Sec. 221(a), Nov. 1, 2000, 114 Stat. 1844; amended Pub. L. 110–387, title IX, Sec. 901(a)(8), Oct. 10, 2008, 122 Stat. 4142.)

SUBCHAPTER II—HOSPITAL, NURSING HOME, OR DOMICILIARY CARE AND MEDICAL TREATMENT

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

(a)(1) The Secretary (subject to paragraph (4)) shall furnish hospital care and medical services which the Secretary determines to be needed—

(A) to any veteran for a service-connected disability; and

(B) to any veteran who has a service-connected disability rated at 50 percent or more.

(2) The Secretary (subject to paragraph (4)) shall furnish hospital care and medical services, and may furnish nursing home care, which the Secretary determines to be needed to any veteran—

(A) who has a compensable service-connected disability rated less than 50 percent or, with respect to nursing home care during any period during which the provisions of section 1710A(a) of this title are in effect, a compensable service-connected disability rated less than 70 percent;

(B) whose discharge or release from active military, naval, or air service was for a disability that was incurred or aggravated in the line of duty;

(C) who is in receipt of, or who, but for a suspension pursuant to section 1151 of this title (or both a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for such care is provided for in the judgment or settlement provided for in such section;

(D) who is a former prisoner of war or who was awarded the Purple Heart;

(E) who is a veteran of the Mexican border period or of World War I;

(F) who was exposed to a toxic substance, radiation, or other conditions, as provided in subsection (e); or

(G) who is unable to defray the expenses of necessary care as determined under section 1722(a) of this title.

(3) In the case of a veteran who is not described in paragraphs (1) and (2), the Secretary may, to the extent resources and facilities are available and subject to the provisions of subsections (f) and (g), furnish hospital care, medical services, and nursing home care which the Secretary determines to be needed.

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

(5) During any period during which the provisions of section 1710A(a) of this title are not in effect, the Secretary may furnish nursing home care which the Secretary determines is needed to

any veteran described in paragraph (1), with the priority for such care on the same basis as if provided under that paragraph.

(b)(1) The Secretary may furnish to a veteran described in paragraph (2) of this subsection such domiciliary care as the Secretary determines is needed for the purpose of the furnishing of medical services to the veteran.

(2) This subsection applies in the case of the following veterans:

(A) Any veteran whose annual income (as determined under section 1503 of this title) does not exceed the maximum annual rate of pension that would be applicable to the veteran if the veteran were eligible for pension under section 1521(d) of this title.

(B) Any veteran who the Secretary determines has no adequate means of support.

(c) While any veteran is receiving hospital care or nursing home care in any Department facility, the Secretary may, within the limits of Department facilities, furnish medical services to correct or treat any non-service-connected disability of such veteran, in addition to treatment incident to the disability for which such veteran is hospitalized, if the veteran is willing, and the Secretary finds such services to be reasonably necessary to protect the health of such veteran. The Secretary may furnish dental services and treatment, and related dental appliances, under this subsection for a non-service-connected dental condition or disability of a veteran only (1) to the extent that the Secretary determines that the dental facilities of the Department to be used to furnish such services, treatment, or appliances are not needed to furnish services, treatment, or appliances for dental conditions or disabilities described in section 1712(a) of this title, or (2) if (A) such non-service-connected dental condition or disability is associated with or aggravating a disability for which such veteran is receiving hospital care, or (B) a compelling medical reason or a dental emergency requires furnishing dental services, treatment, or appliances (excluding the furnishing of such services, treatment, or appliances of a routine nature) to such veteran during the period of hospitalization under this section.

(d) In no case may nursing home care be furnished in a hospital not under the direct jurisdiction of the Secretary except as provided in section 1720 of this title.

(e)(1)(A) A Vietnam-era herbicide-exposed veteran is eligible (subject to paragraph (2)) for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure.

(B) A radiation-exposed veteran is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any disease suffered by the veteran that is—

(i) a disease listed in section 1112(c)(2) of this title; or

(ii) any other disease for which the Secretary, based on the advice of the Advisory Committee on Environmental Hazards, determines that there is credible evidence of a positive association between occurrence of the disease in humans and exposure to ionizing radiation.

(C) Subject to paragraphs (2) and (3) of this subsection, a veteran who served on active duty in the Southwest Asia theater of operations during the Persian Gulf War is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such service.

(D) Subject to paragraphs (2) and (3), a veteran who served on active duty in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during a period of war after the Persian Gulf War, or in combat against a hostile force during a period of hostilities (as defined in section 1712A(a)(2)(B) of this title) after November 11, 1998, is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such condition is attributable to such service.

(E) Subject to paragraph (2), a veteran who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as "Project Shipboard Hazard and Defense (SHAD)" and related land-based tests) is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such illness is attributable to such testing.

(2)(A) In the case of a veteran described in paragraph (1)(A), hospital care, medical services, and nursing home care may not be provided under subsection (a)(2)(F) with respect to—

(i) a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than an exposure described in paragraph (4)(A)(ii); or

(ii) a disease for which the National Academy of Sciences, in a report issued in accordance with section 3 of the Agent Orange Act of 1991, has determined that there is limited or suggestive evidence of the lack of a positive association between occurrence of the disease in humans and exposure to a herbicide agent.

(B) In the case of a veteran described in subparagraph (C), (D), or (E) of paragraph (1), hospital care, medical services, and nursing home care may not be provided under subsection (a)(2)(F) with respect to a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than the service or testing described in such subparagraph.

(3) Hospital care, medical services, and nursing home care may not be provided under or by virtue of subsection (a)(2)(F)—

(A) in the case of care for a veteran described in paragraph (1)(A), after December 31, 2002;

(B) in the case of care for a veteran described in paragraph (1)(C), after December 31, 2002; and

(C) in the case of care for a veteran described in paragraph (1)(D) who—

(i) is discharged or released from the active military, naval, or air service after the date that is five years before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008, after a period of five years beginning on the date of such discharge or release; or

(ii) is so discharged or released more than five years before the date of the enactment of that Act and who did not enroll in the patient enrollment system under section 1705 of this title before such date, after a period of three years beginning on the date of the enactment of that Act.

(4) For purposes of this subsection—

(A) The term "Vietnam-era herbicide-exposed veteran" means a veteran (i) who served on active duty in the Republic of Vietnam during the during the period beginning on January 9, 1962, and ending on May 7, 1975, and (ii) who the Secretary finds may have been exposed during such service to dioxin or was exposed during such service to a toxic substance found in a herbicide or defoliant used for military purposes during such period.

(B) The term "radiation-exposed veteran" has the meaning given that term in section 1112(c)(3) of this title.

(5) When the Secretary first provides care for veterans using the authority provided in paragraph (1)(D), the Secretary shall establish a system for collection and analysis of information on the general health status and health care utilization patterns of veterans receiving care under that paragraph. Not later than 18 months after first providing care under such authority, the Secretary shall submit to Congress a report on the experience under that authority. The Secretary shall include in the report any recommendations of the Secretary for extension of that authority.

(f)(1) The Secretary may not furnish hospital care or nursing home care (except if such care constitutes hospice care) under this section to a veteran who is eligible for such care under subsection (a)(3) of this section unless the veteran agrees to pay to the United States the applicable amount determined under paragraph (2) or (4) of this subsection.

(2) A veteran who is furnished hospital care or nursing home care under this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such care shall be liable to the United States for an amount equal to—

(A) the lesser of—

(i) the cost of furnishing such care, as determined by the Secretary; or

(ii) the amount determined under paragraph (3) of this subsection; and

(B) before September 30, 2010, an amount equal to $10 for every day the veteran receives hospital care and $5 for every day the veteran receives nursing home care.

(3)(A) In the case of hospital care furnished during any 365-day period, the amount referred to in paragraph (2)(A)(ii) of this subsection is—

(i) the amount of the inpatient Medicare deductible, plus

(ii) one-half of such amount for each 90 days of care (or frac-

tion thereof) after the first 90 days of such care during such 365-day period.

(B) In the case of nursing home care furnished during any 365-day period, the amount referred to in paragraph (2)(A)(ii) of this subsection is the amount of the inpatient Medicare deductible for each 90 days of such care (or fraction thereof) during such 365-day period.

(C)(i) Except as provided in clause (ii) of this subparagraph, in the case of a veteran who is admitted for nursing home care under this section after being furnished, during the preceding 365-day period, hospital care for which the veteran has paid the amount of the inpatient Medicare deductible under this subsection and who has not been furnished 90 days of hospital care in connection with such payment, the veteran shall not incur any liability under paragraph (2) of this subsection with respect to such nursing home care until—

(I) the veteran has been furnished, beginning with the first day of such hospital care furnished in connection with such payment, a total of 90 days of hospital care and nursing home care; or

(II) the end of the 365-day period applicable to the hospital care for which payment was made,

whichever occurs first.

(ii) In the case of a veteran who is admitted for nursing home care under this section after being furnished, during any 365-day period, hospital care for which the veteran has paid an amount under subparagraph (A)(ii) of this paragraph and who has not been furnished 90 days of hospital care in connection with such payment, the amount of the liability of the veteran under paragraph (2) of this subsection with respect to the number of days of such nursing home care which, when added to the number of days of such hospital care, is 90 or less, is the difference between the inpatient Medicare deductible and the amount paid under such subparagraph until—

(I) the veteran has been furnished, beginning with the first day of such hospital care furnished in connection with such payment, a total of 90 days of hospital care and nursing home care; or

(II) the end of the 365-day period applicable to the hospital care for which payment was made,

whichever occurs first.

(D) In the case of a veteran who is admitted for hospital care under this section after having been furnished, during the preceding 365-day period, nursing home care for which the veteran has paid the amount of the inpatient Medicare deductible under this subsection and who has not been furnished 90 days of nursing home care in connection with such payment, the veteran shall not incur any liability under paragraph (2) of this subsection with respect to such hospital care until—

(i) the veteran has been furnished, beginning with the first day of such nursing home care furnished in connection with such payment, a total of 90 days of nursing home care and hospital care; or

(ii) the end of the 365-day period applicable to the nursing home care for which payment was made,

whichever occurs first.

(E) A veteran may not be required to make a payment under this subsection for hospital care or nursing home care furnished under this section during any 90-day period in which the veteran is furnished medical services under paragraph (3) of subsection (a) to the extent that such payment would cause the total amount paid by the veteran under this subsection for hospital care and nursing home care furnished during that period and under subsection (g) for medical services furnished during that period to exceed the amount of the inpatient Medicare deductible in effect on the first day of such period.

(F) A veteran may not be required to make a payment under this subsection or subsection (g) for any days of care in excess of 360 days of care during any 365-calendar-day period.

(4) In the case of a veteran covered by this subsection who is also described by section 1705(a)(7) of this title, the amount for which the veteran shall be liable to the United States for hospital care under this subsection shall be an amount equal to 20 percent of the total amount for which the veteran would otherwise be liable for such care under subparagraphs (2)(B) and (3)(A) but for this paragraph.

(5) For the purposes of this subsection, the term "inpatient Medicare deductible" means the amount of the inpatient hospital deductible in effect under section 1813(b) of the Social Security Act (42 U.S.C. 1395e(b)) on the first day of the 365-day period applicable under paragraph (3) of this subsection.

(g)(1) The Secretary may not furnish medical services (except if such care constitutes hospice care) under subsection (a) of this section (including home health services under section 1717 of this title) to a veteran who is eligible for hospital care under this chapter by reason of subsection (a)(3) of this section unless the veteran agrees to pay to the United States in the case of each outpatient visit the applicable amount or amounts established by the Secretary by regulation.

(2) A veteran who is furnished medical services under subsection (a) of this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such services shall be liable to the United States, in the case of each visit in which such services are furnished to the veteran, for an amount which the Secretary shall establish by regulation.

(3) This subsection does not apply with respect to home health services under section 1717 of this title to the extent that such services are for improvements and structural alterations.

(h) Nothing in this section requires the Secretary to furnish care to a veteran to whom another agency of Federal, State, or local government has a duty under law to provide care in an institution of such government.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1141, Sec. 610; Pub. L. 87–583, Sec. 1, Aug. 14, 1962, 76 Stat. 381; Pub. L. 89–358, Sec. 8, Mar. 3, 1966, 80 Stat. 27; Pub. L. 89–785, title III, Sec. 304, Nov. 7, 1966, 80 Stat. 1377; Pub. L. 91–500, Sec. 4, Oct. 22, 1970, 84 Stat. 1096; Pub. L. 93–82, title I, Sec. 102, Aug. 2, 1973, 87 Stat. 180;

Pub. L. 94–581, title II, Sec. 202(d), 210(a)(1), Oct. 21, 1976, 90 Stat. 2855, 2862; Pub. L. 96–22, title I, Sec. 102(a), June 13, 1979, 93 Stat. 47; Pub. L. 97–37, Sec. 5(a), Aug. 14, 1981, 95 Stat. 936; Pub. L. 97–72, title I, Sec. 102(a), Nov. 3, 1981, 95 Stat. 1047; Pub. L. 98–160, title VII, Sec. 701, Nov. 21, 1983, 97 Stat. 1008; Pub. L. 99–166, title I, Sec. 103, Dec. 3, 1985, 99 Stat. 944; Pub. L. 99–272, title XIX, Sec. 19011(a), (d)(3), Apr. 7, 1986, 100 Stat. 372, 379; Pub. L. 99–576, title II, Sec. 237(a), (b)(1), Oct. 28, 1986, 100 Stat. 3267; Pub. L. 100–322, title I, Sec. 102(a), May 20, 1988, 102 Stat. 492; Pub. L. 100–687, div. B, title XII, Sec. 1202, Nov. 18, 1988, 102 Stat. 4125; Pub. L. 101–508, title VIII, Sec. 8013(a), Nov. 5, 1990, 104 Stat. 1388–346; Pub. L. 102–4, Sec. 5, Feb. 6, 1991, 105 Stat. 15; Pub. L. 102–54, Sec. 14(b)(10), June 13, 1991, 105 Stat. 283; renumbered Sec. 1710 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–210, Sec. 1(a), 2(a), Dec. 20, 1993, 107 Stat. 2496, 2497; Pub. L. 103–446, title XII, Sec. 1201(d)(2), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 103–452, title I, Sec. 103(a)(1), Nov. 2, 1994, 108 Stat. 4786; Pub. L. 104–110, title I, Sec. 101(a)(1), Feb. 13, 1996, 110 Stat. 768; Pub. L. 104–262, title I, Secs. 101(a), (b), (d)(2)–(4), 102(a), Oct. 9, 1996, 110 Stat. 3178, 3179, 3181; Pub. L. 104–275, title V, Sec. 505(c), Oct. 9, 1996, 110 Stat. 3342; Pub. L. 105–33, title VIII, Secs. 8021(a)(1), 8023(b)(1), (2), Aug. 5, 1997, 111 Stat. 664, 667; Pub. L. 105–114, title II, Sec. 209(a), title IV, Sec. 402(a), Nov. 21, 1997, 111 Stat. 2290, 2294; Pub. L. 105–368, title I, Sec. 102(a), title X, Sec. 1005(b)(3), Nov. 11, 1998, 112 Stat. 3321, 3365; Pub. L. 106–117, title I, Secs. 101(f), 112(1), title II, Sec. 201(b), Nov. 30, 1999, 113 Stat. 1550, 1556, 1561; Pub. L. 106–419, title II, Sec. 224(b), Nov. 1, 2000, 114 Stat. 1846; Pub. L. 107–135, title II, Secs. 202(b), 209(a), 211, Jan. 23, 2002, 115 Stat. 2457, 2464, 2465; Pub. L. 107–330, title III, Sec. 308(g)(6), Dec. 6, 2002, 116 Stat. 2829; Pub. L. 108–170, title I, Sec. 102, Dec. 6, 2003, 117 Stat. 2044; Pub. L. 109–444, Sec. 2(a), Dec. 21, 2006, 120 Stat. 3304; Pub. L. 109–461, title II, Sec. 211(a)(3)(B), title X, Secs. 1003, 1006(b), Dec. 22, 2006, 120 Stat. 3419, 3465, 3468; Pub. L. 110–161, div. I, title II, Sec. 231, Dec. 26, 2007, 121 Stat. 2273; Pub. L. 110–181, div. A, title XVII, Sec. 1707, Jan. 28, 2008, 122 Stat. 493; Pub. L. 110–329, div. E, title II, Sec. 224, Sept. 30, 2008, 122 Stat. 3713; Pub. L. 110–387, title IV, Sec. 409, title VIII, Secs. 803, 804(a), Oct. 10, 2008, 122 Stat. 4130, 4141.)

§ 1710A. Required nursing home care

(a) The Secretary (subject to section 1710(a)(4) of this title) shall provide nursing home care which the Secretary determines is needed (1) to any veteran in need of such care for a service-connected disability, and (2) to any veteran who is in need of such care and who has a service-connected disability rated at 70 percent or more.

(b)(1) The Secretary shall ensure that a veteran described in subsection (a) who continues to need nursing home care is not, after placement in a Department nursing home, transferred from the facility without the consent of the veteran, or, in the event the veteran cannot provide informed consent, the representative of the veteran.

(2) Nothing in subsection (a) may be construed as authorizing or requiring that a veteran who is receiving nursing home care in a Department nursing home on the date of the enactment of this section be displaced, transferred, or discharged from the facility.

(c) The Secretary shall ensure that nursing home care provided under subsection (a) is provided in an age-appropriate manner.

(d) The provisions of subsection (a) shall terminate on December 31, 2013.

(Added Pub. L. 106–117, title I, Sec. 101(a)(1), Nov. 30, 1999, 113 Stat. 1547; amended Pub. L. 106–419, title II, Sec. 224(a), Nov. 1, 2000, 114 Stat. 1846; Pub. L. 108–170, title I, Sec. 106(b), Dec. 6, 2003, 117 Stat. 2046; Pub. L. 110–181, div. A, title XVII, Sec. 1706(b), Jan. 28, 2008, 122 Stat. 493; Pub. L. 110–387, title VIII, Sec. 805, Oct. 10, 2008, 122 Stat. 4141.)

§ 1710B. Extended care services

(a) The Secretary (subject to section 1710(a)(4) of this title and subsection (c) of this section) shall operate and maintain a program to provide extended care services to eligible veterans in accordance with this section. Such services shall include the following:

(1) Geriatric evaluation.

(2) Nursing home care (A) in facilities operated by the Secretary, and (B) in community-based facilities through contracts under section 1720 of this title.

(3) Domiciliary services under section 1710(b) of this title.

(4) Adult day health care under section 1720(f) of this title.

(5) Such other noninstitutional alternatives to nursing home care as the Secretary may furnish as medical services under section 1701(10) of this title.

(6) Respite care under section 1720B of this title.

(b) The Secretary shall ensure that the staffing and level of extended care services provided by the Secretary nationally in facilities of the Department during any fiscal year is not less than the staffing and level of such services provided nationally in facilities of the Department during fiscal year 1998.

(c)(1) Except as provided in paragraph (2), the Secretary may not furnish extended care services for a non-service-connected disability other than in the case of a veteran who has a compensable service-connected disability unless the veteran agrees to pay to the United States a copayment (determined in accordance with subsection (d)) for any period of such services in a year after the first 21 days of such services provided that veteran in that year.

(2) Paragraph (1) shall not apply—

(A) to a veteran whose annual income (determined under section 1503 of this title) is less than the amount in effect under section 1521(b) of this title;

(B) to a veteran being furnished hospice care under this section; or

(C) with respect to an episode of extended care services that a veteran is being furnished by the Department on November 30, 1999.

(d)(1) A veteran who is furnished extended care services under this chapter and who is required under subsection (c) to pay an amount to the United States in order to be furnished such services shall be liable to the United States for that amount.

(2) In implementing subsection (c), the Secretary shall develop a methodology for establishing the amount of the copayment for which a veteran described in subsection (c) is liable. That methodology shall provide for—

(A) establishing a maximum monthly copayment (based on all income and assets of the veteran and the spouse of such veteran);

(B) protecting the spouse of a veteran from financial hardship by not counting all of the income and assets of the veteran and spouse (in the case of a spouse who resides in the community) as available for determining the copayment obligation; and

(C) allowing the veteran to retain a monthly personal allowance.

(e)(1) There is established in the Treasury of the United States a revolving fund known as the Department of Veterans Affairs Extended Care Fund (hereinafter in this section referred to as the "fund"). Amounts in the fund shall be available, without fiscal year limitation and without further appropriation, exclusively for the purpose of providing extended care services under subsection (a).

(2) All amounts received by the Department under this section shall be deposited in or credited to the fund.

(Added Pub. L. 106–117, title I, Sec. 101(c)(1), Nov. 30, 1999, 113 Stat. 1548; amended Pub. L. 107–14, Sec. 8(a)(2), (16), June 5, 2001, 115 Stat. 34, 35; Pub. L. 107–103, title V, Sec. 509(b), Dec. 27, 2001, 115 Stat. 997; Pub. L. 108–422, title II, Sec. 204, Nov. 30, 2004, 118 Stat. 2382.)

§ 1710C. Traumatic brain injury: plans for rehabilitation and reintegration into the community

(a) PLAN REQUIRED.—The Secretary shall, for each individual who is a veteran or member of the Armed Forces who receives inpatient or outpatient rehabilitative hospital care or medical services provided by the Department for a traumatic brain injury—

(1) develop an individualized plan for the rehabilitation and reintegration of the individual into the community; and

(2) provide such plan in writing to the individual—

(A) in the case of an individual receiving inpatient care, before the individual is discharged from inpatient care or after the individual's transition from serving on active duty as a member of the Armed Forces to receiving outpatient care provided by the Department; or

(B) as soon as practicable following a diagnosis of traumatic brain injury by a Department health care provider.

(b) CONTENTS OF PLAN.—Each plan developed under subsection (a) shall include, for the individual covered by such plan, the following:

(1) Rehabilitation objectives for improving the physical, cognitive, and vocational functioning of the individual with the goal of maximizing the independence and reintegration of such individual into the community.

(2) Access, as warranted, to all appropriate rehabilitative components of the traumatic brain injury continuum of care, and where appropriate, to long-term care services.

(3) A description of specific rehabilitative treatments and other services to achieve the objectives described in paragraph (1), which shall set forth the type, frequency, duration, and location of such treatments and services.

(4) The name of the case manager designated in accordance with subsection (d) to be responsible for the implementation of such plan.

(5) Dates on which the effectiveness of such plan will be reviewed in accordance with subsection (f).

(c) COMPREHENSIVE ASSESSMENT.—(1) Each plan developed under subsection (a) shall be based on a comprehensive assessment, developed in accordance with paragraph (2), of—

(A) the physical, cognitive, vocational, and neuropsychological and social impairments of the individual; and

(B) the family education and family support needs of the individual after the individual is discharged from inpatient care or at the commencement of and during the receipt of outpatient care and services.

(2) The comprehensive assessment required under paragraph (1) with respect to an individual is a comprehensive assessment of the matters set forth in that paragraph by a team, composed by the Secretary for purposes of the assessment, of individuals with expertise in traumatic brain injury, including any of the following:

(A) A neurologist.
(B) A rehabilitation physician.
(C) A social worker.
(D) A neuropsychologist.
(E) A physical therapist.
(F) A vocational rehabilitation specialist.
(G) An occupational therapist.
(H) A speech language pathologist.
(I) A rehabilitation nurse.
(J) An educational therapist.
(K) An audiologist.
(L) A blind rehabilitation specialist.
(M) A recreational therapist.
(N) A low vision optometrist.
(O) An orthotist or prosthetist.
(P) An assistive technologist or rehabilitation engineer.
(Q) An otolaryngology physician.
(R) A dietician.
(S) An opthamologist.
(T) A psychiatrist.

(d) CASE MANAGER.—(1) The Secretary shall designate a case manager for each individual described in subsection (a) to be responsible for the implementation of the plan developed for that individual under that subsection and the coordination of the individual's medical care.

(2) The Secretary shall ensure that each case manager has specific expertise in the care required by the individual for whom the case manager is designated, regardless of whether the case manager obtains such expertise through experience, education, or training.

(e) PARTICIPATION AND COLLABORATION IN DEVELOPMENT OF PLANS.—(1) The Secretary shall involve each individual described in subsection (a), and the family or legal guardian of such individual, in the development of the plan for such individual under that subsection to the maximum extent practicable.

(2) The Secretary shall collaborate in the development of a plan for an individual under subsection (a) with a State protection and advocacy system if—

(A) the individual covered by the plan requests such collaboration; or

(B) in the case of such an individual who is incapacitated, the family or guardian of the individual requests such collaboration.

(3) In the case of a plan required by subsection (a) for a member of the Armed Forces who is serving on active duty, the Secretary shall collaborate with the Secretary of Defense in the development of such plan.

(4) In developing vocational rehabilitation objectives required under subsection (b)(1) and in conducting the assessment required under subsection (c), the Secretary shall act through the Under Secretary for Health in coordination with the Vocational Rehabilitation and Employment Service of the Department of Veterans Affairs.

(f) EVALUATION.—

(1) PERIODIC REVIEW BY SECRETARY.—The Secretary shall periodically review the effectiveness of each plan developed under subsection (a). The Secretary shall refine each such plan as the Secretary considers appropriate in light of such review.

(2) REQUEST FOR REVIEW BY VETERANS.—In addition to the periodic review required by paragraph (1), the Secretary shall conduct a review of the plan for an individual under paragraph (1) at the request of the individual, or in the case of an individual who is incapacitated, at the request of the guardian or designee of the individual.

(g) STATE DESIGNATED PROTECTION AND ADVOCACY SYSTEM DEFINED.—In this section, the term "State protection and advocacy system" means a system established in a State under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.) to protect and advocate for the rights of persons with development disabilities.

(Added Pub. L. 110–181, div. A, title XVII, Sec. 1702(a), Jan. 28, 2008, 122 Stat. 486.)

§ 1710D. Traumatic brain injury: comprehensive program for long-term rehabilitation

(a) COMPREHENSIVE PROGRAM.—In developing plans for the rehabilitation and reintegration of individuals with traumatic brain injury under section 1710C of this title, the Secretary shall develop and carry out a comprehensive program of long-term care for post-acute traumatic brain injury rehabilitation that includes residential, community, and home-based components utilizing interdisciplinary treatment teams.

(b) LOCATION OF PROGRAM.—The Secretary shall carry out the program developed under subsection (a) in each Department polytrauma rehabilitation center designated by the Secretary.

(c) ELIGIBILITY.—A veteran is eligible for care under the program developed under subsection (a) if the veteran is otherwise eligible to receive hospital care and medical services under section 1710 of this title and—

(1) served on active duty in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during a period of war after the Persian Gulf War, or in combat against a hostile force during a period of hostilities (as defined in section 1712A(a)(2)(B) of this title) after November 11, 1998;

(2) is diagnosed as suffering from moderate to severe traumatic brain injury; and

(3) is unable to manage routine activities of daily living without supervision or assistance, as determined by the Secretary.

(d) REPORT.—Not later than one year after the date of the enactment of this section, and annually thereafter, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the following information:

(1) A description of the operation of the program.

(2) The number of veterans provided care under the program during the year preceding such report.

(3) The cost of operating the program during the year preceding such report.

(Added Pub. L. 110–181, div. A, title XVII, Sec. 1702(a), Jan. 28, 2008, 122 Stat. 488.)

§ 1710E. Traumatic brain injury: use of non-Department facilities for rehabilitation

(a) COOPERATIVE AGREEMENTS.—The Secretary, in implementing and carrying out a plan developed under section 1710C of this title, may provide hospital care and medical services through cooperative agreements with appropriate public or private entities that have established long-term neurobehavioral rehabilitation and recovery programs.

(b) AUTHORITIES OF STATE PROTECTION AND ADVOCACY SYSTEMS.—Nothing in subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 shall be construed as preventing a State protection and advocacy system (as defined in section 1710C(g) of this title) from exercising the authorities described in such subtitle with respect to individuals provided rehabilitative treatment or services under section 1710C of this title in a non-Department facility.

(Added Pub. L. 110–181, div. A, title XVII, Sec. 1703(a), Jan. 28, 2008, 122 Stat. 489.)

§ 1711. Care during examinations and in emergencies

(a) The Secretary may furnish hospital care incident to physical examinations where such examinations are necessary in carrying out the provisions of other laws administered by the Secretary.

[(b) Repealed. Pub. L. 107–135, title II, Sec. 208(d), Jan. 23, 2002, 115 Stat. 2463.]

(c)(1) The Secretary may contract with any organization named in, or approved by the Secretary under, section 5902 of this title to provide for the furnishing by the Secretary, on a reimbursable basis (as prescribed by the Secretary), of emergency medical services to individuals attending any national convention of such organization, except that reimbursement shall not be required for services furnished under this subsection to the extent that the individual receiving such services would otherwise be eligible under this chapter for medical services.

(2) The authority of the Secretary to enter into contracts under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1142, Sec. 611; Pub. L. 94–581, title II, Sec. 202(e), 210(a)(2), Oct. 21, 1976, 90 Stat. 2856, 2862; Pub. L. 96–22, title II, Sec. 202, June 13, 1979, 93 Stat. 54; Pub. L. 96–128, title V, Sec. 501(a), Nov. 28, 1979, 93 Stat. 987; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1711 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 107–135, title II, Sec. 208(d), Jan. 23, 2002, 115 Stat. 2463.)

§ 1712. Dental care; drugs and medicines for certain disabled veterans; vaccines

(a)(1) Outpatient dental services and treatment, and related dental appliances, shall be furnished under this section only for a dental condition or disability—

(A) which is service-connected and compensable in degree;

(B) which is service-connected, but not compensable in degree, but only if—

(i) the dental condition or disability is shown to have been in existence at the time of the veteran's discharge or release from active military, naval, or air service;

(ii) the veteran had served on active duty for a period of not less than 180 days or, in the case of a veteran who served on active duty during the Persian Gulf War, 90 days immediately before such discharge or release;

(iii) application for treatment is made within 180 days after such discharge or release, except that (I) in the case of a veteran who reentered active military, naval, or air service within 90 days after the date of such veteran's prior discharge or release from such service, application may be made within 180 days from the date of such veteran's subsequent discharge or release from such service, and (II) if a disqualifying discharge or release has been corrected by competent authority, application may be made within 180 days after the date of correction; and

(iv) the veteran's certificate of discharge or release from active duty does not bear a certification that the veteran was provided, within the 90-day period immediately before the date of such discharge or release, a complete dental examination (including dental X-rays) and all appropriate dental services and treatment indicated by the examination to be needed;

(C) which is a service-connected dental condition or disability due to combat wounds or other service trauma, or of a former prisoner of war;

(D) which is associated with and is aggravating a disability resulting from some other disease or injury which was incurred in or aggravated by active military, naval, or air service;

(E) which is a non-service-connected condition or disability of a veteran for which treatment was begun while such veteran was receiving hospital care under this chapter and such services and treatment are reasonably necessary to complete such treatment;

(F) from which a veteran who is a former prisoner of war is suffering;

(G) from which a veteran who has a service-connected disability rated as total is suffering; or

(H) the treatment of which is medically necessary (i) in preparation for hospital admission, or (ii) for a veteran otherwise receiving care or services under this chapter.

(2) The Secretary concerned shall at the time a member of the Armed Forces is discharged or released from a period of active military, naval, or air service of not less than 180 days or, in the case of a veteran who served on active duty during the Persian Gulf War, 90 days provide to such member a written explanation of the provisions of clause (B) of paragraph (1) of this subsection and enter in the service records of the member a statement signed by the member acknowledging receipt of such explanation (or, if the member refuses to sign such statement, a certification from an officer designated for such purpose by the Secretary concerned that the member was provided such explanation).

(3) The total amount which the Secretary may expend for furnishing, during any twelve-month period, outpatient dental services, treatment, or related dental appliances to a veteran under this section through private facilities for which the Secretary has contracted under clause (1), (2), or (5) of section 1703(a) of this title may not exceed $1,000 unless the Secretary determines, prior to the furnishing of such services, treatment, or appliances and based on an examination of the veteran by a dentist employed by the Department (or, in an area where no such dentist is available, by a dentist conducting such examination under a contract or fee arrangement), that the furnishing of such services, treatment, or appliances at such cost is reasonably necessary.

(4)(A) Except as provided in subparagraph (B) of this paragraph, in any year in which the President's Budget for the fiscal year beginning October 1 of such year includes an amount for expenditures for contract dental care under the provisions of this subsection and section 1703 of this title during such fiscal year in excess of the level of expenditures made for such purpose during fiscal year 1978, the Secretary shall, not later than February 15 of such year, submit a report to the appropriate committees of the Congress justifying the requested level of expenditures for contract dental care and explaining why the application of the criteria prescribed in section 1703 of this title for contracting with private facilities and in the second sentence of section 1710(c) of this title for furnishing incidental dental care to hospitalized veterans will not preclude the need for expenditures for contract dental care in excess of the fiscal year 1978 level of expenditures for such purpose. In any case in which the amount included in the President's Budget for any fiscal year for expenditures for contract dental care under such provisions is not in excess of the level of expenditures made for such purpose during fiscal year 1978 and the Secretary determines after the date of submission of such budget and before the end of such fiscal year that the level of expenditures for such contract dental care during such fiscal year will exceed the fiscal year 1978 level of expenditures, the Secretary shall submit a report to the appropriate committees of the Congress containing both a justification (with respect to the projected level of expenditures for such fiscal year) and an explanation as required in the preceding sentence in the case of a report submitted pursuant to such sentence. Any report submitted pursuant to this paragraph shall in-

clude a comment by the Secretary on the effect of the application of the criteria prescribed in the second sentence of section 1710(c) of this title for furnishing incidental dental care to hospitalized veterans.

(B) A report under subparagraph (A) of this paragraph with respect to a fiscal year is not required if, in the documents submitted by the Secretary to the Congress in justification for the amounts included for Department programs in the President's Budget, the Secretary specifies with respect to contract dental care described in such subparagraph—

(i) the actual level of expenditures for such care in the fiscal year preceding the fiscal year in which such Budget is submitted;

(ii) a current estimate of the level of expenditures for such care in the fiscal year in which such Budget is submitted; and

(iii) the amount included in such Budget for such care.

(b) Dental services and related appliances for a dental condition or disability described in paragraph (1)(B) of subsection (a) shall be furnished on a one-time completion basis, unless the services rendered on a one-time completion basis are found unacceptable within the limitations of good professional standards, in which event such additional services may be afforded as are required to complete professionally acceptable treatment.

(c) Dental appliances, wheelchairs, artificial limbs, trusses, special clothing, and similar appliances to be furnished by the Secretary under this section may be procured by the Secretary either by purchase or by manufacture, whichever the Secretary determines may be advantageous and reasonably necessary.

(d) The Secretary shall furnish to each veteran who is receiving additional compensation or allowance under chapter 11 of this title, or increased pension as a veteran of a period of war, by reason of being permanently housebound or in need of regular aid and attendance, such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of any illness or injury suffered by such veteran. The Secretary shall continue to furnish such drugs and medicines so ordered to any such veteran in need of regular aid and attendance whose pension payments have been discontinued solely because such veteran's annual income is greater than the applicable maximum annual income limitation, but only so long as such veteran's annual income does not exceed such maximum annual income limitation by more than $1,000.

(e) In order to assist the Secretary of Health and Human Services in carrying out national immunization programs under other provisions of law, the Secretary may authorize the administration of immunizations to eligible veterans who voluntarily request such immunizations in connection with the provision of care for a disability under this chapter in any Department health care facility. Any such immunization shall be made using vaccine furnished by the Secretary of Health and Human Services at no cost to the Department. For such purpose, notwithstanding any other provision of law, the Secretary of Health and Human Services may provide such vaccine to the Department at no cost. Section 7316 of this title

shall apply to claims alleging negligence or malpractice on the part of Department personnel granted immunity under such section.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1142, Sec. 612; Pub. L. 86–639, Sec. 1, July 12, 1960, 74 Stat. 472; Pub. L. 87–377, Sec. 1, Oct. 4, 1961, 75 Stat. 806; Pub. L. 87–583, Sec. 2, Aug. 14, 1962, 76 Stat. 381; Pub. L. 88–430, Aug. 14, 1964, 78 Stat. 438; Pub. L. 88–450, Sec. 7, Aug. 19, 1964, 78 Stat. 504; Pub. L. 88–664, Sec. 8, Oct. 13, 1964, 78 Stat. 1096; Pub. L. 90–77, title II, Sec. 203(b), Aug. 31, 1967, 81 Stat. 183; Pub. L. 91–102, Oct. 30, 1969, 83 Stat. 168; Pub. L. 91–500, Sec. 2, 3, Oct. 22, 1970, 84 Stat. 1096; Pub. L. 91–588, Sec. 4, 9(f), Dec. 24, 1970, 84 Stat. 1583, 1585; Pub. L. 93–82, title I, Sec. 103(a), Aug. 2, 1973, 87 Stat. 180; Pub. L. 94–581, title I, Sec. 103(a), title II, Sec. 202(f), 210(a)(3), Oct. 21, 1976, 90 Stat. 2844, 2856, 2862; Pub. L. 95–588, title III, Sec. 302, Nov. 4, 1978, 92 Stat. 2506; Pub. L. 96–22, title I, Sec. 101, 102(b), June 13, 1979, 93 Stat. 47; Pub. L. 96–151, title II, Sec. 203, 204, Dec. 20, 1979, 93 Stat. 1094; Pub. L. 97–35, title XX, Sec. 2002(a), Aug. 13, 1981, 95 Stat. 781; Pub. L. 97–37, Sec. 3(b), 5(b), (c), Aug. 14, 1981, 95 Stat. 936, 937; Pub. L. 97–72, title I, Sec. 102(b), 103(a), (b), Nov. 3, 1981, 95 Stat. 1048, 1049; Pub. L. 97–295, Sec. 4(17), (95)(A), Oct. 12, 1982, 96 Stat. 1306, 1313; Pub. L. 99–166, title I, Sec. 104, Dec. 3, 1985, 99 Stat. 944; Pub. L. 99–272, title XIX, Sec. 19011(b), 19012(c)(1), (2), Apr. 7, 1986, 100 Stat. 375, 382; Pub. L. 99–576, title II, Sec. 202, 231(b), 237(b)(2), title VII, Sec. 702(5), Oct. 28, 1986, 100 Stat. 3254, 3263, 3267, 3301; Pub. L. 100–322, title I, Sec. 101(a)–(c), (d)(2), (e)(1), (2), (f), (g)(1), (h)(1), 106, May 20, 1988, 102 Stat. 489–492, 494; Pub. L. 101–508, title VIII, Sec. 8013(b), Nov. 5, 1990, 104 Stat. 1388–346; Pub. L. 102–25, title III, Sec. 334(a), (c), Apr. 6, 1991, 105 Stat. 88, 89; renumbered Sec. 1712 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), (5), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–86, title III, Sec. 301, 302, Aug. 14, 1991, 105 Stat. 416; Pub. L. 102–585, title I, Sec. 103, Nov. 4, 1992, 106 Stat. 4946; Pub. L. 103–210, Sec. 1(b), Dec. 20, 1993, 107 Stat. 2496; Pub. L. 103–446, title XII, Sec. 1201(d)(3), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 103–452, title I, Sec. 101(e), 103(a)(2), Nov. 2, 1994, 108 Stat. 4784, 4786; Pub. L. 104–110, title I, Sec. 101(a)(2), Feb. 13, 1996, 110 Stat. 768; Pub. L. 104–262, title I, Sec. 101(b)(2)–(c)(2)(A), Oct. 9, 1996, 110 Stat. 3179; Pub. L. 106–419, title IV, Sec. 404(a)(3), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 108–170, title I, Sec. 101(a), Dec. 6, 2003, 117 Stat. 2043; Pub. L. 110–181, div. A, title XVII, Sec. 1709, Jan. 28, 2008, 122 Stat. 494.)

§ 1712A. Eligibility for readjustment counseling and related mental health services

(a)(1)(A) Upon the request of any veteran referred to in subparagraph (B), the Secretary shall furnish counseling to the veteran to assist the veteran in readjusting to civilian life. Such counseling may include a general mental and psychological assessment of the veteran to ascertain whether such veteran has mental or psychological problems associated with readjustment to civilian life.

(B) Subparagraph (A) applies to the following veterans:

(i) Any veteran who served on active duty—

(I) in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during the Vietnam era; or

(II) after May 7, l975, in an area at a time during which hostilities occurred in that area.

(ii) Any veteran (other than a veteran covered by clause (i)) who served on active duty during the Vietnam era who seeks or is furnished such counseling before January 1, 2004.

(iii) Any veteran who served on active duty—

(I) in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during a period of war after the Persian Gulf War; or

(II) in combat against a hostile force during a period of hostilities (as defined in paragraph (2)(B)) after November 11, 1998.

(2)(A) Upon the request of any veteran (other than a veteran covered by paragraph (1)) who served in the active military, naval, or air service in a theater of combat operations (as so determined) during a period of war, or in any other area during a period in which hostilities (as defined in subparagraph (B)) occurred in such area, the Secretary may furnish counseling to the veteran to assist the veteran in readjusting to civilian life.

(B) For the purposes of subparagraph (A), the term "hostilities" means an armed conflict in which the members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

(3) Upon request of a veteran described in paragraph (1)(B)(iii), the Secretary shall provide the veteran a preliminary general mental health assessment as soon as practicable after receiving the request, but not later than 30 days after receiving the request.

(b)(1) If, on the basis of the assessment furnished under subsection (a) of this section, a physician or psychologist employed by the Department (or, in areas where no such physician or psychologist is available, a physician or psychologist carrying out such function under a contract or fee arrangement with the Secretary) determines that the provision of mental health services to such veteran is necessary to facilitate the successful readjustment of the veteran to civilian life, such veteran shall, within the limits of Department facilities, be furnished such services on an outpatient basis. For the purposes of furnishing such mental health services, the counseling furnished under subsection (a) of this section shall be considered to have been furnished by the Department as a part of hospital care. Any hospital care and other medical services considered necessary on the basis of the assessment furnished under subsection (a) of this section shall be furnished only in accordance with the eligibility criteria otherwise set forth in this chapter (including the eligibility criteria set forth in section 1784 of this title).

(2) Mental health services furnished under paragraph (1) of this subsection may, if determined to be essential to the effective treatment and readjustment of the veteran, include such consultation, counseling, training, services, and expenses as are described in sections 1782 and 1783 of this title.

(c) The Under Secretary for Health may provide for such training of professional, paraprofessional, and lay personnel as is necessary to carry out this section effectively, and, in carrying out this section, may utilize the services of paraprofessionals, individuals who are volunteers working without compensation, and individuals who are veteran-students (as described in section 3485 of this title) in initial intake and screening activities.

(d)(1) In furnishing counseling and related mental health services under subsections (a) and (b) of this section, the Secretary shall have available the same authority to enter into contracts with private facilities that is available to the Secretary (under sections 1703(a)(2) and 1710(a)(1)(B) of this title) in furnishing medical

services to veterans suffering from total service-connected disabilities.

(2) Before furnishing counseling or related mental health services described in subsections (a) and (b) of this section through a contract facility, as authorized by this subsection, the Secretary shall approve (in accordance with criteria which the Secretary shall prescribe by regulation) the quality and effectiveness of the program operated by such facility for the purpose for which the counseling or services are to be furnished.

(3) The authority of the Secretary to enter into contracts under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(e) The Secretary, in cooperation with the Secretary of Defense, shall take such action as the Secretary considers appropriate to notify veterans who may be eligible for assistance under this section of such potential eligibility.

(f) For the purposes of this section:

(1) The term "center" means a facility which is operated by the Department for the provision of services under this section and which (A) is situated apart from Department general health-care facilities, or (B) was so situated but has been relocated to a Department general health-care facility.

(2) The term "Department general health-care facility" means a health-care facility which is operated by the Department for the furnishing of health-care services under this chapter, not limited to services provided through the program established under this section.

(Added Pub. L. 96–22, title I, Sec. 103(a)(1), June 13, 1979, 93 Stat. 48, Sec. 612A; amended Pub. L. 96–128, title V, Sec. 501(b), Nov. 28, 1979, 93 Stat. 987; Pub. L. 97–72, title I, Sec. 104(a)(1), (b), Nov. 3, 1981, 95 Stat. 1049; Pub. L. 98–160, title I, Sec. 101, Nov. 21, 1983, 97 Stat. 993; Pub. L. 99–166, title I, Sec. 105, 106, Dec. 3, 1985, 99 Stat. 944, 945; Pub. L. 99–272, title XIX, Sec. 19011(d)(4), 19012(c)(3), Apr. 7, 1986, 100 Stat. 379, 382; Pub. L. 99–576, title II, Sec. 204, title VII, Sec. 702(6), Oct. 28, 1986, 100 Stat. 3255, 3302; Pub. L. 100–322, title I, Sec. 107(a)–(e), May 20, 1988, 102 Stat. 494–496; Pub. L. 100–687, div. B, title XV, Sec. 1501(a), Nov. 18, 1988, 102 Stat. 4132; Pub. L. 102–25, title III, Sec. 334(d), Apr. 6, 1991, 105 Stat. 89; Pub. L. 102–54, Sec. 14(b)(11), June 13, 1991, 105 Stat. 283; renumbered Sec. 1712A and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), (6), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104–262, title I, Sec. 101(d)(5), title III, Sec. 331, Oct. 9, 1996, 110 Stat. 3180, 3197; Pub. L. 106–117, title II, Sec. 205(a), Nov. 30, 1999, 113 Stat. 1563; Pub. L. 107–135, title II, Sec. 208(e)(3)(A), Jan. 23, 2002, 115 Stat. 2463; Pub. L. 110–181, div. A, title XVII, Sec. 1708(b), Jan. 28, 2008, 122 Stat. 494; Pub. L. 110–387, title IX, Sec. 901(a)(1), Oct. 10, 2008, 122 Stat. 4142.)

§ 1712B. Counseling for former prisoners of war

The Secretary may establish a program under which, upon the request of a veteran who is a former prisoner of war, the Secretary, within the limits of Department facilities, furnishes counseling to such veteran to assist such veteran in overcoming the psychological effects of the veteran's detention or internment as a prisoner of war.

(Added Pub. L. 99–166, title I, Sec. 107(a), Dec. 3, 1985, 99 Stat. 945, Sec. 612B; renumbered Sec. 1712B and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

[§ 1713. Renumbered 1781]

§ 1714. Fitting and training in use of prosthetic appliances; guide dogs; service dogs

(a) Any veteran who is entitled to a prosthetic appliance shall be furnished such fitting and training, including institutional training, in the use of such appliance as may be necessary, whether in a Department facility or other training institution, or by outpatient treatment, including such service under contract, and including travel and incidental expenses (under the terms and conditions set forth in section 111 of this title) to and from such veteran's home to such hospital or training institution.

(b) The Secretary may provide guide dogs trained for the aid of the blind to veterans who are enrolled under section 1705 of this title. The Secretary may also provide such veterans with mechanical or electronic equipment for aiding them in overcoming the disability of blindness.

(c) The Secretary may, in accordance with the priority specified in section 1705 of this title, provide—

(1) service dogs trained for the aid of the hearing impaired to veterans who are hearing impaired and are enrolled under section 1705 of this title; and

(2) service dogs trained for the aid of persons with spinal cord injury or dysfunction or other chronic impairment that substantially limits mobility to veterans with such injury, dysfunction, or impairment who are enrolled under section 1705 of this title.

(d) In the case of a veteran provided a dog under subsection (b) or (c), the Secretary may pay travel and incidental expenses for that veteran under the terms and conditions set forth in section 111 of this title to and from the veteran's home for expenses incurred in becoming adjusted to the dog.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1143, Sec. 614; Pub. L. 93–82, title I, Sec. 103(b), Aug. 2, 1973, 87 Stat. 181; Pub. L. 94–581, title II, Sec. 210(a)(5), Oct. 21, 1976, 90 Stat. 2862; Pub. L. 96–151, title II, Sec. 201(c), Dec. 20, 1979, 93 Stat. 1093; renumbered Sec. 1714 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 107–135, title II, Sec. 201(a), (b)(1), Jan. 23, 2002, 115 Stat. 2456, 2457.)

§ 1715. Tobacco for hospitalized veterans

The Secretary may furnish tobacco to veterans receiving hospital or domiciliary care.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1143, Sec. 615; renumbered Sec. 1715 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1716. Hospital care by other agencies of the United States

When so specified in an appropriation or other Act, the Secretary may make allotments and transfers to the Departments of Health and Human Services (Public Health Service), the Army, Navy, Air Force, or Interior, for disbursement by them under the various headings of their appropriations, of such amounts as are necessary for the care and treatment of veterans entitled to hospitalization from the Department under this chapter. The amounts to be charged the Department for care and treatment of veterans

in hospitals shall be calculated on the basis of a per diem rate approved by the Office of Management and Budget.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1143, Sec. 616; Pub. L. 94–581, title II, Sec. 202(g), Oct. 21, 1976, 90 Stat. 2856; Pub. L. 97–295, Sec. 4(95)(A), Oct. 12, 1982, 96 Stat. 1313; renumbered Sec. 1716 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1717. Home health services; invalid lifts and other devices

(a)(1) As part of medical services furnished to a veteran under section 1710(a) of this title, the Secretary may furnish such home health services as the Secretary finds to be necessary or appropriate for the effective and economical treatment of the veteran.

(2) Improvements and structural alterations may be furnished as part of such home health services only as necessary to assure the continuation of treatment for the veteran's disability or to provide access to the home or to essential lavatory and sanitary facilities. The cost of such improvements and structural alterations (or the amount of reimbursement therefor) under this subsection may not exceed—

(A) $4,100 in the case of medical services furnished under section 1710(a)(1) of this title, or for a disability described in section 1710(a)(2)(C) of this title; or

(B) $1,200 in the case of medical services furnished under any other provision of section 1710(a) of this title.

(3) The Secretary may furnish home health services to a veteran in any setting in which the veteran is residing. The Secretary may not furnish such services in such a manner as to relieve any other person or entity of a contractual obligation to furnish services to the veteran. When home health services are furnished in a setting other than the veteran's home, such services may not include any structural improvement or alteration.

(b) The Secretary may furnish an invalid lift, or any type of therapeutic or rehabilitative device, as well as other medical equipment and supplies (excluding medicines), if medically indicated, to any veteran who is receiving (1) compensation under section 1114(l)–(p) of this title (or the comparable rates provided pursuant to section 1134 of this title), or (2) pension under chapter 15 of this title by reason of being in need of regular aid and attendance.

(c) The Secretary may furnish devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) to any veteran who is profoundly deaf and is entitled to compensation on account of hearing impairment.

(d)(1) In the case of a member of the Armed Forces who, as determined by the Secretary, has a disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service, the Secretary may furnish improvements and structural alterations for such member for such disability or as otherwise described in subsection (a)(2) while such member is hospitalized or receiving outpatient medical care, services, or treatment for such disability if the Secretary determines that such member is likely to be discharged or released from the Armed Forces for such disability.

(2) The furnishing of improvements and alterations under paragraph (1) in connection with the furnishing of medical services

described in subparagraph (A) or (B) of subsection (a)(2) shall be subject to the limitation specified in the applicable subparagraph.

(Added Pub. L. 86–211, Sec. 5, Aug. 29, 1959, 73 Stat. 435, Sec. 617; amended Pub. L. 88–450, Sec. 6(a), (c), Aug. 19, 1964, 78 Stat. 504; Pub. L. 90–77, title I, Sec. 109, Aug. 31, 1967, 81 Stat. 180; Pub. L. 90–493, Sec. 3(a), Aug. 19, 1968, 82 Stat. 809; Pub. L. 97–295, Sec. 4(18), Oct. 12, 1982, 96 Stat. 1306; Pub. L. 98–528, title I, Sec. 107, Oct. 19, 1984, 98 Stat. 2690; Pub. L. 99–576, title II, Sec. 202(2), Oct. 28, 1986, 100 Stat. 3254; Pub. L. 100–322, title I, Sec. 101(d), May 20, 1988, 102 Stat. 491; renumbered Sec. 1717 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–405, title I, Sec. 101(a), Oct. 9, 1992, 106 Stat. 1973; Pub. L. 104–262, title I, Sec. 101(d)(6), Oct. 9, 1996, 110 Stat. 3180; Pub. L. 105–114, title IV, Sec. 402(b), Nov. 21, 1997, 111 Stat. 2294; Pub. L. 110–289, div. B, title VI, Sec. 2601, July 30, 2008, 122 Stat. 2858.)

§ 1718. Therapeutic and rehabilitative activities

(a) In providing rehabilitative services under this chapter, the Secretary, upon the recommendation of the Under Secretary for Health, may use the services of patients and members in Department health care facilities for therapeutic and rehabilitative purposes. Such patients and members shall not under these circumstances be held or considered as employees of the United States for any purpose. The Secretary shall prescribe the conditions for the use of such services.

(b)(1) In furnishing rehabilitative services under this chapter, the Secretary, upon the recommendation of the Under Secretary for Health, may enter into a contract or other arrangement with any appropriate source (whether or not an element of the Department of Veterans Affairs or of any other Federal entity) to provide for therapeutic work for patients and members in Department health care facilities.

(2) Notwithstanding any other provision of law, the Secretary may also furnish rehabilitative services under this subsection through contractual arrangements with nonprofit entities to provide for such therapeutic work for such patients. The Secretary shall establish appropriate fiscal, accounting, management, recordkeeping, and reporting requirements with respect to the activities of any such nonprofit entity in connection with such contractual arrangements.

(c)(1) There is hereby established in the Treasury of the United States a revolving fund known as the Department of Veterans Affairs Special Therapeutic and Rehabilitation Activities Fund (hereinafter in this section referred to as the "fund") for the purpose of furnishing rehabilitative services authorized in subsection (b) or (d). Such amounts of the fund as the Secretary may determine to be necessary to establish and maintain operating accounts for the various rehabilitative services activities may be deposited in checking accounts in other depositaries selected or established by the Secretary.

(2) All funds received by the Department under contractual arrangements made under subsection (b) or (d), or by nonprofit entities described in subsection (b)(2), shall be deposited in or credited to the fund, and the Secretary shall distribute out of the fund moneys to participants at rates not less than the wage rates specified in the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and regulations prescribed thereunder for work of similar character.

(3) The Under Secretary for Health shall prepare, for inclusion in the annual report submitted to Congress under section 529 of this title, a description of the scope and achievements of activities carried out under this section (including pertinent data regarding productivity and rates of distribution) during the prior twelve months and an estimate of the needs of the program of therapeutic and rehabilitation activities to be carried out under this section for the ensuing fiscal year.

(d) In providing to a veteran rehabilitative services under this chapter, the Secretary may furnish the veteran with the following:

(1) Work skills training and development services.

(2) Employment support services.

(3) Job development and placement services.

(e) In providing rehabilitative services under this chapter, the Secretary shall take appropriate action to make it possible for the patient to take maximum advantage of any benefits to which such patient is entitled under chapter 31, 34, or 35 of this title, and, if the patient is still receiving treatment of a prolonged nature under this chapter, the provision of rehabilitative services under this chapter shall be continued during, and coordinated with, the pursuit of education and training under such chapter 31, 34, or 35.

(f) The Secretary shall prescribe regulations to ensure that the priorities set forth in section 1705 of this title shall be applied, insofar as practicable, to participation in therapeutic and rehabilitation activities carried out under this section.

(g)(1) The Secretary may not consider any of the matters stated in paragraph (2) as a basis for the denial or discontinuance of a rating of total disability for purposes of compensation or pension based on the veteran's inability to secure or follow a substantially gainful occupation as a result of disability.

(2) Paragraph (1) applies to the following:

(A) A veteran's participation in an activity carried out under this section.

(B) A veteran's receipt of a distribution as a result of participation in an activity carried out under this section.

(C) A veteran's participation in a program of rehabilitative services that (i) is provided as part of the veteran's care furnished by a State home and (ii) is approved by the Secretary as conforming appropriately to standards for activities carried out under this section.

(D) A veteran's receipt of payment as a result of participation in a program described in subparagraph (C).

(3) A distribution of funds made under this section and a payment made to a veteran under a program of rehabilitative services described in paragraph (2)(C) shall be considered for the purposes of chapter 15 of this title to be a donation from a public or private relief or welfare organization.

(Added Pub. L. 87–574, Sec. 2(1), Aug. 6, 1962, 76 Stat. 308, Sec. 618; amended Pub. L. 94–581, title I, Sec. 105(a), Oct. 21, 1976, 90 Stat. 2845; Pub. L. 98–543, title III, Sec. 303, Oct. 24, 1984, 98 Stat. 2748; Pub. L. 99–576, title II, Sec. 205, Oct. 28, 1986, 100 Stat. 3256; Pub. L. 102–54, Sec. 10, 14(b)(12), June 13, 1991, 105 Stat. 273, 284; renumbered Sec. 1718 and amended Pub. L. 102–83, Sec. 2(c)(3), 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 402, 404–406; Pub. L. 102–86, title V, Sec. 506(a)(1), Aug. 14, 1991, 105 Stat. 426; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102–585, title IV, Sec. 401, Nov. 4,

1992, 106 Stat. 4953; Pub. L. 103–446, title XII, Sec. 1201(i)(1), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 104–262, title I, Sec. 101(d)(7), Oct. 9, 1996, 110 Stat. 3180; Pub. L. 108–170, title I, Sec. 104(b), Dec. 6, 2003, 117 Stat. 2045; Pub. L. 109–444, Sec. 8(a)(1), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109–461, title X, Secs. 1004(a)(1), 1006(b), Dec. 22, 2006, 120 Stat. 3465, 3468.)

§ 1719. Repair or replacement of certain prosthetic and other appliances

The Secretary may repair or replace any artificial limb, truss, brace, hearing aid, spectacles, or similar appliance (not including dental appliances) reasonably necessary to a veteran and belonging to such veteran which was damaged or destroyed by a fall or other accident caused by a service-connected disability for which such veteran is in receipt of, or but for the receipt of retirement pay would be entitled to, disability compensation.

(Added Pub. L. 87–850, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1126, Sec. 619; amended Pub. L. 94–581, title II, Sec. 210(a)(6), Oct. 21, 1976, 90 Stat. 2862; renumbered Sec. 1719 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1720. Transfers for nursing home care; adult day health care

(a)(1) Subject to subsection (b) of this section, the Secretary may transfer to a non-Department nursing home, for care at the expense of the United States—

(A) a veteran—

(i) who has been furnished care by the Secretary in a facility under the direct jurisdiction of the Secretary; and

(ii) who the Secretary determines—

(I) requires a protracted period of nursing home care which can be furnished in the non-Department nursing home; and

(II) in the case of a veteran who has been furnished hospital care in a facility under the direct jurisdiction of the Secretary, has received maximum benefits from such care; and

(B) a member of the Armed Forces—

(i) who has been furnished care in a hospital of the Armed Forces;

(ii) who the Secretary concerned determines has received maximum benefits from such care but requires a protracted period of nursing home care; and

(iii) who upon discharge from the Armed Forces will become a veteran.

(2) The Secretary may transfer a person to a nursing home under this subsection only if the Secretary determines that the cost to the United States of the care of such person in the nursing home will not exceed—

(A) the amount equal to 45 percent of the cost of care furnished by the Department in a general hospital under the direct jurisdiction of the Secretary (as such cost may be determined annually by the Secretary); or

(B) the amount equal to 50 percent of such cost, if such higher amount is determined to be necessary by the Secretary

(upon the recommendation of the Under Secretary for Health) to provide adequate care.

(3) Nursing home care may not be furnished under this subsection at the expense of the United States for more than six months in the aggregate in connection with any one transfer except—

(A) in the case of a veteran—

(i) who is transferred to a non-Department nursing home from a hospital under the direct jurisdiction of the Secretary; and

(ii) whose hospitalization was primarily for a service-connected disability;

(B) in a case in which the nursing home care is required for a service-connected disability; or

(C) in a case in which, in the judgment of the Secretary, a longer period of nursing home care is warranted.

(4) A veteran who is furnished care by the Secretary in a hospital or domiciliary facility in Alaska or Hawaii may be furnished nursing home care at the expense of the United States under this subsection even if such hospital or domiciliary facility is not under the direct jurisdiction of the Secretary.

(b) No veteran may be transferred or admitted to any institution for nursing home care under this section, unless such institution is determined by the Secretary to meet such standards as the Secretary may prescribe. The standards prescribed and any report of inspection of institutions furnishing care to veterans under this section made by or for the Secretary shall, to the extent possible, be made available to all Federal, State, and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(c)(1)(A) In furnishing nursing home care, adult day health care, or other extended care services under this section, the Secretary may enter into agreements for furnishing such care or services with—

(i) in the case of the medicare program, a provider of services that has entered into a provider agreement under section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)); and

(ii) in the case of the medicaid program, a provider participating under a State plan under title XIX of such Act (42 U.S.C. 1396 et seq.).

(B) In entering into an agreement under subparagraph (A) with a provider of services described in clause (i) of that subparagraph or a provider described in clause (ii) of that subparagraph, the Secretary may use the procedures available for entering into provider agreements under section 1866(a) of the Social Security Act.

(2) In applying the provisions of section 2(b)(1) of the Service Contract Act of 1965 (41 U.S.C. 351(b)(1)) with respect to any contract entered into under this section to provide nursing home care of veterans, the payment of wages not less than those specified in section 6(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(b)) shall be deemed to constitute compliance with such provisions.

(d)(1) Subject to subsection (b) of this section, the Secretary may authorize for any veteran requiring nursing home care for a service-connected disability direct admission for such care at the expense of the United States to any non-Department nursing home. The Secretary may also authorize a direct admission to such a nursing home for nursing home care for any veteran who has been discharged from a hospital under the direct jurisdiction of the Secretary and who is currently receiving medical services as part of home health services from the Department.

(2) Direct admission authorized by paragraph (1) of this subsection may be authorized upon determination of need therefor—

(A) by a physician employed by the Department; or

(B) in areas where no such physician is available, by a physician carrying out such function under contract or fee arrangement,

based on an examination by such physician.

(3) The amount which may be paid for such care and the length of care available under this subsection shall be the same as authorized under subsection (a) of this section.

(e)(1) The cost of intermediate care for purposes of payment by the United States pursuant to subsection (a)(2)(B) of this section shall be determined by the Secretary except that the rate of reimbursement shall be commensurately less than that provided for nursing home care.

(2) For the purposes of this section, the term "non-Department nursing home" means a public or private institution not under the direct jurisdiction of the Secretary which furnishes nursing home care.

(f)(1)(A) The Secretary may furnish adult day health care services to a veteran enrolled under section 1705(a) of this title who would otherwise require nursing home care.

(B) The Secretary may provide in-kind assistance (through the services of Department employees and the sharing of other Department resources) to a facility furnishing care to veterans under subparagraph (A) of this paragraph. Any such in-kind assistance shall be provided under a contract or agreement between the Secretary and the facility concerned. The Secretary may provide such assistance only for use solely in the furnishing of adult day health care and only if, under such contract or agreement, the Department receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Department facility that provided the assistance.

(2) The Secretary may conduct, at facilities over which the Secretary has direct jurisdiction, programs for the furnishing of adult day health care to veterans who are eligible for such care under paragraph (1) of this subsection, except that necessary travel and incidental expenses (or transportation in lieu thereof) may be furnished under such a program only under the terms and conditions set forth in section 111 of this title. The furnishing of care under any such program shall be subject to the limitations that are appli-

cable to the duration of adult day health care furnished under paragraph (1) of this subsection.

(Added Pub. L. 88–450, Sec. 2(a), Aug. 19, 1964, 78 Stat. 500, Sec. 620; amended Pub. L. 90–429, July 26, 1968, 82 Stat. 446; Pub. L. 90–612, Sec. 1, 3, Oct. 21, 1968, 82 Stat. 1202; Pub. L. 91–101, Oct. 30, 1969, 83 Stat. 167; Pub. L. 93–82, title I, Sec. 104, Aug. 2, 1973, 87 Stat. 182; Pub. L. 94–581, title I, Sec. 106, title II, Sec. 202(h), 210(a)(7), Oct. 21, 1976, 90 Stat. 2847, 2856, 2863; Pub. L. 97–295, Sec. 4(19), Oct. 12, 1982, 96 Stat. 1306; Pub. L. 98–160, title I, Sec. 103(a)(1), (2), Nov. 21, 1983, 97 Stat. 995; Pub. L. 99–166, title I, Sec. 108(a)–(c), Dec. 3, 1985, 99 Stat. 946, 947; Pub. L. 99–272, title XIX, Sec. 19011(d)(5), Apr. 7, 1986, 100 Stat. 379; Pub. L. 100–322, title I, Sec. 103(b), 111(a), May 20, 1988, 102 Stat. 493, 499; renumbered Sec. 1720 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(ii), (3)–(5), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104–262, title I, Sec. 101(d)(8), Oct. 9, 1996, 110 Stat. 3180; Pub. L. 105–114, title IV, Sec. 402(c), Nov. 21, 1997, 111 Stat. 2294; Pub. L. 106–117, title I, Sec. 101(d), Nov. 30, 1999, 113 Stat. 1549; Pub. L. 108–170, title I, Sec. 105, Dec. 6, 2003, 117 Stat. 2045.)

§ 1720A. Treatment and rehabilitative services for persons with drug or alcohol dependency

(a) The Secretary, in consultation with the Secretary of Labor and the Director of the Office of Personnel Management, may take appropriate steps to (1) urge all Federal agencies and appropriate private and public firms, organizations, agencies, and persons to provide appropriate employment and training opportunities for veterans who have been provided treatment and rehabilitative services under this title for alcohol or drug dependence or abuse disabilities and have been determined by competent medical authority to be sufficiently rehabilitated to be employable, and (2) provide all possible assistance to the Secretary of Labor in placing such veterans in such opportunities.

(b) Upon receipt of an application for treatment and rehabilitative services under this title for an alcohol or drug dependence or abuse disability from any individual who has been discharged or released from active military, naval, or air service but who is not eligible for such treatment and services, the Secretary shall—

(1) provide referral services to assist such individual, to the maximum extent practicable, in obtaining treatment and rehabilitative services from sources outside the Department; and

(2) if pertinent, advise such individual of such individual's rights to apply to the appropriate military, naval, or air service and the Department for review of such individual's discharge or release from such service.

(c)(1) Any person serving in the active military, naval, or air service who is determined by the Secretary concerned to have an alcohol or drug dependence or abuse disability may be transferred to any facility in order for the Secretary to furnish care or treatment and rehabilitative services for such disability. Care and services provided to a member so transferred shall be provided as if such member were a veteran. Any transfer of any such member for such care and services shall be made pursuant to such terms as may be agreed upon by the Secretary concerned and the Secretary, subject to the provisions of sections 1535 and 1536 of title 31.

(2) No person serving in the active military, naval, or air service may be transferred pursuant to an agreement made under

paragraph (1) of this subsection unless such person requests such transfer in writing for a specified period of time. No such person transferred pursuant to such a request may be furnished such care and services by the Secretary beyond the period of time specified in such request unless such person requests in writing an extension for a further specified period of time and such request is approved by the Secretary.

(d)(1) The Secretary shall ensure that each medical center of the Department develops and carries out a plan to provide treatment for substance use disorders, either through referral or direct provision of services, to veterans who require such treatment.

(2) Each plan under paragraph (1) shall make available clinically proven substance abuse treatment methods, including opioid substitution therapy, to veterans with respect to whom a qualified medical professional has determined such treatment methods to be appropriate.

(Added Pub. L. 96–22, title I, Sec. 104(a), June 13, 1979, 93 Stat. 50, Sec. 620A; amended Pub. L. 96–128, title V, Sec. 501(c), Nov. 28, 1979, 93 Stat. 987; Pub. L. 97–251, Sec. 6, Sept. 8, 1982, 96 Stat. 716; Pub. L. 97–258, Sec. 3(k)(1), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 99–108, Sec. 3, Sept. 30, 1985, 99 Stat. 481; Pub. L. 99–166, title I, Sec. 101(a), (b)(1), Dec. 3, 1985, 99 Stat. 942, 943; Pub. L. 100–687, div. B, title XV, Sec. 1509, Nov. 18, 1988, 102 Stat. 4137; Pub. L. 100–689, title V, Sec. 502(a)(1), (b), Nov. 18, 1988, 102 Stat. 4179; Pub. L. 102–54, Sec. 14(b)(13), June 13, 1991, 105 Stat. 284; renumbered Sec. 1720A and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–86, title III, Sec. 303, Aug. 14, 1991, 105 Stat. 416; Pub. L. 103–452, title I, Sec. 103(b), Nov. 2, 1994, 108 Stat. 4786; Pub. L. 104–110, title I, Sec. 101(b), Feb. 13, 1996, 110 Stat. 768; Pub. L. 105–114, title IV, Sec. 202(b), Nov. 21, 1997, 111 Stat. 2287; Pub. L. 106–117, title I, Sec. 114, Nov. 30, 1999, 113 Stat. 1558; Pub. L. 106–419, title IV, Sec. 404(a)(4), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 107–95, Sec. 8(c), Dec. 21, 2001, 115 Stat. 920.)

§ 1720B. Respite care

(a) The Secretary may furnish respite care services to a veteran who is enrolled to receive care under section 1710 of this title.

(b) For the purpose of this section, the term "respite care services" means care and services which—

(1) are of limited duration;

(2) are furnished on an intermittent basis to a veteran who is suffering from a chronic illness and who resides primarily at home; and

(3) are furnished for the purpose of helping the veteran to continue residing primarily at home.

(c) In furnishing respite care services, the Secretary may enter into contract arrangements.

(Added Pub. L. 99–576, title II, Sec. 201(a)(1), Oct. 28, 1986, 100 Stat. 3254, Sec. 620B; amended Pub. L. 101–237, title II, Sec. 201(a), Dec. 18, 1989, 103 Stat. 2066; renumbered Sec. 1720B and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–585, title V, Sec. 502, Nov. 4, 1992, 106 Stat. 4955; Pub. L. 106–117, title I, Sec. 101(e), Nov. 30, 1999, 113 Stat. 1549.)

§ 1720C. Noninstitutional alternatives to nursing home care

(a) The Secretary may furnish medical, rehabilitative, and health-related services in noninstitutional settings for veterans who are eligible under this chapter for, and are in need of, nursing

home care. The Secretary shall give priority for participation in such program to veterans who—

(1) are in receipt of, or are in need of, nursing home care primarily for the treatment of a service-connected disability; or

(2) have a service-connected disability rated at 50 percent or more.

(b)(1) Under the program conducted pursuant to subsection (a), the Secretary shall (A) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (B) designate Department health-care employees to furnish case management services to veteran furnished services under the program.

(2) For the purposes of paragraph (1), the term "case management services" includes the coordination and facilitation of all services furnished to a veteran by the Department of Veterans Affairs, either directly or through contract, including assessment of needs, planning, referral (including referral for services to be furnished by the Department, either directly or through a contract, or by an entity other than the Department), monitoring, reassessment, and followup.

(c) The Secretary may provide in-kind assistance (through the services of Department of Veterans Affairs employees and the sharing of other Department resources) to a facility furnishing services to veterans under subsection (b)(1)(A). Any such in-kind assistance shall be provided under a contract between the Department and the facility concerned. The Secretary may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Department receives reimbursement for the full cost of such assistance (including the cost of services and supplies and normal depreciation and amortization of equipment). Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Department facility that provided the assistance.

(d) The total cost of providing services or in-kind assistance in the case of any veteran for any fiscal year under the program may not exceed 65 percent of the cost that would have been incurred by the Department during that fiscal year if the veteran had been furnished, instead, nursing home care under section 1710 of this title during that fiscal year.

(e) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to the extent that appropriations are available.

(Added Pub. L. 101–366, title II, Sec. 201(a)(1), Aug. 15, 1990, 104 Stat. 437, Sec. 620C; renumbered Sec. 1720C and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–452, title I, Sec. 103(c), Nov. 2, 1994, 108 Stat. 4786; Pub. L. 104–110, title I, Sec. 101(c), Feb. 13, 1996, 110 Stat. 768; Pub. L. 105–114, title II, Sec. 206(a)–(b)(2), Nov. 21, 1997, 111 Stat. 2289.)

§ 1720D. Counseling and treatment for sexual trauma

(a)(1) The Secretary shall operate a program under which the Secretary provides counseling and appropriate care and services to veterans who the Secretary determines require such counseling and

care and services to overcome psychological trauma, which in the judgment of a mental health professional employed by the Department, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty or active duty for training.

(2) In furnishing counseling to a veteran under this subsection, the Secretary may provide such counseling pursuant to a contract with a qualified mental health professional if (A) in the judgment of a mental health professional employed by the Department, the receipt of counseling by that veteran in facilities of the Department would be clinically inadvisable, or (B) Department facilities are not capable of furnishing such counseling to that veteran economically because of geographical inaccessibility.

(b)(1) The Secretary shall give priority to the establishment and operation of the program to provide counseling and care and services under subsection (a). In the case of a veteran eligible for counseling and care and services under subsection (a), the Secretary shall ensure that the veteran is furnished counseling and care and services under this section in a way that is coordinated with the furnishing of such care and services under this chapter.

(2) In establishing a program to provide counseling under subsection (a), the Secretary shall—

(A) provide for appropriate training of mental health professionals and such other health care personnel as the Secretary determines necessary to carry out the program effectively;

(B) seek to ensure that such counseling is furnished in a setting that is therapeutically appropriate, taking into account the circumstances that resulted in the need for such counseling; and

(C) provide referral services to assist veterans who are not eligible for services under this chapter to obtain those from sources outside the Department.

(c) The Secretary shall provide information on the counseling and treatment available to veterans under this section. Efforts by the Secretary to provide such information—

(1) shall include availability of a toll-free telephone number (commonly referred to as an 800 number);

(2) shall ensure that information about the counseling and treatment available to veterans under this section—

(A) is revised and updated as appropriate;

(B) is made available and visibly posted at appropriate facilities of the Department; and

(C) is made available through appropriate public information services; and

(3) shall include coordination with the Secretary of Defense seeking to ensure that individuals who are being separated from active military, naval, or air service are provided appropriate information about programs, requirements, and procedures for applying for counseling and treatment under this section.

(d) In this section, the term "sexual harassment" means repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character.

(Added Pub. L. 102–585, title I, Sec. 102(a)(1), Nov. 4, 1992, 106 Stat. 4945; amended Pub. L. 103–452, title I, Sec. 101(a)–(d), (f)(1), (2)(A), (g)(1), Nov. 2, 1994, 108 Stat. 4783, 4784; Pub. L. 105–368, title IX, Sec. 902, Nov. 11, 1998, 112 Stat. 3360; Pub. L. 106–117, title I, Sec. 115(a)–(c), Nov. 30, 1999, 113 Stat. 1558; Pub. L. 108–422, title III, Sec. 301, Nov. 30, 2004, 118 Stat. 2382.)

§ 1720E. Nasopharyngeal radium irradiation

(a) The Secretary may provide any veteran a medical examination, and hospital care, medical services, and nursing home care, which the Secretary determines is needed for the treatment of any cancer of the head or neck which the Secretary finds may be associated with the veteran's receipt of nasopharyngeal radium irradiation treatments in active military, naval, or air service.

(b) The Secretary shall provide care and services to a veteran under subsection (a) only on the basis of evidence in the service records of the veteran which document nasopharyngeal radium irradiation treatment in service, except that, notwithstanding the absence of such documentation, the Secretary may provide such care to a veteran who—

(1) served as an aviator in the active military, naval, or air service before the end of the Korean conflict; or

(2) underwent submarine training in active naval service before January 1, 1965.

(Added Pub. L. 105–368, title IX, Sec. 901(a), Nov. 11, 1998, 112 Stat. 3360.)

§ 1720F. Comprehensive program for suicide prevention among veterans

(a) ESTABLISHMENT.—The Secretary shall develop and carry out a comprehensive program designed to reduce the incidence of suicide among veterans incorporating the components described in this section.

(b) STAFF EDUCATION.—In carrying out the comprehensive program under this section, the Secretary shall provide for mandatory training for appropriate staff and contractors (including all medical personnel) of the Department who interact with veterans. This training shall cover information appropriate to the duties being performed by such staff and contractors. The training shall include information on—

(1) recognizing risk factors for suicide;

(2) proper protocols for responding to crisis situations involving veterans who may be at high risk for suicide; and

(3) best practices for suicide prevention.

(c) HEALTH ASSESSMENTS OF VETERANS.—In carrying out the comprehensive program, the Secretary shall direct that medical staff offer mental health in their overall health assessment when veterans seek medical care at a Department medical facility (including a center established under section 1712A of this title) and make referrals, at the request of the veteran concerned, to appropriate counseling and treatment programs for veterans who show signs or symptoms of mental health problems.

(d) DESIGNATION OF SUICIDE PREVENTION COUNSELORS.—In carrying out the comprehensive program, the Secretary shall designate a suicide prevention counselor at each Department medical facility other than centers established under section 1712A of this title. Each counselor shall work with local emergency rooms, police

departments, mental health organizations, and veterans service organizations to engage in outreach to veterans and improve the coordination of mental health care to veterans.

(e) BEST PRACTICES RESEARCH.—In carrying out the comprehensive program, the Secretary shall provide for research on best practices for suicide prevention among veterans. Research shall be conducted under this subsection in consultation with the heads of the following entities:

(1) The Department of Health and Human Services.

(2) The National Institute of Mental Health.

(3) The Substance Abuse and Mental Health Services Administration.

(4) The Centers for Disease Control and Prevention.

(f) SEXUAL TRAUMA RESEARCH.—In carrying out the comprehensive program, the Secretary shall provide for research on mental health care for veterans who have experienced sexual trauma while in military service. The research design shall include consideration of veterans of a reserve component.

(g) 24-HOUR MENTAL HEALTH CARE.—In carrying out the comprehensive program, the Secretary shall provide for mental health care availability to veterans on a 24-hour basis.

(h) HOTLINE.—In carrying out the comprehensive program, the Secretary may provide for a toll-free hotline for veterans to be staffed by appropriately trained mental health personnel and available at all times.

(i) OUTREACH AND EDUCATION FOR VETERANS AND FAMILIES.—In carrying out the comprehensive program, the Secretary shall provide for outreach to and education for veterans and the families of veterans, with special emphasis on providing information to veterans of Operation Iraqi Freedom and Operation Enduring Freedom and the families of such veterans. Education to promote mental health shall include information designed to—

(1) remove the stigma associated with mental illness;

(2) encourage veterans to seek treatment and assistance for mental illness;

(3) promote skills for coping with mental illness; and

(4) help families of veterans with—

(A) understanding issues arising from the readjustment of veterans to civilian life;

(B) identifying signs and symptoms of mental illness; and

(C) encouraging veterans to seek assistance for mental illness.

(j) PEER SUPPORT COUNSELING PROGRAM.—(1) In carrying out the comprehensive program, the Secretary may establish and carry out a peer support counseling program, under which veterans shall be permitted to volunteer as peer counselors—

(A) to assist other veterans with issues related to mental health and readjustment; and

(B) to conduct outreach to veterans and the families of veterans.

(2) In carrying out the peer support counseling program under this subsection, the Secretary shall provide adequate training for peer counselors.

(k) OTHER COMPONENTS.—In carrying out the comprehensive program, the Secretary may provide for other actions to reduce the incidence of suicide among veterans that the Secretary considers appropriate.

(Added Pub. L. 110–110, Sec. 3(a)(1), Nov. 5, 2007, 121 Stat. 1031.)

SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

§ 1721. Power to make rules and regulations

Rules and regulations prescribed under section 501(a) of this title shall include rules and regulations to promote good conduct on the part of persons who are receiving hospital, nursing home, and domiciliary care and medical services in Department facilities. The Secretary may prescribe in rules and regulations under such section limitations in connection with the furnishing of such care and services during a period of national emergency (other than a period of war or an emergency described in section 8111A of this title).

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1143, Sec. 621; Pub. L. 94–581, title II, Sec. 202(j), 210(a)(8), Oct. 21, 1976, 90 Stat. 2856, 2863; Pub. L. 100–322, title I, Sec. 133, May 20, 1988, 102 Stat. 507; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1721 and amended Pub. L. 102–83, Sec. 2(c)(1), 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 402, 404–406.)

§ 1722. Determination of inability to defray necessary expenses; income thresholds

(a) For the purposes of section 1710(a)(2)(G) of this title, a veteran shall be considered to be unable to defray the expenses of necessary care if—

(1) the veteran is eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(2) the veteran is in receipt of pension under section 1521 of this title; or

(3) the veteran's attributable income is not greater than the amount set forth in subsection (b).

(b)(1) For purposes of subsection (a)(3), the income threshold for the calendar year beginning on January 1, 1990, is—

(A) $17,240 in the case of a veteran with no dependents; and

(B) $20,688 in the case of a veteran with one dependent, plus $1,150 for each additional dependent.

(2) For a calendar year beginning after December 31, 1990, the amounts in effect for purposes of this subsection shall be the amounts in effect for the preceding calendar year as adjusted under subsection (c) of this section.

(c) Effective on January 1 of each year, the amounts in effect under subsection (b) of this section shall be increased by the percentage by which the maximum rates of pension were increased under section 5312(a) of this title during the preceding calendar year.

(d)(1) Notwithstanding the attributable income of a veteran, the Secretary may refuse to make a determination described in

paragraph (2) of this subsection if the corpus of the estate of the veteran is such that under all the circumstances it is reasonable that some part of the corpus of the estate of the veteran be consumed for the veteran's maintenance.

(2) A determination described in this paragraph is a determination that for purposes of subsection (a)(3) of this section a veteran's attributable income is not greater than the amount determined under subsection (b) of this section.

(3) For the purposes of paragraph (1) of this subsection, the corpus of the estate of a veteran shall be determined in the same manner as the manner in which determinations are made of the corpus of the estates of persons under section 1522 of this title.

(e)(1) In order to avoid a hardship to a veteran described in paragraph (2) of this subsection, the Secretary may deem the veteran to have an attributable income during the previous year not greater than the amount determined under subsection (b) of this section.

(2) A veteran is described in this paragraph for the purposes of subsection (a) of this section if—

(A) the veteran has an attributable income greater than the amount determined under subsection (b) of this section; and

(B) the current projections of such veteran's income for the current year are that the veteran's income for such year will be substantially below the amount determined under subsection (b).

(f) For purposes of this section:

(1) The term "attributable income" means the income of a veteran for the previous year determined in the same manner as the manner in which a determination is made of the total amount of income by which the rate of pension for such veteran under section 1521 of this title would be reduced if such veteran were eligible for pension under that section.

(2) The term "corpus of the estate of the veteran" includes the corpus of the estates of the veteran's spouse and dependent children, if any.

(3) The term "previous year" means the calendar year preceding the year in which the veteran applies for care or services under section 1710(a) of this title.

(g) For the purposes of section 1724(c) of this title, the fact that a veteran is—

(1) eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(2) a veteran with a service-connected disability; or

(3) in receipt of pension under any law administered by the Secretary,

shall be accepted as sufficient evidence of such veteran's inability to defray necessary expenses.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1144, Sec. 622; Pub. L. 89–612, Sec. 1, Sept. 30, 1966, 80 Stat. 859; Pub. L. 91–500, Sec. 1, Oct. 22, 1970, 84 Stat. 1096; Pub. L. 94–581, title II, Sec. 202(k), 210(a)(9), Oct. 21, 1976, 90 Stat. 2856, 2863; Pub. L. 96–330, title IV, Sec. 401(a), Aug. 26, 1980, 94 Stat. 1051; Pub. L. 99–272, title XIX, Sec. 19011(c)(1), Apr. 7, 1986, 100 Stat. 376; Pub. L. 100–322, title I, Sec. 102(b), May 20, 1988, 102 Stat. 493; Pub. L. 101–508, title VIII, Sec. 8013(c), Nov.

5, 1990, 104 Stat. 1388–346; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1722 and amended Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 104–262, title I, Sec. 101(d)(9), Oct. 9, 1996, 110 Stat. 3180.)

§ 1722A. Copayment for medications

(a)(1) Subject to paragraph (2), the Secretary shall require a veteran to pay the United States $2 for each 30-day supply of medication furnished such veteran under this chapter on an outpatient basis for the treatment of a non-service-connected disability or condition. If the amount supplied is less than a 30-day supply, the amount of the charge may not be reduced.

(2) The Secretary may not require a veteran to pay an amount in excess of the cost to the Secretary for medication described in paragraph (1).

(3) Paragraph (1) does not apply—

(A) to a veteran with a service-connected disability rated 50 percent or more;

(B) to a veteran who is a former prisoner of war; or

(C) to a veteran whose annual income (as determined under section 1503 of this title) does not exceed the maximum annual rate of pension which would be payable to such veteran if such veteran were eligible for pension under section 1521 of this title.

(b) The Secretary, pursuant to regulations which the Secretary shall prescribe, may—

(1) increase the copayment amount in effect under subsection (a); and

(2) establish a maximum monthly and a maximum annual pharmaceutical copayment amount under subsection (a) for veterans who have multiple outpatient prescriptions.

(c) Amounts collected under this section shall be deposited in the Department of Veterans Affairs Medical Care Collections Fund.

(Added Pub. L. 101–508, title VIII, Sec. 8012(a)(1), Nov. 5, 1990, 104 Stat. 1388–345, Sec. 622A; renumbered Sec. 1722A, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; amended Pub. L. 102–139, title V, Sec. 518(a), Oct. 28, 1991, 105 Stat. 779; Pub. L. 102–229, title I, Dec. 12, 1991, 105 Stat. 1709; Pub. L. 102–568, title VI, Sec. 605(a), 606(a), Oct. 29, 1992, 106 Stat. 4343; Pub. L. 103–66, title XII, Sec. 12002(b), Aug. 10, 1993, 107 Stat. 414; Pub. L. 103–446, title XII, Sec. 1201(e)(7), Nov. 2, 1994, 108 Stat. 4685; Pub. L. 105–33, title VIII, Sec. 8021(b), 8023(b)(3), Aug. 5, 1997, 111 Stat. 665, 667; Pub. L. 106–117, title II, Sec. 201(a), Nov. 30, 1999, 113 Stat. 1560; Pub. L. 108–7, div. K, title I, Sec. 113(c), Feb. 20, 2003, 117 Stat. 482; Pub. L. 108–170, title I, Sec. 101(b), Dec. 6, 2003, 117 Stat. 2043.)

§ 1723. Furnishing of clothing

The Secretary shall not furnish clothing to persons who are in Department facilities, except (1) where the furnishing of such clothing to indigent persons is necessary to protect health or sanitation, and (2) where the Secretary furnishes veterans with special clothing made necessary by the wearing of prosthetic appliances.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1144, Sec. 623; Pub. L. 94–581, title II, Sec. 210(a)(10), Oct. 21, 1976, 90 Stat. 2863; renumbered Sec. 1723 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1724. Hospital care, medical services, and nursing home care abroad

(a) Except as provided in subsections (b) and (c), the Secretary shall not furnish hospital or domiciliary care or medical services outside any State.

(b)(1) The Secretary may furnish hospital care and medical services outside a State to a veteran who is otherwise eligible to receive hospital care and medical services if the Secretary determines that such care and services are needed for the treatment of a service-connected disability of the veteran or as part of a rehabilitation program under chapter 31 of this title.

(2) Care and services for a service-connected disability of a veteran who is not a citizen of the United States may be furnished under this subsection only—

(A) if the veteran is in the Republic of the Philippines or in Canada; or

(B) if the Secretary determines, as a matter of discretion and pursuant to regulations which the Secretary shall prescribe, that it is appropriate and feasible to furnish such care and services.

(c) Within the limits of those facilities of the Veterans Memorial Medical Center at Manila, Republic of the Philippines, for which the Secretary may contract, the Secretary may furnish necessary hospital care to a veteran for any non-service-connected disability if such veteran is unable to defray the expenses of necessary hospital care. The Secretary may enter into contracts to carry out this section.

(d) The Secretary may furnish nursing home care, on the same terms and conditions set forth in section 1720(a) of this title, to any veteran who has been furnished hospital care in the Philippines pursuant to this section, but who requires a protracted period of nursing home care.

(e) Within the limits of an outpatient clinic in the Republic of the Philippines that is under the direct jurisdiction of the Secretary, the Secretary may furnish a veteran who has a service-connected disability with such medical services as the Secretary determines to be needed.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1144, Sec. 624; Pub. L. 86–152, Aug. 11, 1959, 73 Stat. 332; Pub. L. 86–624, Sec. 25(a), July 12, 1960, 74 Stat. 418; Pub. L. 87–815, Sec. 4, Oct. 15, 1962, 76 Stat. 927; Pub. L. 93–82, title I, Sec. 108, Aug. 2, 1973, 87 Stat. 186; Pub. L. 94–581, title II, Sec. 202(l), 210(a)(11), Oct. 21, 1976, 90 Stat. 2856, 2863; Pub. L. 95–520, Sec. 3(a), Oct. 26, 1978, 92 Stat. 1820; Pub. L. 97–72, title I, Sec. 107(a), Nov. 3, 1981, 95 Stat. 1051; Pub. L. 97–295, Sec. 4(20), Oct. 12, 1982, 96 Stat. 1306; Pub. L. 100–322, title I, Sec. 105, May 20, 1988, 102 Stat. 493; renumbered Sec. 1724 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 106–377, Sec. 1(a)(1) [title V, Sec. 501(c)], Oct. 27, 2000, 114 Stat. 1441, 1441A-58.)

§ 1725. Reimbursement for emergency treatment

(a) GENERAL AUTHORITY.—(1) Subject to subsections (c) and (d), the Secretary shall reimburse a veteran described in subsection (b) for the reasonable value of emergency treatment furnished the veteran in a non-Department facility.

(2) In any case in which reimbursement is authorized under subsection (a)(1), the Secretary, in the Secretary's discretion, may,

in lieu of reimbursing the veteran, make payment of the reasonable value of the furnished emergency treatment directly—

(A) to a hospital or other health care provider that furnished the treatment; or

(B) to the person or organization that paid for such treatment on behalf of the veteran.

(b) ELIGIBILITY.—(1) A veteran referred to in subsection (a)(1) is an individual who is an active Department health-care participant who is personally liable for emergency treatment furnished the veteran in a non-Department facility.

(2) A veteran is an active Department health-care participant if—

(A) the veteran is enrolled in the health care system established under section 1705(a) of this title; and

(B) the veteran received care under this chapter within the 24-month period preceding the furnishing of such emergency treatment.

(3) A veteran is personally liable for emergency treatment furnished the veteran in a non-Department facility if the veteran—

(A) is financially liable to the provider of emergency treatment for that treatment;

(B) has no entitlement to care or services under a health-plan contract (determined, in the case of a health-plan contract as defined in subsection (f)(2)(B) or (f)(2)(C), without regard to any requirement or limitation relating to eligibility for care or services from any department or agency of the United States);

(C) has no other contractual or legal recourse against a third party that would, in whole or in part, extinguish such liability to the provider; and

(D) is not eligible for reimbursement for medical care or services under section 1728 of this title.

(c) LIMITATIONS ON REIMBURSEMENT.—(1) The Secretary, in accordance with regulations prescribed by the Secretary, shall—

(A) establish the maximum amount payable under subsection (a);

(B) delineate the circumstances under which such payments may be made, to include such requirements on requesting reimbursement as the Secretary shall establish; and

(C) provide that in no event may a payment under that subsection include any amount for which the veteran is not personally liable.

(2) Subject to paragraph (1), the Secretary may provide reimbursement under this section only after the veteran or the provider of emergency treatment has exhausted without success all claims and remedies reasonably available to the veteran or provider against a third party for payment of such treatment.

(3) Payment by the Secretary under this section on behalf of a veteran to a provider of emergency treatment shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish any liability on the part of the veteran for that treatment. Neither the absence of a contract or agreement between the Secretary and the provider nor any provision of a contract, agreement, or assignment to the contrary shall operate to modify, limit, or negate the requirement in the preceding sentence.

(d) INDEPENDENT RIGHT OF RECOVERY.—(1) In accordance with regulations prescribed by the Secretary, the United States shall have the independent right to recover any amount paid under this section when, and to the extent that, a third party subsequently makes a payment for the same emergency treatment.

(2) Any amount paid by the United States to the veteran (or the veteran's personal representative, successor, dependents, or survivors) or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.

(3) Any amount paid by the United States to the provider that furnished the veteran's emergency treatment shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.

(4) The veteran (or the veteran's personal representative, successor, dependents, or survivors) shall ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran. The veteran (or the veteran's personal representative, successor, dependents, or survivors) shall immediately forward all documents relating to such payment, cooperate with the Secretary in the investigation of such payment, and assist the Secretary in enforcing the United States right to recover any payment made under subsection (c)(3).

(e) WAIVER.—The Secretary, in the Secretary's discretion, may waive recovery of a payment made to a veteran under this section that is otherwise required by subsection (d)(1) when the Secretary determines that such waiver would be in the best interest of the United States, as defined by regulations prescribed by the Secretary.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "emergency treatment" means medical care or services furnished, in the judgment of the Secretary—

(A) when Department or other Federal facilities are not feasibly available and an attempt to use them beforehand would not be reasonable;

(B) when such care or services are rendered in a medical emergency of such nature that a prudent layperson reasonably expects that delay in seeking immediate medical attention would be hazardous to life or health; and

(C) until—

(i) such time as the veteran can be transferred safely to a Department facility or other Federal facility and such facility is capable of accepting such transfer; or

(ii) such time as a Department facility or other Federal facility accepts such transfer if—

(I) at the time the veteran could have been transferred safely to a Department facility or other Federal facility, no Department facility or other Federal facility agreed to accept such transfer; and

(II) the non-Department facility in which such medical care or services was furnished made and documented reasonable attempts to transfer the veteran to a Department facility or other Federal facility.

(2) The term "health-plan contract" includes any of the following:

(A) An insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement under which health services for individuals are provided or the expenses of such services are paid.

(B) An insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of that Act (42 U.S.C. 1395j).

(C) A State plan for medical assistance approved under title XIX of such Act (42 U.S.C. 1396 et seq.).

(D) A workers' compensation law or plan described in section 1729(a)(2)(A) of this title.

(E) A law of a State or political subdivision described in section 1729(a)(2)(B) of this title.

(3) The term "third party" means any of the following:

(A) A Federal entity.

(B) A State or political subdivision of a State.

(C) An employer or an employer's insurance carrier.

(D) An automobile accident reparations insurance carrier.

(E) A person or entity obligated to provide, or to pay the expenses of, health services under a health-plan contract.

(Added Pub. L. 106–117, title I, Sec. 111(a), Nov. 30, 1999, 113 Stat. 1553; amended Pub. L. 110–387, title IV, Sec. 402(a), Oct. 10, 2008, 122 Stat. 4123.)

§ 1726. Reimbursement for loss of personal effects by natural disaster

The Secretary shall, under regulations which the Secretary shall prescribe, reimburse veterans in Department hospitals and domiciliaries for any loss of personal effects sustained by fire, earthquake, or other natural disaster while such effects were stored in designated locations in Department hospitals or domiciliaries.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1144, Sec. 627; Pub. L. 93–82, title I, Sec. 105, Aug. 2, 1973, 87 Stat. 183; Pub. L. 94–581, title II, Sec. 210(a)(12), Oct. 21, 1976, 90 Stat. 2863; renumbered Sec. 1726 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1727. Persons eligible under prior law

Persons who have a status which would, under the laws in effect on December 31, 1957, entitle them to the medical services, hospital and domiciliary care, and other benefits, provided for in this chapter, but who do not meet the service requirements contained in this chapter, shall be entitled to such benefits notwithstanding failure to meet such service requirements.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1144, Sec. 627; Pub. L. 94–581, title II, Sec. 202(m), Oct. 21, 1976, 90 Stat. 2856; renumbered Sec. 1727 Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1728. Reimbursement of certain medical expenses

(a) The Secretary shall, under such regulations as the Secretary prescribes, reimburse veterans eligible for hospital care or medical services under this chapter for the customary and usual charges of emergency treatment (including travel and incidental expenses under the terms and conditions set forth in section 111 of this title) for which such veterans have made payment, from sources other than the Department, where such emergency treatment was rendered to such veterans in need thereof for any of the following:

(1) An adjudicated service-connected disability.

(2) A non-service-connected disability associated with and held to be aggravating a service-connected disability.

(3) Any disability of a veteran if the veteran has a total disability permanent in nature from a service-connected disability.

(4) Any illness, injury, or dental condition of a veteran who—

(A) is a participant in a vocational rehabilitation program (as defined in section 3101(9) of this title); and

(B) is medically determined to have been in need of care or treatment to make possible the veteran's entrance into a course of training, or prevent interruption of a course of training, or hasten the return to a course of training which was interrupted because of such illness, injury, or dental condition.

(b) In any case where reimbursement would be in order under subsection (a) of this section, the Secretary may, in lieu of reimbursing such veteran, make payment of the reasonable value of emergency treatment directly—

(1) to the hospital or other health facility furnishing the emergency treatment; or

(2) to the person or organization making such expenditure on behalf of such veteran.

(c) In this section, the term "emergency treatment" has the meaning given such term in section 1725(f)(1) of this title.

(Added Pub. L. 93–82, title I, Sec. 106(a), Aug. 2, 1973, 87 Stat. 183, Sec. 628; amended Pub. L. 94–581, title II, Sec. 202(n), 210(a)(13), Oct. 21, 1976, 90 Stat. 2856, 2863; Pub. L. 96–151, title II, Sec. 201(d), Dec. 20, 1979, 93 Stat. 1093; Pub. L. 101–237, title II, Sec. 202(a), Dec. 18, 1989, 103 Stat. 2066; Pub. L. 102–54, Sec. 14(b)(14), June 13, 1991, 105 Stat. 284; renumbered Sec. 1728 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 110–387, title IV, Sec. 402(b), Oct. 10, 2008, 122 Stat. 4123.)

§ 1729. Recovery by the United States of the cost of certain care and services

(a)(1) Subject to the provisions of this section, in any case in which a veteran is furnished care or services under this chapter for a non-service-connected disability described in paragraph (2) of this subsection, the United States has the right to recover or collect reasonable charges for such care or services (as determined by the Sec-

retary) from a third party to the extent that the veteran (or the provider of the care or services) would be eligible to receive payment for such care or services from such third party if the care or services had not been furnished by a department or agency of the United States.

(2) Paragraph (1) of this subsection applies to a non-service-connected disability—

(A) that is incurred incident to the veteran's employment and that is covered under a workers' compensation law or plan that provides for payment for the cost of health care and services provided to the veteran by reason of the disability;

(B) that is incurred as the result of a motor vehicle accident to which applies a State law that requires the owners or operators of motor vehicles registered in that State to have in force automobile accident reparations insurance;

(C) that is incurred as the result of a crime of personal violence that occurred in a State, or a political subdivision of a State, in which a person injured as the result of such a crime is entitled to receive health care and services at such State's or subdivision's expense for personal injuries suffered as the result of such crime;

(D) that is incurred by a veteran—

(i) who does not have a service-connected disability; and

(ii) who is entitled to care (or payment of the expenses of care) under a health-plan contract; or

(E) for which care and services are furnished before October 1, 2010, under this chapter to a veteran who—

(i) has a service-connected disability; and

(ii) is entitled to care (or payment of the expenses of care) under a health-plan contract.

(3) In the case of a health-plan contract that contains a requirement for payment of a deductible or copayment by the veteran—

(A) the veteran's not having paid such deductible or copayment with respect to care or services furnished under this chapter shall not preclude recovery or collection under this section; and

(B) the amount that the United States may collect or recover under this section shall be reduced by the appropriate deductible or copayment amount, or both.

(b)(1) As to the right provided in subsection (a) of this section, the United States shall be subrogated to any right or claim that the veteran (or the veteran's personal representative, successor, dependents, or survivors) may have against a third party.

(2)(A) In order to enforce any right or claim to which the United States is subrogated under paragraph (1) of this subsection, the United States may intervene or join in any action or proceeding brought by the veteran (or the veteran's personal representative, successor, dependents, or survivors) against a third party.

(B) The United States may institute and prosecute legal proceedings against the third party if—

(i) an action or proceeding described in subparagraph (A) of this paragraph is not begun within 180 days after the first

day on which care or services for which recovery is sought are furnished to the veteran by the Secretary under this chapter;

(ii) the United States has sent written notice by certified mail to the veteran at the veteran's last-known address (or to the veteran's personal representative or successor) of the intention of the United States to institute such legal proceedings; and

(iii) a period of 60 days has passed following the mailing of such notice.

(C) A proceeding under subparagraph (B) of this paragraph may not be brought after the end of the six-year period beginning on the last day on which the care or services for which recovery is sought are furnished.

(c)(1) The Secretary may compromise, settle, or waive any claim which the United States has under this section.

(2)(A) The Secretary, after consultation with the Comptroller General of the United States, shall prescribe regulations for the purpose of determining reasonable charges for care or services under subsection (a)(1) of this section. Any determination of such charges shall be made in accordance with such regulations.

(B) Such regulations shall provide that the reasonable charges for care or services sought to be recovered or collected from a third-party liable under a health-plan contract may not exceed the amount that such third party demonstrates to the satisfaction of the Secretary it would pay for the care or services if provided by facilities (other than facilities of departments or agencies of the United States) in the same geographic area.

(C) Not later than 45 days after the date on which the Secretary prescribes such regulations (or any amendment to such regulations), the Comptroller General shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives the Comptroller General's comments on and recommendations regarding such regulations (or amendment).

(d) Any contract or agreement into which the Secretary enters with a person under section 3718 of title 31 for collection services to recover indebtedness owed the United States under this section shall provide, with respect to such services, that such person is subject to sections 5701 and 7332 of this title.

(e) A veteran eligible for care or services under this chapter—

(1) may not be denied such care or services by reason of this section; and

(2) may not be required by reason of this section to make any copayment or deductible payment in order to receive such care.

(f) No law of any State or of any political subdivision of a State, and no provision of any contract or other agreement, shall operate to prevent recovery or collection by the United States under this section or with respect to care or services furnished under section 1784 of this title.

[(g) Repealed. Pub. L. 105–33, title VIII, Sec. 8023(b)(4), Aug. 5, 1997, 111 Stat. 667]

(h)(1) Subject to paragraph (3) of this subsection, the Secretary shall make available medical records of a veteran described in paragraph (2) of this subsection for inspection and review by rep-

resentatives of the third party concerned for the sole purposes of permitting the third party to verify—

(A) that the care or services for which recovery or collection is sought were furnished to the veteran; and

(B) that the provision of such care or services to the veteran meets criteria generally applicable under the health-plan contract involved.

(2) A veteran described in this paragraph is a veteran who is a beneficiary of a health-plan contract under which recovery or collection is sought under this section from the third party concerned for the cost of the care or services furnished to the veteran.

(3) Records shall be made available under this subsection under such conditions to protect the confidentiality of such records as the Secretary shall prescribe in regulations.

(i) For purposes of this section—

(1)(A) The term "health-plan contract" means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement, under which health services for individuals are provided or the expenses of such services are paid.

(B) Such term does not include—

(i) an insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of such Act (42 U.S.C. 1395j);

(ii) a State plan for medical assistance approved under title XIX of such Act (42 U.S.C. 1396 et seq.);

(iii) a workers' compensation law or plan described in subparagraph (A) of subsection (a)(2) of this section; or

(iv) a program, plan, or policy under a law described in subparagraph (B) or (C) of such subsection.

(2) The term "payment" includes reimbursement and indemnification.

(3) The term "third party" means—

(A) a State or political subdivision of a State;

(B) an employer or an employer's insurance carrier;

(C) an automobile accident reparations insurance carrier; or

(D) a person obligated to provide, or to pay the expenses of, health services under a health-plan contract.

(Added Pub. L. 97–72, title I, Sec. 106(a)(1), Nov. 3, 1981, 95 Stat. 1050, Sec. 629; amended Pub. L. 99–272, title XIX, Sec. 19013(a), Apr. 7, 1986, 100 Stat. 382; Pub. L. 100–322, title II, Sec. 202, May 20, 1988, 102 Stat. 509; Pub. L. 101–508, title VIII, Sec. 8011(a)–(c), Nov. 5, 1990, 104 Stat. 1388–344; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1729 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–568, title VI, Sec. 604, Oct. 29, 1992, 106 Stat. 4343; Pub. L. 103–66, title XII, Sec. 12003, Aug. 10, 1993, 107 Stat. 414; Pub. L. 104–262, title I, Sec. 101(d)(10), Oct. 9, 1996, 110 Stat. 3180; Pub. L. 105–33, title VIII, Secs. 8022, 8023(b)(4), (d), Aug. 5, 1997, 111 Stat. 665, 667; Pub. L. 107–135, title II, Secs. 208(e)(4), 209(b), Jan. 23, 2002, 115 Stat. 2463, 2464; Pub. L. 110–161, div. I, title II, Sec. 232, Dec. 26, 2007, 121 Stat. 2273; Pub. L. 110–329, div. E, title II, Sec. 225, Sept. 30, 2008, 122 Stat. 3713; Pub. L. 110–387, title VIII, Sec. 804(b), Oct. 10, 2008, 122 Stat. 4141.)

§ 1729A. Department of Veterans Affairs Medical Care Collections Fund

(a) There is in the Treasury a fund to be known as the Department of Veterans Affairs Medical Care Collections Fund.

(b) Amounts recovered or collected under any of the following provisions of law shall be deposited in the fund:

(1) Section 1710(f) of this title.

(2) Section 1710(g) of this title.

(3) Section 1711 of this title.

(4) Section 1722A of this title.

(5) Section 1725 of this title.

(6) Section 1729 of this title.

(7) Section 1784 of this title.

(8) Section 8165(a) of this title.

(9) Section 113 of the Veterans Millennium Health Care and Benefits Act (Public Law 106–117; 38 U.S.C. 8111 note).

(10) Public Law 87–693, popularly known as the "Federal Medical Care Recovery Act" (42 U.S.C. 2651 et seq.), to the extent that a recovery or collection under that law is based on medical care or services furnished under this chapter.

(c)(1) Subject to the provisions of appropriations Acts, amounts in the fund shall be available, without fiscal year limitation, to the Secretary for the following purposes:

(A) Furnishing medical care and services under this chapter, to be available during any fiscal year for the same purposes and subject to the same limitations (other than with respect to the period of availability for obligation) as apply to amounts appropriated from the general fund of the Treasury for that fiscal year for medical care.

(B) Expenses of the Department for the identification, billing, auditing, and collection of amounts owed the United States by reason of medical care and services furnished under this chapter.

(2) Amounts available under paragraph (1) may not be used for any purpose other than a purpose set forth in subparagraph (A) or (B) of that paragraph.

(d) Of the total amount recovered or collected by the Department during a fiscal year under the provisions of law referred to in subsection (b) and made available from the fund, the Secretary shall make available to each Department health care facility of the Department an amount that bears the same ratio to the total amount so made available as the amount recovered or collected by such facility during that fiscal year under such provisions of law bears to such total amount recovered or collected during that fiscal year. The Secretary shall make available to each facility the entirety of the amount specified to be made available to such facility by the preceding sentence.

(e) Amounts recovered or collected under the provisions of law referred to in subsection (b) shall be treated for the purposes of sections 251 and 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901, 902) as offsets to discretionary appropriations (rather than as offsets to direct spending) to the ex-

tent that such amounts are made available for expenditure in appropriations Acts for the purposes specified in subsection (c).

(Added Pub. L. 105–33, title VIII, Sec. 8023(a), Aug. 5, 1997, 111 Stat. 665; Pub. L. 106–117, title I, Sec. 111(b)(1), title II, Sec. 203, Nov. 30, 1999, 113 Stat. 1556, 1561; Pub. L. 107–135, title II, Sec. 208(e)(5), Jan. 23, 2002, 115 Stat. 2463; Pub. L. 108–7, div. K, title I, Sec. 113(b), Feb. 20, 2003, 117 Stat. 482; Pub. L. 108–183, title VII, Sec. 708(a)(2), Dec. 16, 2003, 117 Stat. 2673.)

§ 1729B. Consolidated patient accounting centers

(a) IN GENERAL.—Not later than five years after the date of the enactment of this section, the Secretary of Veterans Affairs shall establish not more than seven consolidated patient accounting centers for conducting industry-modeled regionalized billing and collection activities of the Department.

(b) FUNCTIONS.—The centers shall carry out the following functions:

(1) Reengineer and integrate all business processes of the revenue cycle of the Department.

(2) Standardize and coordinate all activities of the Department related to the revenue cycle for all health care services furnished to veterans for non-service-connected medical conditions.

(3) Apply commercial industry standards for measures of access, timeliness, and performance metrics with respect to revenue enhancement of the Department.

(4) Apply other requirements with respect to such revenue cycle improvement as the Secretary may specify.

(Added Pub. L. 110–387, title IV, Sec. 406(a), Oct. 10, 2008, 122 Stat. 4129.

§ 1730. Community residential care

(a) Subject to this section and regulations to be prescribed by the Secretary under this section, the Secretary may assist a veteran by referring such veteran for placement in, and aiding such veteran in obtaining placement in, a community residential-care facility if—

(1) at the time of initiating the assistance the Secretary—

(A) is furnishing the veteran medical services on an outpatient basis or hospital, domiciliary, or nursing home care; or

(B) has furnished the veteran such care or services within the preceding 12 months; and

(2) placement of the veteran in a community residential-care facility is appropriate.

(b)(1) The Secretary may not provide assistance under subsection (a) of this section with respect to a community residential-care facility unless such facility is approved by the Secretary for the purposes of this section.

(2) The Secretary's approval of a facility for the purposes of this section shall be based upon the Secretary's determination, after inspection of the facility, that the facility meets the standards established in regulations prescribed under this section. Such standards shall include the following:

(A) Health and safety criteria, including a requirement of compliance with applicable State laws and local ordinances relating to health and safety.

(B) A requirement that the costs charged for care by a facility be reasonable, as determined by the Secretary, giving consideration to such factors as (i) the level of care, supervision, and other services to be provided, (ii) the cost of goods and services in the geographic area in which the facility is located, and (iii) comparability with other facilities in such area providing similar services.

(C) Criteria for determining the resources that a facility needs in order to provide an appropriate level of services to veterans.

(D) Such other criteria as the Secretary determines are appropriate to protect the welfare of veterans placed in a facility under this section.

(3) Payment of the charges of a community residential-care facility for any care or service provided to a veteran whom the Secretary has referred to that facility under this section is not the responsibility of the United States or of the Department.

(c)(1) In order to determine continued compliance by community residential-care facilities that have been approved under subsection (b) of this section with the standards established in regulations prescribed under this section, the Secretary shall provide for periodic inspection of such facilities.

(2) If the Secretary determines that a facility is not in compliance with such standards, the Secretary (in accordance with regulations prescribed under this section)—

(A) shall cease to refer veterans to such facility; and

(B) may, with the permission of the veteran (or the person or entity authorized by law to give permission on behalf of the veteran), assist in removing a veteran from such facility. Regulations prescribed to carry out this paragraph shall provide for reasonable notice and, upon request made on behalf of the facility, a hearing before any action authorized by this paragraph is taken.

(d) The Secretary shall prescribe regulations to carry out this section. Such regulations shall include the standards required by subsection (b) of this section.

(e)(1) To the extent possible, the Secretary shall make available each report of an inspection of a community residential-care facility under subsection (b)(2) or (c)(1) of this section to each Federal, State, and local agency charged with the responsibility of licensing or otherwise regulating or inspecting such facility.

(2) The Secretary shall make the standards prescribed in regulations under subsection (d) of this section available to all Federal, State, and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting community residential-care facilities.

(f) For the purpose of this section, the term "community residential-care facility" means a facility that provides room and board and such limited personal care for and supervision of residents as the Secretary determines, in accordance with regulations pre-

scribed under this section, are necessary for the health, safety, and welfare of residents.

(Added Pub. L. 98–160, title I, Sec. 104(a), Nov. 21, 1983, 97 Stat. 996, Sec. 630; amended Pub. L. 102–54, Sec. 14(b)(15), June 13, 1991, 105 Stat. 284; renumbered Sec. 1730 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

SUBCHAPTER IV—HOSPITAL CARE AND MEDICAL TREATMENT FOR VETERANS IN THE REPUBLIC OF THE PHILIPPINES

§ 1731. Assistance to the Republic of the Philippines

The President is authorized to assist the Republic of the Philippines in fulfilling its responsibility in providing medical care and treatment for Commonwealth Army veterans and new Philippine Scouts in need of such care and treatment for service-connected disabilities and non-service-connected disabilities under certain conditions.

(Added Pub. L. 93–82, title I, Sec. 107(a), Aug. 2, 1973, 87 Stat. 184, Sec. 631; amended Pub. L. 97–72, title I, Sec. 107(b), Nov. 3, 1981, 95 Stat. 1052; renumbered Sec. 1731, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1732. Contracts and grants to provide for the care and treatment of United States veterans by the Veterans Memorial Medical Center

(a) The President, with the concurrence of the Republic of the Philippines, may authorize the Secretary to enter into contracts with the Veterans Memorial Medical Center, with the approval of the appropriate department of the Government of the Republic of the Philippines, covering the period beginning on October 1, 1981, and ending on September 30, 1994, under which the United States—

(1) will provide for payments for hospital care and medical services (including nursing home care) in the Veterans Memorial Medical Center, as authorized by section 1724 of this title and on the terms and conditions set forth in such section, to eligible United States veterans at a per diem rate to be jointly determined for each fiscal year by the two Governments to be fair and reasonable; and

(2) may provide that payments for such hospital care and medical services provided to eligible United States veterans may consist in whole or in part of available medicines, medical supplies, and equipment furnished by the Secretary to the Veterans Memorial Medical Center at valuations therefor as determined by the Secretary, who may furnish such medicines, medical supplies, and equipment through the revolving supply fund pursuant to section 8121 of this title.

(b)(1) To further assure the effective care and treatment of United States veterans in the Veterans Memorial Medical Center, there is authorized to be appropriated for each fiscal year during the period beginning on October 1, 1981, and ending on September 30, 1990, the sum of $1,000,000 to be used by the Secretary for making grants to the Veterans Memorial Medical Center for the purpose of assisting the Republic of the Philippines in the replace-

ment and upgrading of equipment and in rehabilitating the physical plant and facilities of such center.

(2) Grants under this subsection shall be made on such terms and conditions as prescribed by the Secretary. Such terms and conditions may include a requirement of prior approval by the Secretary of the uses of the funds provided by such grants.

(3) Funds for such grants may be provided only from appropriations made to the Department for the specific purpose of making such grants.

(c) The Secretary may stop payments under a contract or grant under this section upon reasonable notice as stipulated by the contract or grant if the Republic of the Philippines and the Veterans Memorial Medical Center do not maintain the medical center in a well-equipped and effective operating condition as determined by the Secretary.

(d)(1) The authority of the Secretary to enter into contracts and to make grants under this section is effective for any fiscal year only to the extent that appropriations are available for that purpose.

(2) Appropriations made for the purpose of this section shall remain available until expended.

(Added Pub. L. 93–82, title I, Sec. 107(a), Aug. 2, 1973, 87 Stat. 184, Sec. 632; amended Pub. L. 94–581, title II, Sec. 210(a)(14), Oct. 21, 1976, 90 Stat. 2863; Pub. L. 95–520, Sec. 3(b), Oct. 26, 1978, 92 Stat. 1820; Pub. L. 97–72, title I, Sec. 107(c)(1), Nov. 3, 1981, 95 Stat. 1052; Pub. L. 99–576, title II, Sec. 206(a)(1), Oct. 28, 1986, 100 Stat. 3256; Pub. L. 100–687, div. B, title XV, Sec. 1502(a), (b), Nov. 18, 1988, 102 Stat. 4132; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1732 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–86, title III, Sec. 304(a), Aug. 14, 1991, 105 Stat. 416; Pub. L. 102–585, title V, Sec. 503, Nov. 4, 1992, 106 Stat. 4955.)

§ 1733. Supervision of program by the President

The President, or any officer of the United States to whom the President may delegate authority under this section, may from time to time prescribe such rules and regulations and impose such conditions on the receipt of financial aid as may be necessary to carry out this subchapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1146, Sec. 633; Pub. L. 94–581, title II, Sec. 210(a)(15), Oct. 21, 1976, 90 Stat. 2863; renumbered Sec. 1733, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1734. Hospital and nursing home care and medical services in the United States

(a) The Secretary shall furnish hospital and nursing home care and medical services to any individual described in subsection (b) in the same manner, and subject to the same terms and conditions, as apply to the furnishing of such care and services to individuals who are veterans as defined in section 101(2) of this title. Any disability of an individual described in subsection (b) that is a service-connected disability for purposes of this subchapter (as provided for under section 1735(2) of this title) shall be considered to be a service-connected disability for purposes of furnishing care and services under the preceding sentence.

(b) Subsection (a) applies to any individual who is a Commonwealth Army veteran or new Philippine Scout and who—

(1) is residing in the United States; and

(2) is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

(Added Pub. L. 96–22, title I, Sec. 106(a), June 13, 1979, 93 Stat. 53, Sec. 634; renumbered Sec. 1734 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 106–377, Sec. 1(a)(1) [title V, Sec. 501(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A-57; Pub. L. 108–170, title I, Sec. 103, Dec. 6, 2003, 117 Stat. 2044.)

§ 1735. Definitions

For the purposes of this subchapter—

(1) The term "Commonwealth Army veterans" means persons who served before July 1, 1946, in the organized military forces of the Government of the Philippines, while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who were discharged or released from such service under conditions other than dishonorable. The term "new Philippine Scouts" means persons who served in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945, and who were discharged or released from such service under conditions other than dishonorable.

(2) The term "service-connected disabilities" means disabilities determined by the Secretary under laws administered by the Secretary to have been incurred in or aggravated by the service described in paragraph (1) in line of duty.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1146, Sec. 634; Pub. L. 89–612, Sec. 3, Sept. 30, 1966, 80 Stat. 861; renumbered Sec. 635, Pub. L. 96–22, title I, Sec. 106(a), June 13, 1979, 93 Stat. 53; renumbered Sec. 1735 and amended Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 403–406.)

SUBCHAPTER V—PAYMENTS TO STATE HOMES

§ 1741. Criteria for payment

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

(A) $8.70 for domiciliary care; and

(B) $20.35 for nursing home care and hospital care,

for each veteran receiving such care in a State home, if such veteran is eligible for such care in a Department facility.

(2) The Secretary may pay each State per diem at a rate determined by the Secretary for each veteran receiving extended care services described in any of paragraphs (4) through (6) of section 1710B(a) of this title under a program administered by a State home, if such veteran is eligible for such care under laws administered by the Secretary.

(b) In no case shall the payments made with respect to any veteran under this section exceed one-half of the cost of the veterans' care in such State home.

(c) Whenever the Secretary makes a determination pursuant to section 1720(a)(2)(A) of this title that the cost of care furnished by the Department in a general hospital under the direct jurisdiction

of the Secretary has increased, the Secretary may, effective no earlier than the date of such determination, increase the rates paid under subsection (a) of this section by a percentage not greater than the percentage by which the Secretary has determined that such cost of care has increased.

(d) Subject to section 1743 of this title, the payment of per diem for care furnished in a State home facility shall commence on the date of the completion of the inspection for recognition of the facility under section 1742(a) of this title if the Secretary determines, as a result of that inspection, that the State home meets the standards described in such section.

(e) Payments to States pursuant to this section shall not be considered a liability of a third party, or otherwise be used to offset or reduce any other payment made to assist veterans.

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

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1146, Sec. 641; Pub. L. 86–625, July 12, 1960, 74 Stat. 424; Pub. L. 87–819, Sec. 1, Oct. 15, 1962, 76 Stat. 935; Pub. L. 88–450, Sec. 3(a), Aug. 19, 1964, 78 Stat. 500; Pub. L. 90–432, Sec. 1, July 26, 1968, 82 Stat. 448; Pub. L. 91–178, Sec. 1, Dec. 30, 1969, 83 Stat. 836; Pub. L. 93–82, title IV, Sec. 403(a), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94–417, Sec. 1(a), Sept. 21, 1976, 90 Stat. 1277; Pub. L. 94–581, title II, Sec. 202(o), Oct. 21, 1976, 90 Stat. 2856; Pub. L. 96–151, title I, Sec. 101(b)(1), Dec. 20, 1979, 93 Stat. 1092; Pub. L. 98–160, title I, Sec. 105(a), Nov. 21, 1983, 97 Stat. 998; Pub. L. 100–322, title I, Sec. 134(a), May 20, 1988, 102 Stat. 507; renumbered Sec. 1741 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–585, title IV, Sec. 406, Nov. 4, 1992, 106 Stat. 4954; Pub. L. 104–66, title I, Sec. 1141(a), Dec. 21, 1995, 109 Stat. 726; Pub. L. 104–262, title III, Sec. 342(a), Oct. 9, 1996, 110 Stat. 3206; Pub. L. 106–117, title I, Sec. 101(g), Nov. 30, 1999, 113 Stat. 1550; Pub. L. 108–422, title II, Sec. 202, Nov. 30, 2004, 118 Stat. 2382; Pub. L. 109–461, title II, Sec. 211(a)(3)(A), (b)(2), Dec. 22, 2006, 120 Stat. 3419, 3420.)

§ 1742. Inspections of such homes; restrictions on beneficiaries

(a) The Secretary may inspect any State home at such times as the Secretary deems necessary. No payment or grant may be made to any home under this subchapter unless such home is determined by the Secretary to meet such standards as the Secretary shall prescribe, which standards with respect to nursing home care shall be no less stringent than those prescribed pursuant to section 1720(b) of this title.

(b) The Secretary may ascertain the number of persons on account of whom payments may be made under this subchapter on account of any State home, but shall have no authority over the management or control of any State home.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1146, Sec. 642; Pub. L. 94–581, title I, Sec. 107(a), title II, Sec. 210(a)(16), Oct. 21, 1976, 90 Stat. 2847, 2863; renumbered Sec. 1742 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1743. Applications

Payments on account of any veteran cared for in a State home shall be made under this subchapter only from the date the Sec-

retary receives a request for determination of such veteran's eligibility; however, if such request is received by the Secretary within ten days after care of such veteran begins, payments shall be made on account of such veteran from the date care began.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1147, Sec. 643; Pub. L. 97–251, Sec. 7, Sept. 8, 1982, 96 Stat. 716; renumbered Sec. 1743 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1744. Hiring and retention of nurses: payments to assist States

(a) PAYMENT PROGRAM.—The Secretary shall make payments to States under this section for the purpose of assisting State homes in the hiring and retention of nurses and the reduction of nursing shortages at State homes.

(b) ELIGIBLE RECIPIENTS.—Payments to a State for a fiscal year under this section shall, subject to submission of an application, be made to any State that during that fiscal year—

(1) receives per diem payments under this subchapter for that fiscal year; and

(2) has in effect an employee incentive scholarship program or other employee incentive program at a State home designed to promote the hiring and retention of nursing staff and to reduce nursing shortages at that home.

(c) USE OF FUNDS RECEIVED.—A State may use an amount received under this section only to provide funds for a program described in subsection (b)(2). Any program shall meet such criteria as the Secretary may prescribe. In prescribing such criteria, the Secretary shall take into consideration the need for flexibility and innovation.

(d) LIMITATIONS ON AMOUNT OF PAYMENT.—(1) A payment under this section may not be used to provide more than 50 percent of the costs for a fiscal year of the employee incentive scholarship or other employee incentive program for which the payment is made.

(2) The amount of the payment to a State under this section for any fiscal year is, for each State home in that State with a program described in subsection (b)(2), the amount equal to 2 percent of the amount of payments estimated to be made to that State, for that State home, under section 1741 of this title for that fiscal year.

(e) APPLICATIONS.—A payment under this section for any fiscal year with respect to any State home may only be made based upon an application submitted by the State seeking the payment with respect to that State home. Any such application shall describe the nursing shortage at the State home and the employee incentive scholarship program or other employee incentive program described in subsection (c) for which the payment is sought.

(f) SOURCE OF FUNDS.—Payments under this section shall be made from funds available for other payments under this subchapter.

(g) DISBURSEMENT.—Payments under this section to a State home shall be made as part of the disbursement of payments under section 1741 of this title with respect to that State home.

(h) USE OF CERTAIN RECEIPTS.—The Secretary shall require as a condition of any payment under this section that, in any case in which the State home receives a refund payment made by an employee in breach of the terms of an agreement for employee assistance that used funds provided under this section, the payment shall be returned to the State home's incentive program account and credited as a non-Federal funding source.

(i) ANNUAL REPORT FROM PAYMENT RECIPIENTS.—Any State home receiving a payment under this section for any fiscal year, shall, as a condition of the payment, be required to agree to provide to the Secretary a report setting forth in detail the use of funds received through the payment, including a descriptive analysis of how effective the incentive program has been on nurse staffing in the State home during that fiscal year. The report for any fiscal year shall be provided to the Secretary within 60 days of the close of the fiscal year and shall be subject to audit by the Secretary. Eligibility for a payment under this section for any later fiscal year is contingent upon the receipt by the Secretary of the annual report under this subsection for the previous fiscal year in accordance with this subsection.

(j) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. The regulations shall include the establishment of criteria for the award of payments under this section.

(Added Pub. L. 108–422, title II, Sec. 201(a)(1), Nov. 30, 2004, 118 Stat. 2380.)

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

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

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

(B) Any veteran who—

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

(ii) is in need of such care.

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

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

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

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

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

(1) Any veteran who—

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

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

(2) Any veteran who—

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

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

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

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

(Added and amended Pub. L. 109–461, title II, Sec. 211(a)(1), (2), (b)(1), Dec. 22, 2006, 120 Stat. 3418, 3419.)

SUBCHAPTER VI—SICKLE CELL ANEMIA

§ 1751. Screening, counseling, and medical treatment

The Secretary is authorized to carry out a comprehensive program of providing sickle cell anemia screening, counseling, treatment, and information under the provisions of this chapter.

(Added Pub. L. 93–82, title I, Sec. 109(a), Aug. 2, 1973, 87 Stat. 186, Sec. 651; renumbered Sec. 1751 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1752. Research

The Secretary is authorized to carry out research and research training in the diagnosis, treatment, and control of sickle cell anemia based upon the screening examinations and treatment provided under this subchapter.

(Added Pub. L. 93–82, title I, Sec. 109(a), Aug. 2, 1973, 87 Stat. 186, Sec. 652; renumbered Sec. 1752 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1753. Voluntary participation; confidentiality

(a) The participation by any person in any program or portion thereof under this subchapter shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program under this title.

(b) Patient records prepared or obtained under this subchapter shall be held confidential in the same manner and under the same conditions prescribed in section 7332 of this title.

(Added Pub. L. 93–82, title I, Sec. 109(a), Aug. 2, 1973, 87 Stat. 187, Sec. 653; amended Pub. L. 94–581, title I, Sec. 111(b), Oct. 21, 1976, 90 Stat. 2852; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1753, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1754. Reports

The Secretary shall include in the annual report to the Congress required by section 529 of this title a comprehensive report

on the administration of this subchapter, including such recommendations for additional legislation as the Secretary deems necessary.

(Added Pub. L. 93–82, title I, Sec. 109(a), Aug. 2, 1973, 87 Stat. 187, Sec. 654; renumbered Sec. 1754 and amended Pub. L. 102–83, Sec. 2(c)(3), 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 402, 404–406.)

[§ 1761 to 1764. Repealed. Pub. L. 102-585, title V, Sec. 514(a), Nov. 4, 1992, 106 Stat. 4958]

SUBCHAPTER VII—TRANSFERRED

[§§ 1771 to 1774. Renumbered §§ 2031 to 2034]

SUBCHAPTER VIII—HEALTH CARE OF PERSONS OTHER THAN VETERANS

§ 1781. Medical care for survivors and dependents of certain veterans

(a) The Secretary is authorized to provide medical care, in accordance with the provisions of subsection (b) of this section, for—

(1) the spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability,

(2) the surviving spouse or child of a veteran who (A) died as a result of a service-connected disability, or (B) at the time of death had a total disability permanent in nature, resulting from a service-connected disability, and

(3) the surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct,

who are not otherwise eligible for medical care under chapter 55 of title 10 (CHAMPUS).

(b) In order to accomplish the purposes of subsection (a) of this section, the Secretary shall provide for medical care in the same or similar manner and subject to the same or similar limitations as medical care is furnished to certain dependents and survivors of active duty and retired members of the Armed Forces under chapter 55 of title 10 (CHAMPUS), by—

(1) entering into an agreement with the Secretary of Defense under which that Secretary shall include coverage for such medical care under the contract, or contracts, that Secretary enters into to carry out such chapter 55, and under which the Secretary of Veterans Affairs shall fully reimburse the Secretary of Defense for all costs and expenditures made for the purposes of affording the medical care authorized pursuant to this section; or

(2) contracting in accordance with such regulations as the Secretary shall prescribe for such insurance, medical service, or health plans as the Secretary deems appropriate.

In cases in which Department medical facilities are equipped to provide the care and treatment, the Secretary is also authorized to carry out such purposes through the use of such facilities not being utilized for the care of eligible veterans. A dependent or survivor receiving care under the preceding sentence shall be eligible for the

same medical services as a veteran, including services under sections 1782 and 1783 of this title.

(c) For the purposes of this section, a child between the ages of eighteen and twenty-three (1) who is eligible for benefits under subsection (a) of this section, (2) who is pursuing a full-time course of instruction at an educational institution approved under chapter 36 of this title, and (3) who, while pursuing such course of instruction, incurs a disabling illness or injury (including a disabling illness or injury incurred between terms, semesters, or quarters or during a vacation or holiday period) which is not the result of such child's own willful misconduct and which results in such child's inability to continue or resume such child's chosen program of education at an approved educational institution shall remain eligible for benefits under this section until the end of the six-month period beginning on the date the disability is removed, the end of the two-year period beginning on the date of the onset of the disability, or the twenty-third birthday of the child, whichever occurs first.

(d)(1)(A) An individual otherwise eligible for medical care under this section who is also entitled to hospital insurance benefits under part A of the medicare program is eligible for medical care under this section only if the individual is also enrolled in the supplementary medical insurance program under part B of the medicare program.

(B) The limitation in subparagraph (A) does not apply to an individual who—

(i) has attained 65 years of age as of June 5, 2001; and

(ii) is not enrolled in the supplementary medical insurance program under part B of the medicare program as of that date.

(2) Subject to paragraph (3), if an individual described in paragraph (1) receives medical care for which payment may be made under both this section and the medicare program, the amount payable for such medical care under this section shall be the amount by which (A) the costs for such medical care exceed (B) the sum of—

(i) the amount payable for such medical care under the medicare program; and

(ii) the total amount paid or payable for such medical care by third party payers other than the medicare program.

(3) The amount payable under this subsection for medical care may not exceed the total amount that would be paid under subsection (b) if payment for such medical care were made solely under subsection (b).

(4) In this subsection:

(A) The term "medicare program" means the program of health insurance administered by the Secretary of Health and Human Services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(B) The term "third party" has the meaning given that term in section 1729(i)(3) of this title.

(Added Pub. L. 93–82, title I, Sec. 103(b), Aug. 2, 1973, 87 Stat. 181, Sec. 613; amended Pub. L. 94–581, title I, Sec. 104, title II, Sec. 210(a)(4), Oct. 21, 1976, 90 Stat. 2845, 2862; Pub. L. 96–151, title II, Sec. 205(a), Dec. 20, 1979, 93 Stat. 1094; Pub. L. 97–72, title I, Sec. 105, Nov. 3, 1981, 95 Stat. 1050; Pub. L. 97–251, Sec. 5(a), Sept. 8, 1982, 96 Stat. 716; renumbered Sec. 1713 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(B), (E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub.

L. 102–190, title VII, Sec. 704(b)(2), Dec. 5, 1991, 105 Stat. 1402; Pub. L. 107–14, Sec. 3, June 5, 2001, 115 Stat. 25; renumbered Sec. 1781 and amended Pub. L. 107–135, title II, Sec. 208(c), Jan. 23, 2002, 115 Stat. 2463; Pub. L. 107–330, title III, Sec. 308(g)(8), Dec. 6, 2002, 116 Stat. 2829.)

§ 1782. Counseling, training, and mental health services for immediate family members

(a) COUNSELING FOR FAMILY MEMBERS OF VETERANS RECEIVING SERVICE-CONNECTED TREATMENT.—In the case of a veteran who is receiving treatment for a service-connected disability pursuant to paragraph (1) or (2) of section 1710(a) of this title, the Secretary shall provide to individuals described in subsection (c) such consultation, professional counseling, marriage and family counseling, training, and mental health services as are necessary in connection with that treatment.

(b) COUNSELING FOR FAMILY MEMBERS OF VETERANS RECEIVING NON-SERVICE-CONNECTED TREATMENT.—In the case of a veteran who is eligible to receive treatment for a non-service-connected disability under the conditions described in paragraph (1), (2), or (3) of section 1710(a) of this title, the Secretary may, in the discretion of the Secretary, provide to individuals described in subsection (c) such consultation, professional counseling, marriage and family counseling, training, and mental health services as are necessary in connection with that treatment.

(c) ELIGIBLE INDIVIDUALS.—Individuals who may be provided services under this subsection are—

(1) the members of the immediate family or the legal guardian of a veteran; or

(2) the individual in whose household such veteran certifies an intention to live.

(d) TRAVEL AND TRANSPORTATION AUTHORIZED.—Services provided under subsections (a) and (b) may include, under the terms and conditions set forth in section 111 of this title, travel and incidental expenses of individuals described in subsection (c) in the case of any of the following:

(1) A veteran who is receiving care for a service-connected disability.

(2) A dependent or survivor receiving care under the last sentence of section 1783(b) of this title.

(Added Pub. L. 107–135, title II, Sec. 208(b), Jan. 23, 2002, 115 Stat. 2462; amended Pub. L. 110–387, title III, Sec. 301(a)(2), Oct. 10, 2008, 122 Stat. 4120.)

§ 1783. Bereavement counseling

(a) DEATHS OF VETERANS.—In the case of an individual who was a recipient of services under section 1782 of this title at the time of the death of the veteran, the Secretary may provide bereavement counseling to that individual in the case of a death—

(1) that was unexpected; or

(2) that occurred while the veteran was participating in a hospice program (or a similar program) conducted by the Secretary.

(b) DEATHS IN ACTIVE SERVICE.—(1) The Secretary may provide bereavement counseling to an individual who is a member of the immediate family of a member of the Armed Forces who dies

in the active military, naval, or air service in the line of duty and under circumstances not due to the person's own misconduct.

(2) For purposes of this subsection, the members of the immediate family of a member of the Armed Forces described in paragraph (1) include the parents of such member.

(c) PROVISION OF COUNSELING THROUGH VET CENTERS.—Bereavement counseling may be provided under this section through the facilities and personnel of centers for the provision of readjustment counseling and related mental health services under section 1712A of this title.

(d) BEREAVEMENT COUNSELING DEFINED.—For purposes of this section, the term "bereavement counseling" means such counseling services, for a limited period, as the Secretary determines to be reasonable and necessary to assist an individual with the emotional and psychological stress accompanying the death of another individual.

(Added Pub. L. 107–135, title II, Sec. 208(b), Jan. 23, 2002, 115 Stat. 2463; amended Pub. L. 109–461, title II, Sec. 216, Dec. 22, 2006, 120 Stat. 3424.)

§ 1784. Humanitarian care

The Secretary may furnish hospital care or medical services as a humanitarian service in emergency cases, but the Secretary shall charge for such care and services at rates prescribed by the Secretary.

(Added Pub. L. 107–135, title II, Sec. 208(b), Jan. 23, 2002, 115 Stat. 2463.)

§ 1785. Care and services during certain disasters and emergencies

(a) AUTHORITY TO PROVIDE HOSPITAL CARE AND MEDICAL SERVICES.—During and immediately following a disaster or emergency referred to in subsection (b), the Secretary may furnish hospital care and medical services to individuals responding to, involved in, or otherwise affected by that disaster or emergency.

(b) COVERED DISASTERS AND EMERGENCIES.—A disaster or emergency referred to in this subsection is any disaster or emergency as follows:

(1) A major disaster or emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) A disaster or emergency in which the National Disaster Medical System established pursuant to section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh-11(b)) is activated by the Secretary of Health and Human Services under paragraph (3)(A) of that section or as otherwise authorized by law.

(c) APPLICABILITY TO ELIGIBLE INDIVIDUALS WHO ARE VETERANS.—The Secretary may furnish care and services under this section to an individual described in subsection (a) who is a veteran without regard to whether that individual is enrolled in the system of patient enrollment under section 1705 of this title.

(d) REIMBURSEMENT FROM OTHER FEDERAL DEPARTMENTS AND AGENCIES.—(1) The cost of any care or services furnished under this section to an officer or employee of a department or agency of the United States other than the Department or to a member of the Armed Forces shall be reimbursed at such rates as may be

agreed upon by the Secretary and the head of such department or agency or the Secretary concerned, in the case of a member of the Armed Forces, based on the cost of the care or service furnished.

(2) Amounts received by the Department under this subsection shall be credited to the Medical Care Collections Fund under section 1729A of this title.

(e) REPORT TO CONGRESSIONAL COMMITTEES.—Within 60 days of the commencement of a disaster or emergency referred to in subsection (b) in which the Secretary furnishes care and services under this section (or as soon thereafter as is practicable), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the Secretary's allocation of facilities and personnel in order to furnish such care and services.

(f) REGULATIONS.—The Secretary shall prescribe regulations governing the exercise of the authority of the Secretary under this section.

(Added Pub. L. 107–287, Sec. 4(a)(1), Nov. 7, 2002, 116 Stat. 2028; amended Pub. L. 109–444, Sec. 8(a)(2), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109–461, title X, Secs. 1004(a)(2), 1006(b), Dec. 22, 2006, 120 Stat. 3465, 3468.)

Chapter 18 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART II—GENERAL BENEFITS]

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

Sec.
[1801. Repealed.]

SUBCHAPTER I—CHILDREN OF VIETNAM VETERANS BORN WITH SPINA BIFIDA

1802. Spina bifida conditions covered.
1803. Health care.
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SUBCHAPTER III——CHILDREN OF CERTAIN KOREA SERVICE VETERANS BORN WITH SPINA BIFIDA

1821. Benefits for children of certain Korea service veterans born with spina bifida.
[1822. Renumbered.]

SUBCHAPTER IV—GENERAL PROVISIONS

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1834. Nonduplication of benefits.

[§ 1801. Repealed. Pub. L. 106–419, title IV, Sec. 401(c)(1), Nov. 1, 2000, 114 Stat. 1860]

SUBCHAPTER I—CHILDREN OF VIETNAM VETERANS BORN WITH SPINA BIFIDA

§ 1802. Spina bifida conditions covered

This subchapter applies with respect to all forms and manifestations of spina bifida except spina bifida occulta.

(Added Pub. L. 104–201, title IV, Sec. 421(b), Sept. 26, 1996, 110 Stat. 2923; amended Pub. L. 106–419, title IV, Sec. 401(e)(1), Nov. 1, 2000, 114 Stat. 1860; Pub. L. 107–14, Sec. 8(b)(3), June 5, 2001, 115 Stat. 36.)

§ 1803. Health care

(a) In accordance with regulations which the Secretary shall prescribe, the Secretary shall provide a child of a Vietnam veteran who is suffering from spina bifida with health care under this section.

(b) The Secretary may provide health care under this section directly or by contract or other arrangement with any health care provider.

(c) For the purposes of this section—

(1) The term "health care"—

(A) means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and

(B) includes—

(i) the training of appropriate members of a child's family or household in the care of the child; and

(ii) the provision of such pharmaceuticals, supplies, equipment, devices, appliances, assistive technology, direct transportation costs to and from approved sources of health care, and other materials as the Secretary determines necessary.

(2) The term "health care provider" includes specialized spina bifida clinics, health care plans, insurers, organizations, institutions, and any other entity or individual furnishing health care services that the Secretary determines are authorized under this section.

(3) The term "home care" means outpatient care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to an individual in the individual's home or other place of residence.

(4) The term "hospital care" means care and treatment for a disability furnished to an individual who has been admitted to a hospital as a patient.

(5) The term "nursing home care" means care and treatment for a disability furnished to an individual who has been admitted to a nursing home as a resident.

(6) The term "outpatient care" means care and treatment of a disability, and preventive health services, furnished to an individual other than hospital care or nursing home care.

(7) The term "preventive care" means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

(8) The term "habilitative and rehabilitative care" means such professional, counseling, and guidance services and treatment programs (other than vocational training under section 1804 of this title) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

(9) The term "respite care" means care furnished on an intermittent basis for a limited period to an individual who re-

sides primarily in a private residence when such care will help the individual to continue residing in such private residence.

(Added Pub. L. 104–204, title IV, Sec. 421(b)(1), Sept. 26, 1996, 110 Stat. 2923; amended Pub. L. 105–368, title X, Sec. 1005(b)(4), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 110–387, title IV, Sec. 408(a), Oct. 10, 2008, 122 Stat. 4130.)

§ 1804. Vocational training and rehabilitation

(a) Pursuant to such regulations as the Secretary may prescribe, the Secretary may provide vocational training under this section to a child of a Vietnam veteran who is suffering from spina bifida if the Secretary determines that the achievement of a vocational goal by such child is reasonably feasible.

(b) Any program of vocational training for a child under this section shall—

(1) be designed in consultation with the child in order to meet the child's individual needs;

(2) be set forth in an individualized written plan of vocational rehabilitation; and

(3) be designed and developed before the date specified in subsection (d)(3) so as to permit the beginning of the program as of the date specified in that subsection.

(c)(1) A vocational training program for a child under this section—

(A) shall consist of such vocationally oriented services and assistance, including such placement and post-placement services and personal and work adjustment training, as the Secretary determines are necessary to enable the child to prepare for and participate in vocational training or employment; and

(B) may include a program of education at an institution of higher learning if the Secretary determines that the program of education is predominantly vocational in content.

(2) A vocational training program under this section may not include the provision of any loan or subsistence allowance or any automobile adaptive equipment.

(d)(1) Except as provided in paragraph (2) and subject to subsection (e)(2), a vocational training program under this section may not exceed 24 months.

(2) The Secretary may grant an extension of a vocational training program for a child under this section for up to 24 additional months if the Secretary determines that the extension is necessary in order for the child to achieve a vocational goal identified (before the end of the first 24 months of such program) in the written plan of vocational rehabilitation formulated for the child pursuant to subsection (b).

(3) A vocational training program under this section may begin on the child's 18th birthday, or on the successful completion of the child's secondary schooling, whichever first occurs, except that, if the child is above the age of compulsory school attendance under applicable State law and the Secretary determines that the child's best interests will be served thereby, the vocational training program may begin before the child's 18th birthday.

(e)(1) A child who is pursuing a program of vocational training under this section and is also eligible for assistance under a program under chapter 35 of this title may not receive assistance

under both such programs concurrently. The child shall elect (in such form and manner as the Secretary may prescribe) the program under which the child is to receive assistance.

(2) The aggregate period for which a child may receive assistance under this section and chapter 35 of this title may not exceed 48 months (or the part-time equivalent thereof).

(Added Pub. L. 104–204, title IV, Sec. 421(b)(1), Sept. 26, 1996, 110 Stat. 2924; amended Pub. L. 105–114, title IV, Sec. 404(c), Nov. 21, 1997, 111 Stat. 2295; Pub. L. 108–183, title VII, Sec. 708(a)(3), Dec. 16, 2003, 117 Stat. 2673.)

§ 1805. Monetary allowance

(a) The Secretary shall pay a monthly allowance under this section to any child of a Vietnam veteran for any disability resulting from spina bifida suffered by such child.

(b)(1) The amount of the allowance paid to a child under this section shall be based on the degree of disability suffered by the child, as determined in accordance with such schedule for rating disabilities resulting from spina bifida as the Secretary may prescribe.

(2) The Secretary shall, in prescribing the rating schedule for the purposes of this section, establish three levels of disability upon which the amount of the allowance provided by this section shall be based.

(3) The amounts of the allowance shall be $200 per month for the lowest level of disability prescribed, $700 per month for the intermediate level of disability prescribed, and $1,200 per month for the highest level of disability prescribed. Such amounts are subject to adjustment under section 5312 of this title.

(Added Pub. L. 104–204, title IV, Sec. 421(b)(1), Sept. 26, 1996, 110 Stat. 2925; amended Pub. L. 106–419, title IV, Sec. 401(c)(2), (e)(2), Nov. 1, 2000, 114 Stat. 1860.)

[§ 1806. Repealed. Pub. L. 106–419, title IV, Sec. 401(c)(3), Nov. 1, 2000, 114 Stat. 1860]

SUBCHAPTER II—CHILDREN OF WOMEN VIETNAM VETERANS BORN WITH CERTAIN BIRTH DEFECTS

§ 1811. Definitions

In this subchapter:

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

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

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

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

(Added Pub. L. 106–419, title IV, Sec. 401(a), Nov. 1, 2000, 114 Stat. 1857; amended Pub. L. 108–183, title I, Sec. 102(d)(1), Dec. 16, 2003, 117 Stat. 2654.)

§ 1812. Covered birth defects

(a) IDENTIFICATION.—The Secretary shall identify the birth defects of children of women Vietnam veterans that—

(1) are associated with the service of those veterans in the Republic of Vietnam during the Vietnam era; and

(2) result in permanent physical or mental disability.

(b) LIMITATIONS.—(1) The birth defects identified under subsection (a) may not include birth defects resulting from the following:

(A) A familial disorder.

(B) A birth-related injury.

(C) A fetal or neonatal infirmity with well-established causes.

(2) In any case where affirmative evidence establishes that a covered birth defect of a child of a woman Vietnam veteran results from a cause other than the active military, naval, or air service of that veteran in the Republic of Vietnam during the Vietnam era, no benefits or assistance may be provided the child under this subchapter.

(Added Pub. L. 106–419, title IV, Sec. 401(a), Nov. 1, 2000, 114 Stat. 1857.)

§ 1813. Health care

(a) NEEDED CARE.—The Secretary shall provide an eligible child such health care as the Secretary determines is needed by the child for that child's covered birth defects or any disability that is associated with those birth defects.

(b) AUTHORITY FOR CARE TO BE PROVIDED DIRECTLY OR BY CONTRACT.—The Secretary may provide health care under this section directly or by contract or other arrangement with a health care provider.

(c) DEFINITIONS.—For purposes of this section, the definitions in section 1803(c) of this title shall apply with respect to the provision of health care under this section, except that for such purposes—

(1) the reference to "specialized spina bifida clinic" in paragraph (2) of that section shall be treated as a reference to a specialized clinic treating the birth defect concerned under this section; and

(2) the reference to "vocational training under section 1804 of this title" in paragraph (8) of that section shall be treated as a reference to vocational training under section 1814 of this title.

(Added Pub. L. 106–419, title IV, Sec. 401(a), Nov. 1, 2000, 114 Stat. 1857.)

§ 1814. Vocational training

(a) AUTHORITY.—The Secretary may provide a program of vocational training to an eligible child if the Secretary determines that the achievement of a vocational goal by the child is reasonably feasible.

(b) APPLICABLE PROVISIONS.—Subsections (b) through (e) of section 1804 of this title shall apply with respect to any program of vocational training provided under subsection (a).

(Added Pub. L. 106–419, title IV, Sec. 401(a), Nov. 1, 2000, 114 Stat. 1858.)

§ 1815. Monetary allowance

(a) MONETARY ALLOWANCE.—The Secretary shall pay a monthly allowance to any eligible child for any disability resulting from the covered birth defects of that child.

(b) SCHEDULE FOR RATING DISABILITIES.—(1) The amount of the monthly allowance paid under this section shall be based on the degree of disability suffered by the child concerned, as determined in accordance with a schedule for rating disabilities resulting from covered birth defects that is prescribed by the Secretary.

(2) In prescribing a schedule for rating disabilities for the purposes of this section, the Secretary shall establish four levels of disability upon which the amount of the allowance provided by this section shall be based. The levels of disability established may take into account functional limitations, including limitations on cognition, communication, motor abilities, activities of daily living, and employability.

(c) AMOUNT OF MONTHLY ALLOWANCE.—The amount of the monthly allowance paid under this section shall be as follows:

(1) In the case of a child suffering from the lowest level of disability prescribed in the schedule for rating disabilities under subsection (b), $100.

(2) In the case of a child suffering from the lower intermediate level of disability prescribed in the schedule for rating disabilities under subsection (b), the greater of—

(A) $214; or

(B) the monthly amount payable under section 1805(b)(3) of this title for the lowest level of disability prescribed for purposes of that section.

(3) In the case of a child suffering from the higher intermediate level of disability prescribed in the schedule for rating disabilities under subsection (b), the greater of—

(A) $743; or

(B) the monthly amount payable under section 1805(b)(3) of this title for the intermediate level of disability prescribed for purposes of that section.

(4) In the case of a child suffering from the highest level of disability prescribed in the schedule for rating disabilities under subsection (b), the greater of—

(A) $1,272; or

(B) the monthly amount payable under section 1805(b)(3) of this title for the highest level of disability prescribed for purposes of that section.

(d) INDEXING TO SOCIAL SECURITY BENEFIT INCREASES.—Amounts under paragraphs (1), (2)(A), (3)(A), and (4)(A) of subsection (c) shall be subject to adjustment from time to time under section 5312 of this title.

(Added Pub. L. 106–419, title IV, Sec. 401(a), Nov. 1, 2000, 114 Stat. 1858.)

§ 1816. Regulations

The Secretary shall prescribe regulations for purposes of the administration of this subchapter.

(Added Pub. L. 106–419, title IV, Sec. 401(a), Nov. 1, 2000, 114 Stat. 1859.)

SUBCHAPTER III—CHILDREN OF CERTAIN KOREA SERVICE VETERANS BORN WITH SPINA BIFIDA

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

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

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

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

(1) served in the active military, naval, or air service in or near the Korean demilitarized zone (DMZ), as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on September 1, 1967, and ending on August 31, 1971; and

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

(d) HERBICIDE AGENT.—For purposes of this section, the term "herbicide agent" means a chemical in a herbicide used in support of United States and allied military operations in or near the Korean demilitarized zone, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on September 1, 1967, and ending on August 31, 1971.

(Added Pub. L. 108–183, title I, Sec. 102(a)(2), Dec. 16, 2003, 117 Stat. 2653.)

SUBCHAPTER IV—GENERAL PROVISIONS

§ 1831. Definitions

In this chapter:

(1) The term "child" means the following:

(A) For purposes of subchapters I and II of this chapter, an individual, regardless of age or marital status, who—

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

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

(B) For purposes of subchapter III of this chapter, an individual, regardless of age or marital status, who—

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

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

(2) The term "Vietnam veteran" means an individual who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era, without regard to the characterization of that individual's service.

(3) The term "Vietnam era" with respect to—

(A) subchapter I of this chapter, means the period beginning on January 9, 1962, and ending on May 7, 1975; and

(B) subchapter II of this chapter, means the period beginning on February 28, 1961, and ending on May 7, 1975.

(Added Pub. L. 106–419, title IV, Sec. 401(b), Nov. 1, 2000, 114 Stat. 1859, Sec. 1821; renumbered Sec. 1831, and amended, Pub. L. 108–183, title I, Sec. 102(a)(1), (b), Dec. 16, 2003, 117 Stat. 2653, 2654.)

§ 1832. Applicability of certain administrative provisions

(a) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO COMPENSATION.—The provisions of this title specified in subsection (b) apply with respect to benefits and assistance under this chapter in the same manner as those provisions apply to compensation paid under chapter 11 of this title.

(b) SPECIFIED PROVISIONS.—The provisions of this title referred to in subsection (a) are the following:

(1) Section 5101(c).

(2) Subsections (a), (b)(2), (g), and (i) of section 5110.

(3) Section 5111.

(4) Subsection (a) and paragraphs (1), (6), (9), and (10) of subsection (b) of section 5112.

(Added Pub. L. 106–419, title IV, Sec. 401(b), Nov. 1, 2000, 114 Stat. 1859, Sec. 1822; renumbered Sec. 1832, Pub. L. 108–183, title I, Sec. 102(a)(1), Dec. 16, 2003, 117 Stat. 2653.)

§ 1833. Treatment of receipt of monetary allowance and other benefits

(a) COORDINATION WITH OTHER BENEFITS PAID TO THE RECIPIENT.—Notwithstanding any other provision of law, receipt by an individual of a monetary allowance under this chapter shall not impair, infringe, or otherwise affect the right of the individual to receive any other benefit to which the individual is otherwise entitled under any law administered by the Secretary.

(b) COORDINATION WITH BENEFITS BASED ON RELATIONSHIP OF RECIPIENTS.—Notwithstanding any other provision of law, receipt by an individual of a monetary allowance under this chapter shall not impair, infringe, or otherwise affect the right of any other individual to receive any benefit to which such other individual is entitled under any law administered by the Secretary based on the relationship of such other individual to the individual who receives such monetary allowance.

(c) MONETARY ALLOWANCE NOT TO BE CONSIDERED AS INCOME OR RESOURCES FOR CERTAIN PURPOSES.—Notwithstanding any other provision of law, a monetary allowance paid an individual under this chapter shall not be considered as income or resources

in determining eligibility for, or the amount of benefits under, any Federal or federally assisted program.

(Added Pub. L. 106–419, title IV, Sec. 401(b), Nov. 1, 2000, 114 Stat. 1860, Sec. 1823; renumbered Sec. 1833, Pub. L. 108–183, title I, Sec. 102(a)(1), Dec. 16, 2003, 117 Stat. 2653.)

§ 1834. Nonduplication of benefits

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

(b) VOCATIONAL REHABILITATION.—An individual may only be provided one program of vocational training under this chapter.

(Added Pub. L. 106–419, title IV, Sec. 401(b), Nov. 1, 2000, 114 Stat. 1860, Sec. 1824; renumbered Sec. 1834 and amended, Pub. L. 108–183, title I, Sec. 102(a)(1), (c), Dec. 16, 2003, 117 Stat. 2653, 2654.)

Chapter 19 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART II—GENERAL BENEFITS]

CHAPTER 19—INSURANCE

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SUBCHAPTER I—NATIONAL SERVICE LIFE INSURANCE

§ 1901. Definitions

For the purposes of this subchapter—

(1) The term "insurance" means National Service Life Insurance.

(2) The terms "widow" or "widower" mean a person who was the lawful spouse of the insured at the maturity of the insurance.

(3) The term "child" means a legitimate child, an adopted child, and, if designated as beneficiary by the insured, a stepchild or an illegitimate child.

(4) The terms "parent", "father", and "mother" mean a father, mother, father through adoption, mother through adoption, persons who have stood in loco parentis to a member of the military or naval forces at any time before entry into active service for a period of not less than one year, and a stepparent, if designated as beneficiary by the insured.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1148, Sec. 701; renumbered Sec. 1901, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1902. Premium rates and policy values

Premium rates for insurance shall be the net rates based upon the American Experience Table of Mortality and interest at the

rate of 3 per centum per annum. All cash, loan, paid-up, and extended values, and all other calculations in connection with insurance, shall be based upon said American Experience Table of Mortality and interest at the rate of 3 per centum per annum.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1148, Sec. 702; renumbered Sec. 1902, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1903. Amount of insurance

Insurance shall be issued in any multiple of $500 and the amount of insurance with respect to any one person shall be not less than $1,000 or more than $10,000. No person may carry a combined amount of National Service Life Insurance and United States Government life insurance in excess of $10,000 at any one time. The limitations of this section shall not apply to the additional paid up insurance the purchase of which is authorized under section 1907 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1148, Sec. 703; Pub. L. 92–188, Sec. 1, Dec. 15, 1971, 85 Stat. 645; renumbered Sec. 1903 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 1904. Plans of insurance

(a) Insurance may be issued on the following plans: Five-year level premium term, ordinary life, twenty-payment life, thirty-payment life, twenty-year endowment, endowment at age sixty, and endowment at age sixty-five. Level premium term insurance may be converted as of the date when any premium becomes or has become due, or exchanged as of the date of the original policy, upon payment of the difference in reserve, at any time while such insurance is in force and within the term period to any of the foregoing permanent plans of insurance, except that conversion to an endowment plan may not be made while the insured is totally disabled.

(b) Under such regulations as the Secretary may promulgate a policy of participating insurance may be converted to or exchanged for insurance issued under this subsection on a modified life plan. Insurance issued under this subsection shall be on the same terms and conditions as the insurance which it replaces, except (1) the premium rates for such insurance shall be based on the 1958 Commissioners Standard Ordinary Basic Table of Mortality and interest at the rate of 3 per centum per annum; (2) all cash, loan, paid-up, and extended values shall be based on the 1958 Commissioners Standard Ordinary Basic Table of Mortality and interest at the rate of 3 per centum per annum; and (3) at the end of the day preceding the sixty-fifth birthday of the insured the face value of the modified life insurance policy or the amount of extended term insurance thereunder shall be automatically reduced by one-half thereof, without any reduction in premium.

(c) Under such regulations as the Secretary may promulgate, a policy of nonparticipating insurance may be converted to or exchanged for insurance issued under this subsection on a modified life plan. Insurance issued under this subsection shall be on the same terms and conditions as the insurance which it replaces, except that (1) term insurance issued under section 621 of the National Service Life Insurance Act of 1940 shall be deemed for the purposes of this subsection to have been issued under section

1923(b) of this title; and (2) at the end of the day preceding the sixty-fifth birthday of the insured the face value of the modified life insurance policy or the amount of extended term insurance thereunder shall be automatically reduced by one-half thereof, without any reduction in premium. Any person eligible for insurance under section 1922(a), or section 1925 of this title may be granted a modified life insurance policy under this subsection which, subject to exception (2) above, shall be issued on the same terms and conditions specified in section 1922(a) or section 1925, whichever is applicable.

(d) Any insured whose modified life insurance policy is in force by payment or waiver of premiums on the day before the insured's sixty-fifth birthday may upon written application and payment of premiums made before such birthday be granted National Service Life Insurance, on an ordinary life plan, without physical examination, in an amount of not less than $500, in multiples of $250, but not in excess of one-half of the face amount of the modified life insurance policy in force on the day before the insured's sixty-fifth birthday. Insurance issued under this subsection shall be effective on the sixty-fifth birthday of the insured. The premium rate, cash, loan, paid-up, and extended values on the ordinary life insurance issued under this subsection shall be based on the same mortality tables and interest rates as the insurance issued under the modified life policy. Settlements on policies involving annuities on insurance issued under this subsection shall be based on the same mortality or annuity tables and interest rates as such settlements on the modified life policy. If the insured is totally disabled on the day before the insured's sixty-fifth birthday and premiums on the insured's modified life insurance policy are being waived under section 1912 of this title or the insured is entitled on that date to waiver under such section the insured shall be automatically granted the maximum amount of insurance authorized under this subsection and premiums on such insurance shall be waived during the continuous total disability of the insured.

(e) After June 30, 1972, and under such regulations as the Secretary may promulgate, insurance may be converted to or exchanged for insurance on a modified life plan under the same terms and conditions as are set forth in subsections (b) and (c) of this section except that at the end of the day preceding the seventieth birthday of the insured the face value of the modified life insurance policy or the amount of extended insurance thereunder shall be automatically reduced by one-half thereof, without any reduction in premium. Any insured whose modified life insurance policy issued under this subsection is in force by payment or waiver of premiums on the day before the insured's seventieth birthday may be granted insurance on the ordinary life plan upon the same terms and conditions as are set forth in subsection (d) of this section except that in applying such provisions the seventieth birthday is to be substituted for the sixty-fifth birthday. Notwithstanding any other provision of law or regulations the Secretary under such terms and conditions as the Secretary determines to be reasonable and practicable and upon written application and payment of the required premiums, reserves, or other necessary amounts made within one year from the effective date of this subsection by an insured having in force a modified life plan issued under subsection

(b) or (c) of this section, including any replacement insurance issued under subsection (d) of this section or other provision of this title, can exchange such insurance without proof of good health for an amount of insurance issued under this subsection equal to the insurance then in force or which was in force on the day before such insured's sixty-fifth birthday, whichever is the greater.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1148, Sec. 704; Pub. L. 88–664, Sec. 12(b), Oct. 13, 1964, 78 Stat. 1098; Pub. L. 92–193, Dec. 15, 1971, 85 Stat. 648; Pub. L. 97–295, Sec. 4(21), Oct. 12, 1982, 96 Stat. 1306; Pub. L. 99–576, title VII, Sec. 701(21), Oct. 28, 1986, 100 Stat. 3292; renumbered Sec. 1904 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1905. Renewal

All level premium term policies, except as otherwise provided in this section, shall cease and terminate at the expiration of the term period. At the expiration of any term period any five-year level premium term policy which has not been exchanged or converted to a permanent plan of insurance and which is not lapsed shall be renewed as level premium term insurance without application for a successive five-year period at the premium rate for the attained age without medical examination. However, renewal will be effected in cases where the policy is lapsed only if the insured makes application for reinstatement and renewal of the term policy within five years after the date of lapse, and reinstatement in such cases shall be under the terms and conditions prescribed by the Secretary. In any case in which the insured is shown by evidence satisfactory to the Secretary to be totally disabled at the expiration of the level premium term period of the insurance under conditions which would entitle the insured to continued insurance protection but for such expiration, the insurance, if subject to renewal under this section, shall be automatically renewed for an additional period of five years at the premium rate for the then attained age, unless the insured has elected insurance on some other available plan.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1148, Sec. 705; Pub. L. 91–291, Sec. 8, June 25, 1970, 84 Stat. 331; Pub. L. 99–576, title VII, Sec. 701(22), Oct. 28, 1986, 100 Stat. 3292; renumbered Sec. 1905 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1906. Policy provisions

Provisions for cash, loan, paid-up, and extended values, dividends from gains and savings, refund of unearned premiums, and such other provisions as may be found to be reasonable and practicable may be provided for in the policy of insurance from time to time by regulations promulgated by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1149, Sec. 706; renumbered Sec. 1906 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1907. Payment or use of dividends

(a) Until and unless the Secretary has received from the insured a request or directive in writing exercising any other dividend option allowable under the insured's policy, any dividend accumulations and unpaid dividends shall be applied in payment of premiums becoming due on insurance subsequent to the date the dividend is payable after January 1, 1952.

(b) No claim by an insured for payment in cash of a special dividend declared prior to January 1, 1952, shall be processed by the Secretary unless such claim was received within six years after such dividend was declared. Whenever any claim for payment of a special dividend, the processing of which is barred by this subsection, is received by the Secretary, it shall be returned to the claimant, with a copy of this subsection, and such action shall be a complete response without further communication.

(c) The Secretary, upon application in writing made by the insured for insurance under this subsection, and without proof of good health, is authorized to apply any dividend due and payable on national service life insurance after the date of such application to purchase paid up insurance. Also, the Secretary, upon application in writing made by the insured during the one-year period beginning September 1, 1991, and without proof of good health, is authorized to apply any national service life insurance dividend credits and deposits of such insured existing at the date of the insured's application to purchase paid up insurance. After September 1, 1992, the Secretary may, from time to time, provide for further one-year periods during which insureds may purchase additional paid up insurance from existing dividend credits and deposits. Any such period for the purchase of additional paid up insurance may be allowed only if the Secretary determines in the case of any such period that it would be actuarially and administratively sound to do so. Any dividends, dividend credits, or deposits on endowment policies may be used under this subsection only to purchase additional paid up endowment insurance which matures concurrently with the basic policy. Any dividends, dividend credits, or deposits on policies (other than endowment policies) may be used under this section only to purchase additional paid up whole life insurance. The paid up insurance granted under this subsection shall be in addition to any insurance otherwise authorized under this title, or under prior provisions of law. The paid up insurance granted under this subsection shall be issued on the same terms and conditions as are contained in the standard policies of national service life insurance except (1) the premium rates for such insurance and all cash and loan values thereon shall be based on such table of mortality and rate of interest per annum as may be prescribed by the Secretary; (2) the total disability income provision authorized under section 1915 of this title may not be added to insurance issued under this section; and (3) the insurance shall include such other changes in terms and conditions as the Secretary determines to be reasonable and practicable.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1149, Sec. 707; Pub. L. 91–291, Sec. 9, June 25, 1970, 84 Stat. 331; Pub. L. 92–188, Sec. 2, Dec. 15, 1971, 85 Stat. 645; Pub. L. 97–295, Sec. 4(22), Oct. 12, 1982, 96 Stat. 1306; Pub. L. 99–576, title VII, Sec. 701(23), Oct. 28, 1986, 100 Stat. 3292; renumbered Sec. 1907 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(iii)(I), (C)(i), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 102–86, title II, Sec. 203, Aug. 14, 1991, 105 Stat. 416.)

§ 1908. Premium payments

The Secretary shall, by regulations, prescribe the time and method of payment of the premiums on insurance, but payments of premiums in advance shall not be required for periods of more than one month each, and may at the election of the insured be de-

ducted from the insured's active-service pay or be otherwise made. An amount equal to the first premium due under a National Service Life Insurance policy may be advanced from current appropriations for active-service pay to any person in the active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, which amount shall constitute a lien upon any service or other pay accruing to the person for whom such advance was made and shall be collected therefrom if not otherwise paid. No disbursing or certifying officer shall be responsible for any loss incurred by reason of such advance. Any amount so advanced in excess of available service or other pay shall constitute a lien on the policy within the provisions of section 5301(b) of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1149, Sec. 708; Pub. L. 99–576, title VII, Sec. 701(24), Oct. 28, 1986, 100 Stat. 3292; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 1908 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1909. Effective date of insurance

Insurance may be made effective, as specified in the application, not later than the first day of the calendar month following the date of application therefor, but the United States shall not be liable thereunder for death occurring before such effective date.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1149, Sec. 709; renumbered Sec. 1909, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1910. Incontestability

Subject to the provisions of section 1911 of this title all contracts or policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of issue, reinstatement, or conversion except for fraud, nonpayment of premium, or on the ground that the applicant was not a member of the military or naval forces of the United States. However, in any case in which a contract or policy of insurance is canceled or voided after March 16, 1954, because of fraud, the Secretary shall refund to the insured, if living, or, if deceased, to the person designated as beneficiary (or if none survives, to the estate of the insured) all money, without interest, paid as premiums on such contract or policy for any period subsequent to two years after the date such fraud induced the Secretary to issue, reinstate, or convert such insurance less any dividends, loan, or other payment made to the insured under such contract or policy.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1149, Sec. 710; renumbered Sec. 1910 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(iii)(II), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406.)

§ 1911. Forfeiture

Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to National Service Life Insurance. No insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States; but the cash surrender value, if any, of such insurance on the date of such death

shall be paid to the designated beneficiary, if living, or otherwise to the beneficiary or beneficiaries within the permitted class in accordance with the order specified in section 1916(b) of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1150, Sec. 711; renumbered Sec. 1911 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 1912. Total disability waiver

(a) Upon application by the insured and under such regulations as the Secretary may promulgate, payment of premiums on insurance may be waived during the continuous total disability of the insured, which continues or has continued for six or more consecutive months, if such disability began (1) after the date of the insured's application for insurance, (2) while the insurance was in force under premium-paying conditions, and (3) before the insured's sixty-fifth birthday. Notwithstanding any other provision of this chapter, in any case in which the total disability of the insured commenced on or after the insured's sixtieth birthday but before the insured's sixty-fifth birthday, the Secretary shall not grant waiver of any premium becoming due prior to January 1, 1965.

(b) The Secretary, upon any application made after August 1, 1947, shall not grant waiver of any premium becoming due more than one year before the receipt by the Secretary of application for the same, except as provided in this section. Any premiums paid for months during which waiver is effective shall be refunded. The Secretary shall provide by regulations for examination or reexamination of an insured claiming benefits under this section, and may deny benefits for failure to cooperate. If it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding and the policy of insurance may be continued by payment of premiums as provided in said policy. In any case in which the Secretary finds that the insured's failure to make timely application for waiver of premiums or the insured's failure to submit satisfactory evidence of the existence or continuance of total disability was due to circumstances beyond the insured's control, the Secretary may grant waiver or continuance of waiver of premiums.

(c) If the insured dies without filing application for waiver, the beneficiary, within one year after the death of the insured, or, if the beneficiary is insane or a minor, within one year after removal of such legal disability, may file application for waiver with evidence of the insured's right to waiver under this section. Premium rates shall be calculated without charge for the cost of waiver of premiums provided in this section and no deduction from benefits otherwise payable shall be made on account thereof.

(d) In any case in which an insured has been denied or would have been denied premium waiver under section 602(n) of the National Service Life Insurance Act of 1940 or this section solely because the insured became totally disabled between the date of valid application for insurance and the subsequent effective date thereof, and in which it is shown that (1) the total disability was incurred in line of duty between October 8, 1940, and July 31, 1946, inclusive, or June 27, 1950, and April 30, 1951, inclusive, and (2) the insured remained continuously so totally disabled to the date of death or June 8, 1960, whichever is earlier, the Secretary may

grant waiver of premiums from the beginning of and during the continuous total disability of such insured. Application for waiver of premiums under this subsection must be filed by the insured or, in the event of the insured's death, by the beneficiary within two years after June 8, 1960, except that if the insured or the beneficiary be insane or a minor within the two-year period, application for such waiver may be filed within two years after removal of such legal disability, or if an insane insured shall die before the removal of the disability, application may be filed by the beneficiary within two years after the insured's death. No insurance shall be placed in force under this subsection in any case in which there was an award of benefits under the Servicemen's Indemnity Act of 1951 or of gratuitous insurance under section 1922(b) of this title. The amount of insurance placed in force hereunder together with any other United States Government life insurance or national service life insurance in force at the time of death, or at the time of the insured's application for waiver hereunder, may not exceed $10,000 and shall be reduced by the amount of any gratuitous insurance awarded under the National Service Life Insurance Act of 1940. Waiver of premiums under this subsection shall render the insurance nonparticipating during the period such premium waiver is in effect. The cost of waiver of premium and death benefits paid as a result of this subsection shall be borne by the United States.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1150, Sec. 712; Pub. L. 86–497, June 8, 1960, 74 Stat. 164; Pub. L. 88–364, July 7, 1964, 78 Stat. 302; Pub. L. 97–295, Sec. 4(23), Oct. 12, 1982, 96 Stat. 1306; Pub. L. 99–576, title VII, Sec. 701(25), Oct. 28, 1986, 100 Stat. 3292; renumbered Sec. 1912 and amended Pub. L. 102–83, Sec. 4(a)(2)(C)(ii), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1913. Death before six months' total disability

Whenever premiums are not waived under section 1912 of this title solely because the insured died prior to the continuance of total disability for six months, and proof of such facts, satisfactory to the Secretary, is filed by the beneficiary with the Department within one year after the insured's death, the insurance shall be deemed to be in force at the date of the death, and the unpaid premiums shall become a lien against the proceeds of the insurance. If the beneficiary is insane or a minor, proof of such facts may be filed within one year after removal of such legal disability.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1150, Sec. 713; Pub. L. 99–576, title VII, Sec. 701(26), Oct. 28, 1986, 100 Stat. 3292; renumbered Sec. 1913 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1914. Statutory total disabilities

Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the total loss of hearing of both ears, or the organic loss of speech, shall be deemed total disability for insurance purposes.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1151, Sec. 714; renumbered Sec. 1914, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1915. Total disability income provision

The Secretary shall, except as hereinafter provided, upon application by the insured and proof of good health satisfactory to the Secretary and payment of such extra premium as the Secretary shall prescribe, include in any National Service Life Insurance policy on the life of the insured (except a policy issued under section 620 of the National Service Life Insurance Act of 1940, or section 1922 of this title) provisions whereby an insured who is shown to have become totally disabled for a period of six consecutive months or more commencing after the date of such application and before attaining the age of sixty-five and while the payment of any premium is not in default, shall be paid monthly disability benefits from the first day of the seventh consecutive month of and during the continuance of such total disability of $10 for each $1,000 of such insurance in effect when such benefits become payable. The total disability provision authorized under this section shall not be issued unless application therefor is made either prior to the insured's fifty-fifth birthday, or before the insured's sixtieth birthday and prior to January 1, 1966. The total disability provision authorized under this section shall not be added to a policy containing the total disability coverage heretofore issued under section 602(v) of the National Service Life Insurance Act of 1940, or the provisions of this section as in effect before January 1, 1965, except upon surrender of such total disability coverage, proof of good health, if required, satisfactory to the Secretary, and payment of such extra premium as the Secretary shall determine is required in such cases. Participating policies containing additional provisions for the payment of disability benefits may be separately classified for the purpose of dividend distribution from otherwise similar policies not containing such benefits.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1151, Sec. 715; Pub. L. 88–355, July 7, 1964, 78 Stat. 272; renumbered Sec. 1915 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1916. Insurance which matured before August 1, 1946

(a) Insurance which matured before August 1, 1946, is payable in the following manner:

(1) If the beneficiary to whom payment is first made was under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments.

(2) If the beneficiary to whom payment is first made was thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary.

(3) If elected by the insured or a beneficiary entitled to make such an election under prior provisions of law, as a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the first beneficiary. A refund life income optional settlement is not available in any

case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months. If the mode of payment is changed to a refund life income in accordance with prior provisions of law, after payment has commenced, payment of monthly installments will be adjusted as of the date of maturity of such policy with credit being allowed for payments previously made on the insurance.

(b) Such insurance shall be payable only to a widow, widower, child, parent, brother or sister of the insured. Any installments certain of such insurance remaining unpaid at the death of any beneficiary shall be paid in equal monthly installments in an amount equal to the monthly installments paid to the first beneficiary, to the person or persons then in being within the following classes, and in the order named, unless designated by the insured in a different order:

(1) To the widow or widower of the insured, if living.

(2) If no widow or widower, to the child or children of the insured, if living, in equal shares.

(3) If no widow, widower, or child, to the parent or parents of the insured who last bore that relationship, if living, in equal shares.

(4) If no widow, widower, child, or parent, to the brothers and sisters of the insured, if living, in equal shares.

(c) The provisions of this section shall not be construed to enlarge the classes of beneficiaries heretofore authorized under section 602(d) of the National Service Life Insurance Act of 1940, for payment of gratuitous insurance.

(d) If no beneficiary of insurance which matured before August 1, 1946, was designated by the insured or if the designated beneficiary did not survive the insured, the beneficiary shall be determined in accordance with the order specified in subsection (b) and the insurance shall be payable in equal monthly installments in accordance with subsection (a). The right of any beneficiary to payment of any installments of such insurance shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority, as provided in subsection (b).

(e) No installments of insurance which matured before August 1, 1946, shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and if no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made, except that if the reserve of a contract of converted National Service Life Insurance, together with dividends accumulated thereon, less any indebtedness under such contract, exceeds the aggregate amount paid to beneficiaries, the excess shall be paid to the estate of the insured unless the estate of the insured would escheat under the laws of the insured's place of residence, in which event no payment shall be made. When the amount of an individual monthly payment of such insurance is less than $5, such amount may, in the discre-

tion of the Secretary, be allowed to accumulate without interest and be disbursed annually.

(f) Any payments of insurance made to a person, represented by the insured to be within the permitted class of beneficiaries, shall be deemed to have been properly made and to satisfy fully the obligation of the United States under such insurance policy to the extent of such payments.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1151, Sec. 716; Pub. L. 99–576, title VII, Sec. 701(27), Oct. 28, 1986, 100 Stat. 3292; renumbered Sec. 1916 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–86, title V, Sec. 506(a)(2), Aug. 14, 1991, 105 Stat. 426.)

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

(a) The insured shall have the right to designate the beneficiary or beneficiaries of insurance maturing on or after August 1, 1946, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries.

(b) Insurance maturing on or after August 1, 1946, shall be payable in accordance with the following optional modes of settlement:

(1) In one sum.

(2) In equal monthly installments of from thirty-six to two hundred and forty in number, in multiples of twelve.

(3) In equal monthly installments for one hundred and twenty months certain with such payments continuing during the remaining lifetime of the first beneficiary.

(4) As a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the first beneficiary; however, such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months.

(c) Except as provided in the second and third sentences of this subsection, unless the insured elects some other mode of settlement, such insurance shall be payable to the designated beneficiary or beneficiaries in thirty-six equal monthly installments. The first beneficiary may elect to receive payment under any option which provides for payment over a longer period of time than the option elected by the insured, or if no option has been elected by the insured, in excess of thirty-six months. In the case of insurance maturing after September 30, 1981, and for which no option has been elected by the insured, the first beneficiary may elect to receive payment in one sum. If the option selected requires payment to any one beneficiary of monthly installments of less than $10, the amount payable to such beneficiary shall be paid in such maximum number of monthly installments as are a multiple of twelve as will provide a monthly installment of not less than $10. If the present value of the amount payable at the time any person initially becomes entitled to payment thereof is not sufficient to pay at least

twelve monthly installments of not less than $10 each, such amount shall be payable in one sum. Options (3) and (4) shall not be available if any firm, corporation, legal entity (including the estate of the insured), or trustee is beneficiary.

(d) If the beneficiary of such insurance is entitled to a lump-sum settlement but elects some other mode of settlement and dies before receiving all the benefits due and payable under such mode of settlement, the present value of the remaining unpaid amount shall be payable to the estate of the beneficiary. If no beneficiary is designated by the insured, or if the designated beneficiary does not survive the insured, or if a designated beneficiary not entitled to a lump-sum settlement survives the insured, and dies before receiving all the benefits due and payable, then the commuted value of the remaining unpaid insurance (whether accrued or not) shall be paid in one sum to the estate of the insured. In no event shall there be any payment to the estate of the insured or of the beneficiary of any sums unless it is shown that any sums paid will not escheat.

(e) Under such regulations as the Secretary may promulgate, the cash surrender value of any policy of insurance or the proceeds of an endowment contract which matures by reason of completion of the endowment period may be paid to the insured under option (2) or (4) of this section. All settlements under option (4), however, shall be calculated on the basis of The Annuity Table for 1949. If the option selected requires payment of monthly installments of less than $10, the amount payable shall be paid in such maximum number of monthly installments as are a multiple of twelve as will provide a monthly installment of not less than $10.

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

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

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

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

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1152, Sec. 717; Pub. L. 91–291, Sec. 10, June 25, 1970, 84 Stat. 331; Pub. L. 97–66, title IV, Sec. 403(a), Oct. 17, 1981, 95 Stat. 1031; renumbered Sec. 1917 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 108–183, title I, Sec. 103(a), Dec. 16, 2003, 117 Stat. 2655.)

§ 1918. Assignments

(a) Assignments of all or any part of the beneficiary's interest may be made by a designated beneficiary to a widow, widower,

child, father, mother, grandfather, grandmother, brother, or sister of the insured, when the designated contingent beneficiary, if any, joins the beneficiary in the assignment, and if the assignment is delivered to the Secretary before any payments of the insurance shall have been made to the beneficiary. However, an interest in an annuity, when assigned, shall be payable in equal monthly installments in such multiple of twelve as most nearly equals the number of installments certain under such annuity, or in two hundred and forty installments, whichever is the lesser. The provisions of this subsection shall not be applicable to insurance maturing after July 26, 1962.

(b) Except as to insurance granted under the provisions of section 1922(b) of this title, any person to whom insurance maturing after July 26, 1962, is payable may assign all or any portion of such person's interest in such insurance to a widow, widower, child, father, mother, grandfather, grandmother, brother, or sister of the insured when the designated contingent beneficiary, if any, joins the beneficiary in the assignment. Such joinder shall not be required in any case in which the insurance proceeds are payable in a lump sum.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1153, Sec. 718; Pub. L. 87–557, Sec. 1, July 27, 1962, 76 Stat. 245; Pub. L. 96–128, title III, Sec. 304, Nov. 28, 1979, 93 Stat. 986; Pub. L. 97–295, Sec. 4(24), Oct. 12, 1982, 96 Stat. 1306; renumbered Sec. 1918 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(iii)(III), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403, 406.)

§ 1919. National Service Life Insurance appropriation

(a) The National Service Life Insurance appropriation is continued and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this chapter and the provisions heretofore prescribed in the National Service Life Insurance Act of 1940, or related Acts, for the payment of liabilities under National Service Life Insurance. Payment from this appropriation shall be made upon and in accordance with awards by the Secretary.

(b) All premiums heretofore and hereafter paid on insurance issued or reinstated under section 602(v)(1) of the National Service Life Insurance Act of 1940 where the requirement of good health was waived under such section because of a service-incurred injury or disability shall be credited directly to the National Service Life Insurance appropriation and any payments of benefits heretofore and hereafter made on such insurance shall be made directly from such appropriation.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1154, Sec. 719; Pub. L. 98–160, title VII, Sec. 702(5), Nov. 21, 1983, 97 Stat. 1009; renumbered Sec. 1919 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 105–368, title III, Sec. 304(a), Nov. 11, 1998, 112 Stat. 3334.)

§ 1920. National Service Life Insurance Fund

(a) The National Service Life Insurance Fund heretofore created in the Treasury is continued as a permanent trust fund. Except as otherwise provided in this chapter, all premiums paid on account of National Service Life Insurance shall be deposited and covered into the Treasury to the credit of such fund, which, to-

gether with interest earned thereon, shall be available for the payment of liabilities under such insurance, including payment of dividends and refunds of unearned premiums, and for the reimbursement of administrative costs under subsection (c). Payments from this fund shall be made upon and in accordance with awards by the Secretary.

(b) The Secretary is authorized to set aside out of such fund such reserve amounts as may be required under accepted actuarial principles to meet all liabilities under such insurance; and the Secretary of the Treasury is authorized to invest and reinvest such fund, or any part thereof, in interest-bearing obligations of the United States or in obligations guaranteed as to principal and interest by the United States, and to sell such obligations for the purposes of such fund.

(c)(1) For each fiscal year for which this subsection is in effect, the Secretary shall, from the National Service Life Insurance Fund, reimburse the "General operating expenses" account of the Department for the amount of administrative costs determined under paragraph (2) for that fiscal year. Such reimbursement shall be made from any surplus earnings for that fiscal year that are available for dividends on such insurance after claims have been paid and actuarially determined reserves have been set aside. However, if the amount of such administrative costs exceeds the amount of such surplus earnings, such reimbursement shall be made only to the extent of such surplus earnings.

(2) The Secretary shall determine the administrative costs to the Department for a fiscal year for which this subsection is in effect which, in the judgment of the Secretary, are properly allocable to the provision of National Service Life Insurance (and to the provision of any total disability income insurance added to the provision of such insurance).

(3) This subsection shall be in effect only with respect to fiscal year 1996.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1154, Sec. 720; renumbered Sec. 1920 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 104–99, title II, Sec. 201(b), Jan. 26, 1996, 110 Stat. 36.)

§ 1921. Extra hazard costs

(a) The United States shall bear the excess mortality cost and the cost of waiver of premiums on account of total disability traceable to the extra hazard of military or naval service, as such hazard may be determined by the Secretary.

(b) Whenever benefits under insurance become payable because of the death of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Secretary, the liability for payment of such benefits shall be borne by the United States in an amount which, when added to the reserve of the policy at the time of death of the insured will equal the then value of such benefits under such policy. Where life contingencies are involved in the calculation of the value of such benefits of insurance heretofore or hereafter matured, the calculation of such liability or liabilities shall be based upon such mortality table or tables as the Secretary may prescribe with interest at the rate of 3 per centum per annum. The Secretary

shall transfer from time to time from the National Service Life Insurance appropriation to the National Service Life Insurance Fund such sums as may be necessary to carry out the provisions of this section.

(c) Whenever the premiums under insurance are waived because of the total disability of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Secretary, the premiums so waived shall be paid by the United States and the Secretary shall transfer from time to time an amount equal to the amount of such premiums from the National Service Life Insurance appropriation to the National Service Life Insurance Fund.

(d) Whenever benefits under the total disability income provision become, or have become, payable because of total disability of the insured as a result of disease or injury traceable to the extra hazard of the military or naval service, as such hazard may be determined by the Secretary, the liability shall be borne by the United States, and the Secretary shall transfer from the National Service Life Insurance appropriation to the National Service Life Insurance Fund from time to time any amounts which become, or have become, payable to the insured on account of such total disability, and to transfer from the National Service Life Insurance Fund to the National Service Life Insurance appropriation the amount of the reserve held on account of the total disability benefit. When a person receiving such payments on account of total disability recovers from such disability, and is then entitled to continue protection under the total disability income provision, the Secretary shall transfer to the National Service Life Insurance Fund a sum sufficient to set up the then required reserve on such total disability benefit.

(e) Any disability for which a waiver was required as a condition to tendering a person a commission under Public Law 816, Seventy-seventh Congress, shall be deemed to be a disability resulting from an injury or disease traceable to the extra hazard of military or naval service for the purpose of applying this section.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1154, Sec. 721; renumbered Sec. 1921 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1922. Service disabled veterans' insurance

(a) Any person who is released from active military, naval, or air service, under other than dishonorable conditions on or after April 25, 1951, and is found by the Secretary to be suffering from a disability or disabilities for which compensation would be payable if 10 per centum or more in degree and except for which such person would be insurable according to the standards of good health established by the Secretary, shall, upon application in writing made within two years from the date service-connection of such disability is determined by the Secretary and payment of premiums as provided in this subchapter, be granted insurance by the United States against the death of such person occurring while such insurance is in force. If such a person is shown by evidence satisfactory to the Secretary to have been mentally incompetent during any part of the two-year period, application for insurance under this section may be filed within two years after a guardian is appointed

or within two years after the removal of such disability as determined by the Secretary, whichever is the earlier date. If the guardian was appointed or the removal of the disability occurred before January 1, 1959, application for insurance under this section may be made within two years after that date. Insurance granted under this section shall be issued upon the same terms and conditions as are contained in the standard policies of National Service Life Insurance except (1) the premium rates for such insurance shall be based on the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of 2 1/4 per centum per annum; (2) all cash, loan, paid-up, and extended values shall be based upon the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of 2 1/4 per centum per annum; (3) all settlements on policies involving annuities shall be calculated on the basis of The Annuity Table for 1949, and interest at the rate of 2 1/4 per centum per annum; (4) insurance granted under this section shall be on a nonparticipating basis and all premiums and other collections therefor shall be credited directly to a revolving fund in the Treasury of the United States, and any payments on such insurance shall be made directly from such fund; and (5) administrative costs to the Government for the costs of the program of insurance under this section shall be paid from premiums credited to the fund under paragraph (4), and payments for claims against the fund under paragraph (4) for amounts in excess of amounts credited to such fund under that paragraph (after such administrative costs have been paid) shall be paid from appropriations to the fund. Appropriations to such fund are hereby authorized. As to insurance issued under this section, waiver of premiums pursuant to section 602(n) of the National Service Life Insurance Act of 1940 and section 1912 of this title shall not be denied on the ground that the service-connected disability became total before the effective date of such insurance.

(b)(1) Any person who, on or after April 25, 1951, was otherwise qualified for insurance under the provisions of section 620 of the National Service Life Insurance Act of 1940, or under subsection (a) of this section, but who did not apply for such insurance and who is shown by evidence satisfactory to the Secretary (A) to have been mentally incompetent from a service-connected disability, (i) at the time of release from active service, or (ii) during any part of the two-year period from the date the service connection of a disability is first determined by the Secretary, or (iii) after release from active service but is not rated service-connected disabled by the Secretary until after death; and (B) to have remained continuously so mentally incompetent until date of death; and (C) to have died before the appointment of a guardian, or within two years after the appointment of a guardian; shall be deemed to have applied for and to have been granted such insurance, as of the date of death, in an amount which, together with any other United States Government or National Service life insurance in force, shall aggregate $10,000. The date to be used for determining whether such person was insurable according to the standards of good health established by the Secretary, except for the service-connected disability, shall be the date of release from active service or

the date the person became mentally incompetent, whichever is the later.

(2) Payments of insurance granted under subsection (b)(1) of this section shall be made only to the following beneficiaries and in the order named—

(A) to the widow or widower of the insured, if living and while unremarried;

(B) if no widow or widower entitled thereto, to the child or children of the insured, if living, in equal shares;

(C) if no widow or widower or child entitled thereto, to the parent or parents of the insured who last bore that relationship, if living, in equal shares.

(3) No application for insurance payments under this subsection shall be valid unless filed with the Secretary within two years after the date of death of the insured or before January 1, 1961, whichever is the later, and the relationship of the applicant shall be proved as of the date of death of the insured by evidence satisfactory to the Secretary. Persons shown by evidence satisfactory to the Secretary to have been mentally or legally incompetent at the time the right to apply for death benefits expires, may make such application at any time within one year after the removal of such disability.

(4) Notwithstanding section 1917 of this title, insurance under this subsection shall be payable to the beneficiary determined under paragraph (2) of this subsection in a lump sum.

(c) The premium rate of any term insurance issued under this section shall not exceed the renewal age 70 premium rate.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1155, Sec. 722; renumbered Sec. 1922 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(iii)(IV), (D)(i), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 102–86, title II, Sec. 201(a), 202(a), Aug. 14, 1991, 105 Stat. 415, 416; Pub. L. 103–446, title XII, Sec. 1201(i)(2), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 106–419, title III, Sec. 311(a), Nov. 1, 2000, 114 Stat. 1854; Pub. L. 110–389, title IV, Sec. 404, Oct. 10, 2008, 122 Stat. 4175.)

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

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

(b) To qualify for supplemental insurance under this section a person must file with the Secretary an application for such insurance. Such application must be filed not later than (1) October 31, 1993, or (2) the end of the one-year period beginning on the date on which the Secretary notifies the person that the person is entitled to a waiver of premiums under section 1912 of this title, whichever is later.

(c) Supplemental insurance granted under this section shall be granted upon the same terms and conditions as insurance granted under section 1922(a) of this title, except that such insurance may not be granted to a person under this section unless the application is made for such insurance before the person attains 65 years of age.

(d) No waiver of premiums shall be made in the case of any person for supplemental insurance granted under this section.

(Added Pub. L. 102–568, title II, Sec. 203(a), Oct. 29, 1992, 106 Stat. 4324; amended Pub. L. 103–446, title XII, Sec. 1201(f)(1), Nov. 2, 1994, 108 Stat. 4687.)

§ 1923. Veterans' Special Life Insurance

(a) Insurance heretofore granted under the provisions of section 621 of the National Service Life Insurance Act of 1940, against the death of the policyholder occurring while such insurance is in force, is subject to the same terms and conditions as are contained in standard policies of National Service Life Insurance on the five-year level premium term plan except (1) such insurance may not be exchanged for or converted to insurance on any other plan; (2) the premium rates for such insurance shall be based on the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of 2 1/4 per centum per annum; (3) all settlements on policies involving annuities shall be calculated on the basis of The Annuity Table for 1949, and interest at the rate of 2 1/4 per centum per annum; (4) all premiums and other collections on such insurance and any total disability provisions added thereto shall be credited to a revolving fund in the Treasury of the United States, which, together with interest earned thereon, shall be available for the payment of liabilities under such insurance and any total disability provisions added thereto, including payments of dividends and refunds of unearned premiums, and for the reimbursement of administrative costs under subsection (d).

(b) Any term insurance heretofore issued under section 621 of the National Service Life Insurance Act of 1940, may be converted to a permanent plan of insurance or exchanged for a policy of limited convertible five-year level premium term insurance issued under this subsection. Insurance issued under this subsection shall be issued upon the same terms and conditions as are contained in the standard policies of National Service Life Insurance except (1) after September 1, 1960, limited convertible term insurance may not be issued or renewed on the term plan after the insured's fiftieth birthday; (2) the premium rates for such limited convertible term or permanent plan insurance shall be based on table X-18 (1950–54 Intercompany Table of Mortality) and interest at the rate of 2 1/2 per centum per annum; (3) all settlements on policies involving annuities on insurance issued under this subsection shall be calculated on the basis of The Annuity Table for 1949, and interest at the rate of 2 1/2 per centum per annum; (4) all cash, loan, paid-up, and extended values, and, except as otherwise provided in this subsection, all other calculations in connection with insurance issued under this subsection shall be based on table X-18 (1950–54 Intercompany Table of Mortality) and interest at the rate of 2 1/2 per centum per annum; (5) all premiums and other collections on insurance issued under this subsection and any total disability income provisions added thereto shall be credited directly to the revolving fund referred to in subsection (a) of this section, which together with interest earned thereon, shall be available for the payment of liabilities under such insurance and any total disability provisions added thereto, including payments of dividends and refunds of unearned premiums.

(c) The Secretary is authorized to invest in, and the Secretary of the Treasury is authorized to sell and retire, special interest-

bearing obligations of the United States for the account of the revolving fund with a maturity date as may be agreed upon by the two Secretaries. The rate of interest on such obligations shall be fixed by the Secretary of the Treasury at a rate equal to the rate of interest, computed as of the end of the month preceding the date of issue of such obligations, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt that are not due or callable until after the expiration of five years from the date of original issue; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such average rate.

(d)(1) For each fiscal year for which this subsection is in effect, the Secretary shall, from the Veterans' Special Life Insurance Fund, reimburse the "General operating expenses" account of the Department for the amount of administrative costs determined under paragraph (2) for that fiscal year. Such reimbursement shall be made from any surplus earnings for that fiscal year that are available for dividends on such insurance after claims have been paid and actuarially determined reserves have been set aside. However, if the amount of such administrative costs exceeds the amount of such surplus earnings, such reimbursement shall be made only to the extent of such surplus earnings.

(2) The Secretary shall determine the administrative costs to the Department for a fiscal year for which this subsection is in effect which, in the judgment of the Secretary, are properly allocable to the provision of Veterans' Special Life Insurance (and to the provision of any total disability income insurance added to the provision of such insurance).

(3) This subsection shall be in effect only with respect to fiscal year 1996.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1157, Sec. 723; Pub. L. 85–896, Sept. 2, 1958, 72 Stat. 1716; Pub. L. 87–223, Sept. 13, 1961, 75 Stat. 495; Pub. L. 93–289, Sec. 2(a), May 24, 1974, 88 Stat. 165; renumbered Sec. 1923 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(C), (E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 104–99, title II, Sec. 201(b), Jan. 26, 1996, 110 Stat. 36.)

§ 1924. In-service waiver of premiums

(a) Waiver of all premiums on five-year level premium term insurance and that portion of any permanent insurance premiums representing the cost of the pure insurance risk, as determined by the Secretary, granted on National Service Life Insurance or United States Government life insurance under section 622 of the National Service Life Insurance Act of 1940 and in effect on January 1, 1959, shall, unless canceled, continue in effect according to the provisions of such section for the remainder of the insured's continuous active service and for one hundred and twenty days thereafter. Such premium waiver renders the contract of insurance nonparticipating during the period the waiver is in effect.

(b) Whenever benefits become payable because of the maturity of such insurance while under the premium waiver continued by this section, liability for payment of such benefits shall be borne by the United States in an amount which, when added to any reserve of the policy at the time of maturity, will equal the then value of

such benefits under such policy. Where life contingencies are involved in the calculation of the value of such benefits, the calculation of such liability or liabilities shall be based upon such mortality table or tables as the Secretary may prescribe with interest at the rate of 2 1/4 per centum per annum as to insurance issued under sections 620 and 621 of the National Service Life Insurance Act of 1940, at the rate of 3 per centum per annum as to other National Service Life Insurance, and 3 1/2 per centum per annum as to United States Government life insurance. The Secretary shall transfer from time to time from the National Service Life Insurance appropriation to the National Service Life Insurance Fund and from the military and naval insurance appropriation to the United States Government Life Insurance Fund such sums as may be necessary to carry out the provisions of this section.

(c) In any case in which insurance continued in force under this section matures on or after January 1, 1972, an amount equal to the amount of premiums, less dividends, waived on and after that date shall be placed as an indebtedness against the insurance and, unless otherwise paid, shall be deducted from the proceeds. In such case, the liability of the Government under subsection (b) of this section shall be reduced by the amount so deducted from the proceeds.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1157, Sec. 724; Pub. L. 92–197, Sec. 7, Dec. 15, 1971, 85 Stat. 662; renumbered Sec. 1924 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1925. Limited period for acquiring insurance

(a) Any person (other than a person referred to in subsection (f) of this section) heretofore eligible to apply for National Service Life Insurance after October 7, 1940, and before January 1, 1957, who is found by the Secretary to be suffering (1) from a service-connected disability or disabilities for which compensation would be payable if 10 percent or more in degree and except for which such person would be insurable according to the standards of good health established by the Secretary; or (2) from a non-service-connected disability which renders such person uninsurable according to the standards of good health established by the Secretary and such person establishes to the satisfaction of the Secretary that such person is unable to obtain commercial life insurance at a substandard rate, shall, upon application in writing made before May 2, 1966, compliance with the health requirements of this section and payment of the required premiums, be granted insurance under this section.

(b) If, notwithstanding the applicant's service-connected disability, such person is insurable according to the standards of good health established by the Secretary, the insurance granted under this section shall be issued upon the same terms and conditions as are contained in the standard policies of National Service Life Insurance except (1) five-year level premium term insurance may not be issued; (2) the net premium rates shall be based on the 1958 Commissioners Standard Ordinary Basic Mortality Table, increased at the time of issue by such an amount as the Secretary determines to be necessary for sound actuarial operations, and thereafter such premiums may be adjusted as the Secretary deter-

mines to be so necessary but at intervals of not less than two years; (3) an additional premium to cover administrative costs to the Government as determined by the Secretary at times of issue shall be charged for insurance issued under this subsection and for any total disability income provision attached thereto, and thereafter such costs may be adjusted as the Secretary determines to be necessary but at intervals of not less than five years; (4) all cash, loan, extended and paid-up insurance values shall be based on the 1958 Commissioners Standard Ordinary Basic Mortality Table; (5) all settlements on policies involving annuities shall be calculated on the basis of The Annuity Table for 1949; (6) all calculations in connection with insurance issued under this subsection shall be based on interest at the rate of 3 1/2 percent per annum; and (7) the insurance shall include such other changes in terms and conditions as the Secretary determines to be reasonable and practicable.

(c) If the applicant's service-connected disability or disabilities render the applicant uninsurable according to the standards of good health established by the Secretary, or if the applicant has a non-service-connected disability which renders the applicant uninsurable according to the standards of good health established by the Secretary and such person establishes to the satisfaction of the Secretary that such person is unable to obtain commercial life insurance at a substandard rate and such uninsurability existed as of the date of approval of this section, the insurance granted under this section shall be issued upon the same terms and conditions as are contained in standard policies of National Service Life Insurance, except (1) five-year level premium term insurance may not be issued; (2) the premiums charged for the insurance issued under this subsection shall be increased at the time of issue by such an amount as the Secretary determines to be necessary for sound actuarial operations and thereafter such premiums may be adjusted from time to time as the Secretary determines to be necessary; for the purpose of any increase at time of issue or later adjustment the service-connected group and the non-service-connected group may be separately classified; (3) an additional premium to cover administrative costs to the Government as determined by the Secretary at the time of issue shall be charged for insurance issued under this subsection and for any total disability income provision attached thereto (for which the insured may subsequently become eligible) and thereafter such costs may be adjusted as the Secretary determines to be necessary but at intervals of not less than five years and for this purpose the service-connected and non-service-connected can be separately classified; (4) all settlements on policies involving annuities shall be calculated on the basis of The Annuity Table for 1949; (5) all calculations in connection with insurance issued under this subsection shall be based on interest at the rate of 3 1/2 percent per annum; and (6) the insurance shall include such other changes in terms and conditions as the Secretary determines to be reasonable and practicable.

(d)(1) All premiums and collections on insurance issued pursuant to this section and any total disability income provision attached thereto shall be credited to the Veterans Reopened Insurance Fund, a revolving fund established in the Treasury of the United States, and all payments on such insurance and any total

disability provision attached thereto, including payments of dividends and refunds of unearned premiums, shall be made from that fund and the interest earned on the assets of that fund. For actuarial and accounting purposes, the assets and liabilities (including liabilities for repayment of advances hereinafter authorized, and adjustment of premiums) attributable to the insured groups established under this section shall be separately determined. Such amounts in the Veterans Special Term Insurance Fund in the Treasury, not exceeding $1,650,000 in the aggregate, as may hereafter be determined by the Secretary to be in excess of the actuarial liabilities of that fund, including contingency reserves, shall be available for transfer to the Veterans Reopened Insurance Fund as needed to provide initial capital. Any amounts so transferred shall be repaid to the Treasury over a reasonable period of time with interest as determined by the Secretary of the Treasury taking into consideration the average yield on all marketable interest-bearing obligations of the United States of comparable maturities then forming a part of the public debt.

(2) The Secretary is authorized to set aside out of the revolving fund established under this section such reserve amounts as may be required under accepted actuarial principles to meet all liabilities on insurance issued under this section and any total disability income provision attached thereto. The Secretary of the Treasury is authorized to invest in and to sell and retire special interest-bearing obligations of the United States for the account of the revolving fund. Such obligations issued for this purpose shall have maturities fixed with due regard for the needs of the fund and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 percent, the rate of interest of such obligation shall be the multiple of one-eighth of 1 percent nearest such market yield.

(3) Notwithstanding the provisions of section 1982 of this title, the Secretary shall, from time to time, determine the administrative costs to the Government which in the Secretary's judgment are properly allocable to insurance issued under this section and any total disability income provision attached thereto, and shall transfer from the revolving fund, the amount of such cost allocable to the Department to the appropriation "General Operating Expenses, Department of Veterans Affairs", and the remainder of such cost to the general fund receipts in the Treasury. The initial administrative costs of issuing insurance under this section and any total disability income provision attached thereto shall be so transferred over such period of time as the Secretary determines to be reasonable and practicable.

(e) Notwithstanding the provisions of section 1982 of this title, a medical examination (including any supplemental examination or tests) when required of an applicant for issuance of insurance under this section or any total disability income provisions at-

tached thereto shall be at the applicant's own expense by a duly licensed physician.

(f) No insurance shall be granted under this section to any person referred to in section 107 of this title or to any person while on active duty or active duty for training under a call or order to such duty for a period of thirty-one days or more.

(Added Pub. L. 88–664, Sec. 12(a), Oct. 13, 1964, 78 Stat. 1096, Sec. 725; amended Pub. L. 89–40, June 14, 1965, 79 Stat. 130; Pub. L. 96–128, title III, Sec. 301, Nov. 28, 1979, 93 Stat. 985; Pub. L. 97–295, Sec. 4(25), Oct. 12, 1982, 96 Stat. 1306; Pub. L. 99–576, title VII, Sec. 701(28), Oct. 28, 1986, 100 Stat. 3292; renumbered Sec. 1925 and amended Pub. L. 102–83, Sec. 4(a)(2)(B)(ii), (3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406.)

§ 1926. Authority for higher interest rates for amounts payable to beneficiaries

Notwithstanding sections 1902, 1923, and 1925 of this title, if the beneficiary of an insurance policy receives the proceeds of such policy under a settlement option under which such proceeds are paid in equal monthly installments over a limited period of months, the interest that may be added to each such installment may be at a rate that is higher than the interest rate prescribed in the appropriate section of this subchapter. The Secretary may from time to time establish a higher interest rate under the preceding sentence only in accordance with a determination that such higher rate is administratively and actuarially sound for the program of insurance concerned. Any such higher interest rate shall be paid on the unpaid balance of such monthly installments.

(Added Pub. L. 96–128, title III, Sec. 302(a), Nov. 28, 1979, 93 Stat. 986, Sec. 726; renumbered Sec. 1926 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1927. Authority for higher monthly installments payable to certain annuitants

(a) Subject to subsections (b) and (c) of this section, the Secretary may from time to time adjust the dollar amount of the monthly installments payable to a beneficiary of National Service Life Insurance, Veterans Special Life Insurance, or Veterans Reopened Insurance who is receiving the proceeds of such insurance under a life annuity settlement option. The Secretary may make such an adjustment only if the Secretary determines that the adjustment is administratively and actuarially sound for the program of insurance concerned. The Secretary may make such an adjustment without regard to the provisions of sections 1902, 1923, and 1925 of this title with respect to interest rates and the use of mortality tables.

(b) The Secretary shall determine the amount in the trust funds in the Treasury held for payment of proceeds to National Service Life Insurance, Veterans Special Life Insurance, and Veterans Reopened Insurance beneficiaries attributable to interest and mortality gains on the reserves held for annuity accounts. Such amount shall be available for distribution to the life annuitants referred to in subsection (a) of this section as a fixed percentage of, and in addition to, the monthly installment amount to which the annuitants are entitled under this subchapter. For the purposes of

this section, gains on the reserves are defined as funds attributable solely to annuity accounts that are in excess of actuarial liabilities.

(c) The monthly amount of an annuity authorized in sections 1902, 1923, and 1925 of this title, as adjusted under this section, may not be less than the monthly amount of such annuity that would otherwise be applicable without regard to this section.

(Added Pub. L. 100–322, title III, Sec. 331(a)(1), May 20, 1988, 102 Stat. 536, Sec. 727; renumbered Sec. 1927 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1928. Authority for payment of interest on settlements

(a) Subject to subsection (b) of this section, the Secretary may pay interest on the proceeds of a participating National Service Life Insurance, Veterans' Special Life Insurance, and Veterans Reopened Insurance policy from the date the policy matures to the date of payment of the proceeds to the beneficiary or, in the case of an endowment policy, to the policyholder.

(b)(1) The Secretary may pay interest under subsection (a) of this section only if the Secretary determines that the payment of such interest is administratively and actuarially sound for the settlement option involved.

(2) Interest paid under subsection (a) of this section shall be at the rate that is established by the Secretary for dividends held on credit or deposit in policyholders' accounts under the insurance program involved.

(Added Pub. L. 100–687, div. B, title XIV, Sec. 1401(a)(1), Nov. 18, 1988, 102 Stat. 4128, Sec. 728; renumbered Sec. 1928 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1929. Authority to adjust premium discount rates

(a) Notwithstanding sections 1902, 1923, and 1925 of this title and subject to subsection (b) of this section, the Secretary may from time to time adjust the discount rates for premiums paid in advance on National Service Life Insurance, Veterans' Special Life Insurance, and Veterans Reopened Insurance.

(b)(1) In adjusting a discount rate pursuant to subsection (a) of this section, the Secretary may not set such rate at a rate lower than the rate authorized for the program of insurance involved under section 1902, 1923, or 1925 of this title.

(2) The Secretary may make an adjustment under subsection (a) of this section only if the Secretary determines that the adjustment is administratively and actuarially sound for the program of insurance involved.

(Added Pub. L. 100–687, div. B, title XIV, Sec. 1401(b)(1), Nov. 18, 1988, 102 Stat. 4129, Sec. 729; renumbered Sec. 1929 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

SUBCHAPTER II—UNITED STATES GOVERNMENT LIFE INSURANCE

§ 1940. Definition

For the purposes of this subchapter, the term "insurance" means United States Government life insurance.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1158, Sec. 740; renumbered Sec. 1940, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1941. Amount of insurance

United States Government life insurance shall be issued against death or total permanent disability in any multiple of $500 and not less than $1,000 or more than $10,000. No person may carry a combined amount of National Service Life Insurance and United States Government life insurance in excess of $10,000 at any one time. The limitations of this section shall not apply to the additional paid up insurance the purchase of which is authorized under section 1907 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1158, Sec. 741; Pub. L. 92–188, Sec. 1, Dec. 15, 1971, 85 Stat. 645; renumbered Sec. 1941 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 1942. Plans of insurance

(a) Regulations shall provide for the right to convert insurance on the five-year level premium term plan into ordinary life, twenty-payment life, endowment maturing at age sixty-two, and into other usual forms of insurance as may be prescribed by the Secretary. Provision shall be made for reconversion of any such policies to a higher premium rate or, upon proof of good health satisfactory to the Secretary, to a lower premium rate, in accordance with regulations to be issued by the Secretary. No reconversion shall be made to a five-year level premium term policy.

(b) An insured who on or after the insured's sixty-fifth birthday has a five-year level premium term policy of insurance in force by payment of premiums may exchange such policy for insurance on a special endowment at age ninety-six plan upon written application; payment of the required premium; and surrender of the five-year level premium term policy and any total disability provision attached thereto with all rights, title, and interests thereunder. However, if it is found by the Secretary subsequent to the exchange that prior thereto the term policy matured because of total permanent disability of the insured or that the insured was entitled to total disability benefits under the total disability provision attached to such policy, the insured, upon surrender of the special endowment at age ninety-six policy and any provision for waiver of premiums issued under subsection (c) of this section with all rights, title, and interest thereunder, will be entitled to benefits payable under the prior contract. In such case, the cash value less any indebtedness on the endowment policy shall be refunded together with any premiums paid on a provision for waiver of premiums. Insurance on the special endowment at age ninety-six plan shall be issued at the attained age of the insured upon the same terms and conditions as are contained in standard policies of United States Government Life Insurance except:

(1) the insurance shall not mature and no benefits shall be paid thereunder because of total permanent disability;

(2) the premiums for such insurance shall be as prescribed by the Secretary;

(3) such insurance cannot be exchanged, converted, or reconverted to any other plan of insurance;

(4) all cash, loan, paid-up, and extended term insurance values shall be as prescribed by the Secretary; and

(5) the insurance shall be subject to such other changes in terms and conditions as the Secretary determines to be reasonable and practicable.

(c) The Secretary shall, upon application made by the insured at the same time as the insured exchanges the term policy for an endowment policy issued under the provisions of subsection (b) of this section, and upon payment of such extra premium as the Secretary shall prescribe, include in such endowment policy a provision for waiver of premiums on the policy and on the provision during the total permanent disability of the insured, if such disability began after the date of such application and while the policy and the provision are in force by payment of premiums. The Secretary shall not grant waiver of any premium becoming due more than one year before receipt by the Secretary of claim for the same, except as provided in this subsection. Any premiums paid for months during which waiver is effective shall be refunded. The Secretary shall provide by regulations for examination or reexamination of an insured claiming waiver of premiums under this subsection, and may deny waiver for failure to cooperate. If it is found that an insured is no longer totally and permanently disabled, the waiver of premiums shall cease as of the date of such finding and the policy and provision may be continued by payment of premiums as provided therein. In any case in which the Secretary finds that the insured's failure to make timely claim for waiver of premiums, or to submit satisfactory evidence of the existence or continuance of total permanent disability was due to circumstances beyond the insured's control, the Secretary may grant waiver or continuance of waiver of premiums. If the insured dies without filing claim for waiver, the beneficiary, within one year after the death of the insured, or, if the beneficiary is insane or a minor, within one year after removal of such legal disability, may file claim for waiver with evidence of the insured's right to waiver under this subsection. Policies containing a provision for waiver of premiums issued under this subsection may be separately classified for the purpose of dividend distribution from otherwise similar policies not containing such provision.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1158, Sec. 742; Pub. L. 87–549, July 25, 1962, 76 Stat. 219; Pub. L. 99–576, title VII, Sec. 701(29), Oct. 28, 1986, 100 Stat. 3292; renumbered Sec. 1942 and amended Pub. L. 102–83, Sec. 4(a)(2)(C)(iii), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1943. Premiums

The premium rates for insurance shall be the net rates based upon the American Experience Table of Mortality and interest at 3 1/2 percent per annum. Regulations shall prescribe the time and method of payment of premiums, but payments of premiums in advance shall not be required for periods of more than one month each, and may be deducted from the pay or deposit of the insured or be otherwise made at the insured's election.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1158, Sec. 743; Pub. L. 97–295, Sec. 4(26), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 99–576, title VII, Sec. 701(30), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1943, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1944. Policy provisions

(a) Provisions for maturity at certain ages, for continuous installments during the lifetime of the insured or beneficiaries, or both, for refund of premiums, cash, loan, paid-up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable may be provided for in insurance contracts or from time to time by regulations.

(b) All calculations on insurance shall be based upon the American Experience Table of Mortality and interest at 3 1/2 percent per annum, except that no deduction shall be made for continuous installments during the life of the insured in case the insured's total and permanent disability continues more than two hundred and forty months.

(c) On and after July 19, 1939, the rate of interest charged on any loan secured by a lien on insurance shall not exceed 5 percent per annum.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1158, Sec. 744; Pub. L. 97–295, Sec. 4(26), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 99–576, title VII, Sec. 701(30), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1944, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1945. Renewal

At the expiration of any term period any insurance policy issued on the five-year level premium term plan which has not been exchanged or converted to a permanent plan of insurance and which is not lapsed shall be renewed as level premium term insurance without application for a successive five-year period at the premium rate for the attained age without medical examination. However, renewal shall be effected in cases where the policy is lapsed only if the insured makes application for reinstatement and renewal of the insured's term policy within five years after the date of lapse, and reinstatement in such cases shall be under the terms and conditions prescribed by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1159, Sec. 745; Pub. L. 91–291, Sec. 11, June 25, 1970, 84 Stat. 331; Pub. L. 99–576, title VII, Sec. 701(30), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1945 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1946. Dividends to pay premiums

Until and unless the Secretary has received from the insured a request in writing for payment of dividends in cash or that the dividends be placed on deposit in accordance with the provisions of the insured's policy, any regular annual dividends shall be applied in payment of premiums becoming due on insurance after the date the dividend is payable on or after December 31, 1958.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1159, Sec. 746; Pub. L. 99–576, title VII, Sec. 701(30), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1946 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(iii)(V), 5(a), Aug. 6, 1991, 105 Stat. 403, 406.)

§ 1947. Incontestability

Subject to the provisions of section 1954 of this title all contracts or policies of insurance heretofore or hereafter issued, rein-

stated, or converted shall be incontestable from the date of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States. The insured under such contract or policy may, without prejudicing the insured's rights, elect to make claim to the Department or to bring suit under section 1984 of this title on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy. In any case in which a contract or policy of insurance is canceled or voided after March 16, 1954, because of fraud, the Secretary shall refund to the insured, if living, or, if deceased, to the person designated as beneficiary (or if none survives, to the estate of the insured) all money, without interest, paid as premiums on such contract or policy for any period subsequent to two years after the date such fraud induced the Secretary to issue, reinstate, or convert such insurance less any dividends, loan, or other payment made to the insured under such contract or policy.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1159, Sec. 747; Pub. L. 99–576, title VII, Sec. 701(30), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1947 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(iii)(VI), (3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406.)

§ 1948. Total disability provision

The Secretary shall include in United States Government life insurance policies provision whereby an insured, who is totally disabled as a result of disease or injury for a period of four consecutive months or more before attaining the age of sixty-five years and before default in payment of any premium, shall be paid disability benefits at the rate of $5.75 monthly for each $1,000 of insurance in force when total disability benefits become payable. The amount of such monthly payment under the provisions of this section shall not be reduced because of payment of permanent and total disability benefits under the insurance policy. Such payments shall be effective as of the first day of the fifth consecutive month, and shall be made monthly during the continuance of such total disability. Such payments shall be concurrent with or independent of permanent and total disability benefits under the insurance policy. In addition to the monthly disability benefits the payment of premiums on the life insurance and for the total disability benefits authorized by this section shall be waived during the continuance of such total disability. Regulations shall provide for reexaminations of beneficiaries under this section; and, in the event that it is found that an insured is no longer totally disabled, the waiver of premiums and payment of benefits shall cease and the insurance policy, including the total disability provision, may be continued by payment of premiums as provided in said policy and the total disability provision. Neither the dividends nor the amount payable in any settlement under any United States Government life insurance policy shall be decreased because of disability benefits granted under the provisions of this section. The payment of total disability benefits shall not prejudice the right of any insured, who is totally and permanently disabled, to permanent and total disability benefits under the insured's insurance policy. The provision authorized by this sec-

tion shall not be included in any United States Government life insurance policy heretofore or hereafter issued, except upon application, payment of premium by the insured, and proof of good health satisfactory to the Secretary. The benefit granted under this section shall be on the basis of multiples of $500, and not less than $1,000 or more than the amount of insurance in force at time of application. The Secretary shall determine the amount of the monthly premium to cover the benefits of this section, and in order to continue such benefits in force the monthly premiums shall be payable until the insured attains the age of sixty-five years or until the prior maturity of the policy. In all other respects such monthly premium shall be payable under the same terms and conditions as the regular monthly premium on the United States Government life insurance policy.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1159, Sec. 748; Pub. L. 97–295, Sec. 4(27), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 99–576, title VII, Sec. 701(30), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1948 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1949. Change of beneficiary

Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of a United States Government life insurance policy without the consent of such beneficiary or beneficiaries.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1160, Sec. 749; renumbered Sec. 1949, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1950. Payment to estates

If no beneficiary of insurance is designated by the insured, either while alive or by last will, or if the designated beneficiary does not survive the insured, then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments. If the designated beneficiary survives the insured and dies before receiving all of the installments of insurance payable and applicable, then there shall be paid to the estate of such beneficiary the present value of the remaining unpaid monthly installments. No payments shall be made to any estate which under the laws of the residence of the insured or the beneficiary, as the case may be, would escheat, but same shall escheat to the United States and be credited to the United States Government Life Insurance Fund.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1160, Sec. 750; Pub. L. 99–576, title VII, Sec. 701(31), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1950, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1951. Payment of insurance

United States Government life insurance, except as provided in this subchapter, shall be payable in two hundred and forty equal monthly installments. When the amount of an individual monthly payment is less than $5, such amount may in the discretion of the Secretary be allowed to accumulate without interest and be disbursed annually.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1161, Sec. 751; renumbered Sec. 1951 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1952. Optional settlement

(a) The Secretary may provide in insurance contracts for optional settlements, to be selected by the insured, whereby such insurance may be made payable either in one sum or in installments for thirty-six months or more. A provision may also be included in such contracts authorizing the beneficiary to elect to receive payment of the insurance in installments for thirty-six months or more, but only if the insured has not exercised the right of election as provided in this subchapter. Even though the insured may have exercised the right of election the beneficiary may elect to receive such insurance in installments spread over a greater period of time than that selected by the insured. Notwithstanding any provision to the contrary in any insurance contract, the beneficiary may, in the case of insurance maturing after September 30, 1981, and for which the insured has not exercised the right of election of the insured as provided in this subchapter, elect to receive payment of the insurance in one sum.

(b) Under such regulations as the Secretary may promulgate, the cash surrender value of any policy of insurance or the proceeds of an endowment contract which matures by reason of completion of the endowment period may be paid to the insured (1) in equal monthly installments of from thirty-six to two hundred and forty in number, in multiples of twelve; or (2) as a refund life income in monthly installments payable for such periods certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the cash value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the insured. However, all settlements under option (2) above shall be calculated on the basis of The Annuity Table for 1949. If the option selected requires payment of monthly installments of less than $10, the amount payable shall be paid in such maximum number of monthly installments as are a multiple of twelve as will provide a monthly installment of not less than $10.

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

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

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

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

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1161, Sec. 752; Pub. L. 91–291, Sec. 12, June 25, 1970, 84 Stat. 332; Pub. L. 97–66, title IV, Sec. 403(b), Oct. 17, 1981, 95 Stat. 1031; Pub. L. 99–576, title VII, Sec. 701(32), Oct. 28, 1986, 100 Stat. 3293;

renumbered Sec. 1952 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 108–183, title I, Sec. 103(b), Dec. 16, 2003, 117 Stat. 2655.)

§ 1953. Assignments

Any person to whom United States Government life insurance shall be payable may assign such person's interest in such insurance to the spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law of the insured. Insofar as applicable, the definitions contained in section 3 of the World War Veterans' Act, 1924, in effect on December 31, 1958, shall apply to this section.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1161, Sec. 753; Pub. L. 96–128, title III, Sec. 304, Nov. 28, 1979, 93 Stat. 986; renumbered Sec. 1953, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1954. Forfeiture

No yearly renewable term insurance or United States Government life insurance shall be payable for death inflicted as a lawful punishment for crime or military offense, except when inflicted by the enemy. In such cases the cash surrender value of United States Government life insurance, if any, on the date of such death shall be paid to the designated beneficiary if living, or if there be no designated beneficiary alive at the death of the insured the said value shall be paid to the estate of the insured.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1161, Sec. 754; renumbered Sec. 1954, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1955. United States Government Life Insurance Fund

(a) All premiums paid on account of United States Government life insurance shall be deposited and covered into the Treasury to the credit of the United States Government Life Insurance Fund and shall be available for the payment of losses, dividends, refunds, and other benefits provided for under such insurance, including such liabilities as shall have been or shall hereafter be reduced to judgment in a district court of the United States or the United States District Court for the District of Columbia, and for the reimbursement of administrative costs under subsection (c). Payments from this fund shall be made upon and in accordance with awards by the Secretary.

(b) The Secretary is authorized to set aside out of the funds so collected such reserve funds as may be required, under accepted actuarial principles, to meet all liabilities under such insurance; and the Secretary of the Treasury is authorized to invest and reinvest the said United States Government Life Insurance Fund, or any part thereof, in interest-bearing obligations of the United States or bonds of the Federal farm-loan banks and to sell said obligations of the United States or the bonds of the Federal farm-loan banks for the purposes of such Fund.

(c)(1) For each fiscal year for which this subsection is in effect, the Secretary shall, from the United States Government Life Insurance Fund, reimburse the "General operating expenses" account of the Department for the amount of administrative costs determined under paragraph (2) for that fiscal year. Such reimbursement shall be made from any surplus earnings for that fiscal year that are

available for dividends on such insurance after claims have been paid and actuarially determined reserves have been set aside. However, if the amount of such administrative costs exceeds the amount of such surplus earnings, such reimbursement shall be made only to the extent of such surplus earnings.

(2) The Secretary shall determine the administrative costs to the Department for a fiscal year for which this subsection is in effect which, in the judgment of the Secretary, are properly allocable to the provision of United States Government Life Insurance (and to the provision of any total disability income insurance added to the provision of such insurance).

(3) This subsection shall be in effect only with respect to fiscal year 1996.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1161, Sec. 755; renumbered Sec. 1955 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 104–99, title II, Sec. 201(b), Jan. 26, 1996, 110 Stat. 36.)

§ 1956. Military and naval insurance appropriation

All sums heretofore or hereafter appropriated for the military and naval insurance appropriation and all premiums collected for yearly renewable term insurance deposited and covered into the Treasury to the credit of this appropriation shall be made available to the Department. All premiums that may hereafter be collected for yearly renewable term insurance shall be deposited and covered into the Treasury for the credit of this appropriation. Such sum is made available for the payment of the liabilities of the United States incurred under contracts of yearly renewable term insurance. Payments from this appropriation shall be made upon and in accordance with the awards by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1162, Sec. 756; renumbered Sec. 1956 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1957. Extra hazard costs

(a) The United States shall bear the excess mortality and disability cost resulting from the hazards of war on United States Government life insurance.

(b) Whenever benefits under United States Government life insurance become, or have become, payable because of total permanent disability of the insured or because of the death of the insured as a result of disease or injury traceable to the extra hazard of the military or naval service, as such hazard may be determined by the Secretary, the liability shall be borne by the United States. In such cases the Secretary shall transfer from the military and naval insurance appropriation to the United States Government Life Insurance Fund a sum which, together with the reserve of the policy at the time of maturity by total permanent disability or death, will equal the then value of such benefits. When a person receiving total permanent disability benefits under a United States Government life insurance policy recovers from such disability and is then entitled to continue a reduced amount of insurance, the Secretary shall transfer to the military and naval insurance appropriation all of the loss reserve to the credit of such policy claim except a sum sufficient to set up the then required reserve on the reduced

amount of the insurance that may be continued, which sum shall be retained in the United States Government Life Insurance Fund for the purpose of such reserve.

(c) Whenever benefits under the total disability provision become, or have become, payable because of total disability of the insured as a result of disease or injury traceable to the extra hazard of the military or naval service, as such hazard may be determined by the Secretary, the liability shall be borne by the United States, and the Secretary shall transfer from the military and naval insurance appropriation to the United States Government Life Insurance Fund from time to time any amounts which become or have become payable to the insured on account of such total disability, and shall transfer from the United States Government Life Insurance Fund to the military and naval insurance appropriation the amount of the reserve held on account of the total disability benefit. When a person receiving such payments on account of total disability recovers from such disability and is then entitled to continued protection under the total disability provision, the Secretary shall transfer to the United States Government Life Insurance Fund a sum sufficient to set up the then required reserve on such total disability benefit.

(d) Any disability for which a waiver was required as a condition to tendering a person a commission under Public Law 816, Seventy-seventh Congress, shall be deemed to be a disability resulting from an injury or disease traceable to the extra hazard of military or naval service for the purpose of applying this section.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1162, Sec. 757; renumbered Sec. 1957 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1958. Statutory total permanent disability

Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, shall be deemed total permanent disability for insurance purposes. This section shall be deemed to be in effect on and after April 6, 1917, and shall apply only to automatic insurance, yearly renewable term insurance, and United States Government life insurance issued prior to December 15, 1936.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1163, Sec. 758; renumbered Sec. 1958, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1959. Waiver of disability for reinstatement

(a) In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant have been complied with, an application for reinstatement, in whole or in part, of lapsed United States Government life insurance may be approved if made within two years after the date of lapse and if the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the period beginning April 6, 1917, and ending July 2, 1921, and the applicant during the applicant's lifetime submits proof satisfactory to the Secretary showing that the applicant is not totally and permanently disabled. As

a condition to the acceptance of an application for reinstatement under this section, the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum, compounded annually, on each premium from the date said premium is due by the terms of the policy.

(b) Premium liens established under the provisions of section 304 of the World War Veterans' Act, 1924, shall continue to bear interest at the rate of 5 per centum per annum, compounded annually, and will be deducted from any settlement of insurance to which they are attached.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1163, Sec. 759; Pub. L. 99–576, title VII, Sec. 701(33), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1959 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1960. Waiver of premium payments on due date

(a) The Secretary is authorized to provide by regulations for waiving the payment of premiums on United States Government life insurance on the due date thereof and the insurance may be deemed not to lapse in the cases of the following persons: (1) those who are confined in hospital under the Department for a compensable disability during the period while they are so confined; (2) those who are rated as temporarily totally disabled by reason of any injury or disease entitling them to compensation during the period of such total disability and while they are so rated; (3) those who, while mentally incompetent and for whom no legal guardian had been or has been appointed, allowed or may allow their insurance to lapse during the period for which they have been or hereafter may be rated mentally incompetent, or until a guardian has notified the Department of the guardian's qualification, but not later than six months after appointment of a guardian. In mentally incompetent cases the waiver is to be made without application and retroactive when necessary. Relief from payment of premiums on the due date thereof shall be for full calendar months, beginning with the month in which said confinement to hospital, the temporary total disability rating, or the mental incompetency began or begins and ending with that month during the half or major fraction of which such persons are no longer entitled to waiver as provided above.

(b) All premiums the payment of which when due is waived as provided in this section shall bear interest at the rate of 5 percent per annum, compounded annually, from the due date of each premium, and if not paid by the insured shall be deducted from the insurance in any settlement thereunder, or when the same matures either because of permanent total disability or death. In the event any lien or other indebtedness established by this section or prior corresponding provision of law exists against any policy of United States Government life insurance in excess of the then cash surrender value thereof at the time of the termination of such policy of insurance for any reason other than by death or total permanent disability the Secretary is authorized to transfer and pay from the military and naval insurance appropriation to the United States Government Life Insurance Fund a sum equal to the amount such lien or indebtedness exceeds the then cash surrender value.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1163, Sec. 760; Pub. L. 97–295, Sec. 4(28), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 99–576, title VII, Sec. 701(34), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1960 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1961. Authority for higher interest rates for amounts payable to beneficiaries

Notwithstanding section 1944(b) of this title, if the beneficiary of an insurance policy issued under the provisions of this subchapter receives the proceeds of such policy under a settlement option under which such proceeds are paid in equal monthly installments over a limited period of months, the interest that may be added to each such installment may be at a rate that is higher than the interest rate prescribed in such section. The Secretary may from time to time establish a higher interest rate under the preceding sentence only in accordance with a determination that such higher rate is administratively and actuarially sound. Any such higher interest rate shall be paid on the unpaid balance of such monthly installments.

(Added Pub. L. 96–128, title III, Sec. 303(a), Nov. 28, 1979, 93 Stat. 986, Sec. 761; renumbered Sec. 1961 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1962. Authority for higher monthly installments payable to certain annuitants

(a) Subject to subsections (b) and (c) of this section, the Secretary may from time to time adjust the dollar amount of the monthly installments payable to a beneficiary of United States Government Life Insurance who is receiving the proceeds of such insurance under a life annuity settlement option. The Secretary may make such an adjustment only if the Secretary determines that the adjustment is administratively and actuarially sound. The Secretary may make such an adjustment without regard to the provisions of section 1944 of this title with respect to interest rates and the use of mortality tables.

(b) The Secretary shall determine the amount in the trust fund in the Treasury held for payment of proceeds to United States Government Life Insurance beneficiaries attributable to interest and mortality gains on the reserves held for annuity accounts. Such amount shall be available for distribution to the life annuitants referred to in subsection (a) of this section as a fixed percentage of, and in addition to, the monthly installment amount to which the annuitants are entitled under this subchapter. For the purposes of this section, gains on the reserves are defined as funds attributable solely to annuity accounts that are in excess of actuarial liabilities.

(c) The monthly amount of an annuity authorized in section 1944 of this title, as adjusted under this section, may not be less than the monthly amount of such annuity that would otherwise be applicable without regard to this section.

(Added Pub. L. 100–322, title III, Sec. 331(b)(1), May 20, 1988, 102 Stat. 536, Sec. 762; renumbered Sec. 1962 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1963. Authority for payment of interest on settlements

(a) Subject to subsection (b) of this section, the Secretary may pay interest on the proceeds of a United States Government Life Insurance policy from the date the policy matures to the date of payment of the proceeds to the beneficiary or, in the case of an endowment policy, to the policyholder.

(b)(1) The Secretary may pay interest under subsection (a) of this section only if the Secretary determines that the payment of such interest is administratively and actuarially sound for the settlement option involved.

(2) Interest paid under subsection (a) shall be at the rate that is established by the Secretary for dividends held on credit or deposit in policyholders' accounts.

(Added Pub. L. 100–687, div. B, title XIV, Sec. 1401(a)(2), Nov. 18, 1988, 102 Stat. 4128, Sec. 763; renumbered Sec. 1963 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

SUBCHAPTER III—SERVICEMEMBERS' GROUP LIFE INSURANCE

§ 1965. Definitions

For the purpose of this subchapter—

(1) The term "active duty" means—

(A) full-time duty in the Armed Forces, other than active duty for training;

(B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service;

(C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration; and

(D) full-time duty as a cadet or midshipman at the United States Military Academy, United States Naval Academy, United States Air Force Academy, or the United States Coast Guard Academy.

(2) The term "active duty for training" means—

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service;

(C) full-time duty as a member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises; and

(D) in the case of members of the National Guard or Air National Guard of any State, full-time duty under sections 316, 502, 503, 504, or 505 of title 32, United States Code.

(3) The term "inactive duty training" means—

(A) duty (other than full-time duty) prescribed or authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) which duty is scheduled in advance by competent authority to begin at a specific time and place; and

(B) in the case of a member of the National Guard or Air National Guard of any State, such term means duty (other than full-time duty) which is scheduled in advance by competent authority to begin at a specific time and place under sections 316, 502, 503, 504, or 505 of title 32, United States Code.

(4) The terms "active duty for training" and "inactive duty training" do not include duty performed as a temporary member of the Coast Guard Reserve, and the term "inactive duty training" does not include (A) work or study performed in connection with correspondence courses, or (B) attendance at an educational institution in an inactive status.

(5) The term "member" means—

(A) a person on active duty, active duty for training, or inactive duty training in the uniformed services in a commissioned, warrant, or enlisted rank, or grade, or as a cadet or midshipman of the United States Military Academy, United States Naval Academy, United States Air Force Academy, or the United States Coast Guard Academy;

(B) a person who volunteers for assignment to the Ready Reserve of a uniformed service and is assigned to a unit or position in which such person may be required to perform active duty, or active duty for training, and each year will be scheduled to perform at least twelve periods of inactive duty training that is creditable for retirement purposes under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act);

(C) a person who volunteers for assignment to a mobilization category in the Individual Ready Reserve, as defined in section 12304(i)(1) of title 10; and

(D) a member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises.

(6) The term "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(7) The terms "widow" or "widower" means a person who is the lawful spouse of the insured member at the time of his death.

(8) The term "child" means a legitimate child, a legally adopted child, an illegitimate child as to the mother, or an illegitimate child as to the alleged father, only if (A) he acknowledged the child in writing signed by him; or (B) he has been judicially ordered to contribute to the child's support; or (C) he has been, before his death, judicially decreed to be the father of such child; or (D) proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing that the insured was the informant and was named as father of the child; or (E) proof of paternity is established from service department or other public records, such as

school or welfare agencies, which show that with his knowledge the insured was named as the father of the child.

(9) The term "parent" means a father of a legitimate child, mother of a legitimate child, father through adoption, mother through adoption, mother of an illegitimate child, and father of an illegitimate child but only if (A) he acknowledged paternity of the child in writing signed by him before the child's death; or (B) he has been judicially ordered to contribute to the child's support; or (C) he has been judicially decreed to be the father of such child; or (D) proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing that the claimant was the informant and was named as father of the child; or (E) proof of paternity is established from service department or other public records, such as school or welfare agencies, which show that with his knowledge the claimant was named as father of the child. No person who abandoned or willfully failed to support a child during the child's minority, or consented to the child's adoption may be recognized as a parent for the purpose of this subchapter. However, the immediately preceding sentence shall not be applied so as to require duplicate payments in any case in which insurance benefits have been paid prior to receipt in the administrative office established under subsection 1966(b) of this title of sufficient evidence to clearly establish that the person so paid could not qualify as a parent solely by reason of such sentence.

(10) The term "insurable dependent", with respect to a member, means the following:

(A) The member's spouse.

(B) The member's child, as defined in the first sentence of section 101(4)(A) of this title.

(C) The member's stillborn child.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 880, Sec. 765; amended Pub. L. 91–291, Sec. 1, June 25, 1970, 84 Stat. 326; Pub. L. 92–185, Sec. 1, Dec. 15, 1971, 85 Stat. 642; Pub. L. 92–315, June 20, 1972, 86 Stat. 227; Pub. L. 93–289, Sec. 3, 10(1), May 24, 1974, 88 Stat. 165, 172; Pub. L. 99–576, title VII, Sec. 701(35), Oct. 28, 1986, 100 Stat. 3293; Pub. L. 102–54, Sec. 14(b)(16), June 13, 1991, 105 Stat. 284; renumbered Sec. 1965 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–337, div. A, title VI, Sec. 651(a), title XVI, Sec. 1677(d)(1), Oct. 5, 1994, 108 Stat. 2792, 3020; Pub. L. 104–275, title IV, Sec. 402(a), Oct. 9, 1996, 110 Stat. 3337; Pub. L. 106–419, title IV, Sec. 313(a), Nov. 1, 2000, 114 Stat. 1854; Pub. L. 107–14, Sec. 4(a)(1), June 5, 2001, 115 Stat. 26; Pub. L. 109–13, div. A, title I, Sec. 1032(a)(1), May 11, 2005, 119 Stat. 257; Pub. L. 109–233, title V, Sec. 502(c)(1), June 15, 2006, 120 Stat. 415; Pub. L. 110–389, title IV, Sec. 402(a), Oct. 10, 2008, 122 Stat. 4174.)

§ 1966. Eligible insurance companies

(a) The Secretary is authorized, without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), to purchase from one or more life insurance companies a policy or policies of group life insurance to provide the benefits specified in this subchapter. Each such life insurance company must (1) be licensed to issue life insurance in each of the fifty States of the United States and in the District of Columbia, and (2) as of the most recent December 31 for which information is available to the Secretary, have in effect at least 1 percent of the total amount of group life insur-

ance which all life insurance companies have in effect in the United States.

(b) The life insurance company or companies issuing such policy or policies shall establish an administrative office at a place and under a name designated by the Secretary.

(c) The Secretary shall arrange with the life insurance company or companies issuing any policy or policies under this subchapter to reinsure, under conditions approved by the Secretary, portions of the total amount of insurance under such policy or policies with such other life insurance companies (which meet qualifying criteria set forth by the Secretary) as may elect to participate in such reinsurance.

(d) The Secretary may at any time discontinue any policy or policies which the Secretary has purchased from any insurance company under this subchapter.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 880, Sec. 766; amended Pub. L. 97–295, Sec. 4(29), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 99–576, title VII, Sec. 701(36), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1966 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1967. Persons insured; amount

(a)(1) Subject to an election under paragraph (2), any policy of insurance purchased by the Secretary under section 1966 of this title shall automatically insure the following persons against death:

(A) In the case of any member of a uniformed service on active duty (other than active duty for training)—

(i) the member; and

(ii) each insurable dependent of the member.

(B) Any member of a uniformed service on active duty for training or inactive duty training scheduled in advance by competent authority.

(C) In the case of any member of the Ready Reserve of a uniformed service who meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title—

(i) the member; and

(ii) each insurable dependent of the member.

(2)(A) A member may elect in writing not to be insured under this subchapter.

(B) A member may elect in writing not to insure the member's spouse under this subchapter.

(3)(A) Subject to subparagraphs (B) and (C), the amount for which a person is insured under this subchapter is as follows:

(i) In the case of a member, $400,000.

(ii) In the case of a member's spouse, $100,000.

(iii) In the case of a member's child, $10,000.

(B) A member may elect in writing to be insured or to insure the member's spouse in an amount less than the amount provided for under subparagraph (A). The member may not elect to insure the member's child in an amount less than $10,000. The amount of insurance so elected shall, in the case of a member, be evenly divisible by $50,000 and, in the case of a member's spouse,,(!1) be evenly divisible by $10,000.

(C) In no case may the amount of insurance coverage under this subsection of a member's spouse exceed the amount of insurance coverage of the member.

(4)(A) An insurable dependent of a member is not insured under this chapter unless the member is insured under this subchapter.

(B) An insurable dependent who is a child may not be insured at any time by the insurance coverage under this chapter of more than one member. If an insurable dependent who is a child is otherwise eligible to be insured by the coverage of more than one member under this chapter, the child shall be insured by the coverage of the member whose eligibility for insurance under this subchapter occurred first, except that if that member does not have legal custody of the child, the child shall be insured by the coverage of the member who has legal custody of the child.

(5) The insurance shall be effective with respect to a member and the insurable dependents of the member on the latest of the following dates:

(A) The first day of active duty or active duty for training.

(B) The beginning of a period of inactive duty training scheduled in advance by competent authority.

(C) The first day a member of the Ready Reserve meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title.

(D) The date certified by the Secretary to the Secretary concerned as the date Servicemembers' Group Life Insurance under this subchapter for the class or group concerned takes effect.

(E) In the case of an insurable dependent who is a spouse, the date of marriage of the spouse to the member.

(F) In the case of an insurable dependent who is a child, the date of birth of such child or, if the child is not the natural child of the member, the date on which the child acquires status as an insurable dependent of the member.

(b) Any member (other than one who has elected not to be insured under this subchapter for the period or periods of duty involved)—

(1) who, when authorized or required by competent authority, assumes an obligation to perform (for less than thirty-one days) active duty, or active duty for training, or inactive duty training scheduled in advance by competent authority; and

(2) who is rendered uninsurable at standard premium rates according to the good health standards approved by the Secretary, or dies within one hundred and twenty days thereafter, from a disability, or aggravation of a preexisting disability, incurred by such member while proceeding directly to or returning directly from such active duty, active duty for training, or inactive duty training as the case may be;

shall be deemed to have been on active duty, active duty for training, or inactive duty training, as the case may be, and to have been insured under this subchapter at the time such disability was incurred or aggravated, and if death occurs within one hundred and twenty days thereafter as a result of such disability to have been insured at the time of death. In determining whether or not such

individual was so authorized or required to perform such duty, and whether or not such member was rendered uninsurable or died within one hundred and twenty days thereafter from a disability so incurred or aggravated, there shall be taken into account the call or order to duty, the orders and authorizations of competent authority, the hour on which the member began to so proceed or to return, the hour on which such member was scheduled to arrive for, or on which such member ceased to perform such duty; the method of travel employed; such member's itinerary; the manner in which the travel was performed; and the immediate cause of disability or death. Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this subsection, the burden of proof shall be on the claimant.

(c) If a person eligible for insurance under this subchapter is not so insured, or is insured for less than the maximum amount provided for the person under subparagraph (A) of subsection (a)(3), by reason of an election made by a member under subparagraph (B) of that subsection, the person may thereafter be insured under this subchapter in the maximum amount or any lesser amount elected as provided in such subparagraph (B) upon written application by the member, proof of good health of each person (other than a child) to be so insured, and compliance with such other terms and conditions as may be prescribed by the Secretary. Any former member insured under Veterans' Group Life Insurance who again becomes eligible for Servicemembers' Group Life Insurance and declines such coverage solely for the purpose of maintaining such member's Veterans' Group Life Insurance in effect shall upon termination of coverage under Veterans' Group Life Insurance be automatically insured under Servicemembers' Group Life Insurance, if otherwise eligible therefor.

(d) Whenever a member has the opportunity to make an election under subsection (a) not to be insured under this subchapter, or to be insured under this subchapter in an amount less than the maximum amount in effect under paragraph (3)(A)(i) of that subsection, and at such other times periodically thereafter as the Secretary concerned considers appropriate, the Secretary concerned shall furnish to the member general information concerning life insurance. Such information shall include—

(1) the purpose and role of life insurance in financial planning;

(2) the difference between term life insurance and whole life insurance;

(3) the availability of commercial life insurance; and

(4) the relationship between Servicemembers' Group Life Insurance and Veterans' Group Life Insurance.

(e) The effective date and time for any change in benefits under the Servicemembers' Group Life Insurance Program shall be based on the date and time according to the time zone immediately west of the International Date Line.

(f)(1) If a member who is married and who is eligible for insurance under this section makes an election under subsection (a)(2)(A) not to be insured under this subchapter, the Secretary concerned shall notify the member's spouse, in writing, of that election.

(2) In the case of a member who is married and who is insured under this section and whose spouse is designated as a beneficiary of the member under this subchapter, whenever the member makes an election under subsection (a)(3)(B) for insurance of the member in an amount that is less than the maximum amount provided under subsection (a)(3)(A)(i), the Secretary concerned shall notify the member's spouse, in writing, of that election—

(A) in the case of the first such election; and

(B) in the case of any subsequent such election if the effect of such election is to reduce the amount of insurance coverage of the member from that in effect immediately before such election.

(3) In the case of a member who is married and who is insured under this section, if the member makes a designation under section 1970(a) of this title of any person other than the spouse or a child of the member as the beneficiary of the member for any amount of insurance under this subchapter, the Secretary concerned shall notify the member's spouse, in writing, that such a beneficiary designation has been made by the member, except that such a notification is not required if the spouse has previously received such a notification under this paragraph and if immediately before the new designation by the member under section 1970(a) of this title the spouse is not a designated beneficiary of the member for any amount of insurance under this subchapter.

(4) A notification required by this subsection is satisfied by a good faith effort to provide the required information to the spouse at the last address of the spouse in the records of the Secretary concerned. Failure to provide a notification required under this subsection in a timely manner does not affect the validity of any election specified in paragraph (1) or (2) or beneficiary designation specified in paragraph (3).

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 881, Sec. 767; amended Pub. L. 91–291, Sec. 2, June 25, 1970, 84 Stat. 327; Pub. L. 93–289, Sec. 4, May 24, 1974, 88 Stat. 166; Pub. L. 97–66, title IV, Sec. 401(a), Oct. 17, 1981, 95 Stat. 1030; Pub. L. 99–166, title IV, Sec. 401(a), Dec. 3, 1985, 99 Stat. 956; Pub. L. 99–576, title VII, Sec. 701(37), Oct. 28, 1986, 100 Stat. 3293; Pub. L. 102–25, title III, Sec. 336(a), Apr. 6, 1991, 105 Stat. 89; renumbered Sec. 1967 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–568, title II, Sec. 201, Oct. 29, 1992, 106 Stat. 4324; Pub. L. 103–160, div. A, title XI, Sec. 1175(a), Nov. 30, 1993, 107 Stat. 1768; Pub. L. 103–337, div. A, title VI, Sec. 651(b), Oct. 5, 1994, 108 Stat. 2792; Pub. L. 104–106, div. A, title VI, Sec. 646, Feb. 10, 1996, 110 Stat. 369; Pub. L. 104–275, title IV, Secs. 402(b), 404, 405(b)(1)(A), Oct. 9, 1996, 110 Stat. 3337, 3339; Pub. L. 106–419, title III, Secs. 312(a), 313(b), Nov. 1, 2000, 114 Stat. 1854, 1855; Pub. L. 107–14, Sec. 4(b), June 5, 2001, 115 Stat. 26; Pub. L. 109–13, div. A, title I, Sec. 1012(a)–(c)(1), (d), (f), May 11, 2005, 119 Stat. 244–246; Pub. L. 109–80, Secs. 2, 3(a), 4, 5(a), Sept. 30, 2005, 119 Stat. 2045, 2046; Pub. L. 110–389, title IV, Sec. 403(a)(1), (2)(A), Oct. 10, 2008, 122 Stat. 4174.)

§ 1968. Duration and termination of coverage; conversion

(a) Each policy purchased under this subchapter shall contain a provision, in terms approved by the Secretary, to the effect that any insurance thereunder on any member of the uniformed services, and any insurance thereunder on any insurable dependent of such a member, unless discontinued or reduced upon the written request of the insured (or discontinued pursuant to section 1969(a)(2)(B) of this title), shall continue in effect while the mem-

ber is on active duty, active duty for training, or inactive duty training scheduled in advance by competent authority during the period thereof, or while the member meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title and such insurance shall cease as follows:

(1) With respect to a member on active duty or active duty for training under a call or order to duty that does not specify a period of less than 31 days, insurance under this subchapter shall cease as follows:

(A) 120 days after the separation or release from active duty or active duty for training, unless on the date of such separation or release the member is totally disabled, under criteria established by the Secretary, in which event the insurance shall cease on the earlier of the following dates (but in no event before the end of 120 days after such separation or release):

(i) The date on which the insured ceases to be totally disabled.

(ii) The date that is—

(I) two years after the date of separation or release from such active duty or active duty for training, in the case of such a separation or release during the period beginning on the date that is one year before the date of the enactment of Veterans' Housing Opportunity and Benefits Improvement Act of 2006 and ending on September 30, 2011; and

(II) 18 months after the date of separation or release from such active duty or active duty for training, in the case of such a separation or release on or after October 1, 2011.

(B) At the end of the thirty-first day of a continuous period of (i) absence without leave, (ii) confinement by civil authorities under a sentence adjudged by a civilian court, or (iii) confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances. Any insurance so terminated as the result of such an absence or confinement, together with any beneficiary designation in effect for such insurance at such termination thereof, shall be automatically revived as of the date the member is restored to active duty with pay or to active duty for training with pay.

(2) With respect to a member on active duty or active duty for training under a call or order to duty that specifies a period of less than 31 days, insurance under this subchapter shall cease at midnight, local time, on the last day of such duty, unless on such date the insured is suffering from a disability incurred or aggravated during such period which, within 120 days after such date, (i) results in death, or (ii) renders the member uninsurable at standard premium rates according to the good health standards approved by the Secretary, in which event the insurance shall continue in force to death, or for 120 days after such date, whichever is the earlier date.

(3) With respect to a member on inactive duty training scheduled in advance by competent authority, insurance under this subchapter shall cease at the end of such scheduled training period, unless at such time the insured is suffering from a disability incurred, or aggravated during such period which, within 120 days after the date of such training, (i) results in death, or (ii) renders the member uninsurable at standard premium rates according to the good health standards approved by the Secretary in which event the insurance shall continue in force to death, or for 120 days after the date such training terminated, whichever is the earlier date.

(4) With respect to a member of the Ready Reserve of a uniformed service who meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title, insurance under this subchapter shall cease 120 days after separation or release from such assignment, unless on the date of such separation or release the member is totally disabled, under criteria established by the Secretary, in which event the insurance shall cease on the earlier of the following dates (but in no event before the end of 120 days after separation or release from such assignment):

(A) The date on which the insured ceases to be totally disabled.

(B) The date that is—

(i) two years after the date of separation or release from such assignment, in the case of such a separation or release during the period beginning on the date that is one year before the date of the enactment of Veterans' Housing Opportunity and Benefits Improvement Act of 2006 and ending on September 30, 2011; and

(ii) 18 months after the date of separation or release from such assignment, in the case of such a separation or release on or after October 1, 2011.

(5) With respect to an insurable dependent of the member, insurance under this subchapter shall cease—

(A) 120 days after the date of an election made in writing by the member to terminate the coverage; or

(B) on the earliest of—

(i) 120 days after the date of the member's death;

(ii) the date of termination of the insurance on the member's life under this subchapter; or

(iii) 120 days after the termination of the dependent's status as an insurable dependent of the member.

(b)(1) Each policy purchased under this subchapter shall contain a provision, in terms approved by the Secretary, that, except as hereinafter provided, Servicemembers' Group Life Insurance which is continued in force after expiration of the period of duty or travel under section 1967(b) or 1968(a) of this title, effective the day after the date such insurance would cease—

(A) shall be automatically converted to Veterans' Group Life Insurance (to insure against death of the member only), subject to (i) the timely payment of the initial premium under

terms prescribed by the Secretary, and (ii) the terms and conditions set forth in section 1977 of this title; or

(B) at the election of the member, shall be converted to an individual policy of insurance as described in section 1977(e) of this title upon written application for conversion made to the participating company selected by the member and payment of the required premiums.

(2) Automatic conversion to Veterans' Group Life Insurance under paragraph (1) shall be effective only in the case of an otherwise eligible member or former member who is separated or released from a period of active duty or active duty for training or inactive duty training on or after the date on which the Veterans' Group Life Insurance program (provided for under section 1977 of this title) becomes effective.

(3)(A) In the case of a policy purchased under this subchapter for an insurable dependent who is a spouse, upon election of the spouse, the policy may be converted to an individual policy of insurance under the same conditions as described in section 1977(e) of this title (with respect to conversion of a Veterans' Group Life Insurance policy to such an individual policy) upon written application for conversion made to the participating company selected by the spouse and payment of the required premiums. Conversion of such policy to Veterans' Group Life Insurance is prohibited.

(B) In the case of a policy purchased under this subchapter for an insurable dependent who is a child, such policy may not be converted under this subsection.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 881, Sec. 768; amended Pub. L. 91–291, Sec. 3, June 25, 1970, 84 Stat. 328; Pub. L. 93–289, Sec. 5(a), May 24, 1974, 88 Stat. 166; Pub. L. 97–295, Sec. 4(30), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 99–576, title VII, Sec. 701(38), Oct. 28, 1986, 100 Stat. 3293; renumbered Sec. 1968 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–337, div. A, title VI, Sec. 651(c), title XVI, Sec. 1677(d)(1), Oct. 5, 1994, 108 Stat. 2792, 3020; Pub. L. 104–106, div. A, title VI, Sec. 647(b), Feb. 10, 1996, 110 Stat. 370; Pub. L. 104–275, title IV, Secs. 402(c), 403(a), 405(b)(1)(B), Oct. 9, 1996, 110 Stat. 3337 to 3339; Pub. L. 106–65, div. A, title X, Sec. 1066(d)(1), Oct. 5, 1999, 113 Stat. 773; Pub. L. 106–419, title III, Sec. 313(b), Nov. 1, 2000, 114 Stat. 1855; Pub. L. 107–14, Sec. 4(c), (f), June 5, 2001, 115 Stat. 28, 29; Pub. L. 109–233, title III, Sec. 301, June 15, 2006, 120 Stat. 405; Pub. L. 110–389, title IV, Sec. 403(b), Oct. 10, 2008, 122 Stat. 4174.)

§ 1969. Deductions; payment; investment; expenses

(a)(1) During any period in which a member, on active duty or active duty for training under a call or order to such duty that does not specify a period of less than thirty-one days, is insured under Servicemembers' Group Life Insurance, there shall be deducted each month from the member's basic or other pay until separation or release from such duty an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to insuring such member under such policy, less any costs traceable to the extra hazard of such duty in the uniformed service.

(2)(A) During any month in which a member is assigned to the Ready Reserve of a uniformed service under conditions which meet the qualifications of subparagraph (B) or (C) of section 1965(5) of this title, and is insured under a policy of insurance purchased by the Secretary, under section 1966 of this title, there shall be con-

tributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to insuring such member under this policy, less any costs traceable to the extra hazards of such duty in the uniformed services. Any amounts so contributed on behalf of any individual shall be collected by the Secretary concerned from such individual (by deduction from pay or otherwise) and shall be credited to the appropriation from which such contribution was made.

(B) If an individual who is required pursuant to subparagraph (A) to make a direct remittance of costs to the Secretary concerned fails to make the required remittance within 60 days of the date on which such remittance is due, such individual's insurance with respect to which such remittance is required shall be terminated by the Secretary concerned. Such termination shall be made by written notice to the individual's official address and shall be effective 60 days after the date of such notice. Such termination of insurance may be vacated if, before the effective date of termination, the individual remits all amounts past due for such insurance and demonstrates to the satisfaction of the Secretary concerned that the failure to make timely remittances was justifiable.

(3) During any fiscal year, or portion thereof, that a member is on active duty or active duty for training under a call or order to such duty that specifies a period of less than thirty-one days, or is authorized or required to perform inactive duty training scheduled in advance by competent authority, and is insured under Servicemembers' Group Life Insurance, the Secretary concerned shall collect from the member (by deduction from pay or otherwise) an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to insuring such member under such policy, less any costs traceable to the extra hazard of such duty in the uniformed service.

(4) Any amount not deducted from the basic or other pay of a member insured under Servicemembers' Group Life Insurance, or collected from the member by the Secretary concerned, if not otherwise paid, shall be deducted from the proceeds of any insurance thereafter payable. The initial monthly amount under paragraph (1) or (2) hereof, or fiscal year amount under paragraph (3) hereof, determined by the Secretary to be charged under this section for Servicemembers' Group Life Insurance may be continued from year to year, except that the Secretary may redetermine such monthly or fiscal year amounts from time to time in accordance with experience. No refunds will be made to any member of any amount properly deducted from the member's basic or other pay, or collected from the member by the Secretary concerned, to cover the insurance granted under Servicemembers' Group Life Insurance.

(b) For each month for which any member is so insured, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary and certified to the Secretary concerned to be the cost of Servicemembers' Group Life Insurance which is traceable to the extra hazard of duty in the uniformed services. Effective January 1, 1970, such cost shall be determined by the Secretary on the basis of the excess mortality incurred by members and former

members of the uniformed services insured under Servicemembers' Group Life Insurance above what their mortality would have been under peacetime conditions as such mortality is determined by the Secretary using such methods and data as the Secretary shall determine to be reasonable and practicable. The Secretary is authorized to make such adjustments regarding contributions from pay appropriations as may be indicated from actual experience.

(c) An amount equal to the first amount due on Servicemembers' Group Life Insurance may be advanced from current appropriations for active-service pay to any such member, which amount shall constitute a lien upon any service or other pay accruing to the person from whom such advance was made and shall be collected therefrom if not otherwise paid. No disbursing or certifying officer shall be responsible for any loss incurred by reason of such advance.

(d)(1) The sums withheld from the basic or other pay of members, or collected from them by the Secretary concerned, under subsection (a) of this section, and the sums contributed from appropriations under subsection (b) of this section, together with the income derived from any dividends or premium rate adjustments received from insurers shall be deposited to the credit of a revolving fund established in the Treasury of the United States. All premium payments and extra hazard costs on Servicemembers' Group Life Insurance and the administrative cost to the Department of insurance issued under this subchapter shall be paid from the revolving fund.

(2) The Secretary is authorized to set aside out of the revolving fund such amounts as may be required to meet the administrative costs to the Department of insurance issued under this subchapter and all current premium payments and extra hazard costs on any insurance policy or policies purchased under section 1966 of this title. The Secretary of the Treasury is authorized to invest in and to sell and retire special interest-bearing obligations of the United States for the account of the revolving fund. Such obligations issued for this purpose shall have maturities fixed with due regard for the needs of the fund and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligation shall be the multiple of one-eighth of 1 per centum nearest such market yield.

(3) Notwithstanding the provisions of section 1982 of this title, the Secretary shall, from time to time, determine the administrative costs to the Department which in the Secretary's judgment are properly allocable to insurance issued under this subchapter and shall transfer such cost from the revolving fund to the appropriation "General Operating Expenses, Department of Veterans Affairs".

(e) The Secretary of Defense shall prescribe regulations for the administration of the functions of the Secretaries of the military departments under this section. Such regulations shall prescribe such procedures as the Secretary of Defense, after consultation with the Secretary, may consider necessary to ensure that such functions are carried out in a timely and complete manner and in accordance with the provisions of this section, including specifically the provisions of subsection (a)(2) of this section relating to contributions from appropriations made for active duty pay.

(f)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, or by any political subdivision or other governmental authority of a State, on or with respect to any premium paid under an insurance policy purchased under this subchapter.

(2) Paragraph (1) of this subsection shall not be construed to exempt any company issuing a policy of insurance under this subchapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by that company from business conducted under this subchapter, if that tax, fee, or payment is applicable to a broad range of business activity.

(g)(1)(A) During any period in which a spouse of a member is insured under this subchapter and the member is on active duty, there shall be deducted each month from the member's basic or other pay until separation or release from active duty an amount determined by the Secretary as the premium allocable to the pay period for providing that insurance coverage. No premium may be charged for providing insurance coverage for a child.

(B) During any month in which a member is assigned to the Ready Reserve of a uniformed service under conditions which meet the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title and the spouse of the member is insured under a policy of insurance purchased by the Secretary under section 1966 of this title, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary as the share of the cost attributable to insuring the spouse of such member under this policy, less any costs traceable to the extra hazards of such duty in the uniformed services. Any amounts so contributed on behalf of any individual shall be collected by the Secretary concerned from such individual (by deduction from pay or otherwise) and shall be credited to the appropriation from which such contribution was made.

(2)(A) The Secretary shall determine the premium amounts to be charged for life insurance coverage for spouses of members under this subchapter.

(B) The premium amounts shall be determined on the basis of sound actuarial principles and shall include an amount necessary to cover the administrative costs to the insurer or insurers providing such insurance.

(C) Each premium rate for the first policy year shall be continued for subsequent policy years, except that the rate may be adjusted for any such subsequent policy year on the basis of the experience under the policy, as determined by the Secretary in advance of that policy year.

(h) Any overpayment of a premium for insurance coverage for an insurable dependent of a member that is terminated under section 1968(a)(5) of this title shall be refunded to the member.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 881, Sec. 769; amended Pub. L. 91–291, Sec. 4, June 25, 1970, 84 Stat. 329; Pub. L. 93–289, Sec. 6, 10(2), May 24, 1974, 88 Stat. 168, 172; Pub. L. 97–66, title IV, Sec. 402, Oct. 17, 1981, 95 Stat. 1031; Pub. L. 99–576, title VII, Sec. 701(39), Oct. 28, 1986, 100 Stat. 3293; Pub. L. 100–322, title III, Sec. 332(a), May 20, 1988, 102 Stat. 537; renumbered Sec. 1969 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–337, div. A, title VI, Sec. 651(d), Oct. 5, 1994, 108 Stat. 2793; Pub. L. 103–446, title XII, Sec. 1201(e)(8), (i)(3), Nov. 2, 1994, 108 Stat. 4685, 4688; Pub. L. 104–106, div. A, title VI, Sec. 647(a), Feb. 10, 1996, 110 Stat. 370; Pub. L. 104–275, title IV, Secs. 402(d), 405(b)(1)(C), Oct. 9, 1996, 110 Stat. 3337, 3339; Pub. L. 106–419, title III, Sec. 313(b), Nov. 1, 2000, 114 Stat. 1855; Pub. L. 107–14, Sec. 4(d), June 5, 2001, 115 Stat. 29; Pub. L. 109–13, div. A, title I, Sec. 1012(c)(2), May 11, 2005, 119 Stat. 245; Pub. L. 109–80, Sec. 2, Sept. 30, 2005, 119 Stat. 2045; Pub. L. 110–389, title IV, Sec. 403(a)(2)(B), (c), Oct. 10, 2008, 122 Stat. 4174.)

§ 1970. Beneficiaries; payment of insurance

(a) Any amount of insurance under this subchapter in force on any member or former member on the date of the insured's death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of the insured's death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemembers' Group Life Insurance, or (2) in the administrative office established under section 1966(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemembers' Group Life Insurance, or if insured under Veterans' Group Life Insurance;

Second, if there be no such beneficiary, to the widow or widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of the insured's death.

(b) If any person otherwise entitled to payment under this section does not make claim therefor within one year after the death of the member or former member, or if payment to such person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if such person had predeceased the member or former member, and any such payment shall be a bar to recovery by any other person.

(c) If, within two years after the death of the member or former member, no claim for payment has been filed by any person entitled under the order of precedence set forth in this section, and neither the Secretary nor the administrative office established by the

insurance company or companies pursuant to section 1966(b) of this title has received any notice that any such claim will be made, payment may be made to a claimant as may in the judgment of the Secretary be equitably entitled thereto, and such payment shall be a bar to recovery by any other person.

(d) The member may elect settlement of insurance under this subchapter either in a lump sum or in thirty-six equal monthly installments. If no such election is made by the member the beneficiary or beneficiaries may elect settlement either in a lump sum or in thirty-six equal monthly installments. If the member has elected settlement in a lump sum, the beneficiary or beneficiaries may elect settlement in thirty-six equal monthly installments.

(e) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with the member's uniformed service under prior provisions of law will be effective with respect to the increased insurance authorized under the Veterans' Insurance Act of 1974 and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance heretofore in effect.

(f) Notwithstanding the provisions of any other law, payment of matured Servicemembers' Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer.

(g) Any payments due or to become due under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 1969(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.) (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

(h) Insurance payable under this subchapter may not be paid in any amount to the extent that such amount would escheat to a State. Payment of insurance under this subchapter may not be made to the estate of the insured or the estate of any beneficiary of the insured unless it is affirmatively shown that any amount to be paid will not escheat to a State. Any amount to be paid under this subchapter shall be reduced to the extent necessary to comply with this subsection.

(i) Any amount of insurance in force on an insurable dependent of a member under this subchapter on the date of the dependent's death shall be paid, upon the establishment of a valid claim therefor, to the member or, in the event of the member's death before payment to the member can be made, then to the person or persons entitled to receive payment of the proceeds of insurance on the member's life under this subchapter.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 883, Sec. 770; amended Pub. L. 91–291, Sec. 5, June 25, 1970, 84 Stat. 330; Pub. L. 93–289, Sec. 7, May 24, 1974, 88 Stat. 169; Pub. L. 97–295, Sec. 4(31), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 97–306, title IV, Sec. 401(a), Oct. 14, 1982, 96 Stat. 1442; Pub. L. 99–576, title VII, Sec. 701(40), Oct. 28, 1986, 100 Stat. 3294; Pub. L. 102–54, Sec. 14(b)(17), June 13, 1991, 105 Stat. 284; renumbered Sec. 1970 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 104–275, title IV, Sec. 405(b)(1)(D), Oct. 9, 1996, 110 Stat. 3339; Pub. L. 105–368, title III, Sec. 302(b), Nov. 11, 1998, 112 Stat. 3333; Pub. L. 107–14, Sec. 4(e), June 5, 2001, 115 Stat. 29; Pub. L. 109–13, div. A, title I, Sec. 1012(g), May 11, 2005, 119 Stat. 246; Pub. L. 109–80, Sec. 2, Sept. 30, 2005, 119 Stat. 2045.)

§ 1971. Basic tables of premiums; readjustment of rates

(a) Each policy or policies purchased under section 1966 of this title shall include for the first policy year a schedule of basic premium rates by age which the Secretary shall have determined on a basis consistent with the lowest schedule of basic premium rates generally charged for new group life insurance policies issued to large employers, this schedule of basic premium rates by age to be applied, except as otherwise provided in this section, to the distribution by age of the amount of group life insurance under the policy at its date of issue to determine an average basic premium per $1,000 of insurance. Each policy so purchased shall also include provisions whereby the basic rates of premium determined for the first policy year shall be continued for subsequent policy years, except that they may be readjusted for any subsequent year, based on the experience under the policy, such readjustment to be made by the insurance company or companies issuing the policy on a basis determined by the Secretary in advance of such year to be consistent with the general practice of life insurance companies under policies of group life insurance issued to large employers.

(b) The total premiums for Servicemembers' Group Life Insurance shall be the sum of the amounts computed according to the provisions of subsection (a) above and the estimated cost traceable to the extra hazard of active duty in the uniformed services as determined by the Secretary, subject to the provision that such estimated costs traceable to the extra hazard shall be retroactively readjusted annually in accordance with section 1969(b).

(c) Each policy so purchased shall include a provision that, in the event the Secretary determines that ascertaining the actual age distribution of the amounts of group life insurance in force at the date of issue of the policy or at the end of the first or any subsequent year of insurance thereunder would not be possible except at a disproportionately high expense, the Secretary may approve the determination of a tentative average group life premium, for the first or any subsequent policy year, in lieu of using the actual age distribution. Such tentative average premium rate shall be redetermined by the Secretary during any policy year upon request by the insurance company or companies issuing the policy, if experience indicates that the assumptions made in determining the tentative average premium rate for that policy year were incorrect.

(d) Each policy so purchased shall contain a provision stipulating the maximum expense and risk charges for the first policy year, which charges shall have been determined by the Secretary on a basis consistent with the general level of such charges made by life insurance companies under policies of group life insurance

issued to large employers. Such maximum charges shall be continued from year to year, except that the Secretary may redetermine such maximum charges for any year either by agreement with the insurance company or companies issuing the policy or upon written notice given by the Secretary to such companies at least one year in advance of the beginning of the year for which such redetermined maximum charges will be effective.

(e) Each such policy shall provide for an accounting to the Secretary not later than ninety days after the end of each policy year, which shall set forth, in a form approved by the Secretary, (1) the amounts of premiums actually accrued under the policy from its date of issue to the end of such policy year, (2) the total of all mortality and other claim charges incurred for that period, and (3) the amounts of the insurers' expense and risk charge for that period. Any excess of the total of item (1) over the sum of items (2) and (3) shall be held by the insurance company or companies issuing the policy as a special contingency reserve to be used by such insurance company or companies for charges under such policy only, such reserve to bear interest at a rate to be determined in advance of each policy year by the insurance company or companies issuing the policy, which rate shall be approved by the Secretary as being consistent with the rates generally used by such company or companies for similar funds held under other group life insurance policies. If and when the Secretary determines that such special contingency reserve has attained an amount estimated by the Secretary to make satisfactory provision for adverse fluctuations in future charges under the policy, any further excess shall be deposited to the credit of the revolving fund established under section 1969(d)(1) of this title. If and when such policy is discontinued, and if after all charges have been made, there is any positive balance remaining in such special contingency reserve, such balance shall be deposited to the credit of the revolving fund, subject to the right of the insurance company or companies issuing the policy to make such deposit in equal monthly installments over a period of not more than two years.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 884, Sec. 771; amended Pub. L. 93–289, Sec. 8, May 24, 1974, 88 Stat. 169; renumbered Sec. 1971 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 104–275, title IV, Sec. 405(b)(1)(E), Oct. 9, 1996, 110 Stat. 3339.)

§ 1972. Benefit certificates

The Secretary shall arrange to have each member insured under a policy purchased under section 1966 of this title receive a certificate setting forth the benefits to which the member is entitled thereunder, to whom such benefit shall be payable, to whom claims should be submitted, and summarizing the provisions of the policy principally affecting the member. Such certificate shall be in lieu of the certificate which the insurance company or companies would otherwise be required to issue.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 885, Sec. 772; renumbered Sec. 1972 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1973. Forfeiture

Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to Servicemembers' Group Life Insurance and Veterans' Group Life Insurance under this subchapter. No such insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 885, Sec. 773; renumbered Sec. 1973, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; amended Pub. L. 104–275, title IV, Sec. 405(b)(1)(F), Oct. 9, 1996, 110 Stat. 3339; Pub. L. 110–389, title IV, Sec. 403(d), Oct. 10, 2008, 122 Stat. 4174.)

§ 1974. Advisory Council on Servicemembers' Group Life Insurance

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

(1) the Secretary of the Treasury, who is the chairman of the council;

(2) the Secretary of Defense;

(3) the Secretary of Commerce;

(4) the Secretary of Health and Human Services;

(5) the Secretary of Homeland Security; and

(6) the Director of the Office of Management and Budget.

Members of the council shall serve without additional compensation.

(b) The council shall meet at least once a year, or more often at the call of the Secretary of Veterans Affairs. The council shall review the operations of the Department under this subchapter and shall advise the Secretary on matters of policy relating to the Secretary's activities under this subchapter.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 885, Sec. 774; amended Pub. L. 91–291, Sec. 6, June 25, 1970, 84 Stat. 331; Pub. L. 93–289, Sec. 10(3), May 24, 1974, 88 Stat. 172; Pub. L. 97–295, Sec. 4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 99–576, title VII, Sec. 701(41), Oct. 28, 1986, 100 Stat. 3294; Pub. L. 102–54, Sec. 14(b)(18), June 13, 1991, 105 Stat. 284; renumbered Sec. 1974, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title IV, Sec. 405(b)(1)(G), (2)(B), Oct. 9, 1996, 110 Stat. 3339; Pub. L. 108–183, title VII, Sec. 708(a)(4), Dec. 16, 2003, 117 Stat. 2673.)

§ 1975. Jurisdiction of District Courts

The district courts of the United States shall have original jurisdiction of any civil action or claim against the United States founded upon this subchapter.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 885, Sec. 775; renumbered Sec. 1975, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1976. Effective date

The insurance provided for in this subchapter and the deductions and contributions for that purpose shall take effect on the date designated by the Secretary and certified by the Secretary to each Secretary concerned.

(Added Pub. L. 89–214, Sec. 1(a), Sept. 29, 1965, 79 Stat. 885, Sec. 776; amended Pub. L. 99–576, title VII, Sec. 701(42), Oct. 28, 1986, 100 Stat. 3294; renumbered

Sec. 1976 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1977. Veterans' Group Life Insurance

(a)(1) Veterans' Group Life Insurance shall be issued in the amounts specified in section 1967(a) of this title. In the case of any individual, the amount of Veterans' Group Life Insurance may not exceed the amount of Servicemembers' Group Life Insurance coverage continued in force after the expiration of the period of duty or travel under section 1967(b) or 1968(a) of this title. No person may carry a combined amount of Servicemembers' Group Life Insurance and Veterans' Group Life Insurance at any one time in excess of the maximum amount for Servicemembers' Group Life Insurance in effect under section 1967(a)(3)(A)(i) of this title.

(2) If any person insured under Veterans' Group Life Insurance again becomes insured under Servicemembers' Group Life Insurance but dies before terminating or converting such person's Veterans' Group Insurance, Veterans' Group Life Insurance shall be payable only if such person is insured under Servicemembers' Group Life Insurance for less than the maximum amount for such insurance in effect under section 1967(a)(3)(A)(i) of this title, and then only in an amount which, when added to the amount of Servicemembers' Group Life Insurance payable, does not exceed such maximum amount in effect under such section.

(b) Veterans' Group Life Insurance shall (1) provide protection against death; (2) be issued on a renewable five-year term basis; (3) have no cash, loan, paid-up, or extended values; (4) except as otherwise provided, lapse for nonpayment of premiums; and (5) contain such other terms and conditions as the Secretary determines to be reasonable and practicable which are not specifically provided for in this section, including any provisions of this subchapter not specifically made inapplicable by the provisions of this section.

(c) The premiums for Veterans' Group Life Insurance shall be established under the criteria set forth in sections 1971(a) and (c) of this title, except that the Secretary may provide for average premiums for such various age groupings as the Secretary may decide to be necessary according to sound actuarial principles, and shall include an amount necessary to cover the administrative cost of such insurance to the company or companies issuing such insurance. Such premiums shall be payable by the insureds thereunder as provided by the Secretary directly to the administrative office established for such insurance under section 1966(b) of this title. In any case in which a member or former member who was mentally incompetent on the date such member or former member first became insured under Veterans' Group Life Insurance dies within one year of such date, such insurance shall be deemed not to have lapsed for nonpayment of premiums and to have been in force on the date of death. Where insurance is in force under the preceding sentence, any unpaid premiums may be deducted from the proceeds of the insurance. Any person who claims eligibility for Veterans' Group Life Insurance based on disability incurred during a period of duty shall be required to submit evidence of qualifying health

conditions and, if required, to submit to physical examinations at their own expense.

(d) Any amount of Veterans' Group Life Insurance in force on any person on the date of such person's death shall be paid, upon the establishment of a valid claim therefor, pursuant to the provisions of section 1970 of this title. However, any designation of beneficiary or beneficiaries for Servicemembers' Group Life Insurance filed with a uniformed service until changed, shall be considered a designation of beneficiary or beneficiaries for Veterans' Group Life Insurance, but not for more than sixty days after the effective date of the insured's Veterans' Group Insurance, unless at the end of such sixty-day period, the insured is incompetent in which event such designation may continue in force until the disability is removed but not for more than five years after the effective date of the insured's Veterans' Group Life Insurance. Except as indicated above in incompetent cases, after such sixty-day period, any designation of beneficiary or beneficiaries for Veterans' Group Life Insurance to be effective must be by a writing signed by the insured and received by the administrative office established under section 1966(b) of this title.

(e) An insured under Veterans' Group Life Insurance shall have the right at any time to convert such insurance to an individual policy of life insurance upon written application for conversion made to the participating company the insured selects and payment of the required premiums. The individual policy will be issued without medical examination on a plan then currently written by such company which does not provide for the payment of any sum less than the face value thereof or for the payment of an additional amount as premiums in the event the insured performs active duty, active duty for training, or inactive duty training. The Veterans' Group Life Insurance policy converted to an individual policy under this subsection shall terminate on the day before the date on which the individual policy becomes effective. Upon request to the administrative office established under section 1966(b) of this title, an insured under Veterans' Group Life Insurance shall be furnished a list of life insurance companies participating in the program established under this subchapter. In addition to the life insurance companies participating in the program established under this subchapter, the list furnished to an insured under this section shall include additional life insurance companies (not so participating) which meet qualifying criteria, terms, and conditions established by the Secretary and agree to sell insurance to former members in accordance with the provisions of this section.

(f) The provisions of subsections (d) and (e) of section 1971 of this title shall be applicable to Veterans' Group Life Insurance. However, a separate accounting shall be required for each program of insurance authorized under this subchapter. In such accounting, the Secretary is authorized to allocate claims and other costs among such programs of insurance according to accepted actuarial principles.

(g) Any person whose Servicemembers' Group Life Insurance was continued in force after termination of duty or discharge from service under the law as in effect prior to the date on which the Veterans' Group Life Insurance program (provided for under sec-

tion 1977 of this title) became effective, and whose coverage under Servicemembers' Group Life Insurance terminated less than four years prior to such date, shall be eligible within one year from the effective date of the Veterans' Group Life Insurance program to apply for and be granted Veterans' Group Life Insurance in an amount equal to the amount of the insured's Servicemembers' Group Life Insurance which was not converted to an individual policy under prior law. Veterans' Group Life Insurance issued under this subsection shall be issued for a term period equal to five years, less the time elapsing between the termination of the applicant's Servicemembers' Group Life Insurance and the effective date on which the Veterans' Group Life Insurance program became effective. Veterans' Group Life Insurance under this subsection shall only be issued upon application to the administrative office established under section 1966(b) of this title, payment of the required premium, and proof of good health satisfactory to that office, which proof shall be submitted at the applicant's own expense. Any person who cannot meet the good health requirements for insurance under this subsection solely because of a service-connected disability shall have such disability waived. For each month for which any eligible veteran, whose service-connected disabilities are waived, is insured under this subsection there shall be contributed to the insurer or insurers issuing the policy or policies from the appropriation "Compensation and Pensions, Department of Veterans Affairs" an amount necessary to cover the cost of the insurance in excess of the premiums established for eligible veterans, including the cost of the excess mortality attributable to such veteran's service-connected disabilities. The Secretary may establish, as the Secretary may determine to be necessary according to sound actuarial principles, a separate premium, age groupings for premium purposes, accounting, and reserves, for persons granted insurance under this subsection different from those established for other persons granted insurance under this section. Appropriations to carry out the purpose of this section are hereby authorized.

(h)(1) Notwithstanding any other provision of law, members of the Individual Ready Reserve and the Inactive National Guard are eligible to be insured under Veterans' Group Life Insurance. Any such member shall be so insured upon submission of an application in the manner prescribed by the Secretary and the payment of premiums as required under this section.

(2) In accordance with subsection (b), Veterans' Group Life Insurance coverage under this subsection shall be issued on a renewable five-year term basis, but the person insured must remain a member of the Individual Ready Reserve or Inactive National Guard throughout the period of the insurance in order for the insurance of such person to be renewed.

(3) For the purpose of this subsection, the terms "Individual Ready Reserve" and "Inactive National Guard" shall have the meanings prescribed by the Secretary in consultation with the Secretary of Defense.

(Added Pub. L. 93–289, Sec. 9(a), May 24, 1974, 88 Stat. 169, Sec. 777; amended Pub. L. 97–66, title IV, Sec. 401(b), Oct. 17, 1981, 95 Stat. 1031; Pub. L. 99–166, title IV, Sec. 401(b), Dec. 3, 1985, 99 Stat. 957; Pub. L. 99–576, title VII, Sec. 701(43), Oct. 28, 1986, 100 Stat. 3294; Pub. L. 102–25, title III, Sec. 336(b), Apr.

6, 1991, 105 Stat. 90; renumbered Sec. 1977 and amended Pub. L. 102–83, Sec. 4(a)(2)(B)(iii), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 102–568, title II, Sec. 202, Oct. 29, 1992, 106 Stat. 4324; Pub. L. 103–446, title XII, Sec. 1201(e)(9), Nov. 2, 1994, 108 Stat. 4685; Pub. L. 104–275, title IV, Sec. 403(b), 405(b)(1)(H), 406, Oct. 9, 1996, 110 Stat. 3338–3340; Pub. L. 106–419, title III, Sec. 312(b), Nov. 1, 2000, 114 Stat. 1854; Pub. L. 109–13, div. A, title I, Sec. 1012(e), May 11, 2005, 119 Stat. 246; Pub. L. 109–80, Secs. 2, 3(b), Sept. 30, 2005, 119 Stat. 2045.)

§ 1978. Reinstatement

Reinstatement of insurance coverage granted under this subchapter but lapsed for nonpayment of premiums shall be under terms and conditions prescribed by the Secretary.

(Added Pub. L. 93–289, Sec. 9(a), May 24, 1974, 88 Stat. 172, Sec. 778; renumbered Sec. 1978 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1979. Incontestability

Subject to the provision of section 1973 of this title, insurance coverage granted under this subchapter shall be incontestable from the date of issue, reinstatement, or conversion except for fraud or nonpayment of premium.

(Added Pub. L. 93–289, Sec. 9(a), May 24, 1974, 88 Stat. 172, Sec. 779; renumbered Sec. 1979 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 1980. Option to receive accelerated death benefit

(a) For the purpose of this section, a person shall be considered to be terminally ill if the person has a medical prognosis such that the life expectancy of the person is less than a period prescribed by the Secretary. The maximum length of such period may not exceed 12 months.

(b)(1) A terminally ill person insured under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance may elect to receive in a lump-sum payment a portion of the face value of the insurance as an accelerated death benefit reduced by an amount necessary to assure that there is no increase in the actuarial value of the benefit paid, as determined by the Secretary.

(2) The Secretary shall prescribe the maximum amount of the accelerated death benefit available under this section that the Secretary finds to be administratively practicable and actuarially sound, but in no event may the amount of the benefit exceed the amount equal to 50 percent of the face value of the person's insurance in force on the date the election of the person to receive the benefit is approved.

(3) A person making an election under this section may elect to receive an amount that is less than the maximum amount prescribed under paragraph (2). The Secretary shall prescribe the increments in which a reduced amount under this paragraph may be elected.

(c) The portion of the face value of insurance which is not paid in a lump sum as an accelerated death benefit under this section shall remain payable in accordance with the provisions of this chapter.

(d) Deductions under section 1969 of this title and premiums under section 1977(c) of this title shall be reduced, in a manner

consistent with the percentage reduction in the face value of the insurance as a result of payment of an accelerated death benefit under this section, effective with respect to any amounts which would otherwise become due on or after the date of payment under this section.

(e) The Secretary shall prescribe regulations to carry out this section. Such regulations shall include provisions regarding—

(1) the form and manner in which an application for an election under this section shall be made; and

(2) the procedures under which any such application shall be considered.

(f)(1) An election to receive a benefit under this section shall be irrevocable.

(2) A person may not make more than one election under this section, even if the election of the person is to receive less than the maximum amount of the benefit available to the person under this section.

(g) If a person insured under Servicemembers' Group Life Insurance elects to receive a benefit under this section and the person's Servicemembers' Group Life Insurance is thereafter converted to Veterans' Group Life Insurance as provided in section 1968(b) of this title, the amount of the benefit paid under this section shall reduce the amount of Veterans' Group Life Insurance available to the person under section 1977(a) of this title.

(h) Notwithstanding any other provision of law, the amount of the accelerated death benefit received by a person under this section shall not be considered income or resources for purposes of determining eligibility for or the amount of benefits under any Federal or federally-assisted program or for any other purpose.

(Added Pub. L. 105–368, title III, Sec. 302(a)(1), Nov. 11, 1998, 112 Stat. 3332.)

§ 1980A. Traumatic injury protection

(a)(1) A member of the uniformed services who is insured under Servicemembers' Group Life Insurance shall automatically be insured for traumatic injury in accordance with this section. Insurance benefits under this section shall be payable if the member, while so insured, sustains a traumatic injury on or after December 1, 2005, that results in a qualifying loss specified pursuant to subsection (b)(1).

(2) If a member suffers more than one such qualifying loss as a result of traumatic injury from the same traumatic event, payment shall be made under this section in accordance with the schedule prescribed pursuant to subsection (d) for the single loss providing the highest payment.

(b)(1) A member who is insured against traumatic injury under this section is insured against such losses due to traumatic injury (in this section referred to as "qualifying losses") as are prescribed by the Secretary by regulation. Qualifying losses so prescribed shall include the following:

(A) Total and permanent loss of sight.

(B) Loss of a hand or foot by severance at or above the wrist or ankle.

(C) Total and permanent loss of speech.

(D) Total and permanent loss of hearing in both ears.

(E) Loss of thumb and index finger of the same hand by severance at or above the metacarpophalangeal joints.

(F) Quadriplegia, paraplegia, or hemiplegia.

(G) Burns greater than second degree, covering 30 percent of the body or 30 percent of the face.

(H) Coma or the inability to carry out the activities of daily living resulting from traumatic injury to the brain.

(2) For purposes of this subsection:

(A) The term "quadriplegia" means the complete and irreversible paralysis of all four limbs.

(B) The term "paraplegia" means the complete and irreversible paralysis of both lower limbs.

(C) The term "hemiplegia" means the complete and irreversible paralysis of the upper and lower limbs on one side of the body.

(D) The term "inability to carry out the activities of daily living" means the inability to independently perform two or more of the following six functions:

(i) Bathing.

(ii) Continence.

(iii) Dressing.

(iv) Eating.

(v) Toileting.

(vi) Transferring.

(3) The Secretary may prescribe, by regulation, conditions under which coverage otherwise provided under this section is excluded.

(4) A member shall not be considered for the purposes of this section to be a member insured under Servicemembers' Group Life Insurance if the member is insured under Servicemembers' Group Life Insurance only as an insurable dependent of another member pursuant to subparagraph (A)(ii) or (C)(ii) of section 1967(a)(1) of this title.

(c)(1) A payment may be made to a member under this section only for a qualifying loss that results directly from a traumatic injury sustained while the member is covered against loss under this section and from no other cause.

(2)(A) A payment may be made to a member under this section for a qualifying loss resulting from a traumatic injury only for a loss that is incurred during the applicable period of time specified pursuant to subparagraph (B).

(B) For each qualifying loss, the Secretary shall prescribe, by regulation, a period of time to be the period of time within which a loss of that type must be incurred, determined from the date on which the member sustains the traumatic injury resulting in that loss, in order for that loss to be covered under this section.

(d) Payments under this section for qualifying losses shall be made in accordance with a schedule prescribed by the Secretary, by regulation, specifying the amount of payment to be made for each type of qualifying loss, to be based on the severity of the qualifying loss. The minimum payment that may be prescribed for a qualifying loss is $25,000, and the maximum payment that may be prescribed for a qualifying loss is $100,000.

(e)(1) During any period in which a member is insured under this section and the member is on active duty, there shall be deducted each month from the member's basic or other pay until separation or release from active duty an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to provided coverage under this section, less any costs traceable to the extra hazards of such duty in the uniformed services.

(2) During any month in which a member is assigned to the Ready Reserve of a uniformed service under conditions which meet the qualifications set forth in section 1965(5)(B) of this title and is insured under a policy of insurance purchased by the Secretary under section 1966 of this title, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to provided coverage under this section, less any costs traceable to the extra hazards of such duty in the uniformed services. Any amounts so contributed on behalf of any member shall be collected by the Secretary concerned from such member (by deduction from pay or otherwise) and shall be credited to the appropriation from which such contribution was made in advance on a monthly basis.

(3) The Secretary shall determine the premium amounts to be charged for traumatic injury protection coverage provided under this section.

(4) The premium amounts shall be determined on the basis of sound actuarial principles and shall include an amount necessary to cover the administrative costs to the insurer or insurers providing such insurance.

(5) Each premium rate for the first policy year shall be continued for subsequent policy years, except that the rate may be adjusted for any such subsequent policy year on the basis of the experience under the policy, as determined by the Secretary in advance of that policy year.

(6) The cost attributable to insuring members under this section for any month or other period specified by the Secretary, less the premiums paid by the members, shall be paid by the Secretary concerned to the Secretary. The Secretary shall allocate the amount payable among the uniformed services using such methods and data as the Secretary determines to be reasonable and practicable. Payments under this paragraph shall be made on a monthly basis or at such other intervals as may be specified by the Secretary and shall be made within 10 days of the date on which the Secretary provides notice to the Secretary concerned of the amount required.

(7) For each period for which a payment by a Secretary concerned is required under paragraph (6), the Secretary concerned shall contribute such amount from appropriations available for active duty pay of the uniformed service concerned.

(8) The sums withheld from the basic or other pay of members, or collected from them by the Secretary concerned, under this subsection, and the sums contributed from appropriations under this subsection, together with the income derived from any dividends or

premium rate adjustments received from insurers shall be deposited to the credit of the revolving fund established in the Treasury of the United States under section 1869(d)(1) of this title.

(f) When a claim for benefits is submitted under this section, the Secretary of Defense or, in the case of a member not under the jurisdiction of the Secretary of Defense, the Secretary concerned, shall certify to the Secretary whether the member with respect to whom the claim is submitted—

(1) was at the time of the injury giving rise to the claim insured under Servicemembers' Group Life Insurance for the purposes of this section; and

(2) has sustained a qualifying loss.

(g)(1) Payment for a loss resulting from traumatic injury may not be made under the insurance coverage under this section if the member dies before the end of a period prescribed by the Secretary, by regulation, for such purpose that begins on the date on which the member sustains the injury.

(2) If a member eligible for a payment under this section dies before payment to the member can be made, the payment shall be made to the beneficiary or beneficiaries to whom the payment would be made if the payment were life insurance under section 1967(a) of this title.

(h) Coverage for loss resulting from traumatic injury provided under this section shall cease at midnight on the date of the termination of the member's duty status in the uniformed services that established eligibility for Servicemembers' Group Life Insurance. The termination of coverage under this section is effective in accordance with the preceding sentence, notwithstanding any continuation after the date specified in that sentence of Servicemembers' Group Life Insurance coverage pursuant to 1968(a) of this title for a period specified in that section.

(i) Insurance coverage provided under this section is not convertible to Veterans' Group Life Insurance.

(j) Regulations under this section shall be prescribed in consultation with the Secretary of Defense.

(k) DESIGNATION OF FIDUCIARY OR TRUSTEE.—(1) The Secretary concerned, in consultation with the Secretary, shall develop a process for the designation of a fiduciary or trustee of a member of the uniformed services who is insured against traumatic injury under this section. The fiduciary or trustee so designated would receive a payment for a qualifying loss under this section if the member is medically incapacitated (as determined pursuant to regulations prescribed by the Secretary concerned in consultation with the Secretary) or experiencing an extended loss of consciousness.

(2) The process under paragraph (1) may require each member of the uniformed services who is insured under this section to—

(A) designate an individual as the member's fiduciary or trustee for purposes of subsection (a); or

(B) elect that a court of proper jurisdiction designate an individual as the member's fiduciary or trustee for purposes of subsection (a) in the event that the member becomes medically incapacitated or experiences an extended loss of consciousness.

(Added Pub. L. 109–13, div. A, title I, Sec. 1032(a)(2), May 11, 2005, 119 Stat. 257; amended Pub. L. 109–233, title V, Sec. 501(a), June 15, 2006, 120 Stat. 411; Pub. L. 110–181, div. A, title XVII, Sec. 1711, Jan. 28, 2008, 122 Stat. 495.)

SUBCHAPTER IV—GENERAL

§ 1981. Replacement of surrendered and expired insurance

(a) Any person who surrendered a policy of National Service Life Insurance or United States Government life insurance on a permanent plan for its cash value while in the active service after April 24, 1951, and before January 1, 1957, who was entitled on December 31, 1958, to reinstate or replace such insurance under section 623 of the National Service Life Insurance Act of 1940, may, upon application in writing made while on continuous active duty which began before January 1, 1959, or within one hundred and twenty days after separation therefrom, be granted, without medical examination, permanent plan insurance on the same plan not in excess of the amount surrendered for cash, or may reinstate such surrendered insurance upon payment of the required reserve and the premium for the current month. Waiver of premiums and total disability income benefits otherwise authorized under this chapter shall not be denied in any case of issue or reinstatement of insurance on a permanent plan under this section or the prior corresponding provision of law in which it is shown to the satisfaction of the Secretary that total disability of the applicant began before the date of application. The cost of the premiums waived and total disability income benefits paid by virtue of the preceding sentence and the excess mortality cost in any case where the insurance matures by death from such total disability shall be borne by the United States and the Secretary shall transfer from time to time from the National Service Life Insurance appropriation to the National Service Life Insurance Fund and from the military and naval insurance appropriation to the United States Government Life Insurance Fund such sums as may be necessary to reimburse the funds for such costs.

(b) Any person who had United States Government life insurance or National Service Life Insurance on the five-year level premium term plan, the term of which expired while such person was in the active service after April 25, 1951, or within one hundred and twenty days after separation from such active service, and in either case before January 1, 1957, who was entitled on December 31, 1958, to replace such insurance under section 623 of the National Service Life Insurance Act of 1940, shall, upon application made while on continuous active duty which began before January 1, 1959, or within one hundred and twenty days after separation therefrom, payment of premiums and evidence of good health satisfactory to the Secretary, be granted an equivalent amount of insurance on the five-year level premium term plan at the premium rate for such person's then attained age.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1164, Sec. 781; Pub. L. 99–576, title VII, Sec. 701(44), Oct. 28, 1986, 100 Stat. 3294; renumbered Sec. 1981 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1982. Administrative cost

Except as provided in sections 1920(c), 1923(d), and 1955(c) of this title, the United States shall bear the cost of administration in connection with this chapter, including expenses for medical examinations, inspections when necessary, printing and binding, and for such other expenditures as are necessary in the discretion of the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1165, Sec. 782; renumbered Sec. 1982 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 104–99, title II, Sec. 201(b), Jan. 26, 1996, 110 Stat. 36.)

§ 1983. Settlements for minors or incompetents

When an optional mode of settlement of National Service Life Insurance or United States Government life insurance heretofore or hereafter matured is available to a beneficiary who is a minor or incompetent, such option may be exercised by such beneficiary's fiduciary, person qualified under the Act of February 25, 1933 (25 U.S.C. 14), or person recognized by the Secretary as having custody of the person or the estate of such beneficiary, and the obligation of the United States under the insurance contract shall be fully satisfied by payment of benefits in accordance with the mode of settlement so selected.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1165, Sec. 783; Pub. L. 99–576, title VII, Sec. 701(45), Oct. 28, 1986, 100 Stat. 3294; Pub. L. 102–54, Sec. 14(b)(19), June 13, 1991, 105 Stat. 284; renumbered Sec. 1983 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1984. Suits on insurance

(a) In the event of disagreement as to claim, including claim for refund of premiums, under contract of National Service Life Insurance, United States Government life insurance, or yearly renewable term insurance between the Secretary and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the United States District Court for the District of Columbia or in the district court of the United States in and for the district in which such person or any one of them resides, and jurisdiction is conferred upon such courts to hear and determine all such controversies. All persons having or claiming to have an interest in such insurance may be made parties to such suit, and such as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct. In all cases where the Secretary acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, a suit in the nature of a bill of interpleader may be brought at the request of the Secretary in the name of the United States against all persons having or claiming to have any interest in such insurance in the United States District Court for the District of Columbia or in the district court in and for the district in which any such claimant resides; however, no less than thirty days before instituting such suit the Secretary shall mail a notice of such intention to each of the persons to be made parties to the suit. The courts of appeals for

the several circuits, including the District of Columbia, shall respectively exercise appellate jurisdiction and, except as provided in section 1254 of title 28, the decrees of such courts of appeals shall be final.

(b) No suit on yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made. For the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded. The limitation of six years is suspended for the period elapsing between the filing with the Secretary of the claim sued upon and the denial of the claim. However, if a claim is timely filed the claimant shall have not less than ninety days from the date of mailing of notice of denial within which to file suit. After June 28, 1936, notice of denial of the claim under a contract of insurance shall be by registered mail or by certified mail directed to the claimant's last address of record. Infants, insane persons, or persons under other legal disability, or persons rated as incompetent or insane by the Secretary shall have three years in which to bring suit after the removal of their disabilities. If suit is seasonably begun and fails for defect in process, or for other reasons not affecting the merits, a new action, if one lies, may be brought within a year though the period of limitation has elapsed. No State or other statute of limitations shall be applicable to suits filed under this section.

(c) In any suit, action, or proceeding brought under the provisions of this section subpenas for witnesses who are required to attend a court of the United States in any district may run into any other district. However, no writ of subpena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the court being first had upon proper application and cause shown. The word "district" and the words "district court" as used in this section shall be construed to include the District of Columbia and the United States District Court for the District of Columbia.

(d) Attorneys of the Department, when assigned to assist in the trial of cases, and employees of the Department when ordered in writing by the Secretary to appear as witnesses, shall be paid the regular travel and subsistence allowance paid to other employees when on official travel status.

(e) Part-time and fee-basis employees of the Department, in addition to their regular travel and subsistence allowance, when ordered in writing by the Secretary to appear as witnesses in suits under this section, may be allowed, within the discretion and under written orders of the Secretary, a fee in an amount not to exceed $50 per day.

(f) Employees of the Department who are subpenaed to attend the trial of any suit, under the provisions of this section, as witnesses for a party to such suit shall be granted court leave or authorized absence, as applicable, for the period they are required to be away from the Department in answer to such subpenas.

(g) Whenever a judgment or decree shall be rendered in an action brought under the provisions of this section, the court, as a part of its judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered and to be paid by the Department out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid; except that, in a suit brought by or on behalf of an insured during the insured's lifetime for waiver of premiums on account of total disability, the court, as part of its judgment or decree, shall determine and allow a reasonable fee to be paid by the insured to the insured's attorney.

(h) The term "claim" as used in this section means any writing which uses words showing an intention to claim insurance benefits; and the term "disagreement" means a denial of the claim, after consideration on its merits, by the Secretary or any employee or organizational unit of the Department heretofore or hereafter designated therefor by the Secretary.

(i) The Attorney General of the United States is authorized to agree to a judgment to be rendered by the chief judge of the United States court having jurisdiction of the case, pursuant to compromise approved by the Attorney General upon the recommendation of the United States attorney charged with the defense, upon such terms and for sums within the amount claimed to be payable, in any suit brought under the provisions of this section, on a contract of yearly renewable term insurance, and the Secretary shall make payments in accordance with any such judgment. The Comptroller General of the United States shall allow credit in the accounts of disbursing officers for all payments of insurance made in accordance with any such judgment. All such judgments shall constitute final settlement of the claim and no appeal therefrom shall be authorized.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1165, Sec. 784; Pub. L. 86–507, Sec. 1(32), June 11, 1960, 74 Stat. 202; Pub. L. 97–295, Sec. 4(32), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 99–576, title VII, Sec. 701(46), Oct. 28, 1986, 100 Stat. 3294; renumbered Sec. 1984 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(iii)(VII), (VIII), (D)(ii), (3), (4), (b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 403–406.)

§ 1985. Decisions by the Secretary

Except in the event of suit as provided in section 1984 of this title, or other appropriate court proceedings, all decisions rendered by the Secretary under the provisions of this chapter shall be final and conclusive on all questions of law or fact, and no other official of the United States shall have jurisdiction to review any such decisions.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1167, Sec. 785; renumbered Sec. 1985 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406.)

§ 1986. Deposits in and disbursements from trust funds

All cash balances in the United States Government Life Insurance Fund and the National Service Life Insurance Fund on January 1, 1959, together with all moneys thereafter accruing to such funds, including premiums, appropriated moneys, the proceeds of any sales of investments which may be necessary to meet current

expenditures, and interest on investments, shall be available for disbursement for meeting all expenditures and making investments authorized to be made from such funds.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1167, Sec. 786; renumbered Sec. 1986, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1987. Penalties

(a) Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in anywise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any application for insurance or reinstatement thereof, waiver of premiums or claim for benefits under National Service Life Insurance, United States Government life insurance, or yearly renewable term insurance for any person, shall be fined not more than $1,000, or be imprisoned for not more than one year, or both.

(b) Whoever in any claim for National Service Life Insurance, United States Government life insurance, or yearly renewable term insurance makes any sworn statement of a material fact knowing it to be false, shall be guilty of perjury and shall be fined not more than $5,000, or be imprisoned for not more than two years, or both.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1167, Sec. 787; Pub. L. 99–576, title VII, Sec. 701(47), Oct. 28, 1986, 100 Stat. 3294; renumbered Sec. 1987, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 1988. Savings provision

Nothing in this title or any amendment or repeal made by the Act enacting this title shall affect any right, remedy, liability, authorization or requirement pertaining to Government insurance, the respective insurance funds, or the insurance appropriations, authorized or prescribed under the provisions of the War Risk Insurance Act, the World War Veterans' Act, 1924, the National Service Life Insurance Act of 1940, or any related Act, which was in effect on December 31, 1958.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1167, Sec. 788; renumbered Sec. 1988, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

Chapter 20 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART II—GENERAL BENEFITS]

CHAPTER 20—BENEFITS FOR HOMELESS VETERANS

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SUBCHAPTER I—PURPOSE; DEFINITIONS; ADMINISTRATIVE MATTERS

§ 2001. Purpose

The purpose of this chapter is to provide for the special needs of homeless veterans.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 905.)

§ 2002. Definitions

In this chapter:

(1) The term "homeless veteran" means a veteran who is homeless (as that term is defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a))).

(2) The term "grant and per diem provider" means an entity in receipt of a grant under section 2011 or 2012 of this title.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 905; amended Pub. L. 109–444, Sec. 8(a)(3), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109–461, title X, Secs. 1004(a)(3), 1006(b), Dec. 22, 2006, 120 Stat. 3465, 3468.)

§ 2003. Staffing requirements

(a) VBA STAFFING AT REGIONAL OFFICES.—The Secretary shall ensure that there is at least one full-time employee assigned to oversee and coordinate homeless veterans programs at each of the 20 Veterans Benefits Administration regional offices that the Secretary determines have the largest homeless veteran populations within the regions of the Administration. The programs covered by such oversight and coordination include the following:

(1) Housing programs administered by the Secretary under this title or any other provision of law.

(2) Compensation, pension, vocational rehabilitation, and education benefits programs administered by the Secretary under this title or any other provision of law.

(3) The housing program for veterans supported by the Department of Housing and Urban Development.

(4) The homeless veterans reintegration program of the Department of Labor under section 2021 of this title.

(5) The programs under section 2033 of this title.

(6) The assessments required by section 2034 of this title.

(7) Such other programs relating to homeless veterans as may be specified by the Secretary.

(b) VHA CASE MANAGERS.—The Secretary shall ensure that the number of case managers in the Veterans Health Administration is sufficient to assure that every veteran who is provided a housing voucher through section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) is assigned to, and is seen as needed by, a case manager.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 905.)

SUBCHAPTER II—COMPREHENSIVE SERVICE PROGRAMS

§ 2011. Grants

(a) AUTHORITY TO MAKE GRANTS.—Subject to the availability of appropriations provided for such purpose, the Secretary shall

make grants to assist eligible entities in establishing programs to furnish, and expanding or modifying existing programs for furnishing, the following to homeless veterans:

(1) Outreach.

(2) Rehabilitative services.

(3) Vocational counseling and training.

(4) Transitional housing assistance.

(b) CRITERIA FOR GRANTS.—The Secretary shall establish criteria and requirements for grants under this section, including criteria for entities eligible to receive grants, and shall publish such criteria and requirements in the Federal Register. The criteria established under this subsection shall include the following:

(1) Specification as to the kinds of projects for which grants are available, which shall include—

(A) expansion, remodeling, or alteration of existing buildings, or acquisition of facilities, for use as service centers, transitional housing, or other facilities to serve homeless veterans; and

(B) procurement of vans for use in outreach to and transportation for homeless veterans for purposes of a program referred to in subsection (a).

(2) Specification as to the number of projects for which grants are available.

(3) Criteria for staffing for the provision of services under a project for which grants are made.

(4) Provisions to ensure that grants under this section—

(A) shall not result in duplication of ongoing services; and

(B) to the maximum extent practicable, shall reflect appropriate geographic dispersion and an appropriate balance between urban and other locations.

(5) Provisions to ensure that an entity receiving a grant shall meet fire and safety requirements established by the Secretary, which shall include—

(A) such State and local requirements that may apply; and

(B) fire and safety requirements applicable under the Life Safety Code of the National Fire Protection Association or such other comparable fire and safety requirements as the Secretary may specify.

(6) Specification as to the means by which an entity receiving a grant may contribute in-kind services to the start-up costs of a project for which a grant is sought and the methodology for assigning a cost to that contribution for purposes of subsection (c).

(c) FUNDING LIMITATIONS.—A grant under this section may not be used to support operational costs. The amount of a grant under this section may not exceed 65 percent of the estimated cost of the project concerned.

(d) ELIGIBLE ENTITIES.—The Secretary may make a grant under this section to an entity applying for such a grant only if the applicant for the grant—

(1) is a public or nonprofit private entity with the capacity (as determined by the Secretary) to effectively administer a grant under this section;

(2) demonstrates that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications, and schedule submitted by the applicant; and

(3) agrees to meet the applicable criteria and requirements established under subsections (b) and (g) and has, as determined by the Secretary, the capacity to meet such criteria and requirements.

(e) APPLICATION REQUIREMENT.—An entity seeking a grant for a project under this section shall submit to the Secretary an application for the grant. The application shall set forth the following:

(1) The amount of the grant sought for the project.

(2) A description of the site for the project.

(3) Plans, specifications, and the schedule for implementation of the project in accordance with criteria and requirements prescribed by the Secretary under subsection (b).

(4) Reasonable assurance that upon completion of the work for which the grant is sought, the project will become operational and the facilities will be used principally to provide to veterans the services for which the project was designed, and that not more than 25 percent of the services provided under the project will be provided to individuals who are not veterans.

(f) PROGRAM REQUIREMENTS.—The Secretary may not make a grant for a project to an applicant under this section unless the applicant in the application for the grant agrees to each of the following requirements:

(1) To provide the services for which the grant is made at locations accessible to homeless veterans.

(2) To maintain referral networks for homeless veterans for establishing eligibility for assistance and obtaining services, under available entitlement and assistance programs, and to aid such veterans in establishing eligibility for and obtaining such services.

(3) To ensure the confidentiality of records maintained on homeless veterans receiving services through the project.

(4) To establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant and to such payments as may be made under section 2012 of this title.

(5) To seek to employ homeless veterans and formerly homeless veterans in positions created for purposes of the grant for which those veterans are qualified.

(g) SERVICE CENTER REQUIREMENTS.—In addition to criteria and requirements established under subsection (b), in the case of an application for a grant under this section for a service center for homeless veterans, the Secretary shall require each of the following:

(1) That such center provide services to homeless veterans during such hours as the Secretary may specify and be open to such veterans on an as-needed, unscheduled basis.

(2) That space at such center be made available, as mutually agreeable, for use by staff of the Department of Veterans Affairs, the Department of Labor, and other appropriate agencies and organizations in assisting homeless veterans served by such center.

(3) That such center be equipped and staffed to provide or to assist in providing health care, mental health services, hygiene facilities, benefits and employment counseling, meals, transportation assistance, and such other services as the Secretary determines necessary.

(4) That such center be equipped and staffed to provide, or to assist in providing, job training, counseling, and placement services (including job readiness and literacy and skills training), as well as any outreach and case management services that may be necessary to carry out this paragraph.

(h) RECOVERY OF UNUSED GRANT FUNDS.—(1) If a grant recipient under this section does not establish a program in accordance with this section or ceases to furnish services under such a program for which the grant was made, the United States shall be entitled to recover from such recipient the total of all unused grant amounts made under this section to such recipient in connection with such program.

(2) Any amount recovered by the United States under paragraph (1) may be obligated by the Secretary without fiscal year limitation to carry out provisions of this subchapter.

(3) An amount may not be recovered under paragraph (1) as an unused grant amount before the end of the three-year period beginning on the date on which the grant is made.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 906; amended Pub. L. 109–444, Secs. 2(b), 8(a)(4), Dec. 21, 2006, 120 Stat. 3304, 3313; Pub. L. 109–461, title VII, Sec. 703(a), title X, Secs. 1004(a)(4), 1006(b), Dec. 22, 2006, 120 Stat. 3440, 3465, 3468.)

§ 2012. Per diem payments

(a) PER DIEM PAYMENTS FOR FURNISHING SERVICES TO HOMELESS VETERANS.—(1) Subject to the availability of appropriations provided for such purpose, the Secretary, pursuant to such criteria as the Secretary shall prescribe, shall provide to a recipient of a grant under section 2011 of this title (or an entity eligible to receive a grant under that section which after November 10, 1992, establishes a program that the Secretary determines carries out the purposes described in that section) per diem payments for services furnished to any homeless veteran—

(A) whom the Secretary has referred to the grant recipient (or entity eligible for such a grant); or

(B) for whom the Secretary has authorized the provision of services.

(2)(A) The rate for such per diem payments shall be the daily cost of care estimated by the grant recipient or eligible entity adjusted by the Secretary under subparagraph (B). In no case may the rate determined under this paragraph exceed the rate authorized for State homes for domiciliary care under subsection (a)(1)(A) of section 1741 of this title, as the Secretary may increase from time to time under subsection (c) of that section.

(B) The Secretary shall adjust the rate estimated by the grant recipient or eligible entity under subparagraph (A) to exclude other sources of income described in subparagraph (D) that the grant recipient or eligible entity certifies to be correct.

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

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

(3) In a case in which the Secretary has authorized the provision of services, per diem payments under paragraph (1) may be paid retroactively for services provided not more than three days before the authorization was provided.

(b) INSPECTIONS.—The Secretary may inspect any facility of a grant recipient or entity eligible for payments under subsection (a) at such times as the Secretary considers necessary. No per diem payment may be provided to a grant recipient or eligible entity under this section unless the facilities of the grant recipient or eligible entity meet such standards as the Secretary shall prescribe.

(c) LIFE SAFETY CODE.—(1) Except as provided in paragraph (2), a per diem payment may not be provided under this section to a grant recipient or eligible entity unless the facilities of the grant recipient or eligible entity, as the case may be, meet applicable fire and safety requirements under the Life Safety Code of the National Fire Protection Association or such other comparable fire and safety requirements as the Secretary may specify.

(2) During the five-year period beginning on the date of the enactment of this section, paragraph (1) shall not apply to an entity that received a grant under section 3 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102–590; 38 U.S.C. 7721 note) before that date if the entity meets fire and safety requirements established by the Secretary.

(3) From amounts available for purposes of this section, not less than $5,000,000 shall be used only for grants to assist entities covered by paragraph (2) in meeting the Life Safety Code of the National Fire Protection Association or such other comparable fire and safety requirements as the Secretary may specify.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 908.)

§ 2013. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter $150,000,000 for fiscal year 2007 and each fiscal year thereafter.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 909; amended Pub. L. 108–422, title I, Sec. 101, Nov. 30, 2004, 118 Stat. 2380; Pub. L. 109–461, title VII, Sec. 703(b), Dec. 22, 2006, 120 Stat. 3440; Pub. L. 110–387, title VI, Sec. 601, Oct. 10, 2008, 122 Stat. 4131.)

SUBCHAPTER III—TRAINING AND OUTREACH

§ 2021. Homeless veterans reintegration programs

(a) IN GENERAL.—Subject to the availability of appropriations provided for such purpose, the Secretary of Labor shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force.

(b) REQUIREMENT TO MONITOR EXPENDITURES OF FUNDS.—(1) The Secretary of Labor shall collect such information as that Secretary considers appropriate to monitor and evaluate the distribution and expenditure of funds appropriated to carry out this section. The information shall include data with respect to the results or outcomes of the services provided to each homeless veteran under this section.

(2) Information under paragraph (1) shall be furnished in such form and manner as the Secretary of Labor may specify.

(c) ADMINISTRATION THROUGH THE ASSISTANT SECRETARY OF LABOR FOR VETERANS' EMPLOYMENT AND TRAINING.—The Secretary of Labor shall carry out this section through the Assistant Secretary of Labor for Veterans' Employment and Training.

(d) BIENNIAL REPORT TO CONGRESS.—Not less than every two years, the Secretary of Labor shall submit to Congress a report on the programs conducted under this section. The Secretary of Labor shall include in the report an evaluation of services furnished to veterans under this section and an analysis of the information collected under subsection (b).

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to carry out this section amounts as follows:

(A) $50,000,000 for fiscal year 2002.
(B) $50,000,000 for fiscal year 2003.
(C) $50,000,000 for fiscal year 2004.
(D) $50,000,000 for fiscal year 2005.
(E) $50,000,000 for fiscal year 2006.
(F) $50,000,000 for each of fiscal years 2007 through 2009.

(2) Funds appropriated to carry out this section shall remain available until expended. Funds obligated in any fiscal year to carry out this section may be expended in that fiscal year and the succeeding fiscal year.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 909; amended Pub. L. 109–233, title II, Sec. 203, June 15, 2006, 120 Stat. 404.)

§ 2022. Coordination of outreach services for veterans at risk of homelessness

(a) OUTREACH PLAN.—The Secretary, acting through the Under Secretary for Health, shall provide for appropriate officials of the Mental Health Service and the Readjustment Counseling Service of the Veterans Health Administration to develop a coordinated plan for joint outreach by the two Services to veterans at risk of homelessness, including particularly veterans who are being discharged or released from institutions after inpatient psychiatric care, substance abuse treatment, or imprisonment.

(b) MATTERS TO BE INCLUDED.—The outreach plan under subsection (a) shall include the following:

(1) Strategies to identify and collaborate with non-Department entities used by veterans who have not traditionally used Department services to further outreach efforts.

(2) Strategies to ensure that mentoring programs, recovery support groups, and other appropriate support networks are optimally available to veterans.

(3) Appropriate programs or referrals to family support programs.

(4) Means to increase access to case management services.

(5) Plans for making additional employment services accessible to veterans.

(6) Appropriate referral sources for mental health and substance abuse services.

(c) COOPERATIVE RELATIONSHIPS.—The outreach plan under subsection (a) shall identify strategies for the Department to enter into formal cooperative relationships with entities outside the Department to facilitate making services and resources optimally available to veterans.

(d) REVIEW OF PLAN.—The Secretary shall submit the outreach plan under subsection (a) to the Advisory Committee on Homeless Veterans for its review and consultation.

(e) OUTREACH PROGRAM.—(1) The Secretary shall carry out an outreach program to provide information to homeless veterans and veterans at risk of homelessness. The program shall include at a minimum—

(A) provision of information about benefits available to eligible veterans from the Department; and

(B) contact information for local Department facilities, including medical facilities, regional offices, and veterans centers.

(2) In developing and carrying out the program under paragraph (1), the Secretary shall, to the extent practicable, consult with appropriate public and private organizations, including the Bureau of Prisons, State social service agencies, the Department of Defense, and mental health, veterans, and homeless advocates—

(A) for assistance in identifying and contacting veterans who are homeless or at risk of homelessness;

(B) to coordinate appropriate outreach activities with those organizations; and

(C) to coordinate services provided to veterans with services provided by those organizations.

(f) REPORTS.—(1) Not later than October 1, 2002, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an initial report that contains an evaluation of outreach activities carried out by the Secretary with respect to homeless veterans, including outreach regarding clinical issues and other benefits administered under this title. The Secretary shall conduct the evaluation in consultation with the Under Secretary for Benefits, the Department of Veterans Affairs central office official responsible for the administration of the Readjustment Counseling Service, the Director of Homeless Veterans Programs, and the Department of Veterans Affairs central office offi-

cial responsible for the administration of the Mental Health Strategic Health Care Group.

(2) Not later than December 31, 2005, the Secretary shall submit to the committees referred to in paragraph (1) an interim report on outreach activities carried out by the Secretary with respect to homeless veterans. The report shall include the following:

(A) The Secretary's outreach plan under subsection (a), including goals and time lines for implementation of the plan for particular facilities and service networks.

(B) A description of the implementation and operation of the outreach program under subsection (e).

(C) A description of the implementation and operation of the program under section 2023 of this title.

(3) Not later than July 1, 2007, the Secretary shall submit to the committees referred to in paragraph (1) a final report on outreach activities carried out by the Secretary with respect to homeless veterans. The report shall include the following:

(A) An evaluation of the effectiveness of the outreach plan under subsection (a).

(B) An evaluation of the effectiveness of the outreach program under subsection (e).

(C) An evaluation of the effectiveness of the demonstration program under section 2023 of this title.

(D) Recommendations, if any, regarding an extension or modification of such outreach plan, such outreach program, and such demonstration program.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 910; amended Pub. L. 110–387, title VI, Sec. 602(d)(3), Oct. 10, 2008, 122 Stat. 4132.)

§ 2023. Referral and counseling services: veterans at risk of homelessness who are transitioning from certain institutions

(a) PROGRAM AUTHORITY.—The Secretary and the Secretary of Labor (hereinafter in this section referred to as the "Secretaries") shall carry out a program of referral and counseling services to eligible veterans with respect to benefits and services available to such veterans under this title and under State law.

(b) LOCATION OF PROGRAM.—The program shall be carried out in at least 12 locations. One location shall be a penal institution under the jurisdiction of the Bureau of Prisons.

(c) SCOPE OF PROGRAM.—(1) To the extent practicable, the program shall provide both referral and counseling services, and in the case of counseling services, shall include counseling with respect to job training and placement (including job readiness), housing, health care, and other benefits to assist the eligible veteran in the transition from institutional living.

(2)(A) To the extent that referral or counseling services are provided at a location under the program, referral services shall be provided in person during such period of time that the Secretaries may specify that precedes the date of release or discharge of the eligible veteran, and counseling services shall be furnished after such date.

(B) The Secretaries may, as part of the program, furnish to officials of penal institutions outreach information with respect to re-

ferral and counseling services for presentation to veterans in the custody of such officials during the 18-month period that precedes such date of release or discharge.

(3) The Secretaries may enter into contracts to carry out the referral and counseling services required under the program with entities or organizations that meet such requirements as the Secretaries may establish.

(4) In developing the program, the Secretaries shall consult with officials of the Bureau of Prisons, officials of penal institutions of States and political subdivisions of States, and such other officials as the Secretaries determine appropriate.

(d) DURATION.—The authority of the Secretaries to provide referral and counseling services under the demonstration program shall cease on September 30, 2012.

(e) DEFINITION.—In this section, the term "eligible veteran" means a veteran who—

(1) is a resident of a penal institution or an institution that provides long-term care for mental illness; and

(2) is at risk for homelessness absent referral and counseling services provided under the demonstration program (as determined under guidelines established by the Secretaries).

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 912; amended Pub. L. 110–28, title V, Sec. 5705, May 25, 2007, 121 Stat. 170; Pub. L. 110–387, title VI, Sec. 602(a)–(d)(2), Oct. 10, 2008, 122 Stat. 4132.)

SUBCHAPTER IV—TREATMENT AND REHABILITATION FOR SERIOUSLY MENTALLY ILL AND HOMELESS VETERANS

§ 2031. General treatment

(a) In providing care and services under section 1710 of this title to veterans suffering from serious mental illness, including veterans who are homeless, the Secretary may provide (directly or in conjunction with a governmental or other entity)—

(1) outreach services;

(2) care, treatment, and rehabilitative services (directly or by contract in community-based treatment facilities, including halfway houses); and

(3) therapeutic transitional housing assistance under section 2032 of this title, in conjunction with work therapy under subsection (a) or (b) of section 1718 of this title and outpatient care.

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

(Added Pub. L. 105–114, title II, Sec. 202(a), Nov. 21, 1997, 111 Stat. 2284, Sec. 1771; renumbered Sec. 2031 and amended Pub. L. 107–95, Sec. 5(b), (f), Dec. 21, 2001, 115 Stat. 918; Pub. L. 109–444, Sec. 2(c), Dec. 21, 2006, 120 Stat. 3304; Pub. L. 109–461, title VII, Sec. 704(a), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3440, 3468.)

§ 2032. Therapeutic housing

(a) The Secretary, in connection with the conduct of compensated work therapy programs, may operate residences and facilities as therapeutic housing.

(b) The Secretary may use such procurement procedures for the purchase, lease, or other acquisition of residential housing for

purposes of this section as the Secretary considers appropriate to expedite the opening and operation of transitional housing and to protect the interests of the United States.

(c) A residence or other facility may be operated as transitional housing for veterans described in paragraphs (1) and (2) of section 1710(a) of this title under the following conditions:

(1) Only veterans described in those paragraphs and a house manager may reside in the residence or facility.

(2) Each resident, other than the house manager, shall be required to make payments that contribute to covering the expenses of board and the operational costs of the residence or facility for the period of residence in such housing.

(3) In order to foster the therapeutic and rehabilitative objectives of such housing (A) residents shall be prohibited from using alcohol or any controlled substance or item, (B) any resident violating that prohibition may be expelled from the residence or facility, and (C) each resident shall agree to undergo drug testing or such other measures as the Secretary shall prescribe to ensure compliance with that prohibition.

(4) In the establishment and operation of housing under this section, the Secretary shall consult with appropriate representatives of the community in which the housing is established and shall comply with zoning requirements, building permit requirements, and other similar requirements applicable to other real property used for similar purposes in the community.

(5) The residence or facility shall meet State and community fire and safety requirements applicable to other real property used for similar purposes in the community in which the transitional housing is located, but fire and safety requirements applicable to buildings of the Federal Government shall not apply to such property.

(d) The Secretary shall prescribe the qualifications for house managers for transitional housing units operated under this section. The Secretary may provide for free room and subsistence for a house manager in addition to, or instead of payment of, a fee for the services provided by the manager.

(e)(1) The Secretary may operate as transitional housing under this section—

(A) any suitable residential property acquired by the Secretary as the result of a default on a loan made, guaranteed, or insured under chapter 37 of this title;

(B) any suitable space in a facility under the jurisdiction of the Secretary that is no longer being used (i) to provide acute hospital care, or (ii) as housing for medical center employees; and

(C) any other suitable residential property purchased, leased, or otherwise acquired by the Secretary.

(2) In the case of any property referred to in paragraph (1)(A), the Secretary shall—

(A) transfer administrative jurisdiction over such property within the Department from the Veterans Benefits Administration to the Veterans Health Administration; and

(B) transfer from the General Post Fund to the Loan Guaranty Revolving Fund under chapter 37 of this title an amount (not to exceed the amount the Secretary paid for the property) representing the amount the Secretary considers could be obtained by sale of such property to a nonprofit organization or a State for use as a shelter for homeless veterans.

(3) In the case of any residential property obtained by the Secretary from the Department of Housing and Urban Development under this section, the amount paid by the Secretary to that Department for that property may not exceed the amount that the Secretary of Housing and Urban Development would charge for the sale of that property to a nonprofit organization or a State for use as a shelter for homeless persons. Funds for such charge shall be derived from the General Post Fund.

(f) The Secretary shall prescribe—

(1) a procedure for establishing reasonable payment rates for persons residing in transitional housing; and

(2) appropriate limits on the period for which such persons may reside in transitional housing.

(g) The Secretary may dispose of any property acquired for the purpose of this section. The proceeds of any such disposal shall be credited to the General Post Fund.

(h) Funds received by the Department under this section shall be deposited in the General Post Fund. The Secretary may distribute out of the fund such amounts as necessary for the acquisition, management, maintenance, and disposition of real property for the purpose of carrying out such program. The Secretary shall manage the operation of this section so as to ensure that expenditures under this subsection for any fiscal year shall not exceed by more than $500,000 proceeds credited to the General Post Fund under this section. The operation of the program and funds received shall be separately accounted for, and shall be stated in the documents accompanying the President's budget for each fiscal year.

(Added Pub. L. 105–114, title II, Sec. 202(a), Nov. 21, 1997, 111 Stat. 2284, Sec. 1772; renumbered Sec. 2032, Pub. L. 107–95, Sec. 5(b)(1), Dec. 21, 2001, 115 Stat. 918.)

§ 2033. Additional services at certain locations

(a) Subject to the availability of appropriations, the Secretary shall operate a program under this section to expand and improve the provision of benefits and services by the Department to homeless veterans.

(b) The program shall include the establishment of sites under the jurisdiction of the Secretary to be centers for the provision of comprehensive services to homeless veterans. The services to be provided at each site shall include a comprehensive and coordinated array of those specialized services which may be provided under existing law. The Secretary shall carry out the program under this section in sites in at least each of the 20 largest metropolitan statistical areas.

(c) The program shall include the services of such employees of the Veterans Benefits Administration as the Secretary deter-

mines appropriate at sites under the jurisdiction of the Secretary at which services are provided to homeless veterans.

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

(Added Pub. L. 105–114, title II, Sec. 202(a), Nov. 21, 1997, 111 Stat. 2286, Sec. 1773; renumbered Sec. 2033 and amended Pub. L. 107–95, Sec. 5(b)(1), (f), 8(b), Dec. 21, 2001, 115 Stat. 918, 919; Pub. L. 109–444, Sec. 2(d), Dec. 21, 2006, 120 Stat. 3304; Pub. L. 109–461, title VII, Sec. 704(b), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3440, 3468.)

§ 2034. Coordination with other agencies and organizations

(a) In assisting homeless veterans, the Secretary shall coordinate with, and may provide services authorized under this title in conjunction with, State and local governments, other appropriate departments and agencies of the Federal Government, and nongovernmental organizations.

(b)(1) The Secretary shall require the director of each medical center or the director of each regional benefits office to make an annual assessment of the needs of homeless veterans living within the area served by the medical center or regional office, as the case may be.

(2) Each such assessment shall be made in coordination with representatives of State and local governments, other appropriate departments and agencies of the Federal Government, and nongovernmental organizations that have experience working with homeless persons in that area.

(3) Each such assessment shall identify the needs of homeless veterans with respect to the following:

(A) Health care.

(B) Education and training.

(C) Employment.

(D) Shelter.

(E) Counseling.

(F) Outreach services.

(4) Each assessment shall also indicate the extent to which the needs referred to in paragraph (3) are being met adequately by the programs of the Department, of other departments and agencies of the Federal Government, of State and local governments, and of nongovernmental organizations.

(5) Each assessment shall be carried out in accordance with uniform procedures and guidelines prescribed by the Secretary.

(6) The Secretary shall review each annual assessment under this subsection and shall consolidate the findings and conclusions of each such assessment into the next annual report submitted to Congress under section 2065 of this title.

(c) In furtherance of subsection (a), the Secretary shall require the director of each medical center and the director of each regional benefits office, in coordination with representatives of State and local governments, other Federal officials, and nongovernmental organizations that have experience working with homeless persons in the areas served by such facility or office, to—

(1) develop a list of all public and private programs that provide assistance to homeless persons or homeless veterans in

the area concerned, together with a description of the services offered by those programs;

(2) seek to encourage the development by the representatives of such entities, in coordination with the director, of a plan to coordinate among such public and private programs the provision of services to homeless veterans;

(3) take appropriate action to meet, to the maximum extent practicable through existing programs and available resources, the needs of homeless veterans that are identified in the assessment conducted under subsection (b); and

(4) attempt to inform homeless veterans whose needs the director cannot meet under paragraph (3) of the services available to such veterans within the area served by such center or office.

(Added Pub. L. 105–114, title II, Sec. 202(a), Nov. 21, 1997, 111 Stat. 2286, Sec. 1774; renumbered Sec. 2034 and amended Pub. L. 107–95, Secs. 5(b)(1), 6(b), Dec. 21, 2001, 115 Stat. 918, 919.)

SUBCHAPTER V—HOUSING ASSISTANCE

§ 2041. Housing assistance for homeless veterans

(a)(1) To assist homeless veterans and their families in acquiring shelter, the Secretary may enter into agreements described in paragraph (2) with—

(A) nonprofit organizations, with preference being given to any organization named in, or approved by the Secretary under, section 5902 of this title; or

(B) any State or any political subdivision thereof.

(2) To carry out paragraph (1), the Secretary may enter into agreements to sell, lease, lease with an option to purchase, or donate real property, and improvements thereon, acquired by the Secretary as the result of a default on a loan made, insured, or guaranteed under this chapter. Such sale or lease or donation shall be for such consideration as the Secretary determines is in the best interests of homeless veterans and the Federal Government.

(3) The Secretary may enter into an agreement under paragraph (1) of this subsection only if—

(A) the Secretary determines that such an action will not adversely affect the ability of the Department—

(i) to fulfill its statutory missions with respect to the Department loan guaranty program and the short-and long-term solvency of the Veterans Housing Benefit Program Fund established under section 3722 of this title; or

(ii) to carry out other functions and administer other programs authorized by law;

(B) the entity to which the property is sold, leased, or donated agrees to—

(i) utilize the property solely as a shelter primarily for homeless veterans and their families,

(ii) comply with all zoning laws relating to the property,

(iii) make no use of the property that is not compatible with the area where the property is located, and

(iv) take such other actions as the Secretary determines are necessary or appropriate in the best interests of homeless veterans and the Federal Government; and

(C) the Secretary determines that there is no significant likelihood of the property being sold for a price sufficient to reduce the liability of the Department or the veteran who defaulted on the loan.

(4) The term of any lease under this subsection may not exceed three years.

(5) An approved entity that leases a property from the Secretary under this section shall be responsible for the payment of any taxes, utilities, liability insurance, and other maintenance charges or similar charges that apply to the property.

(6) Any agreement, deed, or other instrument executed by the Secretary under this subsection shall be on such terms and conditions as the Secretary determines to be appropriate and necessary to carry out the purpose of such agreement.

(b)(1) Subject to paragraphs (2) and (3), the Secretary may make loans to organizations described in paragraph (1)(A) of subsection (a) to finance the purchase of property by such organizations under such subsection.

(2) In making a loan under this subsection, the Secretary—

(A) shall establish credit standards to be used for this purpose;

(B) may, pursuant to section 3733(a)(6) of this title, provide that the loan will bear interest at a rate below the rate that prevails for similar loans in the market in which the loan is made; and

(C) may waive the collection of a fee under section 3729 of this title in any case in which the Secretary determines that such a waiver would be appropriate.

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

(Added Pub. L. 102–54, Sec. 9(a), June 13, 1991, 105 Stat. 272, Sec. 1835; renumbered Sec. 3735, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; amended Pub. L. 102–590, Sec. 8, 9, Nov. 10, 1992, 106 Stat. 5140; Pub. L. 103–446, title XII, Sec. 1201(d)(13), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 104–110, title I, Sec. 101(h), Feb. 13, 1996, 110 Stat. 768; Pub. L. 105–114, title II, Sec. 203(a), Nov. 21, 1997, 111 Stat. 2288; Pub. L. 105–368, title VI, Sec. 602(e)(1)(G), Nov. 11, 1998, 112 Stat. 3347; Pub. L. 106–117, title IX, Sec. 902, Nov. 30, 1999, 113 Stat. 1587; renumbered Sec. 2041, Pub. L. 107–95, Sec. 5(c), Dec. 21, 2001, 115 Stat. 918; Pub. L. 108–170, title IV, Sec. 404, Dec. 6, 2003, 117 Stat. 2063; Pub. L. 109–444, Sec. 8(a)(5), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109–461, title VII, Sec. 705, title X, Secs. 1004(a)(5), 1006(b), Dec. 22, 2006, 120 Stat. 3440, 3465, 3468.)

§ 2042. Supported housing for veterans participating in compensated work therapies

The Secretary may authorize homeless veterans in the compensated work therapy program to be provided housing through the therapeutic residence program under section 2032 of this title or through grant and per diem providers under subchapter II of this chapter.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 913.)

§ 2043. Domiciliary care programs

(a) AUTHORITY.—The Secretary may establish up to 10 programs under section 1710(b) of this title (in addition to any program that is established as of the date of the enactment of this section) to provide domiciliary services under such section to homeless veterans.

(b) ENHANCEMENT OF CAPACITY OF DOMICILIARY CARE PROGRAMS FOR FEMALE VETERANS.—The Secretary shall take appropriate actions to ensure that the domiciliary care programs of the Department are adequate, with respect to capacity and with respect to safety, to meet the needs of veterans who are women.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 913; amended Pub. L. 110–387, title VI, Sec. 603, Oct. 10, 2008, 122 Stat. 4132.)

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

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

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

(3)(A) The Secretary shall provide such grants to each eligible entity that is providing or coordinating the provision of supportive services.

(B) The Secretary is authorized to establish intervals of payment for the administration of such grants and establish a maximum amount to be awarded, in accordance with the services being provided and their duration.

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

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

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

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

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

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

(A) outreach services;

(B) case management services;

(C) assistance in obtaining any benefits from the Department which the veteran may be eligible to receive, including, but not limited to, vocational and rehabilitation counseling, employment and training service, educational assistance, and health care services; and

(D) assistance in obtaining and coordinating the provision of other public benefits provided in federal, State, or local agencies, or any organization defined in subsection (f), including—

(i) health care services (including obtaining health insurance);

(ii) daily living services;

(iii) personal financial planning;

(iv) transportation services;

(v) income support services;

(vi) fiduciary and representative payee services;

(vii) legal services to assist the veteran family with issues that interfere with the family's ability to obtain or retain housing or supportive services;

(viii) child care;

(ix) housing counseling; and

(x) other services necessary for maintaining independent living.

(2) Services described in paragraph (1) that are delivered to very low-income veteran families who are homeless and who are scheduled to become residents of permanent housing within 90 days pending the location or development of housing suitable for permanent housing.

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

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

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

(A) a description of the supportive services proposed to be provided by the eligible entity and the identified needs for those services;

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

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

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

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

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

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

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

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

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

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

(d) TECHNICAL ASSISTANCE.—(1) The Secretary shall provide training and technical assistance to participating eligible entities regarding the planning, development, and provision of supportive services to very low-income veteran families occupying permanent housing, through the Technical Assistance grants program in section 2064 of this title.

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

(e) FUNDING.—(1) From amounts appropriated to the Department for Medical Services, there shall be available to carry out subsection (a), (b), and (c) amounts as follows:

(A) $15,000,000 for fiscal year 2009.

(B) $20,000,000 for fiscal year 2010.

(C) $25,000,000 for fiscal year 2011.

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

(3) There is authorized to be appropriated $1,000,000 for each of the fiscal year 2009 through 2011 to carry out the provisions of subsection (d).

(f) DEFINITIONS.—In this section:

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

(2) The term "eligible entity" means—

(A) a private nonprofit organization; or

(B) a consumer cooperative.

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

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

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

(A) Any incorporated private institution or foundation—

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

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

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

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

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

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

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

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

(C) The Secretary may establish an income ceiling higher or lower than 50 percent of the median income for an area if the Secretary determines that such variations are necessary because the area has unusually high or low construction costs, fair market rents (as determined under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)), or family incomes.

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

(Added Pub. L. 110–387, title VI, Sec. 604(b)(1), Oct. 10, 2008, 122 Stat. 4132.)

SUBCHAPTER VI—LOAN GUARANTEE FOR MULTIFAMILY TRANSITIONAL HOUSING

§ 2051. General authority

(a) The Secretary may guarantee the full or partial repayment of a loan that meets the requirements of this subchapter.

(b)(1) Not more than 15 loans may be guaranteed under subsection (a), of which not more than five such loans may be guaranteed during the 3-year period beginning on the date of the enactment of this subchapter.

(2) A guarantee of a loan under subsection (a) shall be in an amount that is not less than the amount necessary to sell the loan in a commercial market.

(3) Not more than an aggregate amount of $100,000,000 in loans may be guaranteed under subsection (a).

(c) A loan may not be guaranteed under this subchapter unless, before closing such loan, the Secretary has approved the loan.

(d)(1) The Secretary shall enter into contracts with a qualified nonprofit organization, or other qualified organization, that has experience in underwriting transitional housing projects to obtain advice in carrying out this subchapter, including advice on the terms and conditions necessary for a loan that meets the requirements of section 2052 of this title.

(2) For purposes of paragraph (1), a nonprofit organization is an organization that is described in paragraph (3) or (4) of subsection (c) of section 501 of the Internal Revenue Code of 1986 and is exempt from tax under subsection (a) of such section.

(e) The Secretary may carry out this subchapter in advance of the issuance of regulations for such purpose.

(f) The Secretary may guarantee loans under this subchapter notwithstanding any requirement for prior appropriations for such purpose under any provision of law.

(g) Notwithstanding any other provision of law, a multifamily transitional housing project that is funded by a loan guaranteed under this subchapter may accept uncompensated voluntary services performed by any eligible entity (as that term is defined in section 2011(d) of this title) in connection with the construction, alteration, or repair of such project.

(Added Pub. L. 105–368, title VI, Sec. 601(a), Nov. 11, 1998, 112 Stat. 3342, Sec. 3772; renumbered Sec. 2051 and amended Pub. L. 107–95, Sec. 5(d)(1), (2)(B), Dec. 21, 2001, 115 Stat. 918; Pub. L. 108–454, title IV, Sec. 402(a), Dec. 10, 2004, 118 Stat. 3615.)

§ 2052. Requirements

(a) A loan referred to in section 2051 of this title meets the requirements of this subchapter if each of the following requirements is met:

(1) The loan—

(A) is for—

(i) construction of, rehabilitation of, or acquisition of land for a multifamily transitional housing project described in subsection (b), or more than one of such purposes; or

(ii) refinancing of an existing loan for such a project; and

(B) may also include additional reasonable amounts for—

(i) financing acquisition of furniture, equipment, supplies, or materials for the project; or

(ii) in the case of a loan made for purposes of subparagraph (A)(i), supplying the organization carrying out the project with working capital relative to the project.

(2) The loan is made in connection with funding or the provision of substantial property or services for such project by either a State or local government or a nongovernmental entity, or both.

(3) The maximum loan amount does not exceed the lesser of—

(A) that amount generally approved (utilizing prudent underwriting principles) in the consideration and approval of projects of similar nature and risk so as to assure repayment of the loan obligation; and

(B) 90 percent of the total cost of the project.

(4) The loan is of sound value, taking into account the creditworthiness of the entity (and the individual members of the entity) applying for such loan.

(5) The loan is secured.

(6) The loan is subject to such terms and conditions as the Secretary determines are reasonable, taking into account other housing projects with similarities in size, location, population, and services provided.

(b) For purposes of this subchapter, a multifamily transitional housing project referred to in subsection (a)(1) is a project that—

(1) provides transitional housing to homeless veterans, which housing may be single room occupancy (as defined in section 8(n) of the United States Housing Act of 1937 (42 U.S.C. 1437f(n)));

(2) provides supportive services and counselling services (including job counselling) at the project site with the goal of making such veterans self-sufficient;

(3) requires that each such veteran seek to obtain and maintain employment;

(4) charges a reasonable fee for occupying a unit in such housing; and

(5) maintains strict guidelines regarding sobriety as a condition of occupying such unit.

(c) Such a project—

(1) may include space for neighborhood retail services, other commercial activities, or job training programs; and

(2) may provide transitional housing to veterans who are not homeless and to homeless individuals who are not veterans if—

(A) at the time of taking occupancy by any such veteran or homeless individual, the transitional housing needs of homeless veterans in the project area have been met;

(B) the housing needs of any such veteran or homeless individual can be met in a manner that is compatible with the manner in which the needs of homeless veterans are met under paragraph (1); and

(C) the provisions of paragraphs (4) and (5) of subsection (b) are met.

(d) In determining whether to guarantee a loan under this subchapter, the Secretary shall consider—

(1) the availability of Department of Veterans Affairs medical services to residents of the multifamily transitional housing project; and

(2) the extent to which needs of homeless veterans are met in a community, as assessed under section 107 of Public Law 102–405.

(Added Pub. L. 105–368, title VI, Sec. 601(a), Nov. 11, 1998, 112 Stat. 3343, Sec. 3773; renumbered Sec. 2052 and amended Pub. L. 107–95, Sec. 5(d)(1), (2)(C), Dec. 21, 2001, 115 Stat. 918; Pub. L. 108–454, title IV, Sec. 402(b), Dec. 10, 2004, 118 Stat. 3616.)

§ 2053. Default

(a) The Secretary shall take such steps as may be necessary to obtain repayment on any loan that is in default and that is guaranteed under this subchapter.

(b) Upon default of a loan guaranteed under this subchapter and terminated pursuant to State law, a lender may file a claim under the guarantee for an amount not to exceed the lesser of—

(1) the maximum guarantee; or

(2) the difference between—

(A) the total outstanding obligation on the loan, including principal, interest, and expenses authorized by the loan documents, through the date of the public sale (as authorized under such documents and State law); and

(B) the amount realized at such sale.

(Added Pub. L. 105–368, title VI, Sec. 601(a), Nov. 11, 1998, 112 Stat. 3344, Sec. 3774; renumbered Sec. 2053, Pub. L. 107–95, Sec. 5(d)(1), Dec. 21, 2001, 115 Stat. 918.)

§ 2054. Audit

(a) During each of the first 3 years of operation of a multifamily transitional housing project with respect to which a loan is guaranteed under this subchapter, there shall be an annual, independent audit of such operation. Such audit shall include a detailed statement of the operations, activities, and accomplishments of such project during the year covered by such audit. The party responsible for obtaining such audit (and paying the costs therefor) shall be determined before the Secretary issues a guarantee under this subchapter.

(b) After the first three years of operation of such a multifamily transitional housing project, the Secretary may provide for periodic audits of the project.

(Added Pub. L. 105–368, title VI, Sec. 601(a), Nov. 11, 1998, 112 Stat. 3345, Sec. 3775; amended Pub. L. 106–117, title VII, Sec. 712, Nov. 30, 1999, 113 Stat. 1584; renumbered Sec. 2054, Pub. L. 107–95, Sec. 5(d)(1), Dec. 21, 2001, 115 Stat. 918.)

SUBCHAPTER VII—OTHER PROVISIONS

§ 2061. Grant program for homeless veterans with special needs

(a) ESTABLISHMENT.—The Secretary shall carry out a program to make grants to health care facilities of the Department and to grant and per diem providers in order to encourage development by those facilities and providers of programs for homeless veterans with special needs.

(b) HOMELESS VETERANS WITH SPECIAL NEEDS.—For purposes of this section, homeless veterans with special needs include homeless veterans who are—

(1) women, including women who have care of minor dependents;

(2) frail elderly;

(3) terminally ill; or

(4) chronically mentally ill.

(c) FUNDING.—(1) From amounts appropriated to the Department for "Medical Services" for each of fiscal years 2007 through 2011, $5,000,000 shall be available for each such fiscal year for the purposes of the program under this section.

(2) The Secretary shall ensure that funds for grants under this section are designated for the first three years of operation of the program under this section as a special purpose program for which funds are not allocated through the Veterans Equitable Resource Allocation system.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 913; amended Pub. L. 109–461, title VII, Sec. 706, Dec. 22, 2006, 120 Stat. 3440.)

§ 2062. Dental care

(a) IN GENERAL.—For purposes of section 1712(a)(1)(H) of this title, outpatient dental services and treatment of a dental condition or disability of a veteran described in subsection (b) shall be considered to be medically necessary, subject to subsection (c), if—

(1) the dental services and treatment are necessary for the veteran to successfully gain or regain employment;

(2) the dental services and treatment are necessary to alleviate pain; or

(3) the dental services and treatment are necessary for treatment of moderate, severe, or severe and complicated gingival and periodontal pathology.

(b) ELIGIBLE VETERANS.—Subsection (a) applies to a veteran—

(1) who is enrolled for care under section 1705(a) of this title; and

(2) who, for a period of 60 consecutive days, is receiving care (directly or by contract) in any of the following settings:

(A) A domiciliary under section 1710 of this title.

(B) A therapeutic residence under section 2032 of this title.

(C) Community residential care coordinated by the Secretary under section 1730 of this title.

(D) A setting for which the Secretary provides funds for a grant and per diem provider.

(3) For purposes of paragraph (2), in determining whether a veteran has received treatment for a period of 60 consecutive days, the Secretary may disregard breaks in the continuity of treatment for which the veteran is not responsible.

(c) LIMITATION.—Dental benefits provided by reason of this section shall be a one-time course of dental care provided in the same manner as the dental benefits provided to a newly discharged veteran.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 913.)

§ 2063. Employment assistance

The Secretary may authorize homeless veterans receiving care through vocational rehabilitation programs to participate in the compensated work therapy program under section 1718 of this title.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 914.)

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

(a) GRANT PROGRAM.—The Secretary shall carry out a program to make grants to entities or organizations with expertise in preparing grant applications. Under the program, the entities or organizations receiving grants shall provide technical assistance to nonprofit community-based groups with experience in providing assistance to homeless veterans in order to assist such groups in applying for grants under this chapter and other grants relating to addressing problems of homeless veterans.

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

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 914; amended Pub. L. 109–461, title VII, Sec. 707, Dec. 22, 2006, 120 Stat. 3440.)

§ 2065. Annual report on assistance to homeless veterans

(a) ANNUAL REPORT.—Not later than June 15 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the activities of the Department during the calendar year preceding the report under programs of the Department under this chapter and other programs of the Department for the provision of assistance to homeless veterans.

(b) GENERAL CONTENTS OF REPORT.—Each report under subsection (a) shall include the following:

(1) The number of homeless veterans provided assistance under the programs referred to in subsection (a).

(2) The cost to the Department of providing such assistance under those programs.

(3) The Secretary's evaluation of the effectiveness of the programs of the Department in providing assistance to homeless veterans, including—

(A) residential work-therapy programs;

(B) programs combining outreach, community-based residential treatment, and case-management; and

(C) contract care programs for alcohol and drug-dependence or use disabilities.

(4) The Secretary's evaluation of the effectiveness of programs established by recipients of grants under section 2011 of this title and a description of the experience of those recipients in applying for and receiving grants from the Secretary of Housing and Urban Development to serve primarily homeless persons who are veterans.

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

(A) the Department of Defense;

(B) the Department of Health and Human Services;

(C) the Department of Housing and Urban Development;

(D) the Department of Justice;

(E) the Department of Labor;

(F) the Interagency Council on Homelessness;

(G) the Social Security Administration; and

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

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

(c) HEALTH CARE CONTENTS OF REPORT.—Each report under subsection (a) shall include, with respect to programs of the Department addressing health care needs of homeless veterans, the following:

(1) Information about expenditures, costs, and workload under the program of the Department known as the Health Care for Homeless Veterans program (HCHV).

(2) Information about the veterans contacted through that program.

(3) Information about program treatment outcomes under that program.

(4) Information about supported housing programs.

(5) Information about the Department's grant and per diem provider program under subchapter II of this chapter.

(6) The findings and conclusions of the assessments of the medical needs of homeless veterans conducted under section 2034(b) of this title.

(7) Other information the Secretary considers relevant in assessing those programs.

(d) BENEFITS CONTENT OF REPORT.—Each report under subsection (a) shall include, with respect to programs and activities of the Veterans Benefits Administration in processing of claims for benefits of homeless veterans during the preceding year, the following:

(1) Information on costs, expenditures, and workload of Veterans Benefits Administration claims evaluators in processing claims for benefits of homeless veterans.

(2) Information on the filing of claims for benefits by homeless veterans.

(3) Information on efforts undertaken to expedite the processing of claims for benefits of homeless veterans.

(4) Other information that the Secretary considers relevant in assessing the programs and activities.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 914; amended Pub. L. 108–170, title IV, Sec. 405(b), Dec. 6, 2003, 117 Stat. 2063; Pub. L. 109–461, title VII, Sec. 708, Dec. 22, 2006, 120 Stat. 3440; Pub. L. 110–387, title IX, Sec. 901(a)(2), Oct. 10, 2008, 122 Stat. 4142.)

§ 2066. Advisory Committee on Homeless Veterans

(a) ESTABLISHMENT.—(1) There is established in the Department the Advisory Committee on Homeless Veterans (hereinafter in this section referred to as the "Committee").

(2) The Committee shall consist of not more than 15 members appointed by the Secretary from among the following:

(A) Veterans service organizations.

(B) Advocates of homeless veterans and other homeless individuals.

(C) Community-based providers of services to homeless individuals.

(D) Previously homeless veterans.

(E) State veterans affairs officials.

(F) Experts in the treatment of individuals with mental illness.

(G) Experts in the treatment of substance use disorders.

(H) Experts in the development of permanent housing alternatives for lower income populations.

(I) Experts in vocational rehabilitation.

(J) Such other organizations or groups as the Secretary considers appropriate.

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

(A) The Secretary of Labor (or a representative of the Secretary selected after consultation with the Assistant Secretary of Labor for Veterans' Employment).

(B) The Secretary of Defense (or a representative of the Secretary).

(C) The Secretary of Health and Human Services (or a representative of the Secretary).

(D) The Secretary of Housing and Urban Development (or a representative of the Secretary).

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

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

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

(4)(A) The Secretary shall determine the terms of service and allowances of the members of the Committee, except that a term of service may not exceed three years. The Secretary may reappoint any member for additional terms of service.

(B) Members of the Committee shall serve without pay. Members may receive travel expenses, including per diem in lieu of subsistence for travel in connection with their duties as members of the Committee.

(b) DUTIES.—(1) The Secretary shall consult with and seek the advice of the Committee on a regular basis with respect to the provision by the Department of benefits and services to homeless veterans.

(2) In providing advice to the Secretary under this subsection, the Committee shall—

(A) assemble and review information relating to the needs of homeless veterans;

(B) provide an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans; and

(C) provide on-going advice on the most appropriate means of providing assistance to homeless veterans.

(3) The Committee shall—

(A) review the continuum of services provided by the Department directly or by contract in order to define cross-cutting issues and to improve coordination of all services with the Department that are involved in addressing the special needs of homeless veterans;

(B) identify (through the annual assessments under section 2034 of this title and other available resources) gaps in programs of the Department in serving homeless veterans, including identification of geographic areas with unmet needs, and provide recommendations to address those gaps;

(C) identify gaps in existing information systems on homeless veterans, both within and outside the Department, and provide recommendations about redressing problems in data collection;

(D) identify barriers under existing laws and policies to effective coordination by the Department with other Federal agencies and with State and local agencies addressing homeless populations;

(E) identify opportunities for increased liaison by the Department with nongovernmental organizations and individual groups providing services to homeless populations;

(F) with appropriate officials of the Department designated by the Secretary, participate with the Interagency Council on the Homeless under title II of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11311 et seq.);

(G) recommend appropriate funding levels for specialized programs for homeless veterans provided or funded by the Department;

(H) recommend appropriate placement options for veterans who, because of advanced age, frailty, or severe mental illness, may not be appropriate candidates for vocational rehabilitation or independent living; and

(I) perform such other functions as the Secretary may direct.

(c) REPORTS.—(1) Not later than March 31 of each year, the Committee shall submit to the Secretary a report on the programs and activities of the Department that relate to homeless veterans. Each such report shall include—

(A) an assessment of the needs of homeless veterans;

(B) a review of the programs and activities of the Department designed to meet such needs;

(C) a review of the activities of the Committee; and

(D) such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate.

(2) Not later than 90 days after the receipt of a report under paragraph (1), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Secretary considers appropriate.

(3) The Committee may also submit to the Secretary such other reports and recommendations as the Committee considers appropriate.

(4) The Secretary shall submit with each annual report submitted to the Congress pursuant to section 529 of this title a summary of all reports and recommendations of the Committee submitted to the Secretary since the previous annual report of the Secretary submitted pursuant to that section.

(d) TERMINATION.—The Committee shall cease to exist December 30, 2011.

(Added Pub. L. 107–95, Sec. 5(a)(1), Dec. 21, 2001, 115 Stat. 916; amended Pub. L. 109–444, Sec. 2(e), Dec. 21, 2006, 120 Stat. 3304; Pub. L. 109–461, title VII, Sec. 709, title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3441, 3468.)

Chapter 21 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART II—GENERAL BENEFITS]

CHAPTER 21—SPECIALLY ADAPTED HOUSING FOR DISABLED VETERANS

Sec.
2101. Acquisition and adaptation of housing: eligible veterans.
2101A. Eligibility for benefits and assistance: members of the Armed Forces with service-connected disabilities; individuals residing outside the United States.
2102. Limitations on assistance furnished.
2102A. Assistance for individuals residing temporarily in housing owned by a family member.
2103. Furnishing of plans and specifications.
2104. Benefits additional to benefits under other laws.
2105. Nonliability of United States.
2106. Veterans' mortgage life insurance.
2107. Coordination of administration of benefits.

§ 2101. Acquisition and adaptation of housing: eligible veterans

(a) ACQUISITION OF HOUSING WITH SPECIAL FEATURES.—(1) Subject to paragraph (3), the Secretary may assist a disabled veteran described in paragraph (2) in acquiring a suitable housing unit with special fixtures or movable facilities made necessary by the nature of the veteran's disability, and necessary land therefor.

(2) A veteran is described in this paragraph if the veteran is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability that meets any of the following criteria:

(A) The disability is due to the loss, or loss of use, of both lower extremities such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

(B) The disability is due to—

(i) blindness in both eyes, having only light perception, plus (ii) loss or loss of use of one lower extremity.

(C) The disability is due to the loss or loss of use of one lower extremity together with—

(i) residuals of organic disease or injury; or

(ii) the loss or loss of use of one upper extremity,

which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

(D) The disability is due to the loss, or loss of use, of both upper extremities such as to preclude use of the arms at or above the elbows.

(E) The disability is due to a severe burn injury (as determined pursuant to regulations prescribed by the Secretary).

(3) The regulations prescribed under subsection (d) shall require that assistance under paragraph (1) may be provided to a veteran only if the Secretary finds that—

(A) it is medically feasible for the veteran to reside in the proposed housing unit and in the proposed locality;

(B) the proposed housing unit bears a proper relation to the veteran's present and anticipated income and expenses; and

(C) the nature and condition of the proposed housing unit are such as to be suitable to the veteran's needs for dwelling purposes.

(b) ADAPTATIONS TO RESIDENCE OF VETERAN.—(1) Subject to paragraph (3), the Secretary shall assist any disabled veteran described in paragraph (2) (other than a veteran who is eligible for assistance under subsection (a))—

(A) in acquiring such adaptations to such veteran's residence as are determined by the Secretary to be reasonably necessary because of such disability; or

(B) in acquiring a residence already adapted with special features determined by the Secretary to be reasonably necessary for the veteran because of such disability.

(2) A veteran is described in this paragraph if the veteran is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability that meets any of the following criteria:

(A) The disability is due to blindness in both eyes with 5/200 visual acuity or less.

(B) The disability includes the anatomical loss or loss of use of both hands.

(C) The disability is due to a severe burn injury (as so determined).

(3) Assistance under paragraph (1) may be provided only to a veteran who the Secretary determines—

(A) is residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family; or

(B) if the veteran's residence is to be constructed or purchased, will be residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family.

(c) REGULATIONS.—Assistance under this section shall be provided in accordance with such regulations as the Secretary may prescribe.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1168, Sec. 801; Pub. L. 86–239, Sept. 8, 1959, 73 Stat. 472; Pub. L. 88–401, Aug. 4, 1964, 78 Stat. 380; Pub. L. 91–22, Sec. 1, June 6, 1969, 83 Stat. 32; Pub. L. 95–117, title IV, Sec. 401, Oct. 3, 1977, 91 Stat. 1065; Pub. L. 96–385, title III, Sec. 301(a), Oct. 7, 1980, 94 Stat. 1531; Pub. L. 99–576, title IV, Sec. 401(a), title VII, Sec. 701(48), 702(7), Oct. 28, 1986, 100 Stat. 3280, 3295, 3302; renumbered Sec. 2101 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 108–183, title IV, Sec. 401, Dec. 16, 2003, 117 Stat. 2664; Pub. L. 108–454, title IV, Sec. 401, Dec. 10, 2004, 118 Stat. 3614; Pub. L. 109–233, title I, Sec. 105(a), June 15, 2006, 120 Stat. 402; Pub. L. 110–289, div. B, title VI, Secs. 2602(b)(1), (7)(A), 2603, July 30, 2008, 122 Stat. 2859, 2860.)

§ 2101A. Eligibility for benefits and assistance: members of the Armed Forces with service-connected disabilities; individuals residing outside the United States

(a) MEMBERS WITH SERVICE-CONNECTED DISABILITIES.—(1) The Secretary may provide assistance under this chapter to a member of the Armed Forces serving on active duty who is suffering from a disability that meets applicable criteria for benefits under this chapter if the disability is incurred or aggravated in line of duty in the active military, naval, or air service. Such assistance shall be provided to the same extent as assistance is provided under this chapter to veterans eligible for assistance under this chapter and subject to the same requirements as veterans under this chapter.

(2) For purposes of this chapter, any reference to a veteran or eligible individual shall be treated as a reference to a member of the Armed Forces described in subsection (a) who is similarly situated to the veteran or other eligible individual so referred to.

(b) BENEFITS AND ASSISTANCE FOR INDIVIDUALS RESIDING OUTSIDE THE UNITED STATES.—(1) Subject to paragraph (2), the Secretary may, at the Secretary's discretion, provide benefits and assistance under this chapter (other than benefits under section 2106 of this title) to any individual otherwise eligible for such benefits and assistance who resides outside the United States.

(2) The Secretary may provide benefits and assistance to an individual under paragraph (1) only if—

(A) the country or political subdivision in which the housing or residence involved is or will be located permits the individual to have or acquire a beneficial property interest (as determined by the Secretary) in such housing or residence; and

(B) the individual has or will acquire a beneficial property interest (as so determined) in such housing or residence.

(c) REGULATIONS.—Benefits and assistance under this chapter by reason of this section shall be provided in accordance with such regulations as the Secretary may prescribe.

(Added Pub. L. 110–289, div. B, title VI, Sec. 2602(a), July 30, 2008, 122 Stat. 2858.)

§ 2102. Limitations on assistance furnished

(a) The assistance authorized by section 2101(a) of this title shall be afforded under one of the following plans, at the option of the individual—

(1) where the individual elects to construct a housing unit on land to be acquired by such individual, the Secretary shall pay not to exceed 50 percent of the total cost to the individual of (A) the housing unit and (B) the necessary land upon which it is to be situated;

(2) where the individual elects to construct a housing unit on land acquired by such individual prior to application for assistance under this chapter, the Secretary shall pay not to exceed the smaller of the following sums: (A) 50 percent of the total cost to the individual of the housing unit and the land necessary for such housing unit, or (B) 50 percent of the cost to the individual of the housing unit plus the full amount of the unpaid balance, if any, of the cost to the individual of the land necessary for such housing unit;

(3) where the individual elects to remodel a dwelling which is not adapted to the requirements of such individual's disability, acquired by such individual prior to application for assistance under this chapter, the Secretary shall pay not to exceed (A) the cost to the individual of such remodeling; or (B) 50 percent of the cost to the individual of such remodeling; plus the smaller of the following sums: (i) 50 percent of the cost to the individual of such dwelling and the necessary land upon which it is situated, or (ii) the full amount of the unpaid balance, if any, of the cost to the individual of such dwelling and the necessary land upon which it is situated; and

(4) where the individual has acquired a suitable housing unit, the Secretary shall pay not to exceed the smaller of the following sums: (A) 50 percent of the cost to the individual of such housing unit and the necessary land upon which it is situated, or (B) the full amount of the unpaid balance, if any, of the cost to the individual of such housing unit and the necessary land upon which it is situated.

(b) Except as provided in section 2104(b) of this title, the assistance authorized by section 2101(b) of this title shall be limited to the lesser of—

(1) the actual cost, or, in the case of an individual acquiring a residence already adapted with special features, the fair market value, of the adaptations determined by the Secretary under such section 2101(b) to be reasonably necessary, or

(2) $12,000.

(c) The amount of assistance afforded under subsection (a) for an individual authorized assistance by section 2101(a) of this title shall not be reduced by reason that title to the housing unit, which is vested in the individual, is also vested in any other person, if the individual resides in the housing unit.

(d)(1) The aggregate amount of assistance available to an individual under sections 2101(a) and 2102A of this title shall be limited to $60,000.

(2) The aggregate amount of assistance available to an individual under sections 2101(b) and 2102A of this title shall be limited to $12,000.

(3) No veteran may receive more than three grants of assistance under this chapter.

(e)(1) Effective on October 1 of each year (beginning in 2009), the Secretary shall increase the amounts described in subsection (b)(2) and paragraphs (1) and (2) of subsection (d) in accordance with this subsection.

(2) The increase in amounts under paragraph (1) to take effect on October 1 of a year shall be by an amount of such amounts equal to the percentage by which—

(A) the residential home cost-of-construction index for the preceding calendar year, exceeds

(B) the residential home cost-of-construction index for the year preceding the year described in subparagraph (A).

(3) The Secretary shall establish a residential home cost-of-construction index for the purposes of this subsection. The index shall reflect a uniform, national average change in the cost of residential home construction, determined on a calendar year basis. The Sec-

retary may use an index developed in the private sector that the Secretary determines is appropriate for purposes of this subsection.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1168, Sec. 802; Pub. L. 91–22, Sec. 2, June 6, 1969, 83 Stat. 32; Pub. L. 91–506, Sec. 6, Oct. 23, 1970, 84 Stat. 1113; Pub. L. 92–341, July 10, 1972, 86 Stat. 432; Pub. L. 93–569, Sec. 9, Dec. 31, 1974, 88 Stat. 1867; Pub. L. 95–476, title I, Sec. 101, Oct. 18, 1978, 92 Stat. 1497; Pub. L. 96–385, title III, Sec. 301(b), Oct. 7, 1980, 94 Stat. 1531; Pub. L. 97–66, title V, Sec. 502, Oct. 17, 1981, 95 Stat. 1032; Pub. L. 97–295, Sec. 4(33), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 98–543, title III, Sec. 304(a), Oct. 24, 1984, 98 Stat. 2748; Pub. L. 99–576, title IV, Sec. 401(b), Oct. 28, 1986, 100 Stat. 3280; Pub. L. 100–322, title III, Sec. 301, May 20, 1988, 102 Stat. 534; renumbered Sec. 2102 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 105–178, title VIII, Sec. 8204(a), June 9, 1998, 112 Stat. 494; Pub. L. 106–419, title III, Sec. 321, Nov. 1, 2000, 114 Stat. 1855; Pub. L. 107–103, title IV, Sec. 404, Dec. 27, 2001, 115 Stat. 993; Pub. L. 108–183, title IV, Sec. 402(a), Dec. 16, 2003, 117 Stat. 2664; Pub. L. 109–233, title I, Sec. 101(b), June 15, 2006, 120 Stat. 398; Pub. L. 110–289, div. B, title VI, Secs. 2602(b)(2), 2605(a), July 30, 2008, 122 Stat. 2859, 2861.)

§ 2102A. Assistance for individuals residing temporarily in housing owned by a family member

(a) PROVISION OF ASSISTANCE.—In the case of a disabled individual who is described in subsection (a)(2) or (b)(2) of section 2101 of this title and who is residing, but does not intend to permanently reside, in a residence owned by a member of such individual's family, the Secretary may assist the individual in acquiring such adaptations to such residence as are determined by the Secretary to be reasonably necessary because of the individual's disability.

(b) AMOUNT OF ASSISTANCE.—The assistance authorized under subsection (a) may not exceed—

(1) $14,000, in the case of an individual described in section 2101(a)(2) of this title; or

(2) $2,000, in the case of an individual described in section 2101(b)(2) of this title.

(c) LIMITATION.—The assistance authorized by subsection (a) shall be limited in the case of any individual to one residence.

(d) REGULATIONS.—Assistance under this section shall be provided in accordance with such regulations as the Secretary may prescribe.

(e) TERMINATION.—No assistance may be provided under this section after December 31, 2011.

(Added Pub. L. 109–233, title I, Sec. 101(a), June 15, 2006, 120 Stat. 398; amended Pub. L. 110–289, div. B, title VI, Secs. 2602(b)(3), (7)(B), 2604, July 30, 2008, 122 Stat. 2859–2861.)

§ 2103. Furnishing of plans and specifications

(a) PLANS AND SPECIFICATIONS.—The Secretary is authorized to furnish to individuals eligible for assistance under this chapter, without cost to the individuals, model plans and specifications of suitable housing units.

(b) HANDBOOK FOR DESIGN.—The Secretary shall make available to veterans eligible for assistance under this chapter, without cost to the veterans, a handbook containing appropriate designs for specially adapted housing. The Secretary shall update such handbook at least once every six years to take into account any new or

unique disabilities, including vision impairments, impairments specific to the upper limbs, and burn injuries.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1168, Sec. 803; renumbered Sec. 2103 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 110–289, div. B, title VI, Sec. 2602(b)(4), July 30, 2008, 122 Stat. 2859; Pub. L. 110–389, title V, Sec. 503, Oct. 10, 2008, 122 Stat. 4176.)

§ 2104. Benefits additional to benefits under other laws

(a) Any individual who accepts the benefits of this chapter shall not by reason thereof be denied the benefits of chapter 37 of this title; however, except as provided in subsection (b) of this section, the assistance authorized by section 2101 of this title shall not be available to any individual more than once.

(b) An individual eligible for assistance under section 2101(b) of this title shall not by reason of such eligibility be denied benefits for which such individual becomes eligible under section 2101(a) of this title or benefits relating to home health services under section 1717(a)(2) of this title. However, no particular type of adaptation, improvement, or structural alteration provided to an individual under section 1717(a)(2) of this title may be provided to such individual under section 2101(b) of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1169, Sec. 804; Pub. L. 96–385, title III, Sec. 301(c), Oct. 7, 1980, 94 Stat. 1531; renumbered Sec. 2104 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–262, title I, Sec. 101(e)(2), Oct. 9, 1996, 110 Stat. 3180; Pub. L. 110–289, div. B, title VI, Sec. 2602(b)(5), July 30, 2008, 122 Stat. 2859.)

§ 2105. Nonliability of United States

The Government of the United States shall have no liability in connection with any housing unit, or necessary land therefor, or adaptation acquired under the provisions of this chapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1169, Sec. 805; Pub. L. 96–385, title III, Sec. 301(d), Oct. 7, 1980, 94 Stat. 1531; renumbered Sec. 2105, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 2106. Veterans' mortgage life insurance

(a) The United States shall automatically insure any eligible individual age 69 or younger who is or has been granted assistance in securing a suitable housing unit under this chapter against the death of the individual unless the individual (1) submits to the Secretary in writing the individual's election not to be insured under this section, or (2) fails to respond in a timely manner to a request from the Secretary for information on which the premium for such insurance can be based.

(b) The amount of insurance provided an individual under this section may not exceed the lesser of $90,000 or the amount of the loan outstanding on the housing unit. The amount of such insurance shall be reduced according to the amortization schedule of the loan and may not at any time exceed the amount of the outstanding loan with interest. If there is no outstanding loan on the housing unit, insurance is not payable under this section. If an eligible individual elects not to be insured under this section, the individual may thereafter be insured under this section, but only upon submission of an application, payment of required premiums,

and compliance with such health requirements and other terms and conditions as may be prescribed by the Secretary.

(c) The premiums charged an individual for insurance under this section shall be paid at such time and in such manner as the Secretary prescribes. The rates for such premiums shall be based on such mortality data as the Secretary considers appropriate to cover only the mortality cost of insuring standard lives. In the case of an individual receiving compensation or other cash benefits paid to the individual by the Secretary, the Secretary shall deduct from such compensation or other benefits the premiums charged the individual under this section.

(d)(1) The United States shall bear the costs of insurance under this section to the extent that such costs exceed premiums established by the Secretary. Premiums collected on insurance under this section shall be credited to the "Veterans Insurance and Indemnities" appropriation account, and all disbursements of insurance proceeds under this section shall be made from that account.

(2) There are authorized to be appropriated to the Secretary for such account such amounts as may be necessary to carry out this section.

(e) Any amount of insurance in force under this section on the date of the death of an individual insured under this section shall be paid to the holder of the mortgage loan, for payment of which the insurance was granted, for credit on the loan indebtedness. Any liability of the United States under such insurance shall be satisfied when such payment is made. If the Secretary is the holder of the mortgage loan, the insurance proceeds shall be credited to the loan indebtedness and, deposited in the Veterans Housing Benefit Program Fund established by section 3722 of this title.

(f) The Secretary may prescribe such regulations relating to eligibility for insurance under this section, the maximum amount of insurance, the effective date of insurance, the maximum duration of insurance, and other pertinent matters not specifically provided for in this section as the Secretary determines are in the best interest of veterans or the United States.

(g) The amount of the insurance in force at any time shall be the amount necessary to pay the mortgage indebtedness in full, except as otherwise limited by subsection (b) of this section or regulations prescribed by the Secretary under this section.

(h) The Secretary shall issue to each individual insured under this section a certificate setting forth the benefits to which the individual is entitled under the insurance.

(i) Insurance under this section shall terminate upon whichever of the following events first occurs:

(1) Satisfaction of the individual's indebtedness under the loan upon which the insurance is based.

(2) Termination of the individual's ownership of the property securing the loan.

(3) Discontinuance of payment of premiums by the individual.

(j) Termination of life insurance under this section shall not affect the guaranty or insurance of the loan by the Secretary.

(Added Pub. L. 92–95, Sec. 1, Aug. 11, 1971, 85 Stat. 320, Sec. 806; amended Pub. L. 94–433, title III, Sec. 302, Sept. 30, 1976, 90 Stat. 1377; Pub. L. 99–576, title

VII, Sec. 701(49), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 100–322, title III, Sec. 333(a)(1), May 20, 1988, 102 Stat. 537; renumbered Sec. 2106 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–568, title II, Sec. 204(a), Oct. 29, 1992, 106 Stat. 4325; Pub. L. 103–446, title XII, Sec. 1201(h)(2), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 105–368, title VI, Sec. 602(e)(2), Nov. 10, 1998, 112 Stat. 3347; Pub. L. 107–330, title III, Sec. 302, Dec. 6, 2002, 116 Stat. 2824; Pub. L. 110–289, div. B, title VI, Sec. 2602(b)(6), July 30, 2008, 122 Stat. 2860.)

§ 2107. Coordination of administration of benefits

The Secretary shall provide for the coordination of the administration of programs to provide specially adapted housing that are administered by the Under Secretary for Health and such programs that are administered by the Under Secretary for Benefits under this chapter, chapter 17, and chapter 31 of this title.

(Added Pub. L. 109–233, title I, Sec. 101(c), June 15, 2006, 120 Stat. 399.)

Chapter 23 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART II—GENERAL BENEFITS]

CHAPTER 23—BURIAL BENEFITS

Sec.
2301. Flags.
2302. Funeral expenses.
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2304. Claims for reimbursement.
2305. Persons eligible under prior law.
2306. Headstones, markers, and burial receptacles.
2307. Death from service-connected disability.
2308. Transportation of deceased veteran to a national cemetery.

§ 2301. Flags

(a) The Secretary shall furnish a flag to drape the casket of each—

(1) deceased veteran who—

(A) was a veteran of any war, or of service after January 31, 1955;

(B) had served at least one enlistment; or

(C) had been discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty; and

(2) deceased individual who at the time of death was entitled to retired pay under chapter 67 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(b) After the burial of the veteran the flag so furnished shall be given to the veteran's next of kin. If no claim is made for the flag by the next of kin, it may be given, upon request, to a close friend or associate of the deceased veteran. If a flag is given to a close friend or associate of the deceased veteran, no flag shall be given to any other person on account of the death of such veteran.

(c) For the purpose of this section, the term "Mexican border period" as defined in paragraph (30) of section 101 of this title includes the period beginning on January 1, 1911, and ending on May 8, 1916.

(d) In the case of any person who died while in the active military, naval, or air service after May 27, 1941, the Secretary shall furnish a flag to the next of kin, or to such other person as the Secretary considers most appropriate, if such next of kin or other person is not otherwise entitled to receive a flag under this section or under section 1482(a) of title 10.

(e) The Secretary shall furnish a flag to drape the casket of each deceased person who is buried in a national cemetery by virtue of eligibility for burial in such cemetery under section 2402(6)

of this title. After the burial, the flag shall be given to the next of kin or to such other person as the Secretary considers appropriate.

(f)(1) The Secretary shall furnish a flag to drape the casket of each deceased member or former member of the Selected Reserve (as described in section 10143 of title 10) who is not otherwise eligible for a flag under this section or section 1482(a) of title 10—

(A) who completed at least one enlistment as a member of the Selected Reserve or, in the case of an officer, completed the period of initial obligated service as a member of the Selected Reserve;

(B) who was discharged before completion of the person's initial enlistment as a member of the Selected Reserve or, in the case of an officer, period of initial obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in line of duty; or

(C) who died while a member of the Selected Reserve.

(2) A flag may not be furnished under subparagraph (A) or (B) of paragraph (1) in the case of a person whose last discharge from service in the Armed Forces was under conditions less favorable than honorable.

(3) After the burial, a flag furnished under paragraph (1) shall be given to the next of kin or to such other person as the Secretary considers appropriate.

(g) A flag may not be furnished under this section in the case of a person described in section 2411(b) of this title.

(h)(1) The Secretary may not procure any flag for the purposes of this section that is not wholly produced in the United States.

(2)(A) The Secretary may waive the requirement of paragraph (1) if the Secretary determines—

(i) that the requirement cannot be reasonably met; or

(ii) that compliance with the requirement would not be in the national interest of the United States.

(B) The Secretary shall submit to Congress in writing notice of a determination under subparagraph (A) not later than 30 days after the date on which such determination is made.

(3) For the purpose of paragraph (1), a flag shall be considered to be wholly produced in the United States only if—

(A) the materials and components of the flag are entirely grown, manufactured, or created in the United States;

(B) the processing (including spinning, weaving, dyeing, and finishing) of such materials and components is entirely performed in the United States; and

(C) the manufacture and assembling of such materials and components into the flag is entirely performed in the United States.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1169, Sec. 901; Pub. L. 87–240, Sept. 14, 1961, 75 Stat. 512; Pub. L. 89–358, Sec. 9, Mar. 3, 1966, 80 Stat. 28; Pub. L. 90–77, title IV, Sec. 402, Aug. 31, 1967, 81 Stat. 190; Pub. L. 91–588, Sec. 9(g), Dec. 24, 1970, 84 Stat. 1585; Pub. L. 97–306, title IV, Sec. 402(a), Oct. 14, 1982, 96 Stat. 1442; Pub. L. 99–576, title VII, Sec. 701(50), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102–54, Sec. 14(b)(20), June 13, 1991, 105 Stat. 284; renumbered Sec. 2301 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–547, Sec. 11(a), Oct. 28, 1992, 106 Stat. 3644; Pub. L. 105–261, div. A, title V, Sec. 517, title X, Sec. 1073(a), Oct. 17, 1998, 112 Stat. 2009, 2137; Pub. L. 107–14, Sec. 8(a)(3), June 5,

2001, 115 Stat. 34; Pub. L. 107–330, title II, Sec. 201(b), Dec. 6, 2002, 116 Stat. 2823.)

§ 2302. Funeral expenses

(a) In the case of a deceased veteran—

(1) who at the time of death was in receipt of compensation (or but for the receipt of retirement pay would have been entitled to compensation) or was in receipt of pension, or

(2) who was a veteran of any war or was discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty, whose body is held by a State (or a political subdivision of a State), and with respect to whom the Secretary determines—

(A) that there is no next of kin or other person claiming the body of the deceased veteran, and

(B) that there are not available sufficient resources to cover burial and funeral expenses,

the Secretary, in the Secretary's discretion, having due regard to the circumstances in each case, may pay a sum not exceeding $300 to such person as the Secretary prescribes to cover the burial and funeral expenses of the deceased veteran and the expense of preparing the body and transporting it to the place of burial. For the purpose of this subsection, the term "veteran" includes a person who died during a period deemed to be active military, naval, or air service under section 106(c) of this title.

(b) Except as hereafter provided in this subsection, no deduction shall be made from the burial allowance because of the veteran's net assets at the time of the death of such veteran, or because of any contribution from any source toward the burial and funeral expenses (including transportation) unless the amount of expenses incurred is covered by the amount actually paid therefor by the United States, a State, any agency or political subdivision of the United States or of a State, or the employer of the deceased veteran. No claim shall be allowed (1) for more than the difference between the entire amount of the expenses incurred and the amount paid by any or all of the foregoing, or (2) when the burial allowance would revert to the funds of a public or private organization or would discharge such an organization's obligation without payment. The burial allowance or any part thereof shall not be paid in any case where specific provision is otherwise made for payment of expenses of funeral, transportation, and interment under any other Act.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1169, Sec. 902; Pub. L. 88–359, July 7, 1964, 78 Stat. 296; Pub. L. 89–360, Mar. 7, 1966, 80 Stat. 29; Pub. L. 95–476, title II, Sec. 203(b), Oct. 18, 1978, 92 Stat. 1506; Pub. L. 95–479, title III, Sec. 303(a), Oct. 18, 1978, 92 Stat. 1565; Pub. L. 97–35, title XX, Sec. 2001(a)(1), Aug. 13, 1981, 95 Stat. 781; Pub. L. 97–306, title IV, Sec. 403((a)), Oct. 14, 1982, 96 Stat. 1443; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2302, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 2303. Death in Department facility; plot allowance

(a)(1) When a veteran dies in a facility described in paragraph (2), the Secretary shall—

(A) pay the actual cost (not to exceed $300) of the burial and funeral or, within such limits, may make contracts for

such services without regard to the laws requiring advertisement for proposals for supplies and services for the Department; and

(B) when such a death occurs in a State, transport the body to the place of burial in the same or any other State.

(2) A facility described in this paragraph is—

(A) a facility of the Department (as defined in section 1701(3) of this title) to which the deceased was properly admitted for hospital, nursing home, or domiciliary care under section 1710 or 1711(a) of this title; or

(B) an institution at which the deceased veteran was, at the time of death, receiving—

(i) hospital care in accordance with section 1703 of this title;

(ii) nursing home care under section 1720 of this title; or

(iii) nursing home care for which payments are made under section 1741 of this title.

(b) In addition to the benefits provided for under section 2302 of this title and subsection (a) of this section, in the case of a veteran who is eligible for burial in a national cemetery under section 2402 of this title and who is not buried in a national cemetery or other cemetery under the jurisdiction of the United States—

(1) if such veteran is buried (without charge for the cost of a plot or interment) in a cemetery, or a section of a cemetery, that (A) is used solely for the interment of persons who are (i) eligible for burial in a national cemetery, and (ii) members of a reserve component of the Armed Forces not otherwise eligible for such burial or former members of such a reserve component not otherwise eligible for such burial who are discharged or released from service under conditions other than dishonorable, and(B) is owned by a State or by an agency or political subdivision of a State, the Secretary shall pay to such State, agency, or political subdivision the sum of $300 as a plot or interment allowance for such veteran; and

(2) if such veteran is eligible for a burial allowance under section 2302 of this title or under subsection (a) of this section, or was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, and such veteran is buried in a cemetery, or a section of a cemetery, other than as described in clause (1) of this subsection, the Secretary shall pay a sum not exceeding $300 as a plot or interment allowance to such person as the Secretary prescribes, except that if any part of the plot or interment costs of a burial to which this clause applies has been paid or assumed by a State, an agency or political subdivision of a State, or a former employer of the deceased veteran, no claim for such allowance shall be allowed for more than the difference between the entire amount of the expenses incurred and the amount paid or assumed by any or all of the foregoing entities.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1170, Sec. 903; Pub. L. 86–70, Sec. 29(a), June 25, 1959, 73 Stat. 148; Pub. L. 86–624, Sec. 25(b), July 12, 1960, 74 Stat. 418; Pub. L. 87–99, July 21, 1961, 75 Stat. 218; Pub. L. 89–358, Sec. 4(i), Mar. 3, 1966, 80 Stat. 24; Pub. L. 93–43, Sec. 5(a)(1), June 18, 1973, 87 Stat. 80; Pub. L. 94–581,

title II, Sec. 204, Oct. 21, 1976, 90 Stat. 2856; Pub. L. 95–476, title II, Sec. 202(a), Oct. 18, 1978, 92 Stat. 1503; Pub. L. 95–479, title III, Sec. 303(a), Oct. 18, 1978, 92 Stat. 1565; Pub. L. 97–35, title XX, Sec. 2001(b), Aug. 13, 1981, 95 Stat. 781; Pub. L. 97–306, title IV, Sec. 404(a), Oct. 14, 1982, 96 Stat. 1443; Pub. L. 99–272, title XIX, Sec. 19012(c)(4), Apr. 7, 1986, 100 Stat. 382; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 101–508, title VIII, Sec. 8042(a), Nov. 5, 1990, 104 Stat. 1388–349; renumbered Sec. 2303 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 104–275, title II, Sec. 212, Oct. 9, 1996, 110 Stat. 3330; Pub. L. 105–114, title IV, Sec. 401(a), Nov. 21, 1997, 111 Stat. 2293; Pub. L. 106–419, title III, Sec. 333(a), Nov. 1, 2000, 114 Stat. 1856; Pub. L. 107–103, title V, Sec. 501(b)(1), Dec. 27, 2001, 115 Stat. 994; Pub. L. 108–183, title V, Sec. 501(a), Dec. 16, 2003, 117 Stat. 2666.)

§ 2304. Claims for reimbursement

Applications for payments under section 2302 of this title must be filed within two years after the burial of the veteran. If the burial allowance was not payable at the death of the veteran because of the nature of the veteran's discharge from the service, but after the veteran's death the veteran's discharge has been corrected by competent authority so as to reflect a discharge from the service under conditions other than dishonorable, then the burial allowance may be paid if a claim is filed within two years from the date of correction of the discharge. If a claimant's application is incomplete at the time it is originally submitted, the Secretary shall notify the applicant of the evidence necessary to complete the application. If such evidence is not received within one year from the date of such notification, no allowance may be paid.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1170, Sec. 904; Pub. L. 88–3, Apr. 2, 1963, 77 Stat. 4; Pub. L. 91–24, Sec. 7, June 11, 1969, 83 Stat. 34; Pub. L. 99–576, title VII, Sec. 701(51), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2304 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 2305. Persons eligible under prior law

The death of any person who had a status which would, under the laws in effect on December 31, 1957, afford entitlement to the burial benefits and other benefits provided for in this chapter, but who did not meet the service requirements contained in this chapter, shall afford entitlement to such benefits, notwithstanding the failure of such person to meet such service requirements.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1170, Sec. 905; renumbered Sec. 2305, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 2306. Headstones, markers, and burial receptacles

(a) The Secretary shall furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of the following:

(1) Any individual buried in a national cemetery or in a post cemetery.

(2) Any individual eligible for burial in a national cemetery (but not buried there), except for those persons or classes of persons enumerated in section 2402(4), (5), and (6) of this title.

(3) Soldiers of the Union and Confederate Armies of the Civil War.

(4) Any individual described in section 2402(5) of this title who is buried in a veterans' cemetery owned by a State.

(5) Any individual who at the time of death was entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(b)(1) The Secretary shall furnish, when requested, an appropriate memorial headstone or marker for the purpose of commemorating an eligible individual whose remains are unavailable. Such a headstone or marker shall be furnished for placement in a national cemetery area reserved for that purpose under section 2403 of this title, a veterans' cemetery owned by a State, or, in the case of a veteran, in a State, local, or private cemetery.

(2) For purposes of paragraph (1), an eligible individual is any of the following:

(A) A veteran.

(B) The spouse or surviving spouse of a veteran.

(C) An eligible dependent child of a veteran.

(3) For purposes of paragraph (1), the remains of an individual shall be considered to be unavailable if the individual's remains—

(A) have not been recovered or identified;

(B) were buried at sea, whether by the individual's own choice or otherwise;

(C) were donated to science; or

(D) were cremated and the ashes scattered without interment of any portion of the ashes.

(4) For purposes of this subsection:

(A) The term "veteran" includes an individual who dies in the active military, naval, or air service.

(B) The term "surviving spouse" includes a surviving spouse who had a subsequent remarriage.

(5) For purposes of this section, the term "eligible dependent child" means a child—

(A) who is under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution; or

(B) who is unmarried and became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a course of instruction at an approved educational institution.

(c) A headstone or marker furnished under subsection (a), (b), or (d) 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.

(d)(1) The Secretary shall furnish, when requested, an appropriate Government headstone or marker at the expense of the United States for the grave of an individual described in paragraph (2) or (5) of subsection (a) who is buried in a private cemetery, notwithstanding that the grave is marked by a headstone or marker furnished at private expense. Such a headstone or marker may be furnished only if the individual making the request for the Govern-

ment headstone or marker certifies to the Secretary that the headstone or marker will be placed on the grave for which the headstone or marker is requested, or, if placement on the grave is impossible or impracticable, as close as possible to the grave within the grounds of the cemetery in which the grave is located.

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

(3) The headstone or marker furnished under this subsection shall be the headstone or marker selected by the individual making the request from among all the headstones and markers made available by the Government for selection.

(4) In lieu of furnishing a headstone or marker under this subsection, the Secretary may furnish, upon request, a medallion or other device of a design determined by the Secretary to signify the deceased's status as a veteran, to be attached to a headstone or marker furnished at private expense.

(e)(1) The Secretary of Veterans Affairs shall provide an outer burial receptacle for each new grave in an open cemetery under the control of the National Cemetery Administration in which remains are interred in a casket. The Secretary of the Army may provide an outer burial receptacle for such a grave in the Arlington National Cemetery.

(2) The use of outer burial receptacles in a cemetery under the control of the National Cemetery Administration or in the Arlington National Cemetery shall be in accordance with regulations or procedures approved by the Secretary of Veterans Affairs or Secretary of the Army, respectively.

(3) Regulations or procedures under paragraph (2) may specify that—

(A) an outer burial receptacle other than a grave liner be provided in lieu of a grave liner at the election of the survivors of the interred veteran; and

(B) if an outer burial receptacle other than a grave liner is provided in lieu of a grave liner upon an election of such survivors, such survivors be required—

(i) to pay the amount by which the cost of the outer burial receptacle exceeds the cost of the grave liner that would otherwise have been provided in the absence of the election; and

(ii) to pay the amount of the administrative costs incurred by the Secretary (or, with respect to Arlington National Cemetery, the Secretary of the Army) in providing the outer burial receptacle in lieu of such grave liner.

(4) Regulations or procedures under paragraph (2) may provide for the use of a voucher system, or other system of reimbursement approved by the Secretary (or, with respect to Arlington National Cemetery, the Secretary of the Army), for payment for outer burial receptacles other than grave liners provided under such regulations or procedures.

(f)(1) When the Secretary has furnished a headstone or marker under subsection (a) for the unmarked grave of an individual, the Secretary shall, if feasible, add a memorial inscription to that head-

stone or marker rather than furnishing a separate headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

(2) When the Secretary has furnished a memorial headstone or marker under subsection (b) for purposes of commemorating a veteran or an individual who died in the active military, naval, or air service, the Secretary shall, if feasible, add a memorial inscription to that headstone or marker rather than furnishing a separate memorial headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

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

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

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

(Added Pub. L. 93–43, Sec. 5(a)(2), June 18, 1973, 87 Stat. 80, Sec. 906; amended Pub. L. 95–476, title II, Sec. 203(a), Oct. 18, 1978, 92 Stat. 1505; Pub. L. 95–479, title III, Sec. 303(b), Oct. 18, 1978, 92 Stat. 1565; Pub. L. 96–385, title V, Sec. 502, Oct. 7, 1980, 94 Stat. 1534; Pub. L. 97–66, title VI, Sec. 603(a), Oct. 17, 1981, 95 Stat. 1034; Pub. L. 100–322, title III, Sec. 344(a), (b)(1), May 20, 1988, 102 Stat. 540; Pub. L. 101–237, title III, Sec. 313(b)(1), (3), title V, Sec. 501, 504(a), Dec. 18, 1989, 103 Stat. 2077, 2093, 2094; Pub. L. 101–508, title VIII, Sec. 8041(a), Nov. 5, 1990, 104 Stat. 1388–349; renumbered Sec. 2306 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–547, Sec. 11(b), Oct. 28, 1992, 106 Stat. 3644; Pub. L. 104–275, title II, Sec. 213(a), (b)(1), Oct. 9, 1996, 110 Stat. 3331, 3332; Pub. L. 105–368, title IV, Secs. 401(a), (b), 403(c)(2), Nov. 10, 1998, 112 Stat. 3334, 3335, 3338; Pub. L. 107–103, title V, Sec. 502(a)–(c), Dec. 27, 2001, 115 Stat. 994, 995; Pub. L. 107–330, title II, Sec. 201(c), Dec. 6, 2002, 116 Stat. 2823; Pub. L. 109–444, Sec. 2(f), Dec. 21, 2006, 120 Stat. 3305; Pub. L. 109–461, title IV, Secs. 401(a), (b), 402, title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3429, 3468; Pub. L. 110–157, title II, Secs. 201, 203(a), Dec. 26, 2007, 121 Stat. 1832, 1833; Pub. L. 110–389, title VIII, Sec. 810(a), Oct. 10, 2008, 122 Stat. 4190.)

§ 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) $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)(2) of this title.

(Added Pub. L. 93–43, Sec. 5(a)(2), June 18, 1973, 87 Stat. 80, Sec. 907; amended Pub. L. 95–479, title III, Sec. 303(c), Oct. 18, 1978, 92 Stat. 1565; Pub. L. 100–322, title III, Sec. 303, May 20, 1988, 102 Stat. 534; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2307 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–103, title V, Sec. 501(a)(1), Dec. 27, 2001, 115 Stat. 994; Pub. L. 108–183, title V, Sec. 501(b), Dec. 16, 2003, 117 Stat. 2667.)

§ 2308. Transportation of deceased veteran to a national cemetery

Where a veteran dies as the result of a service-connected disability, or is in receipt of (but for the receipt of retirement pay or pension under this title would have been entitled to) disability compensation, the Secretary may pay, in addition to any amount paid pursuant to section 2302 or 2307 of this title, the cost of transportation of the deceased veteran for burial in a national cemetery. Such payment shall not exceed the cost of transportation to the national cemetery nearest the veteran's last place of residence in which burial space is available.

(Added Pub. L. 94–433, title III, Sec. 304(a), Sept. 30, 1976, 90 Stat. 1377, Sec. 908; amended Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2308 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

Chapter 24 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART II—GENERAL BENEFITS]

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

Sec.
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§ 2400. Establishment of National Cemetery Administration; composition of Administration

(a) There shall be within the Department a National Cemetery Administration responsible for the interment of deceased servicemembers and veterans. The National Cemetery Administration shall be headed by the Under Secretary for Memorial Affairs, who shall perform such functions as may be assigned by the Secretary.

(b) The national cemeteries and other facilities under the control of the National Cemetery Administration shall consist of—

(1) national cemeteries transferred from the Department of the Army to the Veterans' Administration by the National Cemeteries Act of 1973;

(2) cemeteries under the jurisdiction of the Veterans' Administration on the date of enactment of this chapter; and

(3) any other cemetery, memorial, or monument transferred to the Veterans' Administration by the National Cemeteries Act of 1973, or later acquired or developed by the Secretary.

(Added Pub. L. 93–43, Sec. 2(a), June 18, 1973, 87 Stat. 75, Sec. 1000; amended Pub. L. 99–576, title VII, Sec. 701(52), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 100–527, Sec. 13(i), Oct. 25, 1988, 102 Stat. 2644; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2400 and amended Pub.

L. 102–83, Sec. 4(a)(3), (4), 5(a), Aug. 6, 1991, 105 Stat. 404, 406; Pub. L. 105–368, title IV, Sec. 403(c)(3), Nov. 11, 1998, 112 Stat. 3338.)

§ 2401. Advisory Committee on Cemeteries and Memorials

There shall be appointed by the Secretary an Advisory Committee on Cemeteries and Memorials. The Secretary shall advise and consult with the Committee from time to time with respect to the administration of the cemeteries for which the Secretary is responsible, and with respect to the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee shall make periodic reports and recommendations to the Secretary and to Congress.

(Added Pub. L. 93–43, Sec. 2(a), June 18, 1973, 87 Stat. 75, Sec. 1001; amended Pub. L. 99–576, title VII, Sec. 701(53), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2401, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 2402. Persons eligible for interment in national cemeteries

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

(1) Any veteran (which for the purposes of this chapter includes a person who died in the active military, naval, or air service).

(2) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(3) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(A) attending an authorized training camp or on an authorized practice cruise;

(B) performing authorized travel to or from that camp or cruise; or

(C) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) attending that camp or on that cruise;

(ii) performing that travel; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

(4) Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, and whose last such service terminated honorably.

(5) The spouse, surviving spouse (which for purposes of this chapter includes a surviving spouse who had a subsequent remarriage), minor child (which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing

a course of instruction at an approved educational institution), and, in the discretion of the Secretary, unmarried adult child of any of the persons listed in paragraphs (1) through (4) and paragraph (7).

(6) Such other persons or classes of persons as may be designated by the Secretary.

(7) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

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

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

(B) resided in the United States.

(Added Pub. L. 93–43, Sec. 2(a), June 18, 1973, 87 Stat. 75, Sec. 1002; amended Pub. L. 99–576, title VII, Sec. 701(54), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 2402, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–240, Sec. 1, May 4, 1994, 108 Stat. 609; Pub. L. 103–446, title VIII, Sec. 801, 802, Nov. 2, 1994, 108 Stat. 4675; Pub. L. 104–275, title II, Sec. 211, Oct. 9, 1996, 110 Stat. 3330; Pub. L. 105–368, title IV, Sec. 403(c)(5), Nov. 11, 1998, 112 Stat. 3338; Pub. L. 106–419, title III, Sec. 331(a), title IV, Sec. 404(a)(5), Nov. 1, 2000, 114 Stat. 1856, 1865; Pub. L. 108–183, title II, Sec. 212(b), title V, Sec. 502(a), Dec. 16, 2003, 117 Stat. 2658, 2667.)

§ 2403. Memorial areas

(a) The Secretary shall set aside, when available, suitable areas in national cemeteries to honor the memory of members of the Armed Forces and veterans—

(1) who are missing in action;

(2) whose remains have not been recovered or identified;

(3) whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) whose remains were donated to science; or

(5) whose remains were cremated and the ashes scattered without interment of any portion of the ashes.

(b) Under regulations prescribed by the Secretary, group memorials may be placed to honor the memory of groups of individuals referred to in subsection (a), and appropriate memorial headstones and markers may be placed to honor the memory of individuals referred to in subsection (a) and section 2306(b) of this title.

(c) All national and other veterans' cemeteries under the control of the National Cemetery Administration shall be considered national shrines as a tribute to our gallant dead and, notwithstanding the provisions of any other law, the Secretary is hereby authorized to permit appropriate officials to fly the flag of the United States of America at such cemeteries twenty-four hours each day.

(Added Pub. L. 93–43, Sec. 2(a), June 18, 1973, 87 Stat. 76, Sec. 1003; amended Pub. L. 97–66, title VI, Sec. 603(b), Oct. 17, 1981, 95 Stat. 1034; Pub. L. 97–295, Sec. 4(34), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2403, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–368, title IV, Sec. 401(c), 403(c)(6), Nov. 11, 1998, 112 Stat. 3335, 3339.)

§ 2404. Administration

(a) The Secretary is authorized to make all rules and regulations which are necessary or appropriate to carry out the provisions of this chapter, and may designate those cemeteries which are considered to be national cemeteries.

(b) In conjunction with the development and administration of cemeteries for which the Secretary is responsible, the Secretary shall provide all necessary facilities including, as necessary, superintendents' lodges, chapels, crypts, mausoleums, and columbaria.

(c)(1) Subject to paragraph (2), each grave in a national cemetery shall be marked with an appropriate marker. Such marker shall bear the name of the person buried, the number of the grave, and such other information as the Secretary shall by regulation prescribe.

(2) The grave markers referred to in paragraph (1) shall be upright for interments that occur on or after January 1, 1987, except that—

(A) in the case of any cemetery scheduled to be closed by September 30, 1991, as indicated in the documents submitted by the Administrator of Veterans' Affairs to the Congress in justification for the amounts included for Veterans' Administration programs in the President's Budget for fiscal year 1987, the Secretary may provide for flat grave markers;

(B) in the case of any cemetery with a section which has flat markers on October 28, 1986, the Secretary may continue to provide for flat grave markers in such section;

(C) in the case of any cemetery located on the grounds of or adjacent to a Department health-care facility, the Secretary may provide for flat grave markers; and

(D) in the case of grave sites of cremated remains that are interred in the ground, the Secretary may provide for flat grave markers.

(d) There shall be kept in each national cemetery, and at the main office of the Department, a register of burials in each cemetery setting forth the name of each person buried in the cemetery, the number of the grave in which the veteran is buried, and such other information as the Secretary by regulation may prescribe.

(e) In carrying out the Secretary's responsibilities under this chapter, the Secretary may contract with responsible persons, firms, or corporations for the care and maintenance of such cemeteries under the Secretary's jurisdiction as the Secretary shall choose, under such terms and conditions as the Secretary may prescribe.

(f)(1) The Secretary is authorized to convey to any State, or political subdivision thereof, in which any national cemetery is located, all right, title, and interest of the United States in and to any Government owned or controlled approach road to such cemetery if, prior to the delivery of any instrument of conveyance, the State or political subdivision to which such conveyance is to be made notifies the Secretary in writing of its willingness to accept and maintain the road included in such conveyance. Upon the execution and delivery of such a conveyance, the jurisdiction of the

United States over the road conveyed shall cease and thereafter vest in the State or political subdivision concerned.

(2) The Secretary may, to the extent of appropriated funds available for such purpose, make a contribution to local authorities for the construction of road improvements or traffic controls or other devices on land adjacent to a national cemetery if the Secretary determines that such a contribution is essential to ensure safe ingress to or egress from the cemetery.

(g) Notwithstanding any other provision of law, the Secretary may at such time as the Secretary deems desirable, relinquish to the State in which any cemetery, monument, or memorial under the Secretary's jurisdiction is located, such portion of legislative jurisdiction over the lands involved as is necessary to establish concurrent jurisdiction between the Federal Government and the State concerned. Such partial relinquishment of jurisdiction under the authority of this subsection may be made by filing with the Governor of the State involved a notice of such relinquishment and shall take effect upon acceptance thereof by the State in such manner as its laws may prescribe.

(Added Pub. L. 93–43, Sec. 2(a), June 18, 1973, 87 Stat. 76, Sec. 1004; amended Pub. L. 99–576, title IV, Sec. 411, title VII, Sec. 701(55), Oct. 28, 1986, 100 Stat. 3283, 3295; Pub. L. 100–322, title III, Sec. 341(a), 342, May 20, 1988, 102 Stat. 539, 540; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102–54, Sec. 14(b)(21), June 13, 1991, 105 Stat. 284; renumbered Sec. 2404 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(7), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

§ 2405. Disposition of inactive cemeteries

(a) The Secretary may transfer, with the consent of the agency concerned, any inactive cemetery, burial plot, memorial, or monument within the Secretary's control to the Department of the Interior for maintenance as a national monument or park, or to any other agency of the Government. Any cemetery transferred to the Department of the Interior shall be administered by the Secretary of the Interior as a part of the National Park System, and funds appropriated to the Secretary of the Interior for such system shall be available for the management and operation of such cemetery.

(b) The Secretary may also transfer and convey all right, title, and interest of the United States in or to any inactive cemetery or burial plot, or portion thereon, to any State, county, municipality, or proper agency thereof, in which or in the vicinity of which such cemetery or burial plot is located, but in the event the grantee shall cease or fail to care for and maintain the cemetery or burial plot or the graves and monuments contained therein in a manner satisfactory to the Secretary, all such right, title, and interest transferred or conveyed by the United States, shall revert to the United States.

(c) If a cemetery not under the control of the National Cemetery Administration has been or is to be discontinued, the Secretary may provide for the removal of remains from that cemetery to any cemetery under the control of such Administration. The Secretary may also provide for the removal of the remains of any veteran from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

(Added Pub. L. 93–43, Sec. 2(a), June 18, 1973, 87 Stat. 77, Sec. 1005; amended Pub. L. 99–576, title VII, Sec. 701(56), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101–237, title III, Sec. 313(b)(1), (4), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2405, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–368, title IV, Sec. 403(c)(7), Nov. 11, 1998, 112 Stat. 3339.)

§ 2406. Acquisition of lands

As additional lands are needed for national cemeteries, they may be acquired by the Secretary by purchase, gift (including donations from States or political subdivisions thereof), condemnation, transfer from other Federal agencies, exchange, or otherwise, as the Secretary determines to be in the best interest of the United States.

(Added Pub. L. 93–43, Sec. 2(a), June 18, 1973, 87 Stat. 78, Sec. 1006; amended Pub. L. 99–576, title VII, Sec. 701(57), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2406, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 108–454, title VI, Sec. 603, Dec. 10, 2004, 118 Stat. 3624.)

§ 2407. Authority to accept and maintain suitable memorials

Subject to such restrictions as the Secretary may prescribe, the Secretary may accept gifts, devises, or bequests from legitimate societies and organizations or reputable individuals, made in any manner, which are made for the purpose of beautifying national cemeteries, or are determined to be beneficial to such cemetery. The Secretary may make land available for this purpose, and may furnish such care and maintenance as the Secretary deems necessary.

(Added Pub. L. 93–43, Sec. 2(a), June 18, 1973, 87 Stat. 78, Sec. 1007; amended Pub. L. 99–576, title VII, Sec. 701(58), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2407, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

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

(a)(1) Subject to subsection (b), the Secretary may make a grant to any State for the following purposes:

(A) Establishing, expanding, or improving a veterans' cemetery owned by the State.

(B) Operating and maintaining such a cemetery.

(2) A grant under paragraph (1) may be made only upon submission of an application to the Secretary in such form and manner, and containing such information, as the Secretary may require.

(b) A grant under this section for a purpose described in subsection (a)(1)(A) shall be subject to the following conditions:

(1) The amount of such a grant may not exceed—

(A) in the case of the establishment of a new cemetery, the sum of: (i) the cost of improvements to be made on the land to be converted into a cemetery; and (ii) the cost of initial equipment necessary to operate the cemetery; and

(B) in the case of the expansion or improvement of an existing cemetery, the sum of: (i) the cost of improvements to be made on any land to be added to the cemetery; and (ii) the cost of any improvements to be made to the existing cemetery.

(2) If the amount of such a grant is less than the amount of costs referred to in subparagraph (A) or (B) of paragraph (1), the State receiving the grant shall contribute the excess of such costs over the grant.

(3) If a State that has received such a grant to establish, expand, or improve a veterans' cemetery ceases to own such cemetery, ceases to operate such cemetery as a veterans' cemetery, or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from such State the total of all grants made under this section to such State in connection with such cemetery.

(c)(1) In addition to the conditions specified in subsection (b) of this section, any grant to a State under this section to assist such State in establishing a veterans' cemetery shall be made on the condition that such cemetery shall conform to such standards and guidelines relating to site selection, planning, and construction as the Secretary may by regulation prescribe. In prescribing regulations for the purposes of the preceding sentence, the Secretary shall take into account the standards and guidelines for site selection, planning, and construction that are applicable to cemeteries under the control of the National Cemetery Administration, including those provided in subsections (b), (c), and (d) of section 2404 of this title.

(2) The Secretary may by regulation prescribe such additional terms and conditions for grants under this section as the Secretary considers appropriate.

(d)(1) In addition to the conditions specified in subsections (b) and (c), any grant made to a State under this section shall be made subject to the condition specified in paragraph (2).

(2) For purposes of paragraph (1), the condition described in this paragraph is that, after the date of the receipt of the grant, such State prohibit the interment or memorialization in that cemetery of a person described in section 2411(b) of this title, subject to the receipt of notice described in subsection (a)(2) of such section, except that for purposes of this subsection—

(A) such notice shall be furnished to an appropriate official of such State; and

(B) a finding described in subsection (b)(3) of such section shall be made by an appropriate official of such State.

(e)(1) Amounts appropriated to carry out this section shall remain available until expended. If all funds from a grant under this section have not been utilized by a State for the purpose for which the grant was made within three years after such grant is made, the United States shall be entitled to recover any such unused grant funds from such State.

(2) In any fiscal year, the aggregate amount of grants awarded under this section for the purposes specified in subsection (a)(1)(B) may not exceed $5,000,000.

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

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

(3) For purposes of this subsection:

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

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

(Added Pub. L. 95–476, title II, Sec. 202(b)(1), Oct. 18, 1978, 92 Stat. 1504, Sec. 1008; amended Pub. L. 98–223, title II, Sec. 202, Mar. 2, 1984, 98 Stat. 41; Pub. L. 100–322, title III, Sec. 343, May 20, 1988, 102 Stat. 540; Pub. L. 100–687, div. B, title XVI, Sec. 1601, Nov. 18, 1988, 102 Stat. 4137; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2408 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VIII, Sec. 803, Nov. 2, 1994, 108 Stat. 4675; Pub. L. 105–116, Sec. 2, Nov. 21, 1997, 111 Stat. 2382; Pub. L. 105–368, title IV, Sec. 403(c)(8), 404(a)(1), (b), (c), title X, Sec. 1005(b)(5), Nov. 11, 1998, 112 Stat. 3339, 3365; Pub. L. 108–183, title V, Sec. 503, Dec. 16, 2003, 117 Stat. 2667; Pub. L. 109–461, title IV, Sec. 403, Dec. 22, 2006, 120 Stat. 3430; Pub. L. 110–140, title II, Sec. 202(b)(1)–(3), Dec. 26, 2007, 121 Stat. 1832.)

§ 2409. Memorial areas in Arlington National Cemetery

(a) The Secretary of the Army may set aside, when available, a suitable area or areas in Arlington National Cemetery, Virginia, to honor the memory of members of the Armed Forces and veterans—

(1) who are missing in action;

(2) whose remains have not been recovered or identified;

(3) whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) whose remains were donated to science; or

(5) whose remains were cremated and whose ashes were scattered without interment of any portion of the ashes.

(b) Under regulations prescribed by the Secretary of the Army, appropriate memorials or markers may be erected in Arlington National Cemetery to honor the memory of those individuals, or group of individuals, referred to in subsection (a) of this section.

(Added Pub. L. 99–576, title IV, Sec. 413(a), Oct. 28, 1986, 100 Stat. 3284, Sec. 1009; amended Pub. L. 101–237, title III, Sec. 313(b)(5), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 2409, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 2410. Burial of cremated remains in Arlington National Cemetery

(a) The Secretary of the Army shall designate an area of appropriate size within Arlington National Cemetery for the unmarked interment, in accordance with such regulations as the Secretary may prescribe, of the ashes of persons eligible for interment in Arlington National Cemetery whose remains were cremated. Such area shall be an area not suitable for the burial of casketed remains.

(b) The Secretary of each military department shall make available appropriate forms on which those members of the Armed Forces who so desire may indicate their desire to be buried within the area to be designated under subsection (a).

(Added Pub. L. 101–237, title V, Sec. 502(a), Dec. 18, 1989, 103 Stat. 2093, Sec. 1010; amended Pub. L. 102–54, Sec. 14(b)(22), June 13, 1991, 105 Stat. 284; renumbered Sec. 2410, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 2411. Prohibition against interment or memorialization in the National Cemetery Administration or Arlington National Cemetery of persons committing Federal or State capital crimes

(a)(1) In the case of a person described in subsection (b), the appropriate Federal official may not—

(A) inter the remains of such person in a cemetery in the National Cemetery Administration or in Arlington National Cemetery; or

(B) honor the memory of such person in a memorial area in a cemetery in the National Cemetery Administration (described in section 2403(a) of this title) or in such an area in Arlington National Cemetery (described in section 2409(a) of this title).

(2) In the case of a person described in subsection (b)(1) or (b)(2), the prohibition under paragraph (1) shall not apply unless written notice of a conviction referred to in subsection (b)(1) or (b)(2), as the case may be, is received by the appropriate Federal official before such official approves an application for the interment or memorialization of such person. Such written notice shall be furnished to such official by the Attorney General, in the case of a Federal capital crime, or by an appropriate State official, in the case of a State capital crime.

(b) A person referred to in subsection (a) is any of the following:

(1) A person who has been convicted of a Federal capital crime and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) A person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of a State).

(3) A person who—

(A) is found (as provided in subsection (c)) to have committed a Federal capital crime or a State capital crime, but

(B) has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution.

(c) A finding under subsection (b)(3) shall be made by the appropriate Federal official. Any such finding may only be made based upon a showing of clear and convincing evidence, after an opportunity for a hearing in a manner prescribed by the appropriate Federal official.

(d) For purposes of this section:

(1) The term "Federal capital crime" means an offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

(2) The term "State capital crime" means, under State law, the willful, deliberate, or premeditated unlawful killing of an-

other human being for which a sentence of imprisonment for life or the death penalty may be imposed.

(3) The term "appropriate Federal official" means—

(A) the Secretary, in the case of the National Cemetery Administration; and

(B) the Secretary of the Army, in the case of Arlington National Cemetery.

(Added Pub. L. 105–116, Sec. 1(a), Nov. 21, 1997, 111 Stat. 2381; amended Pub. L. 105–368, title IV, Sec. 403(d)(1), Nov. 11, 1998, 112 Stat. 3339; Pub. L. 107–330, title II, Sec. 202, Dec. 6, 2002, 116 Stat. 2824; Pub. L. 109–163, div. A, title VI, Sec. 662(a), Jan. 6, 2006, 119 Stat. 3314.)

§ 2412. Lease of land and buildings

(a) LEASE AUTHORIZED.—The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration.

(b) TERM.—The term of a lease under subsection (a) may not exceed 10 years.

(c) LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.—(1) A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).

(2) Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease.

(d) NOTICE.—Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of general circulation in the community in which the lands or buildings concerned are located.

(e) NATIONAL CEMETERY ADMINISTRATION FACILITIES OPERATION FUND.—(1) There is established on the book of the Treasury an account to be known as the "National Cemetery Administration Facilities Operation Fund" (in this section referred to as the "Fund").

(2) The Fund shall consist of the following:

(A) Proceeds from the lease of land or buildings under this section.

(B) Proceeds of agricultural licenses of lands of the National Cemetery Administration.

(C) Any other amounts appropriated to or otherwise authorized for deposit in the Fund by law.

(3) Amounts in the Fund shall be available to cover costs incurred by the National Cemetery Administration in the operation and maintenance of property of the Administration.

(4) Amounts in the Fund shall remain available until expended.

(Added Pub. L. 108–454, title VI, Sec. 602(a), Dec. 10, 2004, 118 Stat. 3623.)

§ 2413. Prohibition on certain demonstrations at cemeteries under control of the National Cemetery Administration and at Arlington National Cemetery

(a) PROHIBITION.—No person may carry out—

(1) a demonstration on the property of a cemetery under the control of the National Cemetery Administration or on the property of Arlington National Cemetery unless the demonstration has been approved by the cemetery superintendent or the director of the property on which the cemetery is located; or

(2) with respect to such a cemetery, a demonstration during the period beginning 60 minutes before and ending 60 minutes after a funeral, memorial service, or ceremony is held, any part of which demonstration—

(A)(i) takes place within 150 feet of a road, pathway, or other route of ingress to or egress from such cemetery property; and

(ii) includes, as part of such demonstration, any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral, memorial service, or ceremony; or

(B) is within 300 feet of such cemetery and impedes the access to or egress from such cemetery.

(b) DEMONSTRATION.—For purposes of this section, the term "demonstration" includes the following:

(1) Any picketing or similar conduct.

(2) Any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral, memorial service, or ceremony.

(3) The display of any placard, banner, flag, or similar device, unless such a display is part of a funeral, memorial service, or ceremony.

(4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral, memorial service, or ceremony..

(Added Pub. L. 109–228, Sec. 2(a)(1), May 29, 2006, 120 Stat. 387.)

Chapter 30 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

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CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

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SUBCHAPTER I—PURPOSES; DEFINITIONS

§ 3001. Purposes

The purposes of this chapter are—

(1) to provide a new educational assistance program to assist in the readjustment of members of the Armed Forces to civilian life after their separation from military service;

(2) to extend the benefits of a higher education to qualifying men and women who might not otherwise be able to afford such an education;

(3) to provide for vocational readjustment and to restore lost educational opportunities to those service men and women who served on active duty after June 30, 1985;

(4) to promote and assist the All-Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve (including the National Guard) to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces;

(5) to give special emphasis to providing educational assistance benefits to aid in the retention of personnel in the Armed Forces; and

(6) to enhance our Nation's competitiveness through the development of a more highly educated and productive work force.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2553, Sec. 1401; amended Pub. L. 100–48, Sec. 5, June 1, 1987, 101 Stat. 331; renumbered Sec. 3001, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3002. Definitions

For the purposes of this chapter—

(1) The term "basic educational assistance" means educational assistance provided under subchapter II of this chapter.

(2) The term "supplemental educational assistance" means educational assistance provided under subchapter III of this chapter.

(3) The term "program of education"—

(A) has the meaning given such term in section 3452(b) of this title;

(B) includes—

(i) a preparatory course for a test that is required or used for admission to an institution of higher education; and

(ii) a preparatory course for a test that is required or used for admission to a graduate school; and

(C) in the case of an individual who is not serving on active duty, includes (i) a full-time program of apprenticeship or of other on-job training approved as provided in clause (1) or (2), as appropriate, of section 3687(a) of this title, and (ii) a cooperative program (as defined in section 3482(a)(2) of this title).

(4) The term "Selected Reserve" means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 10143(a) of title 10.

(5) The term "Secretary of Defense" means the Secretary of Defense, except that it means the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(6) The term "active duty" does not include any period during which an individual (A) was assigned full time by the Armed

Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians, (B) served as a cadet or midshipman at one of the service academies, or (C) served under the provisions of section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(7) The term "active duty" includes full-time National Guard duty first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

(8) The term "educational institution" has the meaning given such term in section 3452(c) of this title.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2554, Sec. 1402; amended Pub. L. 99–576, title III, Sec. 301(a), Oct. 28, 1986, 100 Stat. 3267; Pub. L. 100–689, title I, Sec. 108(a)(1), 111(a)(1), Nov. 18, 1988, 102 Stat. 4169, 4170; Pub. L. 101–237, title IV, Sec. 423(b)(3), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 101–510, div. A, title V, Sec. 563(a), Nov. 5, 1990, 104 Stat. 1575; renumbered Sec. 3002 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–337, div. A, title XVI, Sec. 1677(d)(2), Oct. 5, 1994, 108 Stat. 3020; Pub. L. 103–446, title VI, Sec. 603(b), Nov. 2, 1994, 108 Stat. 4671; Pub. L. 104–275, title I, Sec. 107(a), Oct. 9, 1996, 110 Stat. 3329; Pub. L. 106–117, title VII, Sec. 701, Nov. 30, 1999, 113 Stat. 1582; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 109–163, div. A, title V, Sec. 515(e)(2), Jan. 6, 2006, 119 Stat. 3236.)

SUBCHAPTER II—BASIC EDUCATIONAL ASSISTANCE

§ 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) who (I) in the case of an individual whose obligated period of active duty is three years or more, serves at least three years of continuous active duty in the Armed Forces, or (II) in the case of an individual whose obligated period of active duty is less than three years, serves at least two years of continuous active duty in the Armed Forces; or

(ii) who serves in the Armed Forces and is discharged or released from active duty (I) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), 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 Homeland Security 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 in the case of an individual who completed not less than 30 months of continuous active duty if the initial obligated period of active duty of the individual was at least three years; 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 Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy;

(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) after June 30, 1985, serves at least three years of continuous active duty in the Armed Forces; or

(ii) after June 30, 1985, is discharged or released from active duty (I) for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), 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 Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy; or

(C) as of December 31, 1989, was 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 October 19, 1984; and

(iii) on or 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, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), 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 Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy;

(2) who completes the requirements of a secondary school diploma (or equivalency certificate), or successfully completes (or otherwise receives academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree, before applying for benefits under this section; and

(3) who, after completion of the service described in clause (1) of this subsection—

(A) continues on active duty;

(B) is discharged from active duty with an honorable discharge;

(C) is released after service on active duty characterized by the Secretary concerned as honorable service and is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list; or

(D) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service;

is entitled to basic educational assistance under this chapter.

(b)(1) Except as provided in paragraph (2), the basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election under subsection (c)(1) of this section shall be reduced by $100 for each of the first 12 months that such individual is entitled to such pay.

(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall

collect from the individual an amount equal to $1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.

(3) Any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual.

(c)(1) An individual described in subsection (a)(1)(A) of this section may make an election not to receive educational assistance under this chapter. Any such election shall be made at the time the individual initially enters on active duty as a member of the Armed Forces. Any individual who makes such an election is not entitled to educational assistance under this chapter.

(2) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy is not eligible for educational assistance under this section.

(3) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under section 2107 of title 10 is not eligible for educational assistance under this section if the individual enters on active duty—

(A) before October 1, 1996; or

(B) after September 30, 1996, and while participating in such program received more than $3,400 for each year of such participation.

(d)(1) For purposes of this chapter, any period of service described in paragraphs (2) and (3) of this subsection shall not be considered a part of an obligated period of active duty on which an individual's entitlement to assistance under this section is based.

(2) The period of service referred to in paragraph (1) is any period terminated because of a defective enlistment and induction based on—

(A) the individual's being a minor for purposes of service in the Armed Forces;

(B) an erroneous enlistment or induction; or

(C) a defective enlistment agreement.

(3) The period of service referred to in paragraph (1) is also any period of service on active duty which an individual in the Selected Reserve was ordered to perform under section 12301, 12302, 12304, 12306, or 12307 of title 10 for a period of less than 2 years.

(e)(1) Any individual eligible for educational assistance under this section who does not make an election under subsection (c)(1) may contribute amounts for purposes of receiving an increased amount of basic educational assistance as provided for under section 3015(g) of this title. Such contributions shall be in addition to any reductions in the basic pay of such individual under subsection (b).

(2) An individual covered by paragraph (1) may make the contributions authorized by that paragraph at any time while on active duty, but not more frequently than monthly.

(3) The total amount of the contributions made by an individual under paragraph (1) may not exceed $600. Such contributions shall be made in multiples of $20.

(4) Contributions under this subsection shall be made to the Secretary of the military department concerned. That Secretary shall deposit any amounts received as contributions under this subsection into the Treasury as miscellaneous receipts.

(f)(1) For the purposes of this chapter, a member referred to in paragraph (2) or (3) of this subsection who serves the periods of active duty referred to in that paragraph shall be deemed to have served a continuous period of active duty the length of which is the aggregate length of the periods of active duty referred to in that paragraph.

(2) This subsection applies to a member who—

(A) after a period of continuous active duty of not more than 12 months, is discharged or released from active duty under subclause (I) or (III) of subsection (a)(1)(A)(ii) of this section; and

(B) after such discharge or release, reenlists or re-enters on a period of active duty.

(3) This subsection applies to a member who after a period of continuous active duty as an enlisted member or warrant officer, and following successful completion of officer training school, is discharged in order to accept, without a break in service, a commission as an officer in the Armed Forces for a period of active duty.

(g) Notwithstanding section 3002(6)(A) of this title, a period during which an individual is assigned full time by the Armed Forces to a civilian institution for a course of education as described in such section 3002(6)(A) shall not be considered a break in service or a break in a continuous period of active duty of the individual for the purposes of this chapter.

(h)(1) Notwithstanding section 3002(6)(B) of this title, a member referred to in paragraph (2) of this subsection who serves the periods of active duty referred to in subparagraphs (A) and (C) of that paragraph shall be deemed to have served a continuous period of active duty whose length is the aggregate length of the periods of active duty referred to in such subparagraphs.

(2) This subsection applies to a member who—

(A) during the obligated period of active duty on which entitlement to assistance under this section is based, commences pursuit of a course of education—

(i) at a service academy; or

(ii) at a post-secondary school for the purpose of preparation for enrollment at a service academy;

(B) fails to complete the course of education; and

(C) re-enters on a period of active duty.

(i) The Secretary concerned shall inform any member of the Armed Forces who has not completed that member's obligated period of active duty (as described in subsection (a)(1)(A)) and who indicates the intent to be discharged or released from such duty for the convenience of the Government of the minimum active duty re-

quirements for entitlement to educational assistance benefits under this chapter. Such information shall be provided to the member in a timely manner.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2554, Sec. 1411; amended Pub. L. 99–145, title VI, Sec. 674(1), Nov. 8, 1985, 99 Stat. 665; Pub. L. 99–576, title III, Sec. 303(a)(1), 307(a)(1), 321(1), title VII, Sec. 702(8), Oct. 28, 1986, 100 Stat. 3268, 3269, 3277, 3302; Pub. L. 100–48, Sec. 3(a), June 1, 1987, 101 Stat. 331; Pub. L. 100–689, title I, Sec. 102(a), 103(b)(1), 104(a), 111(a)(2)(A), (3), Nov. 18, 1988, 102 Stat. 4162, 4165, 4166, 4170, 4171; Pub. L. 101–237, title IV, Sec. 409, 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2084, 2092; Pub. L. 101–510, div. A, title V, Sec. 562(a)(1), (2), (b), Nov. 5, 1990, 104 Stat. 1573, 1574; Pub. L. 102–16, Sec. 10(a)(1), Mar. 22, 1991, 105 Stat. 55; renumbered Sec. 3011, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 302(a)(1), 303(a)(1), 304(a), 305(a), 306(a), Oct. 29, 1992, 106 Stat. 4326–4328; Pub. L. 103–446, title XII, Sec. 1201(e)(10), (f)(2), Nov. 2, 1994, 108 Stat. 4685, 4687; Pub. L. 104–106, div. A, title XV, Sec. 1501(e)(2)(A), Feb. 10, 1996, 110 Stat. 501; Pub. L. 104–201, div. A, title V, Sec. 556(a), Sept. 23, 1996, 110 Stat. 2528; Pub. L. 105–368, title II, Secs. 203(a), 207(a), Nov. 11, 1998, 112 Stat. 3326, 3328; Pub. L. 106–117, title VII, Secs. 702(a), 704, Nov. 30, 1999, 113 Stat. 1583, 1584; Pub. L. 106–419, title I, Secs. 102(a)(1), 103(a), 105(a)(1), Nov. 1, 2000, 114 Stat. 1824, 1825, 1828; Pub. L. 107–14, Sec. 7(a)(1), (c)(1), June 5, 2001, 115 Stat. 31, 32; Pub. L. 107–103, title I, Secs. 105(a), 106(a), Dec. 27, 2001, 115 Stat. 982, 983; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107–330, title III, Sec. 308(a), Dec. 6, 2002, 116 Stat. 2827; Pub. L. 108–454, title I, Sec. 109(a), Dec. 10, 2004, 118 Stat. 3604; Pub. L. 109–444, Sec. 8(b)(2), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109–461, title X, Secs. 1004(b)(2), 1006(b), Dec. 22, 2006, 120 Stat. 3466, 3468; Pub. L. 110–317, Sec. 6(c)(1), Aug. 29, 2008, 122 Stat. 3529.)

§ 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) serves an obligated period of active duty of 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 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;

(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) after June 30, 1985, 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) 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, was 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 October 19, 1984; and

(iii) on or 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;

(2) who completes the requirements of a secondary school diploma (or equivalency certificate), or successfully completes (or otherwise receives academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree, before applying for benefits under this section; and

(3) who, after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, or is transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service; or

(B) continues on active duty or in the Selected Reserve;

is entitled to basic educational assistance under this chapter.

(b)(1)(A) The requirement of two years of service under clauses (1)(A)(i) and (1)(B)(i) of subsection (a) of this section is not applicable to an individual who is discharged or released, during such two years, from active duty in the Armed Forces (i) for a service-connected disability, (ii) for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, (iii) for hardship, (iv) in the case of an individual discharged or released after 20 months of such service, for the convenience of the Government, (v) 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 Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, (vi) for a physical or mental condition that was not characterized as a dis-

ability, as described in section 3011(a)(1)(A)(ii)(I) of this title, or (vii) by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10).

(B) The requirement of four years of service under clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section is not applicable to an individual—

(i) who, during the two years of service described in clauses (1)(A)(i) and (1)(B)(i) of subsection (a) of this section, was discharged or released from active duty in the Armed Forces for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, or for a physical or mental condition not characterized as a disability, as described in section 3011(a)(1)(A)(ii)(I) of this title, if the individual was obligated, at the beginning of such two years of service, to serve such four years of service;

(ii) who, during the four years of service described in clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section, is discharged or released from service in the Selected Reserve (I) for a service-connected disability, (II) for a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which the Secretary determines is not service connected, (III) for hardship, (IV) in the case of an individual discharged or released after 30 months of such service, for the convenience of the Government, (V) 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 Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, (VI) for a physical or mental condition not characterized as a disability, as described in section 3011(a)(1)(A)(ii)(I) of this title, or (VII) by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10); or

(iii) who, before completing the four years of service described in clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section, ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of title 10.

(2) After an individual begins service in the Selected Reserve within one year after completion of the service described in clause (A)(i) or (B)(i) of subsection (a)(1) of this section, the continuity of service of such individual as a member of the Selected Reserve shall not be considered to be broken—

(A) by any period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not able to locate a unit of the Selected

Reserve of the member's Armed Force that the member is eligible to join or that has a vacancy; or

(B) by any other period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not attached to a unit of the Selected Reserve that the Secretary concerned, pursuant to regulations, considers to be inappropriate to consider for such purpose.

(c)(1) Except as provided in paragraph (2), the basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election under subsection (d)(1) of this section shall be reduced by $100 for each of the first 12 months that such individual is entitled to such pay.

(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to $1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.

(3) Any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual.

(d)(1) An individual described in subsection (a)(1)(A) of this section may make an election not to receive educational assistance under this chapter. Any such election shall be made at the time the individual initially enters on active duty as a member of the Armed Forces. Any individual who makes such an election is not entitled to educational assistance under this chapter.

(2) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy is not eligible for educational assistance under this section.

(3) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under section 2107 of title 10 is not eligible for educational assistance under this section if the individual enters on active duty—

(A) before October 1, 1996; or

(B) after September 30, 1996, and while participating in such program received more than $3,400 for each year of such participation.

(e)(1) An individual described in subclause (I) or (III) of subsection (b)(1)(B)(ii) of this section may elect entitlement to basic educational assistance under section 3011 of this title, based on an obligated period of active duty of two years, in lieu of entitlement to assistance under this section.

(2) An individual who makes the election described in paragraph (1) of this subsection shall, for all purposes of this chapter, be considered entitled to educational assistance under section 3011

of this title and not under this section. Such an election is irrevocable.

(f)(1) Any individual eligible for educational assistance under this section who does not make an election under subsection (d)(1) may contribute amounts for purposes of receiving an increased amount of basic educational assistance as provided for under section 3015(g) of this title. Such contributions shall be in addition to any reductions in the basic pay of such individual under subsection (c).

(2) An individual covered by paragraph (1) may make the contributions authorized by that paragraph at any time while on active duty, but not more frequently than monthly.

(3) The total amount of the contributions made by an individual under paragraph (1) may not exceed $600. Such contributions shall be made in multiples of $20.

(4) Contributions under this subsection shall be made to the Secretary of the military department concerned. That Secretary shall deposit any amounts received as contributions under this subsection into the Treasury as miscellaneous receipts.

(g)(1) The Secretary concerned shall inform any member of the Armed Forces who has not completed that member's initial service (as described in paragraph (2)) and who indicates the intent to be discharged or released from such service for the convenience of the Government of the minimum service requirements for entitlement to educational assistance benefits under this chapter. Such information shall be provided to the member in a timely manner.

(2) The initial service referred to in paragraph (1) is the initial obligated period of active duty (described in subparagraph (A)(i) or (B)(i) of subsection (a)(1)) or the period of service in the Selected Reserve (described in subparagraph (A)(ii) or (B)(ii) of subsection (a)(1)).

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2555, Sec. 1412; amended Pub. L. 99–145, title VI, Sec. 674(2), Nov. 8, 1985, 99 Stat. 665; Pub. L. 99–576, title III, Sec. 303(a)(2), 307(a)(2), 321(2), Oct. 28, 1986, 100 Stat. 3269, 3277; Pub. L. 100–48, Sec. 3(b), June 1, 1987, 101 Stat. 331; Pub. L. 100–689, title I, Sec. 102(b)(1), 103(b)(1), 104(b), 105, 111(a)(2)(B), Nov. 18, 1988, 102 Stat. 4162, 4165, 4166, 4171; Pub. L. 101–237, title IV, Sec. 409, 423(a)(1), (b)(1)(A), Dec. 18, 1989, 103 Stat. 2084, 2090, 2092; Pub. L. 101–510, div. A, title V, Sec. 562(a)(3), Nov. 5, 1990, 104 Stat. 1574; renumbered Sec. 3012 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–484, div. D, title XLIV, Sec. 4419(b), Oct. 23, 1992, 106 Stat. 2718; Pub. L. 102–568, title III, Sec. 302(a)(2), 303(a)(2), Oct. 29, 1992, 106 Stat. 4326, 4327; Pub. L. 103–160, div. A, title V, Sec. 561(m), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–446, title XII, Sec. 1201(f)(2), Nov. 2, 1994, 108 Stat. 4687; Pub. L. 104–106, div. A, title XV, Sec. 1501(e)(2)(B), Feb. 10, 1996, 110 Stat. 501; Pub. L. 104–201, div. A, title V, Sec. 556(b), Sept. 23, 1996, 110 Stat. 2528; Pub. L. 105–368, title II, Secs. 203(a), 207(b), Nov. 11, 1998, 112 Stat. 3326, 3328; Pub. L. 106–117, title VII, Sec. 704, Nov. 30, 1999, 113 Stat. 1584; Pub. L. 106–419, title I, Secs. 102(b), 103(b), 105(a)(2), title IV, Sec. 404(a)(6), Nov. 1, 2000, 114 Stat. 1824, 1826, 1829, 1865; Pub. L. 107–14, Sec. 7(c)(2), June 5, 2001, 115 Stat. 32; Pub. L. 107–103, title I, Secs. 105(b), 106(a), Dec. 27, 2001, 115 Stat. 982, 983; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 108–454, title I, Sec. 109(b), Dec. 10, 2004, 118 Stat. 3604; Pub. L. 109–233, title V, Sec. 503(3), June 15, 2006, 120 Stat. 416; Pub. L. 110–317, Sec. 6(c)(2), Aug. 29, 2008, 122 Stat. 3529.)

§ 3013. Duration of basic educational assistance

(a)(1) Subject to section 3695 of this title and except as provided in paragraph (2) of this subsection, each individual entitled

to basic educational assistance under section 3011 of this title is entitled to 36 months of educational assistance benefits under this chapter (or the equivalent thereof in part-time educational assistance).

(2) Subject to section 3695 of this title and subsection (d) of this section, in the case of an individual described in section 3011(a)(1)(A)(ii)(I) or (III) of this title who is not also described in section 3011(a)(1)(A)(i) of this title or an individual described in section 3011(a)(1)(B)(ii)(I) or (III) of this title who is not also described in section 3011(a)(1)(B)(i) of this title, the individual is entitled to one month of educational assistance benefits under this chapter for each month of continuous active duty served by such individual after June 30, 1985, as part of the obligated period of active duty on which such entitlement is based in the case of an individual described in section 3011(a)(1)(A)(ii)(I) or (III) of this title, or in the case of an individual described in section 3011(a)(1)(B)(ii)(I) or (III) of this title, after June 30, 1985.

(b) Subject to section 3695 of this title and subsection (d) of this section, each individual entitled to basic educational assistance under section 3012 of this title is entitled to (1) one month of educational assistance benefits under this chapter for each month of continuous active duty served by such individual after June 30, 1985, as part of the obligated period of active duty on which such entitlement is based in the case of an individual described in section 3012(a)(1)(A) of this title, or in the case of an individual described in section 3012(a)(1)(B) of this title, after June 30, 1985, and (2) one month of educational assistance benefits under this chapter for each four months served by such individual in the Selected Reserve after the applicable date specified in clause (1) of this subsection (other than any month in which the individual served on active duty).

(c)(1) Subject to section 3695 of this title and except as provided in paragraphs (2) and (3) of this subsection, each individual entitled to basic educational assistance under section 3018 of this title is entitled to 36 months of educational assistance under this chapter (or the equivalent thereof in part-time educational assistance).

(2) Subject to section 3695 of this title, an individual described in clause (B) or (C) of section 3018(b)(3) of this title whose discharge or release from active duty prevents the reduction of the basic pay of such individual by $1,200 is entitled to the number of months of assistance under this chapter that is equal to the lesser of—

(A) 36 multiplied by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced under section 3018(c) and the denominator of which is $1,200; or

(B) the number of months the individual has served on continuous active duty after June 30, 1985.

(3) Subject to section 3695 of this title and subsection (d) of this section, an individual described in clause (B) or (C)(ii) of section 3018(b)(3) of this title (other than an individual described in paragraph (2) of this subsection) is entitled to the number of months of educational assistance under this chapter that is equal

to the number of months the individual has served on continuous active duty after June 30, 1985.

(d) Subject to section 3695 of this title, each individual entitled to educational benefits under section 3018A, 3018B, or 3018C of this title is entitled to the lesser of—

(1) 36 months of educational assistance under this chapter (or the equivalent thereof in part-time educational assistance); or

(2) the number of months of such educational assistance (or such equivalent thereof) that is equal to the number of months served by such individual on active duty.

(e) No individual may receive basic educational assistance benefits under this chapter for a period in excess of 36 months (or the equivalent thereof in part-time educational assistance).

(f)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in paragraph (2) shall not—

(A) be charged against any entitlement of any individual under this chapter; or

(B) be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of assistance.

(2) Subject to paragraph (3), the payment of the educational assistance allowance referred to in paragraph (1) is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

(A) in the case of a person not serving on active duty, had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10; or

(B) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered to a new duty location or assignment or to perform an increased amount of work; and

(C) failed to receive credit or lost training time toward completion of the individual's approved education, professional, or vocational objective as a result of having to discontinue, as described in subparagraph (A) or (B), his or her course pursuit.

(3) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under paragraph (2)(C) of this subsection.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2557, Sec. 1413; amended Pub. L. 99–576, title III, Sec. 321(3), Oct. 28, 1986, 100 Stat. 3277; Pub. L. 100–689, title I, Sec. 102(b)(2), 103(b)(2), 111(a)(4), Nov. 18, 1988, 102 Stat. 4163, 4165, 4171; Pub. L. 101–237, title IV, Sec. 423(a)(2), Dec. 18, 1989, 103 Stat. 2091; Pub. L. 101–510, div. A, title V, Sec. 561(b)(1), Nov. 5, 1990, 104 Stat. 1573; renumbered Sec. 3013 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–127, Sec. 2(a), Oct. 10, 1991, 105 Stat. 619; Pub. L. 102–484, div. D, title XLIV, Sec. 4404(b)(2), Oct. 23, 1992, 106 Stat. 2706; Pub. L. 104–275, title I, Sec. 106(b)(2), Oct. 9, 1996, 110 Stat. 3329; Pub. L. 106–419, title I, Sec.

103(c), Nov. 1, 2000, 114 Stat. 1826; Pub. L. 107–103, title I, Sec. 103(a), (d), Dec. 27, 2001, 115 Stat. 979.)

§ 3014. Payment of basic educational assistance

(a) The Secretary shall pay to each individual entitled to basic educational assistance who is pursuing an approved program of education a basic educational assistance allowance to help meet, in part, the expenses of such individual's subsistence, tuition, fees, supplies, books, equipment, and other educational costs.

(b)(1) In the case of an individual entitled to basic educational assistance who is pursuing education or training described in subsection (a) or (c) of section 2007 of title 10, the Secretary shall, at the election of the individual, pay the individual a basic educational assistance allowance to meet all or a portion of the charges of the educational institution for the education or training that are not paid by the Secretary of the military department concerned under such subsection.

(2)(A) The amount of the basic educational assistance allowance payable to an individual under this subsection for a month shall be the amount of the basic educational assistance allowance to which the individual would be entitled for the month under section 3015 of this title .

(B) The maximum number of months for which an individual may be paid a basic educational assistance allowance under paragraph (1) is 36.

(C) The number of months of entitlement charged under this chapter in the case of an individual who has been paid a basic educational assistance allowance under this subsection shall be equal to the number (including any fraction) determined by dividing the total amount of such educational assistance allowance paid the individual by the full-time monthly institutional rate of educational assistance which such individual would otherwise be paid under subsection (a)(1), (b)(1), (c)(1), (d)(1), or (e)(1) of section 3015 of this title, as the case may be.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2557, Sec. 1414; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3014, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 106–398, Sec. 1[[div. A], title XVI, Sec. 1602(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-359; Pub. L. 107–14, Sec. 7(b)(1), June 5, 2001, 115 Stat. 31.)

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

(Added Pub. L. 107–103, title I, Sec. 104(a)(1), Dec. 27, 2001, 115 Stat. 980; amended Pub. L. 107–330, title III, Sec. 308(b)(1), (2)(A), Dec. 6, 2002, 116 Stat. 2827.)

§ 3015. Amount of basic educational assistance

(a) The amount of payment of educational assistance under this chapter is subject to section 3032 of this title. Except as otherwise provided in this section, in the case of an individual entitled to an educational assistance allowance under this chapter whose obligated period of active duty on which such entitlement is based is three years, a basic educational assistance allowance under this subchapter shall be paid—

(1) for an approved program of education pursued on a full-time basis, at the monthly rate of—

(A) for months occurring during the period beginning on August 1, 2008, and ending on the last day of fiscal year 2009, $1,321; and

(B) for months occurring during a subsequent fiscal year, the amount for months occurring during the previous fiscal year increased under subsection (h); or

(2) at an appropriately reduced rate, as determined under regulations which the Secretary shall prescribe, for an approved program of education pursued on less than a full-time basis.

(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) for an approved program of education pursued on a full-time basis, at the monthly rate of—

(A) for months occurring during the period beginning on August 1, 2008, and ending on the last day of fiscal year 2009, $1,073; and

(B) for months occurring during a subsequent fiscal year, the amount for months occurring during the previous fiscal year increased under subsection (h); or

(2) at an appropriately reduced rate, as determined under regulations which the Secretary shall prescribe, for an approved program of education pursued on less than a full-time basis.

(c)(1) The amount of basic educational allowance payable under this chapter to an individual referred to in paragraph (2) of this subsection is the amount determined under subsection (a) of this section.

(2) Paragraph (1) of this subsection applies to an individual entitled to an educational assistance allowance under section 3011 of this title—

(A) whose obligated period of active duty on which such entitlement is based is less than three years;

(B) who, beginning on the date of the commencement of such obligated period of active duty, serves a continuous period of active duty of not less than three years; and

(C) who, after the completion of that continuous period of active duty, meets one of the conditions set forth in subsection (a)(3) of such section 3011.

(d)(1) In the case of an individual who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, the Secretary concerned, pursuant to regulations to be prescribed by the Secretary of Defense, may, at the time the individual first becomes a member of the Armed Forces, increase the rate of the basic educational assistance allowance applicable to such individual to such rate in excess of the rate prescribed under subsections (a), (b), and (c) of this section as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed $950 per month.

(2) In the case of an individual who after October 7, 1997, receives an enlistment bonus under section 308a or 308f of title 37, receipt of that bonus does not affect the eligibility of that individual for an increase under paragraph (1) in the rate of the basic educational assistance allowance applicable to that individual, and the Secretary concerned may provide such an increase for that individual (and enter into an agreement with that individual that the United States agrees to make payments pursuant to such an increase) without regard to any provision of law (enacted before, on, or after the date of the enactment of this paragraph) that limits the authority to make such payments.

(e)(1)(A) Except as provided in subparagraph (B) of this paragraph and subject to paragraph (2) of this subsection, in the case of an individual who on December 31, 1989, was entitled to educational assistance under chapter 34 of this title, the rate of the basic educational assistance allowance applicable to such individual under this chapter shall be increased by the amount equal to one-half of the educational assistance allowance that would be applicable to such individual under such chapter 34 (as of the time the assistance under this chapter is provided and based on the rates in effect on December 31, 1989) if such chapter were in effect.

(B) Notwithstanding subparagraph (A) of this paragraph, in the case of an individual described in that subparagraph who is pursuing a cooperative program on or after October 9, 1996, the

rate of the basic educational assistance allowance applicable to such individual under this chapter shall be increased by the amount equal to one-half of the educational assistance allowance that would be applicable to such individual for pursuit of full-time institutional training under chapter 34 (as of the time the assistance under this chapter is provided and based on the rates in effect on December 31, 1989) if such chapter were in effect.

(2) The number of months for which the rate of the basic educational assistance allowance applicable to an individual is increased under paragraph (1) of this subsection may not exceed the number of months of entitlement to educational assistance under chapter 34 of this title that the individual had remaining on December 31, 1989.

(f) In the case of an individual for whom the Secretary of Defense made contributions under section 3222(c) of this title and who is entitled to educational assistance under section 3018A, 3018B, or 3018C of this chapter, the Secretary shall increase the rate of the basic educational assistance allowance applicable to such individual in excess of the rate provided under subsection (a) of this section in a manner consistent with, as determined by the Secretary of Defense, the agreement entered into with such individual pursuant to the rules and regulations issued by the Secretary of Defense under section 3222(c) of this title.

(g) In the case of an individual who has made contributions authorized by section 3011(e) or 3012(f) of this title, effective as of the first day of the enrollment period following receipt of such contributions from such individual by the Secretary concerned, the monthly amount of basic educational assistance allowance applicable to such individual under subsection (a), (b), or (c) shall be the monthly rate otherwise provided for under the applicable subsection increased by—

(1) an amount equal to $5 for each $20 contributed by such individual under section 3011(e) or 3012(f) of this title, as the case may be, for an approved program of education pursued on a full-time basis; or

(2) an appropriately reduced amount based on the amount so contributed, as determined under regulations which the Secretary shall prescribe, for an approved program of education pursued on less than a full-time basis.

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

(A) the average cost of undergraduate tuition in the United States, as determined by the National Center for Education Statistics, for the last academic year preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) the average cost of undergraduate tuition in the United States, as so determined, for the academic year preceding the academic year described in subparagraph (A).

(2) Any increase under paragraph (1) in a rate with respect to a fiscal year after fiscal year 2004 and before fiscal year 2014 shall be rounded down to the next lower whole dollar amount. Any such increase with respect to a fiscal year after fiscal year 2013 shall be rounded to the nearest whole dollar amount.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2557, Sec. 1415; amended Pub. L. 100–689, title I, Sec. 103(b)(3), 111(a)(5)(A), Nov. 18, 1988, 102 Stat. 4165, 4171; Pub. L. 101–189, div. A, title VI, Sec. 641, Nov. 29, 1989, 103 Stat. 1456; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (5), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 101–510, div. A, title V, Sec. 561(b)(2), Nov. 5, 1990, 104 Stat. 1573; Pub. L. 102–25, title III, Sec. 337(a), Apr. 6, 1991, 105 Stat. 90; Pub. L. 102–54, Sec. 14(c)(1), June 13, 1991, 105 Stat. 284; renumbered Sec. 3015 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 301(a), (c), 307(a), (b), Oct. 29, 1992, 106 Stat. 4325, 4326, 4328, 4329; Pub. L. 103–66, title XII, Sec. 12009(a), (d)(1), (2), Aug. 10, 1993, 107 Stat. 415, 416; Pub. L. 104–275, title I, Sec. 106(b)(3), Oct. 9, 1996, 110 Stat. 3329; Pub. L. 105–114, title IV, Sec. 401(b), Nov. 21, 1997, 111 Stat. 2293; Pub. L. 105–178, title VIII, Sec. 8203(a)(1)–(3), June 9, 1998, 112 Stat. 493; Pub. L. 105–261, div. A, title V, Sec. 565(a), title VI, Sec. 656(a), Oct. 17, 1998, 112 Stat. 2029, 2053; Pub. L. 106–398, Sec. 1[title XVI, Sec. 1602(b)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A-359; Pub. L. 106–419, title I, Secs. 101(a), 103(d), 105(b), Nov. 1, 2000, 114 Stat. 1824, 1826, 1829; Pub. L. 107–14, Sec. 7(b)(2)(A), (c)(3), June 5, 2001, 115 Stat. 31, 32; Pub. L. 107–103, title I, Sec. 101(a), Dec. 27, 2001, 115 Stat. 977; Pub. L. 108–183, title III, Sec. 304(a), Dec. 16, 2003, 117 Stat. 2659; Pub. L. 110–252, title V, Sec. 5004(a)–(c), June 30, 2008, 122 Stat. 2379.)

§ 3016. Inservice enrollment in a program of education

(a) A member of the Armed Forces who—

(1) first becomes a member or first enters on active duty as a member of the Armed Forces after June 30, 1985, and does not make an election under section 3011(c)(1) or section 3012(d)(1);

(2) completes at least two years of service on active duty after such date;

(3) after such service, continues on active duty or in the Selected Reserve without a break in service (except as described in section 3012(b)(2) of this title); and

(4) but for section 3011(a)(1)(A)(i)(I) or 3012(a)(1)(A)(ii) of this title would be eligible for basic educational assistance,

may receive educational assistance under this chapter for enrollment in an approved program of education while continuing to perform the duty described in section 3011(a)(1)(A)(i)(I) or 3012(a)(1)(A)(ii) of this title.

(b) A member of the Armed Forces who—

(1) as of December 31, 1989, is eligible for educational assistance benefits under chapter 34 of this title;

(2) after June 30, 1985, has served the two years required by section 3012(a)(1)(B)(i); and

(3) but for section 3012(a)(1)(B)(ii) of this title would be eligible for basic educational assistance,

may, after December 31, 1989, receive educational assistance under this chapter for enrollment in an approved program of education while continuing to perform the duty described in section 3012(a)(1)(B)(ii) of this title.

(c) A member of the Armed Forces who—

(1) completes at least two years of service on active duty after June 30, 1985;

(2) after such service continues on active duty without a break in service; and

(3) but for section 3018(b)(3)(A) of this title would be entitled to basic educational assistance under this chapter,

may receive such assistance for enrollment in an approved program of education while continuing to perform the service described in section 3018(b)(2) of this title.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2558, Sec. 1416; amended Pub. L. 99–576, title III, Sec. 321(4), Oct. 28, 1986, 100 Stat. 3278; Pub. L. 100–689, title I, Sec. 103(b)(4), Nov. 18, 1988, 102 Stat. 4165; renumbered Sec. 3016 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3017. Death benefit

(a)(1) In the event of the service-connected death of any individual—

(A) who—

(i) is entitled to basic educational assistance under this chapter; or

(ii) is on active duty in the Armed Forces and but for clause (1)(A)(i) or clause (2) of section 3011(a) or clause (1)(A)(i) or (ii) or clause (2) of section 3012(a) of this title would be eligible for such basic educational assistance; and

(B) who dies while on active duty or within one year after discharge or release from active duty,

the Secretary shall make a payment, subject to paragraph (2)(B) of this subsection, in the amount described in subsection (b) of this section to the person or persons described in paragraph (2)(A) of this subsection.

(2)(A) The payment referred to in paragraph (1) of this subsection shall be made to the person or persons first listed below who is surviving on the date of such individual's death:

(i) The beneficiary or beneficiaries designated by such individual under the individual's Servicemembers' Group Life Insurance policy.

(ii) The surviving spouse of the individual.

(iii) The surviving child or children of the individual, in equal shares.

(iv) The surviving parent or parents of the individual, in equal shares.

(B) If no such person survives such individual, no payment shall be made under this section.

(b) The amount of any payment made under this section shall be equal to—

(1) the total of—

(A) the amount reduced from the individual's basic pay under section 3011(b), 3012(c), 3018(c), 3018A(b), 3018B(b), 3018C(b), or 3018C(e) of this title;

(B) the amount reduced from the individual's retired pay under section 3018C(e) of this title;

(C) the amount collected from the individual by the Secretary under section 3018B(b), 3018C(b), or 3018C(e) of this title; and

(D) the amount of any contributions made by the individual under section 3011(e) or 3012(f) of this title, less (2) the total of—

(A) the amount of educational assistance that has been paid to the individual under this chapter before the payment is made under this section; and

(B) the amount of accrued benefits paid or payable with respect to such individual in connection with this chapter.

(c) A payment under this section shall be considered to be a benefit under this title and, for purposes of section 3035(b)(1), it shall be considered to be an entitlement earned under this subchapter.

(Added Pub. L. 100–689, title I, Sec. 101(a), Nov. 18, 1988, 102 Stat. 4161, Sec. 1417; amended Pub. L. 101–237, title IV, Sec. 423(a)(3), (b)(1)(A), Dec. 18, 1989, 103 Stat. 2091, 2092; renumbered Sec. 3017 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 308, Oct. 29, 1992, 106 Stat. 4329; Pub. L. 104–275, title IV, Sec. 405(c)(2), Oct. 9, 1996, 110 Stat. 3340; Pub. L. 106–419, title I, Sec. 102(a)(2), Nov. 1, 2000, 114 Stat. 1824; Pub. L. 107–14, Sec. 7(d)(1), June 5, 2001, 115 Stat. 33; ;Pub. L. 109–233, title V, Sec. 503(4), June 15, 2006, 120 Stat. 416.)

§ 3018. Opportunity for certain active-duty personnel to withdraw election not to enroll

(a) Notwithstanding any other provision of this chapter, during the period beginning December 1, 1988, and ending June 30, 1989 (hereinafter in this section referred to as the "open period"), an individual who—

(1) first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces during the period beginning July 1, 1985, and ending June 30, 1988;

(2) has continuously served on active duty without a break in service since the date the individual first became such a member or first entered on active duty as such a member; and

(3) is serving on active duty during the open period,

shall have the opportunity, in accordance with this section and on such form as the Secretary of Defense shall prescribe, to withdraw an election made under section 3011(c)(1) or 3012(d)(1) of this title not to receive educational assistance under this chapter.

(b) An individual described in clauses (1) through (3) of subsection (a) of this section who made an election under section 3011(c)(1) or 3012(d)(1) of this title and who—

(1) while serving on active duty during the open period, makes a withdrawal of such an election;

(2) continues to serve the period of service which, at the beginning of the open period, such individual was obligated to serve;

(3)(A) serves the obligated period of service described in clause (2) of this subsection;

(B) before completing such obligated period of service, is discharged or released from active duty for (i) a service-connected disability, (ii) a medical condition which preexisted such service and which the Secretary determines is not service connected, (iii) hardship, or (iv) 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 Homeland Security with respect to the Coast Guard when it is not operating as a service of the Navy); or

(C) before completing such obligated period of service, is (i) discharged or released from active duty for the convenience of the Government after completing not less than 20 months of such period of service, if such period was less than three years, or 30 months, if such period was at least three years, or (ii) involuntarily discharged or released from active duty for the convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense;

(4) before applying for benefits under this section—

(A) completes the requirements of a secondary school diploma (or equivalency certificate); or

(B) successfully completes (or otherwise receives academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree; and

(5) upon completion of such obligated period of service—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

(B) continues on active duty; or

(C) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service,

is entitled to basic educational assistance under this chapter.

(c) The basic pay of an individual withdrawing, under subsection (b)(1) of this section, an election under section 3011(c)(1) or 3012(d)(1) of this title shall be reduced by—

(1) $1,200; or

(2) in the case of an individual described in clause (B) or (C) of subsection (b)(3) of this section whose discharge or release from active duty prevents the reduction of the basic pay of such individual by $1,200, an amount less than $1,200.

(d) A withdrawal under subsection (b)(1) of this section is irrevocable.

(Added Pub. L. 100–689, title I, Sec. 103(a), Nov. 18, 1988, 102 Stat. 4164, Sec. 1418; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (4)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–16, Sec. 10(a)(2), Mar. 22, 1991, 105 Stat. 55; renumbered Sec. 3018 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–86, title V, Sec. 506(b)(2), Aug. 14, 1991, 105 Stat. 426; Pub. L. 102–568, title III, Sec. 309(a), Oct. 29, 1992, 106 Stat. 4329; Pub. L. 105–368, title II, Sec. 203(a), Nov. 11, 1998, 112 Stat. 3326; Pub. L. 106–419, title I, Sec. 102(c), Nov. 1, 2000, 114 Stat. 1825; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315.)

§ 3018A. Opportunity for certain active-duty personnel to enroll before being involuntarily separated from service

(a) Notwithstanding any other provision of law, an individual who—

(1) after February 2, 1991, is involuntarily separated (as such term is defined in section 1141 of title 10) with an honorable discharge;

(2) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or equivalency certificate) or has successfully completed (or otherwise received academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree;

(3) in the case of any individual who has made an election under section 3011(c)(1) or 3012(d)(1) of this title, withdraws such election before such separation pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense for the purpose of carrying out this section or which the Secretary of Homeland Security shall provide for such purpose with respect to the Coast Guard when it is not operating as a service in the Navy;

(4) in the case of any person enrolled in the educational benefits program provided by chapter 32 of this title makes an irrevocable election, pursuant to procedures referred to in paragraph (3), before such separation to receive benefits under this section in lieu of benefits under such chapter 32; and

(5) before such separation elects to receive assistance under this section pursuant to procedures referred to in paragraph (3),

is entitled to basic educational assistance under this chapter.

(b) The basic pay of an individual described in subsection (a) shall be reduced by $1,200.

(c) A withdrawal referred to in subsection (a)(3) is irrevocable.

(d)(1) Except as provided in paragraph (3), an individual who is enrolled in the educational benefits program provided by chapter 32 of this title and who makes the election described in subsection (a)(4) shall be disenrolled from such chapter 32 program as of the date of such election.

(2) For each individual who is disenrolled from such program, the Secretary shall refund—

(A) as provided in section 3223(b) of this title, to the individual the unused contributions made by the individual to the Post-Vietnam Era Veterans Education Account established pursuant to section 3222(a) of this title; and

(B) to the Secretary of Defense the unused contributions (other than contributions made under section 3222(c) of this title) made by such Secretary to the Account on behalf of such individual.

(3) Any contribution made by the Secretary of Defense to the Post-Vietnam Era Veterans Education Account pursuant to subsection (c) of section 3222 of this title on behalf of any individual referred to in paragraph (1) shall remain in such Account to make payments of benefits to such individual under section 3015(f) of this title.

(Added Pub. L. 101–510, div. A, title V, Sec. 561(a)(1), Nov. 5, 1990, 104 Stat. 1571, Sec. 1418A; amended Pub. L. 102–25, title VII, Sec. 705(c)(1), Apr. 6, 1991, 105 Stat. 120; renumbered Sec. 3018A and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6,

1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1201(d)(4), (i)(4), Nov. 2, 1994, 108 Stat. 4684, 4688; Pub. L. 105–368, title II, Sec. 203(a), Nov. 11, 1998, 112 Stat. 3326; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; ;Pub. L. 109–233, title V, Sec. 503(5), June 15, 2006, 120 Stat. 416.)

§ 3018B. Opportunity for certain persons to enroll

(a) Notwithstanding any other provision of law—

(1) the Secretary of Defense shall, subject to the availability of appropriations, allow an individual who—

(A) is separated from the active military, naval, or air service with an honorable discharge and receives voluntary separation incentives under section 1174a or 1175 of title 10;

(B) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or equivalency certificate) or has successfully completed (or otherwise received academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree;

(C) in the case of any individual who has made an election under section 3011(c)(1) or 3012(d)(1) of this title, withdraws such election before such separation pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense for the purpose of carrying out this section or which the Secretary of Homeland Security shall provide for such purpose with respect to the Coast Guard when it is not operating as service in the Navy;

(D) in the case of any person enrolled in the educational benefits program provided by chapter 32 of this title makes an irrevocable election, pursuant to procedures referred to in subparagraph (C) of this paragraph, before such separation to receive benefits under this section in lieu of benefits under such chapter 32; and

(E) before such separation elects to receive assistance under this section pursuant to procedures referred to in subparagraph (C) of this paragraph; or

(2) the Secretary, in consultation with the Secretary of Defense, shall, subject to the availability of appropriations, allow an individual who—

(A) separated before October 23, 1992, from the active military, naval, or air service with an honorable discharge and received or is receiving voluntary separation incentives under section 1174a or 1175 of title 10;

(B) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or equivalency certificate) or has successfully completed (or otherwise received academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree;

(C) in the case of any individual who has made an election under section 3011(c)(1) or 3012(d)(1) of this title, withdraws such election before making an election under this paragraph pursuant to procedures which the Sec-

retary shall provide, in consultation with the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as service in the Navy, which shall be similar to the regulations prescribed under paragraph (1)(C) of this subsection;

(D) in the case of any person enrolled in the educational benefits program provided by chapter 32 of this title makes an irrevocable election, pursuant to procedures referred to in subparagraph (C) of this paragraph, before making an election under this paragraph to receive benefits under this section in lieu of benefits under such chapter 32; and

(E) before October 23, 1993, elects to receive assistance under this section pursuant to procedures referred to in subparagraph (C) of this paragraph,

to elect to become entitled to basic education assistance under this chapter.

(b)(1) The basic pay or voluntary separation incentives of an individual who makes an election under subsection (a)(1) to become entitled to basic education assistance under this chapter shall be reduced by $1,200.

(2) The Secretary shall collect $1,200 from an individual who makes an election under subsection (a)(2) to become entitled to basic education assistance under this chapter, which shall be paid into the Treasury of the United States as miscellaneous receipts.

(c) A withdrawal referred to in subsection (a)(1)(C) or (a)(2)(C) of this section is irrevocable.

(d)(1) Except as provided in paragraph (3) of this subsection, an individual who is enrolled in the educational benefits program provided by chapter 32 of this title and who makes the election described in subsection (a)(1)(D) or (a)(2)(D) of this section shall be disenrolled from such chapter 32 program as of the date of such election.

(2) For each individual who is disenrolled from such program, the Secretary shall refund—

(A) as provided in section 3223(b) of this title, to the individual the unused contributions made by the individual to the Post-Vietnam Era Veterans Education Account established pursuant to section 3222(a) of this title; and

(B) to the Secretary of Defense the unused contributions (other than contributions made under section 3222(c) of this title) made by such Secretary to the Account on behalf of such individual.

(3) Any contribution made by the Secretary of Defense to the Post-Vietnam Era Veterans Education Account pursuant to subsection (c) of section 3222 of this title on behalf of any individual referred to in paragraph (1) of this subsection shall remain in such account to make payments of benefits to such individual under section 3015(f) of this title.

(Added Pub. L. 102–484, div. D, title XLIV, Sec. 4404(a), Oct. 23, 1992, 106 Stat. 2704; amended Pub. L. 103–446, title XII, Sec. 1201(d)(5), (e)(11), (f)(3), Nov. 2, 1994, 108 Stat. 4684, 4685, 4687; Pub. L. 105–368, title II, Sec. 203(a), title X, Sec. 1005(b)(6), Nov. 11, 1998, 112 Stat. 3326, 3365; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315.)

§ 3018C. Opportunity for certain VEAP participants to enroll

(a) Notwithstanding any other provision of law, an individual who—

(1) is a participant on October 9, 1996, in the educational benefits program provided by chapter 32 of this title;

(2) is serving on active duty (excluding the periods referred to in section 3202(1)(C) of this title) on such date;

(3) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or equivalency certificate) or has successfully completed (or otherwise received academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree;

(4) if discharged or released from active duty after the date on which the individual makes the election described in paragraph (5), is discharged or released therefrom with an honorable discharge; and

(5) during the one-year period beginning on October 9, 1996, makes an irrevocable election to receive benefits under this section in lieu of benefits under chapter 32 of this title, pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense for the purpose of carrying out this section or which the Secretary of Homeland Security shall provide for such purpose with respect to the Coast Guard when it is not operating as a service in the Navy;

may elect to become entitled to basic educational assistance under this chapter.

(b) With respect to an individual who makes an election under subsection (a) to become entitled to basic education assistance under this chapter—

(1) the basic pay of the individual shall be reduced (in a manner determined by the Secretary of Defense) until the total amount by which such basic pay is reduced is $1,200; or

(2) to the extent that basic pay is not so reduced before the individual's discharge or release from active duty as specified in subsection (a)(4), the Secretary shall collect from the individual an amount equal to the difference between $1,200 and the total amount of reductions under paragraph (1), which shall be paid into the Treasury of the United States as miscellaneous receipts.

(c)(1) Except as provided in paragraph (3), an individual who is enrolled in the educational benefits program provided by chapter 32 of this title and who makes the election described in subsection (a)(5) shall be disenrolled from such chapter 32 program as of the date of such election.

(2) For each individual who is disenrolled from such program, the Secretary shall refund—

(A) to the individual, as provided in section 3223(b) of this title and subject to subsection (b)(2) of this section, the unused contributions made by the individual to the Post-Vietnam Era

Veterans Education Account established pursuant to section 3222(a) of this title; and

(B) to the Secretary of Defense the unused contributions (other than contributions made under section 3222(c) of this title) made by such Secretary to the Account on behalf of such individual.

(3) Any contribution made by the Secretary of Defense to the Post-Vietnam Era Veterans Education Account pursuant to subsection (c) of section 3222 of this title on behalf of any individual referred to in paragraph (1) shall remain in such account to make payments of benefits to such individual under section 3015(f) of this title.

(d) The procedures provided in regulations referred to in subsection (a) shall provide for notice of the requirements of subparagraphs (B), (C), and (D) of section 3011(a)(3) and of subparagraph (A) of section 3012(a)(3) of this title. Receipt of such notice shall be acknowledged in writing.

(e)(1) A qualified individual (described in paragraph (2)) may make an irrevocable election under this subsection, during the one-year period beginning on the date of the enactment of this subsection, to become entitled to basic educational assistance under this chapter. Such an election shall be made in the same manner as elections made under subsection (a)(5).

(2) A qualified individual referred to in paragraph (1) is an individual who meets each of the following requirements:

(A) The individual was a participant in the educational benefits program under chapter 32 of this title on or before October 9, 1996.

(B) The individual has continuously served on active duty since October 9, 1996 (excluding the periods referred to in section 3202(1)(C) of this title), through at least April 1, 2000.

(C) The individual meets the requirements of subsection (a)(3).

(D) The individual, when discharged or released from active duty, is discharged or released therefrom with an honorable discharge.

(3)(A) Subject to the succeeding provisions of this paragraph, with respect to a qualified individual who makes an election under paragraph (1) to become entitled to basic education assistance under this chapter—

(i) the basic pay of the qualified individual shall be reduced (in a manner determined by the Secretary concerned) until the total amount by which such basic pay is reduced is $2,700; and

(ii) to the extent that basic pay is not so reduced before the qualified individual's discharge or release from active duty as specified in subsection (a)(4), at the election of the qualified individual—

(I) the Secretary concerned shall collect from the qualified individual; or

(II) the Secretary concerned shall reduce the retired or retainer pay of the qualified individual by,

an amount equal to the difference between $2,700 and the total amount of reductions under clause (i), which shall be

paid into the Treasury of the United States as miscellaneous receipts.

(B)(i) The Secretary concerned shall provide for an 18-month period, beginning on the date the qualified individual makes an election under paragraph (1), for the qualified individual to pay that Secretary the amount due under subparagraph (A).

(ii) Nothing in clause (i) shall be construed as modifying the period of eligibility for and entitlement to basic education assistance under this chapter applicable under section 3031 of this title.

(C) The provisions of subsection (c) shall apply to qualified individuals making elections under this subsection in the same manner as they applied to individuals making elections under subsection (a)(5).

(4) With respect to qualified individuals referred to in paragraph (3)(A)(ii), no amount of educational assistance allowance under this chapter shall be paid to the qualified individual until the earlier of the date on which—

(A) the Secretary concerned collects the applicable amount under subclause (I) of such paragraph; or

(B) the retired or retainer pay of the qualified individual is first reduced under subclause (II) of such paragraph.

(5) The Secretary, in conjunction with the Secretary of Defense, shall provide for notice to participants in the educational benefits program under chapter 32 of this title of the opportunity under this subsection to elect to become entitled to basic educational assistance under this chapter.

(Added Pub. L. 104–275, title I, Sec. 106(a), Oct. 9, 1996, 110 Stat. 3327; amended Pub. L. 105–114, title IV, Sec. 401(c), Nov. 21, 1997, 111 Stat. 2293; Pub. L. 105–368, title II, Sec. 203(a), Nov. 11, 1998, 112 Stat. 3326; Pub. L. 106–398, Sec. 1 [[div. A], title XVI, Sec. 1601], Oct. 30, 2000, 114 Stat. 1654, 1654A-357; Pub. L. 106–419, title I, Sec. 104(a)–(c), Nov. 1, 2000, 114 Stat. 1827, 1828; Pub. L. 107–14, Sec. 7(e)(1), June 5, 2001, 115 Stat. 33; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107–330, title III, Sec. 308(g)(9), Dec. 6, 2002, 116 Stat. 2829.)

§ 3019. Tutorial assistance

(a) An individual entitled to an educational assistance allowance under this chapter shall also be entitled to benefits provided an eligible veteran under section 3492 of this title, subject to the conditions applicable to an eligible veteran under such section.

(b) The amount of such benefits payable under this section may not exceed $100 per month, for a maximum of twelve months, or until a maximum of $1,200 is utilized. This amount is in addition to the amount of educational assistance allowance payable to the individual under this chapter.

(c)(1) An individual's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the individual under this section in excess of $600.

(2) An individual's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of $600 that is equal to the amount of the monthly educational assistance allowance which the individual is otherwise

eligible to receive for full-time pursuit of an institutional course under this chapter.

(Added Pub. L. 100–689, title I, Sec. 107(a)(1), Nov. 18, 1988, 102 Stat. 4167, Sec. 1419; renumbered Sec. 3019 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3020. Authority to transfer unused education benefits to family members for career service members

(a) IN GENERAL.—Subject to the provisions of this section, the Secretary of Defense may authorize the Secretary concerned, to promote recruitment and retention of members of the Armed Forces, to permit an individual described in subsection (b) who is entitled to basic educational assistance under this subchapter to elect to transfer to one or more of the dependents specified in subsection (c) the unused portion of entitlement to such assistance, subject to the limitation under subsection (d).

(b) ELIGIBLE INDIVIDUALS.—An individual referred to in subsection (a) is any member of the Armed Forces—

(1) who, while serving on active duty or as a member of the Selected Reserve at the time of the approval by the Secretary concerned of the member's request to transfer entitlement to basic educational assistance under this section, has completed six years of service in the Armed Forces and enters into an agreement to serve at least four more years as a member of the Armed Forces; or

(2) as determined in regulations pursuant to subsection (k).

(c) ELIGIBLE DEPENDENTS.—An individual approved to transfer an entitlement to basic educational assistance under this section may transfer the individual's entitlement as follows:

(1) To the individual's spouse.

(2) To one or more of the individual's children.

(3) To a combination of the individuals referred to in paragraphs (1) and (2).

(d) LIMITATION ON MONTHS OF TRANSFER.—(1) An individual approved to transfer an entitlement to basic educational assistance under this section may transfer any unused entitlement to one or more of the dependents specified in subsection (c).

(2) The total number of months of entitlement transferred by an individual under this section may not exceed 36 months. The Secretary of Defense may prescribe regulations that would limit the months of entitlement that may be transferred under this section to no less than 18 months.

(e) DESIGNATION OF TRANSFEREE.—An individual transferring an entitlement to basic educational assistance under this section shall—

(1) designate the dependent or dependents to whom such entitlement is being transferred;

(2) designate the number of months of such entitlement to be transferred to each such dependent; and

(3) specify the period for which the transfer shall be effective for each dependent designated under paragraph (1).

(f) TIME FOR TRANSFER; REVOCATION AND MODIFICATION.—(1) Subject to the time limitation for use of entitlement under section

3031 of this title, an individual approved to transfer entitlement to basic educational assistance under this section may transfer such entitlement at any time after the approval of the individual's request to transfer such entitlement only while the individual is a member of the Armed Forces when the transfer is executed.

(2)(A) An individual transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred as long as the individual is serving on active duty or as a member of the Selected Reserve.

(B) The modification or revocation of the transfer of entitlement under this paragraph shall be made by the submittal of written notice of the action to both the Secretary concerned and the Secretary of Veterans Affairs.

(3) Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(g) COMMENCEMENT OF USE.—A dependent to whom entitlement to basic educational assistance is transferred under this section may not commence the use of the transferred entitlement until—

(1) in the case of entitlement transferred to a spouse, the completion by the individual making the transfer of six years of service in the Armed Forces; or

(2) in the case of entitlement transferred to a child, both—

(A) the completion by the individual making the transfer of 10 years of service in the Armed Forces; and

(B) either—

(i) the completion by the child of the requirements of a secondary school diploma (or equivalency certificate); or

(ii) the attainment by the child of 18 years of age.

(h) ADDITIONAL ADMINISTRATIVE MATTERS.—(1) The use of any entitlement to basic educational assistance transferred under this section shall be charged against the entitlement of the individual making the transfer at the rate of one month for each month of transferred entitlement that is used.

(2) Except as provided under subsection (e)(2) and subject to paragraphs (5) and (6), a dependent to whom entitlement is transferred under this section is entitled to basic educational assistance under this subchapter in the same manner as the individual from whom the entitlement was transferred.

(3)(A) Subject to subparagraph (B), the monthly rate of educational assistance payable to a dependent to whom entitlement is transferred under this section shall be the monthly amount payable under sections 3015 and 3022 of this title to the individual making the transfer.

(B) The monthly rate of assistance payable to a dependent under subparagraph (A) shall be subject to the provisions of section 3032 of this title, except that the provisions of subsection (a)(1) of that section shall not apply even if the individual making the transfer to the dependent under this section is on active duty during all or any part of enrollment period of the dependent in which such entitlement is used.

(4) The death of an individual transferring an entitlement under this section shall not affect the use of the entitlement by the dependent to whom the entitlement is transferred.

(5) Notwithstanding section 3031 of this title, a child to whom entitlement is transferred under this section may use the benefit without regard to the 10-year delimiting date, but may not use any entitlement so transferred after attaining the age of 26 years.

(6) The administrative provisions of this chapter (including the provisions set forth in section 3034(a)(1) of this title) shall apply to the use of entitlement transferred under this section, except that the dependent to whom the entitlement is transferred shall be treated as the eligible veteran for purposes of such provisions.

(7) The purposes for which a dependent to whom entitlement is transferred under this section may use such entitlement shall include the pursuit and completion of the requirements of a secondary school diploma (or equivalency certificate).

(i) OVERPAYMENT.—(1) In the event of an overpayment of basic educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the individual making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685 of this title.

(2) Except as provided in paragraph (3), if an individual transferring entitlement under this section fails to complete the service agreed to by the individual under subsection (b)(3) in accordance with the terms of the agreement of the individual under that subsection, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of basic educational assistance under paragraph (1).

(3) Paragraph (2) shall not apply in the case of an individual who fails to complete service agreed to by the individual—

(A) by reason of the death of the individual; or

(B) for a reason referred to in section 3011(a)(1)(A)(ii)(I) of this title.

(j) APPROVALS OF TRANSFER SUBJECT TO AVAILABILITY OF APPROPRIATIONS.—The Secretary concerned may approve transfers of entitlement to basic educational assistance under this section in a fiscal year only to the extent that appropriations for military personnel are available in that fiscal year for purposes of making deposits in the Department of Defense Education Benefits Fund under section 2006 of title 10 in that fiscal year to cover the present value of future benefits payable from the Fund for the Department of Defense portion of payments of basic educational assistance attributable to increased usage of benefits as a result of such transfers of entitlement in that fiscal year.

(k) REGULATIONS.—The Secretary of Defense, in coordination with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section. Such regulations shall specify—

(1) the manner of authorizing the military departments to offer transfer of entitlements under this section;

(2) the eligibility criteria in accordance with subsection (b);

(3) the limitations on the amount of entitlement eligible to be transferred; and

(4) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2).

(l) ANNUAL REPORT.—(1) Not later than January 31 each year (beginning in 2003), the Secretary of Defense shall submit to the Committees on Armed Services and the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the transfers of entitlement to basic educational assistance under this section that were approved by each Secretary concerned during the preceding fiscal year.

(2) Each report shall set forth—

(A) the number of transfers of entitlement under this section that were approved by such Secretary during the preceding fiscal year; or

(B) if no transfers of entitlement under this section were approved by such Secretary during that fiscal year, a justification for such Secretary's decision not to approve any such transfers of entitlement during that fiscal year.

(m) SECRETARY CONCERNED DEFINED.—Notwithstanding section 101(25) of this title, in this section, the term "Secretary concerned" means—

(1) the Secretary of the Army with respect to matters concerning the Army;

(2) the Secretary of the Navy with respect to matters concerning the Navy or the Marine Corps;

(3) the Secretary of the Air Force with respect to matters concerning the Air Force; and

(4) the Secretary of Defense with respect to matters concerning the Coast Guard, or the Secretary of Homeland Security when it is not operating as a service in the Navy.

(Added Pub. L. 107–107, title VI, Sec. 654(a)(1), Dec. 28, 2001, 115 Stat. 1153; amended Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107–314, div. A, title VI, Sec. 643(a), Dec. 2, 2002, 116 Stat. 2577; Pub. L. 110–252, title V, Sec. 5006(a), June 30, 2008, 122 Stat. 2380.)

SUBCHAPTER III—SUPPLEMENTAL EDUCATIONAL ASSISTANCE

§ 3021. Supplemental educational assistance for additional service

(a) The Secretary concerned, pursuant to regulations to be prescribed by the Secretary of Defense, may provide for the payment of supplemental educational assistance under this subchapter to any individual eligible for basic educational assistance under section 3011 or 3018 of this title who—

(1) serves five or more consecutive years of active duty in the Armed Forces after the years of active duty counted under section 3011(a)(1) of this title without a break in such service; and

(2) after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

(B) continues on active duty without a break in service; or

(C) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(b) The Secretary concerned, pursuant to regulations to be prescribed by the Secretary of Defense, may provide for the payment of supplemental educational assistance under this subchapter to any individual eligible for basic educational assistance under section 3012 or 3018 of this title who—

(1) serves two or more consecutive years of active duty in the Armed Forces after the years of active duty counted under section 3012(a)(1) of this title and four or more consecutive years of duty in the Selected Reserve after the years of duty in the Selected Reserve counted under such section without a break in service; and

(2) after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list; or

(B) continues on active duty or in the Selected Reserve.

(c) Continuity of service of a member in the Selected Reserve for purposes of subsection (b)(1) of this section shall not be considered to be broken—

(1) by any period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not able to locate a unit of the Selected Reserve of the member's Armed Force that the member is eligible to join or that has a vacancy; or

(2) by any other period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not attached to a unit of the Selected Reserve that the Secretary concerned, pursuant to regulations, considers to be inappropriate to consider for such purpose.

(d) A period of active duty or duty in the Selected Reserve that occurs before the period of duty by which the individual concerned qualifies for basic educational assistance may not be counted for purposes of this section.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2558, Sec. 1421; amended Pub. L. 99–576, title III, Sec. 321(5), (6), Oct. 28, 1986, 100 Stat. 3278; Pub. L. 100–689, title I, Sec. 103(b)(5), Nov. 18, 1988, 102 Stat. 4166; Pub. L. 101–237, title IV, Sec. 423(b)(4)(B), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3021 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3022. Amount of supplemental educational assistance

(a) The amount of payment of educational assistance under this chapter is subject to section 3032 of this title. Except as otherwise provided under subsection (b) of this section, supplemental

educational assistance under section 3021 of this title shall be paid—

(1) at a monthly rate of $300 for an approved program of education pursued on a full-time basis; or

(2) at an appropriately reduced rate, as determined under regulations which the Secretary shall prescribe, for an approved program of education pursued on less than a full-time basis.

(b) In the case of a member of the Armed Forces for whom the Secretary concerned has provided for the payment of supplemental educational assistance who has a skill or specialty designated by the Secretary concerned, pursuant to regulations to be prescribed by the Secretary of Defense, as a skill or specialty in which there is a critical shortage of personnel, the Secretary concerned, pursuant to such regulations, may increase the rate of the supplemental educational assistance allowance applicable to such individual to such rate in excess of the rate prescribed under subsection (a) of this section as the Secretary concerned considers appropriate, but the amount of any such increase may not exceed $300 per month.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2559, Sec. 1422; amended Pub. L. 100–689, title I, Sec. 111(a)(5)(B), Nov. 18, 1988, 102 Stat. 4171; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (4)(C), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3022 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3023. Payment of supplemental educational assistance under this subchapter

The Secretary shall increase the monthly basic educational assistance allowance paid to an individual who is entitled to supplemental educational assistance under this subchapter by the monthly amount of the supplemental educational assistance to which the individual is entitled.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2560, Sec. 1423; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3023, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

SUBCHAPTER IV—TIME LIMITATION FOR USE OF ELIGIBILITY AND ENTITLEMENT; GENERAL AND ADMINISTRATIVE PROVISIONS

§ 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;

(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 December 27, 2001.

(b) In the case of any eligible individual who has been prevented, as determined by the Secretary, from pursuing a program of education under this chapter within the 10-year period prescribed by subsection (a) of this section because such individual had not met the nature of discharge requirement of this chapter before the nature of such individual's discharge or release was changed by appropriate authority, such 10-year period shall not run during the period of time that such individual was so prevented from pursuing such program of education.

(c) In the case of an individual eligible for educational assistance under the provisions of this chapter who, after such individual's last discharge or release from active duty, was detained by a foreign government or power, the 10-year period described in subsection (a) of this section shall not run (1) while such individual is so detained, or (2) during any period immediately following such individual's release from such detention during which such individual is hospitalized at a military, civilian, or Department of Veterans Affairs medical facility.

(d) In the case of an individual eligible for educational assistance under this chapter—

(1) who was prevented from pursuing such individual's chosen program of education before the expiration of the 10-year period for use of entitlement under this chapter otherwise applicable under this section because of a physical or mental disability which was not the result of the individual's own willful misconduct, and

(2) who applies for an extension of such 10-year period within one year after (A) the last day of such period, or (B) the last day on which such individual was so prevented from pursuing such program, whichever is later,

such 10-year period shall not run with respect to such individual during the period of time that such individual was so prevented from pursuing such program and such 10-year period will again begin running on the first day following such individual's recovery from such disability on which it is reasonably feasible, as determined under regulations which the Secretary shall prescribe, for such individual to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(e)(1) Except as provided in paragraph (2) of this subsection, in the case of an individual described in 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.

(2) In the case of an individual to which paragraph (1) of this subsection is applicable and who is described in section 3452(a)(1)(B) of this title, the 10-year period prescribed in subsection (a) of this section shall not be reduced by any period in 1977 before the individual began serving on active duty.

(f)(1) If an individual eligible for educational assistance under this chapter is enrolled under this chapter in an educational institution regularly operated on the quarter or semester system and the period of such individual's entitlement under this chapter would, under section 3013, expire during a quarter or semester, such period shall be extended to the end of such quarter or semester.

(2) If an individual eligible for educational assistance under this chapter is enrolled under this chapter in an educational institution not regularly operated on the quarter or semester system and the period of such individual's entitlement under this chapter would, under section 3013, expire after a major portion of the course is completed, such period shall be extended to the end of the course or for 12 weeks, whichever is the lesser period of extension.

(g) In the case of an individual described in section 3011(f)(3) of this title, the period during which that individual may use the individual's entitlement to educational assistance allowance expires on the last day of the 10-year period beginning on the date of the enactment of the Veterans Millennium Health Care and Benefits Act if that date is later than the date that would otherwise be applicable to that individual under this section.

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

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2560, Sec. 1431; amended Pub. L. 99–576, title III, Sec. 307(b), 321(7), Oct. 28, 1986, 100 Stat. 3270, 3278; Pub. L. 100–689, title I, Sec. 111(a)(6), Nov. 18, 1988, 102 Stat. 4171; Pub. L. 101–237, title IV, Sec. 420(a)(1), (b), 423(a)(4), (b)(1), Dec. 18, 1989, 103 Stat. 2087, 2088, 2091, 2092; renumbered Sec. 3031 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 302(a)(3), Oct. 29, 1992, 106 Stat. 4327; Pub. L. 106–117, title VII, Sec. 702(b), Nov. 30, 1999, 113 Stat. 1583; Pub. L. 107–103, title I, Sec. 105(c), Dec. 27, 2001, 115 Stat. 983; Pub. L. 107–330, title III, Sec. 308(g)(10), Dec. 6, 2002, 116 Stat. 2829.)

§ 3032. Limitations on educational assistance for certain individuals

(a) In the case of an individual entitled to educational assistance under this chapter who is pursuing a program of education—

(1) while on active duty; or

(2) on less than a half-time basis,

the amount of the monthly educational assistance allowance payable to such individual under this chapter is the amount determined under subsection (b) of this section.

(b) The amount of the educational assistance allowance payable to an individual described in subsection (a) of this section is the least of the following: (1) the amount of the educational assistance allowance otherwise payable to such individual under this chapter, (2) the established charges for tuition and fees that the educational institution involved requires similarly circumstanced nonveterans enrolled in the same program to pay, or (3) the amount of the charges of the educational institution elected by the individual under section 3014(b)(1) of this title.

(c)(1) Except as provided in paragraph (2) of this subsection, the amount of the monthly educational assistance allowance payable to an individual pursuing a full-time program of apprenticeship or other on-job training under this chapter is—

(A) for each of the first six months of the individual's pursuit of such program, 75 percent of the monthly educational assistance allowance otherwise payable to such individual under this chapter;

(B) for each of the second six months of the individual's pursuit of such program, 55 percent of such monthly educational assistance allowance; and

(C) for each of the months following the first 12 months of the individual's pursuit of such program, 35 percent of such monthly educational assistance allowance.

(2) In any month in which an individual pursuing a program of education consisting of a program of apprenticeship or other on-job training fails to complete 120 hours of training, the amount of monthly educational assistance allowance payable under this chapter to the individual shall be limited to the same proportion of the applicable rate determined under paragraph (1) of this subsection as the number of hours worked during such month, rounded to the nearest eight hours, bears to 120 hours.

(3)(A) Except as provided in subparagraph (B) of this paragraph, for each month that an individual is paid a monthly educational assistance allowance under this chapter, the individual's entitlement under this chapter shall be charged at the rate of—

(i) 75 percent of a month in the case of payments made in accordance with paragraph (1)(A) of this subsection;

(ii) 55 percent of a month in the case of payments made in accordance with paragraph (1)(B) of this subsection; and

(iii) 35 percent of a month in the case of payments made in accordance with paragraph (1)(C) of this subsection.

(B) Any such charge to the individual's entitlement shall be reduced proportionately in accordance with the reduction in payment under paragraph (2) of this subsection.

(d)(1)(A) The amount of the educational assistance allowance payable under this chapter to an individual who enters into an agreement to pursue, and is pursuing, a program of education exclusively by correspondence is an amount equal to 55 percent of the established charge which the institution requires nonveterans to pay for the course or courses pursued by such individual.

(B) For purposes of this paragraph, the term "established charge" means the lesser of—

(i) the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the

institution and approved by the appropriate State approving agency; or

(ii) the actual charge to the individual for such course or courses.

(2) Such allowance shall be paid quarterly on a pro rata basis for the lessons completed by the individual and serviced by the institution.

(3) In each case in which the rate of payment to an individual is determined under paragraph (1) of this subsection, the period of entitlement of such individual under this chapter shall be charged at the rate of one month for each payment of educational assistance to the individual that is equal to the amount of monthly educational assistance the individual would otherwise be eligible to receive for full-time pursuit of an institutional course under this chapter.

(e)(1) Notwithstanding subsection (a) of this section, each individual who is pursuing a program of education consisting exclusively of flight training approved as meeting the requirements of section 3034(d) of this title shall be paid an educational assistance allowance under this chapter in the amount equal to 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

(2) No educational assistance allowance may be paid under this chapter to an individual for any month during which such individual is pursuing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the institution providing such training a certification of the flight training received by the individual during that month and the tuition and other fees charged for that training.

(3) The number of months of entitlement charged in the case of any individual for a program of education described in paragraph (1) of this subsection shall be equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such program by the monthly rate of educational assistance which, except for paragraph (1) of this subsection, such individual would otherwise be paid under subsection (a)(1), (b)(1), (d), or (e)(1) of section 3015 of this title, as the case may be.

(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.

(f)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a licensing or certification test described in section 3452(b) of this title is the lesser of $2,000 or the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for such licensing or certification test is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational

assistance which, except for paragraph (1), such individual would otherwise be paid under subsection (a)(1), (b)(1), (d), or (e)(1) of section 3015 of this title, as the case may be.

(3) In no event shall payment of educational assistance under this subsection for such a test exceed the amount of the individual's available entitlement under this chapter.

(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under subsection (a)(1), (b)(1), (d), or (e)(1) of section 3015 of this title, as the case may be.

(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2561, Sec. 1432; amended Pub. L. 99–576, title III, Sec. 301(b), (d)(1), Oct. 28, 1986, 100 Stat. 3267, 3268; Pub. L. 100–689, title I, Sec. 108(a)(2), 111(a)(7)(A), (8), Nov. 18, 1988, 102 Stat. 4169, 4172; Pub. L. 101–237, title IV, Sec. 422(a)(2), Dec. 18, 1989, 103 Stat. 2089; Pub. L. 102–16, Sec. 10(a)(3), Mar. 22, 1991, 105 Stat. 55; renumbered Sec. 3032 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 310(a), Oct. 29, 1992, 106 Stat. 4329; Pub. L. 103–446, title XII, Sec. 1201(d)(6), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 104–275, title I, Sec. 105(a), Oct. 9, 1996, 110 Stat. 3327; Pub. L. 106–419, title I, Sec. 122(b)(1), Nov. 1, 2000, 114 Stat. 1833; Pub. L. 107–14, Sec. 7(b)(2)(B), June 5, 2001, 115 Stat. 32; Pub. L. 108–454, title I, Sec. 106(b)(1), Dec. 10, 2004, 118 Stat. 3602.)

§ 3033. Bar to duplication of educational assistance benefits

(a)(1) An individual entitled to educational assistance under a program established by this chapter who is also eligible for educational assistance under a program under chapter 31, 32, 33, or 35 of this title, under chapter 106 or 107 of title 10, or under the Hostage Relief Act of 1980 (Public Law 96–449; 5 U.S.C. 5561 note) may not receive assistance under two or more of such programs concurrently but shall elect (in such form and manner as the Secretary may prescribe) under which program to receive educational assistance.

(2) An individual entitled to educational assistance under chapter 34 of this title may not receive assistance under this chapter before January 1, 1990.

(b) A period of service counted for purposes of repayment under chapter 109 of title 10 of an education loan may not also be counted for purposes of entitlement to educational assistance under this chapter.

(c) An individual who serves in the Selected Reserve may not receive credit for such service under two or more of the programs established by this chapter, chapter 33 of this title, and chapters 1606 and 1607 of title 10.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2561, Sec. 1433; amended Pub. L. 99–576, title III, Sec. 306, Oct. 28, 1986, 100 Stat. 3269; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–16, Sec. 10(a)(4), Mar. 22, 1991, 105 Stat. 55; renumbered Sec. 3033, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; amended Pub. L. 110–252, title V, Sec. 5003(b)(1)(A), June 30, 2008, 122 Stat. 2375 (conforming amendment effective August 1, 2009).)

§ 3034. Program administration

(a)(1) Except as otherwise provided in this chapter, the provisions of sections 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of this title and the provisions of subchapters I and II of chapter 36 of this title (with the exception of sections 3680(c), 3680(f), 3686(a), and 3687) shall be applicable to the provision of educational assistance under this chapter.

(2) The term "eligible veteran", as used in the provisions of the sections enumerated in paragraph (1) of this subsection, shall be deemed to include an individual who is eligible for educational assistance under this chapter.

(3) The Secretary may, without regard to the application to this chapter of so much of the provisions of section 3471 of this title as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is "already qualified", and pursuant to such regulations as the Secretary shall prescribe, approve the enrollment of such individual in refresher courses (including courses which will permit such individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the period of such veteran's active military service), deficiency courses, or other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education.

(b) Regulations prescribed by the Secretary of Defense under this chapter shall be uniform for the Armed Forces under the jurisdiction of the Secretary of a military department.

(c) Payment of educational assistance allowance in the case of an eligible individual pursuing a program of education under this chapter on less than a half-time basis shall be made in a lump-sum amount for the entire quarter, semester, or term not later than the last day of the month immediately following the month in which certification is received from the educational institution that such individual has enrolled in and is pursuing a program at such institution. Such lump-sum payment shall be computed at the rate determined under section 3032(b) of this title.

(d) The Secretary may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of this title) by an individual entitled to basic educational assistance under this chapter if—

(1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

(2) the individual possesses a valid private pilot certificate and meets, on the day the individual begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; and

(3) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

(e)(1) In the case of a member of the Armed Forces who participates in basic educational assistance under this chapter, the Secretary shall furnish the information described in paragraph (2) to each such member. The Secretary shall furnish such information as soon as practicable after the basic pay of the member has been reduced by $1,200 in accordance with section 3011(b) or 3012(c) of this title and at such additional times as the Secretary determines appropriate.

(2) The information referred to in paragraph (1) is information with respect to the benefits, limitations, procedures, eligibility requirements (including time-in-service requirements), and other important aspects of the basic educational assistance program under this chapter, including application forms for such basic educational assistance under section 5102 of this title.

(3) The Secretary shall furnish the forms described in paragraph (2) and other educational materials to educational institutions, training establishments, and military education personnel, as the Secretary determines appropriate.

(4) The Secretary shall use amounts appropriated for readjustment benefits to carry out this subsection and section 5102 of this title with respect to application forms under that section for basic educational assistance under this chapter.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2562, Sec. 1434; amended Pub. L. 99–576, title III, Sec. 301(c), 302, 305, 308(a), Oct. 28, 1986, 100 Stat. 3268–3270; Pub. L. 100–689, title I, Sec. 106(a), 111(a)(7)(B), Nov. 18, 1988, 102 Stat. 4166, 4172; Pub. L. 101–237, title IV, Sec. 415(b), 422(a)(1), 423(a)(5)(A), (6), (b)(1)(A), Dec. 18, 1989, 103 Stat. 2086, 2088, 2091, 2092; Pub. L. 102–16, Sec. 2(b)(2), Mar. 22, 1991, 105 Stat. 49; renumbered Sec. 3034 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 313(a)(4), Oct. 29, 1992, 106 Stat. 4332; Pub. L. 103–446, title VI, Sec. 601(a), Nov. 2, 1994, 108 Stat. 4670; Pub. L. 105–368, title II, Sec. 204(a), 206(a), Nov. 11, 1998, 112 Stat. 3327.)

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2562, Sec. 1434; amended Pub. L. 99–576, title III, Sec. 301(c), 302, 305, 308(a), Oct. 28, 1986, 100 Stat. 3268–3270; Pub. L. 100–689, title I, Sec. 106(a), 111(a)(7)(B), Nov. 18, 1988, 102 Stat. 4166, 4172; Pub. L. 101–237, title IV, Sec. 415(b), 422(a)(1), 423(a)(5)(A), (6), (b)(1)(A), Dec. 18, 1989, 103 Stat. 2086, 2088, 2091, 2092; Pub. L. 102–16, Sec. 2(b)(2), Mar. 22, 1991, 105 Stat. 49; renumbered Sec. 3034 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 313(a)(4), Oct. 29, 1992, 106 Stat. 4332; Pub. L. 103–446, title VI, Sec. 601(a), Nov. 2, 1994, 108 Stat. 4670; Pub. L. 105–368, title II, Sec. 204(a), 206(a), Nov. 11, 1998, 112 Stat. 3327.)

§ 3035. Allocation of administration and of program costs

(a) Except to the extent otherwise specifically provided in this chapter, the educational assistance programs established by this chapter shall be administered by the Department of Veterans Affairs.

(b)(1) Except to the extent provided in paragraphs (2), (3), and (4), payments for entitlement earned under subchapter II of this chapter shall be made from funds appropriated to, or otherwise available to, the Department of Veterans Affairs for the payment of readjustment benefits and from transfers from the Post-Vietnam

Era Veterans Education Account pursuant to section 3232(b)(2)(B) of this title.

(2) Payments for entitlement earned under subchapter II of this chapter that is established under section 3015(d) of this title at a rate in excess of the rate prescribed under subsection (a) or (b) of section 3015 of this title shall, to the extent of that excess, be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Homeland Security, as appropriate.

(3) Payment for entitlements established under section 3018A or 3018B of this title shall be made—

(A) except as provided in subparagraphs (B) and (C) of this paragraph, from the Department of Defense Education Benefits Fund established under section 2006 of title 10;

(B) in the case of any individual described in section 3018A(a)(3), 3018B(a)(1)(C), or 3018B(a)(2)(C) of this title, from funds appropriated, or otherwise available, to the Department of Veterans Affairs for the payment of readjustment benefits; and

(C) in the case of the increase in payments made under section 3015(f) of this title, from the Post-Vietnam Era Veterans Education Account established pursuant to section 3222(a) of this title.

(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.

(c) Payments for educational assistance provided under subchapter III of this chapter shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Homeland Security, as appropriate.

(d) Funds for the payment by the Secretary of benefits under this chapter that are to be paid from the Department of Defense Education Benefits Fund shall be transferred to the Department of Veterans Affairs from such Fund as necessary and in accordance with agreements entered into under section 2006 of title 10 by the Secretary, the Secretary of Defense, and the Secretary of the Treasury. Funds for the payment by the Secretary of benefits under this chapter that are to be paid from appropriations made to the Department of Homeland Security shall be transferred to the Department of Veterans Affairs as necessary. The Secretary and the Secretary of Homeland Security shall enter into an agreement for the manner in which such transfers are to be made.

(e) Payments for tutorial assistance benefits under section 3019 of this title shall be made—

(1) in the case of the first $600 of such benefits paid to an individual, from funds appropriated, or otherwise available, to the Department of Veterans Affairs for the payment of readjustment benefits; and

(2) in the case of payments to an individual for such benefits in excess of $600, from—

(A) funds appropriated, or otherwise available, to the Department of Veterans Affairs for the payment of readjustment benefits;

(B) the Department of Defense Education Benefits Fund established under section 2006 of title 10; and

(C) funds appropriated to the Department of Homeland Security,

in the same proportion as the Fund described in subclause (B) of this clause and the funds described in subclause (A) or (C) of this clause are used to pay the educational assistance allowance to the individual under this chapter.

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2562, Sec. 1435; amended Pub. L. 99–576, title III, Sec. 321(8), Oct. 28, 1986, 100 Stat. 3278; Pub. L. 100–689, title I, Sec. 107(a)(2), Nov. 18, 1988, 102 Stat. 4168; Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 101–510, div. A, title V, Sec. 561(b)(3), Nov. 5, 1990, 104 Stat. 1573; renumbered Sec. 3035 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–484, div. D, title XLIV, Sec. 4404(b)(3), Oct. 23, 1992, 106 Stat. 2706; Pub. L. 103–446, title XII, Sec. 1201(d)(7), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 104–275, title I, Sec. 106(c)(2), Oct. 9, 1996, 110 Stat. 3329; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107–314, div. A, title VI, Sec. 643(b), Dec. 2, 2002, 116 Stat. 2577; Pub. L. 107–330, title III, Sec. 308(c)(1), Dec. 6, 2002, 116 Stat. 2827.)

§ 3036. Reporting requirement

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

(b) The Secretary of Defense shall include in each report submitted under this section—

(1) information indicating (A) the extent to which the benefit levels provided under this chapter are adequate to achieve the purposes of inducing individuals to enter and remain in the Armed Forces and of providing an adequate level of financial assistance to help meet the cost of pursuing a program of education, (B) whether it is necessary for the purposes of maintaining adequate levels of well-qualified active-duty personnel in the Armed Forces to continue to offer the opportunity for educational assistance under this chapter to individuals who have not yet entered active-duty service, and (C) describing the efforts under sections 3011(i) and 3012(g) of this title to inform members of the Armed Forces of the minimum service requirements for entitlement to educational assistance benefits under this chapter and the results from such efforts; and

(2) such recommendations for administrative and legislative changes regarding the provision of educational assistance to members of the Armed Forces and veterans, and their dependents, as the Secretary of Defense considers appropriate.

(c) The Secretary shall include in each report submitted under this section—

(1) information concerning the level of utilization of educational assistance and of expenditures under this chapter; and

(2) such recommendations for administrative and legislative changes regarding the provision of educational assistance to members of the Armed Forces and veterans, and their dependents, as the Secretary considers appropriate.

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

(Added Pub. L. 98–525, title VII, Sec. 702(a)(1), Oct. 19, 1984, 98 Stat. 2563, Sec. 1436; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (4)(D), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3036, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–368, title II, Sec. 207(c), Nov. 11, 1998, 112 Stat. 3328; Pub. L. 106–419, title IV, Sec. 403(c)(4), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 109–444, Sec. 4(b), Dec. 21, 2006, 120 Stat. 3308; Pub. L. 109–461, title III, Sec. 305(b), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3428, 3468.)

Chapter 31 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

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

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§ 3100. Purposes

The purposes of this chapter are to provide for all services and assistance necessary to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2172, Sec. 1500; renumbered Sec. 3100, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3101. Definitions

For the purposes of this chapter—

(1) The term "employment handicap" means an impairment, resulting in substantial part from a disability described in section 3102(1)(A) of this title, of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(2) The term "independence in daily living" means the ability of a veteran, without the services of others or with a reduced level

of the services of others, to live and function within such veteran's family and community.

(3) The term "program of education" has the meaning provided in section 3452(b) of this title.

(4) The term "program of independent living services and assistance" includes (A) the services provided for in this chapter that are needed to enable a veteran to achieve independence in daily living, including such counseling, diagnostic, medical, social, psychological, and educational services as are determined by the Secretary to be needed for such veteran to achieve maximum independence in daily living, and (B) the assistance authorized by this chapter for such veteran.

(5) The term "rehabilitated to the point of employability" means rendered employable in an occupation for which a vocational rehabilitation program has been provided under this chapter.

(6) The term "rehabilitation program" means (A) a vocational rehabilitation program, or (B) a program of independent living services and assistance authorized under section 3120 of this title for a veteran for whom a vocational goal has been determined not to be currently reasonably feasible.

(7) The term "serious employment handicap" means a significant impairment, resulting in substantial part from a service-connected disability rated at 10 percent or more, of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(8) The term "vocational goal" means a gainful employment status consistent with a veteran's abilities, aptitudes, and interests.

(9) The term "vocational rehabilitation program" includes—

(A) the services provided for in this chapter that are needed for the accomplishment of the purposes of this chapter, including such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined by the Secretary to be needed—

(i) in the case of a veteran for whom the achievement of a vocational goal has not been determined not to be currently reasonably feasible, (I) to determine whether a vocational goal is reasonably feasible, (II) to improve such veteran's potential to participate in a program of services designed to achieve a vocational goal, and (III) to enable such veteran to achieve maximum independence in daily living, and

(ii) in the case of a veteran for whom the achievement of a vocational goal is determined to be reasonably feasible, to enable such veteran to become, to the maximum extent feasible, employable and to obtain and maintain suitable employment, and

(B) the assistance authorized by this chapter for a veteran receiving any of the services described in clause (A) of this paragraph.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2172, Sec. 1501; amended Pub. L. 99–576, title III, Sec. 333(b)(1), Oct. 28, 1986, 100 Stat. 3279; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered

Sec. 3101 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title I, Sec. 101(a), Oct. 9, 1996, 110 Stat. 3323.)

§ 3102. Basic entitlement

A person shall be entitled to a rehabilitation program under the terms and conditions of this chapter if—

(1) the person—

(A) is—

(i) a veteran who has a service-connected disability rated at 20 percent or more which was incurred or aggravated in service on or after September 16, 1940; or

(ii) hospitalized or receiving outpatient medical care, services, or treatment for a service-connected disability pending discharge from the active military, naval, or air service, and the Secretary determines that—

(I) the hospital (or other medical facility) providing the hospitalization, care, services, or treatment is doing so under contract or agreement with the Secretary concerned, or is under the jurisdiction of the Secretary of Veterans Affairs or the Secretary concerned; and

(II) the person is suffering from a disability which will likely be compensable at a rate of 20 percent or more under chapter 11 of this title; and

(B) is determined by the Secretary to be in need of rehabilitation because of an employment handicap; or

(2) the person is a veteran who—

(A) has a service-connected disability rated at 10 percent which was incurred or aggravated in service on or after September 16, 1940; and

(B) is determined by the Secretary to be in need of rehabilitation because of a serious employment handicap.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2173, Sec. 1502; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 101–508, title VIII, Sec. 8021(a), Nov. 5, 1990, 104 Stat. 1388–347; Pub. L. 102–16, Sec. 3(a), Mar. 22, 1991, 105 Stat. 49; renumbered Sec. 3102, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title IV, Sec. 404(a), Oct. 29, 1992, 106 Stat. 4338; Pub. L. 104–275, title I, Sec. 101(b), Oct. 9, 1996, 110 Stat. 3323.)

§ 3103. Periods of eligibility

(a) Except as provided in subsection (b), (c), or (d) of this section, a rehabilitation program may not be afforded to a veteran under this chapter after the end of the twelve-year period beginning on the date of such veteran's discharge or release from active military, naval, or air service.

(b)(1) In any case in which the Secretary determines that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a medical condition of such veteran made it infeasible for such veteran to participate in such a program, the twelve-year period of eligibility shall not run during the period of time that such veteran was so

prevented from participating in such a program, and such period of eligibility shall again begin to run on the first day following such veteran's recovery from such condition on which it is reasonably feasible, as determined under regulations which the Secretary shall prescribe, for such veteran to participate in such a program.

(2) In any case in which the Secretary determines that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because—

(A) such veteran had not met the requirement of a discharge or release from active military, naval, or air service under conditions other than dishonorable before (i) the nature of such discharge or release was changed by appropriate authority, or (ii) the Secretary determined, under regulations prescribed by the Secretary, that such discharge or release was under conditions other than dishonorable, or

(B) such veteran's discharge or dismissal was, under section 5303 of this title, a bar to benefits under this title before the Secretary made a determination that such discharge or dismissal is not a bar to such benefits,

the twelve-year period of eligibility shall not run during the period of time that such veteran was so prevented from participating in such a program.

(3) In any case in which the Secretary determines that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because such veteran had not established the existence of a service-connected disability rated at 10 percent or more, the twelve-year period of eligibility shall not run during the period such veteran was so prevented from participating in such a program.

(c) In any case in which the Secretary determines that a veteran is in need of services to overcome a serious employment handicap, such veteran may be afforded a vocational rehabilitation program after the expiration of the period of eligibility otherwise applicable to such veteran if the Secretary also determines, on the basis of such veteran's current employment handicap and need for such services, that an extension of the applicable period of eligibility is necessary for such veteran and—

(1) that such veteran had not previously been rehabilitated to the point of employability;

(2) that such veteran had previously been rehabilitated to the point of employability but (A) the need for such services had arisen out of a worsening of such veteran's service-connected disability that precludes such veteran from performing the duties of the occupation for which such veteran was previously trained in a vocational rehabilitation program under this chapter, or (B) the occupation for which such veteran had been so trained is not suitable in view of such veteran's current employment handicap and capabilities; or

(3) under regulations which the Secretary shall prescribe, that an extension of the period of eligibility of such veteran is necessary to accomplish the purposes of a rehabilitation program for such veteran.

(d) In any case in which the Secretary has determined that a veteran's disability or disabilities are so severe that the achievement of a vocational goal currently is not reasonably feasible, such veteran may be afforded a program of independent living services and assistance in accordance with the provisions of section 3120 of this title after the expiration of the period of eligibility otherwise applicable to such veteran if the Secretary also determines that an extension of the period of eligibility of such veteran is necessary for such veteran to achieve maximum independence in daily living.

(e) In any case in which the Secretary has determined that a veteran was prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility otherwise prescribed in this section as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, such period of eligibility shall not run for the period of such active duty service plus four months.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2173, Sec. 1503; amended Pub. L. 99–576, title III, Sec. 333(b)(2), Oct. 28, 1986, 100 Stat. 3279; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 3103 and amended, Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1201(d)(8), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 104–275, title I, Sec. 101(c), Oct. 9, 1996, 110 Stat. 3324; Pub. L. 107–103, title I, Sec. 103(c)(2), Dec. 27, 2001, 115 Stat. 979; Pub. L. 107–330, title III, Sec. 308(h), Dec. 6, 2002, 116 Stat. 2829.)

§ 3104. Scope of services and assistance

(a) Services and assistance which the Secretary may provide under this chapter, pursuant to regulations which the Secretary shall prescribe, include the following:

(1) Evaluation, including periodic reevaluations as appropriate with respect to a veteran participating in a rehabilitation program, of the potential for rehabilitation of a veteran, including diagnostic and related services (A) to determine whether the veteran has an employment handicap or a serious employment handicap and whether a vocational goal is reasonably feasible for such veteran, and (B) to provide a basis for planning a suitable vocational rehabilitation program or a program of services and assistance to improve the vocational rehabilitation potential or independent living status of such veteran, as appropriate.

(2) Educational, vocational, psychological, employment, and personal adjustment counseling.

(3) An allowance and other appropriate assistance, as authorized by section 3108 of this title.

(4) A work-study allowance as authorized by section 3485 of this title.

(5) Placement services to effect suitable placement in employment, and postplacement services to attempt to insure satisfactory adjustment in employment.

(6) Personal adjustment and work adjustment training.

(7)(A) Vocational and other training services and assistance, including individualized tutorial assistance, tuition, fees, books, supplies, handling charges, licensing fees, and equipment and other training materials determined by the Secretary

to be necessary to accomplish the purposes of the rehabilitation program in the individual case.

(B) Payment for the services and assistance provided under subparagraph (A) of this paragraph shall be made from funds available for the payment of readjustment benefits.

(8) Loans as authorized by section 3112 of this title.

(9) Treatment, care, and services described in chapter 17 of this title.

(10) Prosthetic appliances, eyeglasses, and other corrective and assistive devices.

(11) Services to a veteran's family as necessary for the effective rehabilitation of such veteran.

(12) For veterans with the most severe service-connected disabilities who require homebound training or self-employment, or both homebound training and self-employment, such license fees and essential equipment, supplies, and minimum stocks of materials as the Secretary determines to be necessary for such a veteran to begin employment and are within the criteria and cost limitations that the Secretary shall prescribe in regulations for the furnishing of such fees, equipment, supplies, and stocks.

(13) Travel and incidental expenses under the terms and conditions set forth in section 111 of this title, plus, in the case of a veteran who because of such veteran's disability has transportation expenses in addition to those incurred by persons not so disabled, a special transportation allowance to defray such additional expenses during rehabilitation, job seeking, and the initial employment stage.

(14) Special services (including services related to blindness and deafness) including—

(A) language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(B) orientation, adjustment, mobility, reader, interpreter, and related services; and

(C) telecommunications, sensory, and other technical aids and devices.

(15) Services necessary to enable a veteran to achieve maximum independence in daily living.

(16) Other incidental goods and services determined by the Secretary to be necessary to accomplish the purposes of a rehabilitation program in an individual case.

(b) A rehabilitation program (including individual courses) to be pursued by a veteran shall be subject to the approval of the Secretary.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2174, Sec. 1504; amended Pub. L. 100–323, Sec. 11(a)(3)(A), May 20, 1988, 102 Stat. 568; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–16, Sec. 3(b)(1), Mar. 22, 1991, 105 Stat. 49; Pub. L. 102–54, Sec. 14(c)(3), June 13, 1991, 105 Stat. 285; renumbered Sec. 3104 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title I, Sec. 101(d), Oct. 9, 1996, 110 Stat. 3324.)

§ 3105. Duration of rehabilitation programs

(a) In any case in which the Secretary is unable to determine whether it currently is reasonably feasible for a veteran to achieve

a vocational goal, the period of extended evaluation under section 3106(c) of this title may not exceed twelve months, except that such period may be extended for additional periods of up to six months each if the Secretary determines before granting any such extension that it is reasonably likely that, during the period of any such extension, a determination can be made whether the achievement of a vocational goal is reasonably feasible in the case of such veteran.

(b) Except as provided in subsection (c) of this section, the period of a vocational rehabilitation program for a veteran under this chapter following a determination of the current reasonable feasibility of achieving a vocational goal may not exceed forty-eight months, except that the counseling and placement and postplacement services described in section 3104(a)(2) and (5) of this title may be provided for an additional period not to exceed eighteen months in any case in which the Secretary determines the provision of such counseling and services to be necessary to accomplish the purposes of a rehabilitation program in the individual case.

(c) The Secretary may extend the period of a vocational rehabilitation program for a veteran to the extent that the Secretary determines that an extension of such period is necessary to enable such veteran to achieve a vocational goal if the Secretary also determines—

(1) that such veteran had previously been rehabilitated to the point of employability but (A) such veteran's need for further vocational rehabilitation has arisen out of a worsening of such veteran's service-connected disability that precludes such veteran from performing the duties of the occupation for which such veteran had been so rehabilitated, or (B) the occupation for which such veteran had been so rehabilitated is not suitable in view of such veteran's current employment handicap and capabilities; or

(2) under regulations which the Secretary shall prescribe, that such veteran has a serious employment handicap and that an extension of such period is necessary to accomplish the purposes of a rehabilitation program for such veteran.

(d)(1) Except as provided in paragraph (2), the period of a program of independent living services and assistance for a veteran under this chapter (following a determination by the Secretary that such veteran's disability or disabilities are so severe that the achievement of a vocational goal currently is not reasonably feasible) may not exceed twenty-four months.

(2)(A) The period of a program of independent living services and assistance for a veteran under this chapter may exceed twenty-four months as follows:

(i) If the Secretary determines that a longer period is necessary and likely to result in a substantial increase in the veteran's level of independence in daily living.

(ii) If the veteran served on active duty during the Post-9/ 11 Global Operations period and has a severe disability (as determined by the Secretary for purposes of this clause) incurred or aggravated in such service.

(B) In this paragraph, the term "Post-9/11 Global Operations period" means the period of the Persian Gulf War beginning on September 11, 2001, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(e)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of a subsistence allowance and other assistance described in paragraph (2) shall not—

(A) be charged against any entitlement of any veteran under this chapter; or

(B) be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of allowance or assistance.

(2) The payment of the subsistence allowance and other assistance referred to in paragraph (1) is the payment of such an allowance or assistance for the period described in paragraph (3) to a veteran for participation in a vocational rehabilitation program under this chapter if the Secretary finds that the veteran had to suspend or discontinue participation in such vocational rehabilitation program as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10.

(3) The period for which, by reason of this subsection, a subsistence allowance and other assistance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall be the period of participation in the vocational rehabilitation program for which the veteran failed to receive credit or with respect to which the veteran lost training time, as determined by the Secretary.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2176, Sec. 1505; amended Pub. L. 99–576, title III, Sec. 333(b)(3), Oct. 28, 1986, 100 Stat. 3279; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3105 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title I, Sec. 101(e), Oct. 9, 1996, 110 Stat. 3324; Pub. L. 107–103, title I, Sec. 103(c)(1), Dec. 27, 2001, 115 Stat. 979; Pub. L. 110–389, title III, Sec. 331, Oct. 10, 2008, 122 Stat. 4170.)

§ 3106. Initial and extended evaluations; determinations regarding serious employment handicap

(a) The Secretary shall provide any veteran who has a service-connected disability rated at 10 percent or more and who applies for benefits under this chapter with an initial evaluation consisting of such services described in section 3104(a)(1) of this title as are necessary (1) to determine whether such veteran is entitled to and eligible for benefits under this chapter, and (2) in the case of a veteran who is determined to be entitled to and eligible for such benefits, to determine—

(A) whether such veteran has a serious employment handicap, and

(B) whether the achievement of a vocational goal currently is reasonably feasible for such veteran if it is reasonably feasible to make such determination without extended evaluation.

(b) In any case in which the Secretary has determined that a veteran has a serious employment handicap and that the achievement of a vocational goal currently is reasonably feasible for such veteran, such veteran shall be provided an individualized written

plan of vocational rehabilitation developed under section 3107(a) of this title.

(c) In any case in which the Secretary has determined that a veteran has a serious employment handicap but the Secretary is unable to determine, in an initial evaluation pursuant to subsection (a) of this section, whether or not the achievement of a vocational goal currently is reasonably feasible, such veteran shall be provided with an extended evaluation consisting of the services described in section 3104(a)(1) of this title, such services under this chapter as the Secretary determines necessary to improve such veteran's potential for participation in a program of services designed to achieve a vocational goal and enable such veteran to achieve maximum independence in daily living, and assistance as authorized by section 3108 of this title.

(d) In any case in which the Secretary has determined that a veteran has a serious employment handicap and also determines, following such initial and any such extended evaluation, that achievement of a vocational goal currently is not reasonably feasible, the Secretary shall determine whether the veteran is capable of participating in a program of independent living services and assistance under section 3120 of this title.

(e) The Secretary shall in all cases determine as expeditiously as possible whether the achievement of a vocational goal by a veteran currently is reasonably feasible. In the case of a veteran provided extended evaluation under subsection (c) of this section (including any periods of extensions under section 3105(a) of this title), the Secretary shall make such determination not later than the end of such extended evaluation or period of extension, as the case may be. In determining whether the achievement of a vocational goal currently is reasonably feasible, the Secretary shall resolve any reasonable doubt in favor of determining that such achievement currently is reasonably feasible.

(f) In connection with each period of extended evaluation of a veteran and each rehabilitation program for a veteran who is determined to have a serious employment handicap, the Secretary shall assign a Department of Veterans Affairs employee to be responsible for the management and followup of the provision of all services (including appropriate coordination of employment assistance under section 3117 of this title) and assistance under this chapter to such veteran.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2176, Sec. 1506; amended Pub. L. 99–576, title III, Sec. 333(b)(4), Oct. 28, 1986, 100 Stat. 3279; Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3106 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1201(d)(9), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 104–275, title I, Sec. 101(f)(1), Oct. 9, 1996, 110 Stat. 3324.)

§ 3107. Individualized vocational rehabilitation plan

(a) The Secretary shall formulate an individualized written plan of vocational rehabilitation for a veteran described in section 3106(b) of this title. Such plan shall be developed with such veteran and shall include, but not be limited to (1) a statement of long-range rehabilitation goals for such veteran and intermediate rehabilitation objectives related to achieving such goals, (2) a statement of the specific services (which shall include counseling in all

cases) and assistance to be provided under this chapter, (3) the projected date for the initiation and the anticipated duration of each such service, and (4) objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved.

(b) The Secretary shall review at least annually the plan formulated under subsection (a) of this section for a veteran and shall afford such veteran the opportunity to participate in each such review. On the basis of such review, the Secretary shall (1) redevelop such plan with such veteran if the Secretary determines, under regulations which the Secretary shall prescribe, that redevelopment of such plan is appropriate, or (2) disapprove redevelopment of such plan if the Secretary determines, under such regulations, that redevelopment of such plan is not appropriate.

(c)(1) Each veteran for whom a plan has been developed or redeveloped under subsection (a) or (b)(1), respectively, of this section or in whose case redevelopment of a plan has been disapproved under subsection (b)(2) of this section, shall be informed of such veteran's opportunity for a review as provided in paragraph (2) of this subsection.

(2) In any case in which a veteran does not agree to such plan as proposed, to such plan as redeveloped, or to the disapproval of redevelopment of such plan, such veteran may submit to the person described in section 3106(f) of this title a written statement containing such veteran's objections and request a review of such plan as proposed or redeveloped, or a review of the disapproval of redevelopment of such plan, as the case may be.

(3) The Secretary shall review the statement submitted under paragraph (2) of this subsection and the plan as proposed or as redeveloped, and, if applicable, the disapproval of redevelopment of the plan, and render a decision on such review not later than ninety days after the date on which such veteran submits such statement, unless the case is one for which a longer period for review, not to exceed 150 days after such veteran submits such statement, is allowed under regulations prescribed by the Secretary, in which case the Secretary shall render a decision no later than the last day of the period prescribed in such regulations.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2177, Sec. 1507; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3107 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title I, Sec. 101(f)(2)(A), Oct. 9, 1996, 110 Stat. 3325.)

§ 3108. Allowances

(a)(1) Except in the case of a veteran who makes an election under subsection (f) of this section and subject to the provisions of paragraph (3) of this subsection, each veteran shall be paid a subsistence allowance in accordance with this section during a period determined by the Secretary to be a period of such veteran's participation under this chapter in a rehabilitation program.

(2) In any case in which the Secretary determines, at the conclusion of such veteran's pursuit of a vocational rehabilitation program under this chapter, that such veteran has been rehabilitated to the point of employability, such veteran shall be paid a subsist-

ence allowance, as prescribed in this section for full-time training for the type of program that the veteran was pursuing, for two months while satisfactorily following a program of employment services provided under section 3104(a)(5) of this title.

(3) A subsistence allowance may not be paid under this chapter to a veteran for any period during which such veteran is being provided with an initial evaluation under section 3106(a) of this title or during which such veteran is being provided only with counseling or with placement or postplacement services under section 3105(b) of this title.

(b)(1) Except as otherwise provided in this section, the Secretary shall determine the subsistence allowance to be paid to a veteran under this chapter in accordance with the following table, which shall be the monthly amount shown in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the appropriate type of program being pursued as specified in column I:

Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time	$366	$454	$535	$39
Three-quarter-time	275	341	400	30
Half-time	184	228	268	20
Farm cooperative, apprentice, or other on-job training:				
Full-time	320	387	446	29
Extended evaluation:				
Full-time	366	454	535	39
Independent living training:				
Full-time	366	454	535	39
Three-quarter-time	275	341	400	30
Half-time	184	228	268	20

(2) With respect to the fiscal year beginning on October 1, 1994, the Secretary shall provide a percentage increase in the monthly rates payable under paragraph (1) of this subsection equal to the percentage by which the Consumer Price Index (all items, United States city average published by the Bureau of Labor Statistics) for the 12-month period ending June 30, 1994, exceeds such Consumer Price Index for the 12-month period ending June 30, 1993.

(3) With respect to any fiscal year beginning on or after October 1, 1995, the Secretary shall continue to pay, in lieu of the rates payable under paragraph (1) of this subsection, the monthly rates payable under this subsection for the previous fiscal year and shall provide, for any such fiscal year, a percentage increase in such rates equal to the percentage by which—

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

(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

(c)(1) In any case in which the vocational rehabilitation program for a veteran includes training on the job by an employer in any month, such employer shall be required to submit to the Secretary a statement in writing showing any wage, compensation, or other income paid (directly or indirectly) by the employer to such veteran for such month. Based upon such written statement, the Secretary is authorized to reduce the subsistence allowance of such veteran to an amount considered equitable and just in accordance with criteria which the Secretary shall establish in regulations which the Secretary shall prescribe.

(2) A veteran pursuing on-job training or work experience as part of a vocational rehabilitation program in a Federal, State, or local government agency or federally recognized Indian tribe under the provisions of section 3115(a)(1) of this title without pay or for nominal pay shall be paid the appropriate subsistence allowance rate provided in subsection (b) of this section for an institutional program.

(d)(1) The Secretary shall, in accordance with regulations which the Secretary shall prescribe, define full-time and each part-time status for veterans participating in rehabilitation programs under this chapter.

(2) A veteran participating in extended evaluation on less than a full-time basis may be paid a proportional subsistence allowance in accordance with regulations which the Secretary shall prescribe.

(e) In any case in which a veteran is pursuing a rehabilitation program on a residential basis in a specialized rehabilitation facility, the Secretary may (1) pay to such facility the cost of such veteran's room and board in lieu of payment to such veteran of the subsistence allowance (not including any portion payable for any dependents) payable under subsection (b) of this section, and (2) pay to such veteran that portion of the allowance for dependents payable, as determined by such veteran's dependency status, under subsection (b) of this section for a full-time institutional program.

(f)(1)(A) In any case in which the Secretary determines that a veteran is eligible for and entitled to rehabilitation under this chapter, to the extent that such veteran has remaining eligibility for and entitlement to educational assistance benefits under chapter 30 of this title, such veteran may elect, as part of a vocational rehabilitation program under this chapter, to pursue an approved program of education and receive allowances and other forms of assistance equivalent to those authorized for veterans enrolled under chapter 30 of this title, if the Secretary approves the educational, professional, or vocational objective chosen by such veteran for such program.

(B) In the event that such veteran makes such an election, the terms and conditions applicable to the pursuit of a comparable program of education and the payment of allowances and provision of assistance under chapter 30 of this title for such a comparable program shall be applied to the pursuit of the approved program of education under this chapter.

(2) A veteran who is receiving an allowance pursuant to paragraph (1) of this subsection may not receive any of the services or

assistance described in section 3104(a)(3), (7), and (8) of this title (other than an allowance and other assistance under this subsection).

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

(2) Paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a rehabilitation program under this chapter while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.

(h) Notwithstanding any other provision of this title, the amount of subsistence allowance, or other allowance under subsection (f) of this section, that may be paid to a veteran pursuing a rehabilitation program for any month for which such veteran receives compensation at the rate prescribed in section 1114(j) of this title as the result of hospital treatment (not including post-hospital convalescence) or observation at the expense of the Department of Veterans Affairs may not exceed, when added to any compensation to which such veteran is entitled for such month, an amount equal to the greater of—

(1) the sum of—

(A) the amount of monthly subsistence or other allowance that would otherwise be paid to such veteran under this section, and

(B) the amount of monthly compensation that would be paid to such veteran if such veteran were not receiving compensation at such rate as the result of such hospital treatment or observation; or

(2) the amount of monthly compensation payable under section 1114(j) of this title.

(i) Payment of a subsistence allowance may be made in advance in accordance with the provisions of section 3680(d) of this title.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2178, Sec. 1508; amended Pub. L. 97–306, title II, Sec. 205(a), Oct. 14, 1982, 96 Stat. 1434; Pub. L. 98–525, title VII, Sec. 703(a), Oct. 19, 1984, 98 Stat. 2564; Pub. L. 98–543, title II, Sec. 201, Oct. 24, 1984, 98 Stat. 2740; Pub. L. 101–237, title IV, Sec. 402(a), 423(b)(1), Dec. 18, 1989, 103 Stat. 2078, 2092; Pub. L. 102–16, Sec. 3(c), Mar. 22, 1991, 105 Stat. 49; renumbered Sec. 3108 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title IV, Sec. 405(a), (b), Oct. 29, 1992, 106 Stat. 4338, 4339; Pub. L. 103–446, title VI, Sec. 602(b), Nov. 2, 1994, 108 Stat. 4671; Pub. L. 104–275, title I, Sec. 101(g), Oct. 9, 1996, 110 Stat. 3325; Pub. L. 109–461, title X, Sec. 1002(b), Dec. 22, 2006, 120 Stat. 3465.)

§ 3109. Entitlement to independent living services and assistance

In any case in which the Secretary has determined under section 3106(e) of this title that the achievement of a vocational goal by a veteran currently is not reasonably feasible, such veteran shall be entitled, in accordance with the provisions of section 3120 of this title, to a program of independent living services and assist-

ance designed to enable such veteran to achieve maximum independence in daily living.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2181, Sec. 1509; amended Pub. L. 99–576, title III, Sec. 333(b)(5), Oct. 28, 1986, 100 Stat. 3279; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3109 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title I, Sec. 101(f)(2)(B), Oct. 9, 1996, 110 Stat. 3325.)

§ 3110. Leaves of absence

The Secretary shall prescribe such regulations as the Secretary determines necessary for granting leaves of absence to veterans pursuing rehabilitation programs under this chapter. During authorized leaves of absence, a veteran shall be considered to be pursuing such program.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2181, Sec. 1510; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3110, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3111. Regulations to promote satisfactory conduct and cooperation

The Secretary shall prescribe such rules and regulations as the Secretary determines necessary to promote satisfactory conduct and cooperation on the part of veterans who are pursuing rehabilitation programs under this chapter. In any case in which the Secretary determines that a veteran has failed to maintain satisfactory conduct or cooperation, the Secretary may, after determining that all reasonable counseling efforts have been made and are not reasonably likely to be effective, discontinue services and assistance unless the Secretary determines that mitigating circumstances exist. In any case in which such services and assistance have been discontinued, the Secretary may reinstitute such services and assistance only if the Secretary determines that—

(1) the cause of the unsatisfactory conduct or cooperation of such veteran has been removed; and

(2) the rehabilitation program which such veteran proposes to pursue (whether the same or revised) is suitable to such veteran's abilities, aptitudes, and interests.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2181, Sec. 1511; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3111, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3112. Revolving fund loans

The revolving fund established pursuant to part VII of Veterans Regulation Numbered 1(a) is continued in effect, and may be used by the Secretary, under regulations prescribed by the Secretary, for making advances, not in excess of twice the amount of the full-time institutional monthly subsistence allowance for a veteran with no dependents (as provided in section 3108(b) of this title) to veterans pursuing rehabilitation programs under this chapter. Such advances, and advances from such fund made before the effective date of the Veterans' Rehabilitation and Education Amendments of 1980, shall bear no interest and shall be repaid in such installments, as may be determined by the Secretary, by proper deductions from future payments of compensation, pension, sub-

sistence allowance, educational assistance allowance, or retirement pay.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2181, Sec. 1512; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3112 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3113. Vocational rehabilitation for hospitalized members of the Armed Forces and veterans

(a) Services and assistance may be provided under this chapter to a person described in subparagraphs (A)(ii) and (B) of section 3102(1) of this title who is hospitalized pending discharge from active military, naval, or air service. In such cases, no subsistence allowance shall be paid.

(b) Services and assistance may be provided under this chapter to a veteran who is receiving care in a Department of Veterans Affairs hospital, nursing home, or domiciliary facility or in any other hospital or medical facility.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2181, Sec. 1513; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(B), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3113 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1201(d)(10), Nov. 2, 1994, 108 Stat. 4684.)

§ 3114. Vocational rehabilitation outside the United States

Under regulations which the Secretary shall prescribe, a vocational rehabilitation program under this chapter may be provided outside the United States if the Secretary determines that such training is (1) necessary in the particular case to provide the preparation needed to render a veteran employable and enable such veteran to obtain and retain suitable employment, and (2) in the best interest of such veteran and the Federal Government.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2182, Sec. 1514; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3114, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3115. Rehabilitation resources

(a) Notwithstanding any other provision of law, for the purpose of providing services under this chapter, the Secretary may—

(1) use the facilities of any Federal agency (including the Department of Veterans Affairs), of any State or local government agency receiving Federal financial assistance, or of any federally recognized Indian tribe, to provide training or work experience as part or all of a veteran's vocational rehabilitation program without pay or for nominal pay in any case in which the Secretary determines that such training or work experience is necessary to accomplish such veteran's rehabilitation;

(2) use the facilities, staff, and other resources of the Department of Veterans Affairs;

(3) employ such additional personnel and experts as the Secretary considers necessary; and

(4) use the facilities and services of any Federal, State, or other public agency, any agency maintained by joint Federal and State contributions, any federally recognized Indian tribe,

any public or private institution or establishment, and any private individual.

(b)(1) While pursuing on-job training or work experience under subsection (a)(1) of this section at a Federal agency, a veteran shall be considered to be an employee of the United States for the purposes of the benefits of chapter 81 of title 5, but not for the purposes of laws administered by the Office of Personnel Management.

(2) Except as provided in chapter 17 of this title, hospital care and medical services provided under this chapter shall be furnished in facilities over which the Secretary has direct jurisdiction.

(3) Use of the facilities of a State or local government agency under subsection (a)(1) of this section or use of facilities and services under subsection (a)(4) of this section, shall be procured through contract, agreement, or other cooperative arrangement.

(4) The Secretary shall prescribe regulations providing for the monitoring of training and work experiences provided under such subsection (a)(1) at State or local government agencies and otherwise ensuring that such training or work experience is in the best interest of the veteran and the Federal Government.

(c) For purposes of this section, the term "federally recognized Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2182, Sec. 1515; amended Pub. L. 100–689, title II, Sec. 201, Nov. 18, 1988, 102 Stat. 4175; Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3115, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VI, Sec. 602(a), Nov. 2, 1994, 108 Stat. 4671.)

§ 3116. Promotion of employment and training opportunities

(a) The Secretary shall actively promote the development and establishment of employment, training, and other related opportunities for (1) veterans who are participating or who have participated in a rehabilitation program under this chapter, (2) veterans with service-connected disabilities, and (3) other veterans to whom the employment emphases set forth in chapter 42 of this title apply. The Secretary shall promote the development and establishment of such opportunities through Department of Veterans Affairs staff outreach efforts to employers and through Department of Veterans Affairs coordination with Federal, State, and local governmental agencies and appropriate nongovernmental organizations. In carrying out the provisions of this subsection with respect to veterans referred to in clause (3) of the first sentence of this subsection, the Secretary shall place particular emphasis on the needs of categories of such veterans on the basis of applicable rates of unemployment.

(b)(1) The Secretary, pursuant to regulations prescribed in accordance with paragraph (3) of this subsection, may make payments to employers for providing on-job training to veterans who have been rehabilitated to the point of employability in individual cases in which the Secretary determines that such payment is nec-

essary to obtain needed on-job training or to begin employment. Such payments may not exceed the direct expenses incurred by such employers in providing such on-job training or employment opportunity.

(2) In any case in which a veteran described in paragraph (1) of this subsection participates in on-job training described in such paragraph that satisfies the criteria for payment of a training assistance allowance under section 3687 of this title, such veteran shall, to the extent that such veteran has remaining eligibility for and entitlement to such allowance, be paid such allowance.

(3) The Secretary shall prescribe regulations under this subsection in consultation with the Secretary of Labor and, in prescribing such regulations, shall take into consideration the provisions of title V of the Rehabilitation Act of 1973 (29 U.S.C. ch. 16, subch. V) and section 4212 of this title, and regulations prescribed under such provisions.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2182, Sec. 1516; amended Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3116 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3117. Employment assistance

(a)(1) A veteran with a service-connected disability rated at 10 percent or more who has participated in a vocational rehabilitation program under this chapter or a similar program under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) and who the Secretary has determined to be employable shall be furnished assistance in obtaining employment consistent with such veteran's abilities, aptitudes, interests, and employment handicap, including assistance necessary to insure that such veteran receives the benefit of any applicable provisions of law or regulation providing for special consideration or emphasis or preference for such veteran in employment or training.

(2) Assistance provided under this subsection may include—

(A) direct placement of such veteran in employment;

(B) utilization of employment, training, and placement services under chapter 41 of this title; and

(C) utilization of the job development and placement services of (i) programs under the Rehabilitation Act of 1973, (ii) the State employment service and the Veterans' Employment Service of the Department of Labor, (iii) the Office of Personnel Management, (iv) any other public or nonprofit organization having placement services available, and (v) any for-profit entity in a case in which the Secretary has determined that services necessary to provide such assistance are available from such entity and that comparably effective services are not available, or cannot be obtained cost-effectively, from the entities described in subclauses (i) through (iv) of this clause.

(b)(1) In any case in which a veteran has completed a vocational rehabilitation program for self-employment in a small business enterprise under this chapter, the Secretary shall assist such veteran in securing, as appropriate, a loan under subchapter IV of chapter 37 of this title and shall cooperate with the Small Business Administration to assist such veteran to secure a loan for the pur-

chase of equipment needed to establish such veteran's own business and to insure that such veteran receives the special consideration provided for in section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)).

(2) In the case of a veteran described in clause (12) of section 3104(a) of this title who has trained under a State rehabilitation program with the objective of self-employment in a small business enterprise, the Secretary may, subject to the limitations and criteria provided for in such clause, provide such veteran with such supplementary equipment and initial stocks and supplies as are determined to be needed by such veteran if such supplementary equipment and initial stocks and supplies, or assistance in acquiring them, are not available through the State program or other sources.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2183, Sec. 1517; amended Pub. L. 97–72, title III, Sec. 303(k), Nov. 3, 1981, 95 Stat. 1060; Pub. L. 100–689, title II, Sec. 202(a), Nov. 18, 1988, 102 Stat. 4175; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–54, Sec. 14(c)(4), June 13, 1991, 105 Stat. 285; renumbered Sec. 3117 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title I, Sec. 101(h), Oct. 9, 1996, 110 Stat. 3325; Pub. L. 107–288, Sec. 4(e)(2), Nov. 7, 2002, 116 Stat. 2044; Pub. L. 109–233, title V, Sec. 503(6), June 15, 2006, 120 Stat. 416.)

§ 3118. Personnel training, development, and qualifications

(a) The Secretary shall provide a program of ongoing professional training and development for Department of Veterans Affairs counseling and rehabilitation personnel engaged in providing rehabilitation services under this chapter. The objective of such training shall be to insure that rehabilitation services for disabled veterans are provided in accordance with the most advanced knowledge, methods, and techniques available for the rehabilitation of handicapped persons. For this purpose, the Secretary may employ the services of consultants and may make grants to and contract with public or private agencies (including institutions of higher learning) to conduct such training and development.

(b) The Secretary shall coordinate with the Commissioner of the Rehabilitation Services Administration in the Department of Education and the Assistant Secretary for Veterans' Employment in the Department of Labor in planning and carrying out personnel training in areas of mutual programmatic concern.

(c) Notwithstanding any other provision of law, the Secretary shall establish such qualifications for personnel providing evaluation and rehabilitation services to veterans under this chapter and for employees performing the functions described in section 3106(f) of this title as the Secretary determines are necessary and appropriate to insure the quality of rehabilitation programs under this chapter. In establishing such qualifications, the Secretary shall take into account the qualifications established for comparable personnel under the Rehabilitation Act of 1973 (29 U.S.C. ch. 16).

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2184, Sec. 1518; amended Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3118 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title I, Sec. 101(f)(2)(C), Oct. 9, 1996, 110 Stat. 3325.)

§ 3119. Rehabilitation research and special projects

(a) The Secretary shall carry out an ongoing program of activities for the purpose of advancing the knowledge, methods, techniques, and resources available for use in rehabilitation programs for veterans. For this purpose, the Secretary shall conduct and provide support for the development or conduct, or both the development and conduct, of—

(1) studies and research concerning the psychological, educational, employment, social, vocational, industrial, and economic aspects of the rehabilitation of disabled veterans, including new methods of rehabilitation; and

(2) projects which are designed to increase the resources and potential for accomplishing the rehabilitation of disabled veterans.

(b) For the purpose specified in subsection (a) of this section, the Secretary is authorized to make grants to or contract with public or nonprofit agencies, including institutions of higher learning.

(c) The Secretary shall cooperate with the Commissioner of the Rehabilitation Services Administration and the Director of the Institute of Handicapped Research in the Department of Education, the Assistant Secretary for Veterans' Employment in the Department of Labor, and the Secretary of Health and Human Services regarding rehabilitation studies, research, and special projects of mutual programmatic concern.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2184, Sec. 1519; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3119, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3120. Program of independent living services and assistance

(a) The Secretary may, under contracts with entities described in subsection (f) of this section, or through facilities of the Veterans Health Administration, which possess a demonstrated capability to conduct programs of independent living services for severely handicapped persons, provide, under regulations which the Secretary shall prescribe, programs of independent living services and assistance under this chapter, in various geographic regions of the United States, to veterans described in subsection (b) of this section.

(b) A program of independent living services and assistance may be made available under this section only to a veteran who has a serious employment handicap resulting in substantial part from a service-connected disability described in section 3102(1)(A)(i) of this title and with respect to whom it is determined under section 3106(d) or (e) of this title that the achievement of a vocational goal currently is not reasonably feasible.

(c) The Secretary shall, to the maximum extent feasible, include among those veterans who are provided with programs of independent living services and assistance under this section substantial numbers of veterans described in subsection (b) of this section who are receiving long-term care in Department of Veterans Affairs hospitals and nursing homes and in nursing homes with which the Secretary contracts for the provision of care to veterans.

(d) A program of independent living services and assistance for a veteran shall consist of such services described in section 3104(a) of this title as the Secretary determines necessary to enable such veteran to achieve maximum independence in daily living. Such veteran shall have the same rights with respect to an individualized written plan of services and assistance as are afforded veterans under section 3107 of this title.

(e) Programs of independent living services and assistance shall be initiated for no more than 2600 veterans in each fiscal year, and the first priority in the provision of such programs 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.

(f) Entities described in this subsection are (1) public or nonprofit agencies or organizations, and (2) for-profit entities in cases in which the Secretary determines that services comparable in effectiveness to services available from such an entity are not available, or cannot be obtained cost-effectively from, public or nonprofit agencies or through facilities of the Veterans Health Administration.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2185, Sec. 1520; amended Pub. L. 99–576, title III, Sec. 333(a), (b)(6), (c), Oct. 28, 1986, 100 Stat. 3279; Pub. L. 100–689, title II, Sec. 202(b), Nov. 18, 1988, 102 Stat. 4176; Pub. L. 101–237, title IV, Sec. 404, 423(b)(1), Dec. 18, 1989, 103 Stat. 2080, 2092; renumbered Sec. 3120 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1201(b)(1), (d)(11), Nov. 2, 1994, 108 Stat. 4682, 4684; Pub. L. 104–275, title I, Sec. 101(f)(2)(D), (i), Oct. 9, 1996, 110 Stat. 3325; Pub. L. 107–103, title V, Sec. 508(a), Dec. 27, 2001, 115 Stat. 997; Pub. L. 110–389, title III, Sec. 332, Oct. 10, 2008, 122 Stat. 4170.)

§ 3121. Veterans' Advisory Committee on Rehabilitation

(a)(1) The Secretary shall appoint an advisory committee to be known as the Veterans' Advisory Committee on Rehabilitation (hereinafter in this section referred to as the "Committee").

(2) The members of the Committee shall be appointed by the Secretary from the general public and shall serve for terms to be determined by the Secretary not to exceed three years. Veterans with service-connected disabilities shall be appropriately represented in the membership of the Committee, and the Committee shall also include persons who have distinguished themselves in the public and private sectors in the fields of rehabilitation medicine, vocational guidance, vocational rehabilitation, and employment and training programs. The Secretary may designate one of the members of the Committee appointed under this paragraph to chair the Committee.

(3) The Committee shall also include as ex officio members the following: (A) one representative from the Veterans Health Administration and one from the Veterans Benefits Administration, (B) one representative from the Rehabilitation Services Administration of the Department of Education and one from the National Institute for Handicapped Research of the Department of Education, and (C) one representative of the Assistant Secretary of Labor for Veterans' Employment and Training of the Department of Labor.

(b) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the administration of veterans' rehabilitation programs under this title.

(c) The Committee shall submit to the Secretary an annual report on the rehabilitation programs and activities of the Department of Veterans Affairs and shall submit such other reports and recommendations to the Secretary as the Committee determines appropriate. The annual report shall include an assessment of the rehabilitation needs of veterans and a review of the programs and activities of the Department of Veterans Affairs designed to meet such needs. The Secretary shall submit with each annual report submitted to the Congress pursuant to section 529 of this title a copy of all reports and recommendations of the Committee submitted to the Secretary since the previous annual report of the Secretary was submitted to the Congress pursuant to such section.

(Added Pub. L. 96–466, title I, Sec. 101(a), Oct. 17, 1980, 94 Stat. 2186, Sec. 1521; amended Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–54, Sec. 14(c)(5), June 13, 1991, 105 Stat. 285; renumbered Sec. 3121 and amended Pub. L. 102–83, Sec. 2(c)(3), 5(a), Aug. 6, 1991, 105 Stat. 402, 406; Pub. L. 103–446, title XII, Sec. 1201(b)(1), (i)(5), Nov. 2, 1994, 108 Stat. 4682, 4688.)

§ 3122. Longitudinal study of vocational rehabilitation programs

(a) STUDY REQUIRED.—(1) Subject to the availability of appropriated funds, the Secretary shall conduct a longitudinal study of a statistically valid sample of each of the groups of individuals described in paragraph (2). The Secretary shall study each such group over a period of at least 20 years.

(2) The groups of individuals described in this paragraph are the following:

(A) Individuals who begin participating in a vocational rehabilitation program under this chapter during fiscal year 2010.

(B) Individuals who begin participating in such a program during fiscal year 2012.

(C) Individuals who begin participating in such a program during fiscal year 2014.

(b) ANNUAL REPORTS.—By not later than July 1 of each year covered by the study required under subsection (a), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the study during the preceding year.

(c) CONTENTS OF REPORT.—The Secretary shall include in the report required under subsection (b) any data the Secretary determines is necessary to determine the long-term outcomes of the individuals participating in the vocational rehabilitation programs under this chapter. The Secretary may add data elements from time to time as necessary. In addition, each such report shall contain the following information:

(1) The number of individuals participating in vocational rehabilitation programs under this chapter who suspended participation in such a program during the year covered by the report.

(2) The average number of months such individuals served on active duty.

(3) The distribution of disability ratings of such individuals.

(4) The types of other benefits administered by the Secretary received by such individuals.

(5) The types of social security benefits received by such individuals.

(6) Any unemployment benefits received by such individuals.

(7) The average number of months such individuals were employed during the year covered by the report.

(8) The average annual starting and ending salaries of such individuals who were employed during the year covered by the report.

(9) The number of such individuals enrolled in an institution of higher learning, as that term is defined in section 3452(f) of this title.

(10) The average number of academic credit hours, degrees, and certificates obtained by such individuals during the year covered by the report.

(11) The average number of visits such individuals made to Department medical facilities during the year covered by the report.

(12) The average number of visits such individuals made to non-Department medical facilities during the year covered by the report.

(13) The average annual income of such individuals.

(14) The average total household income of such individuals for the year covered by the report.

(15) The percentage of such individuals who own their principal residences.

(16) The average number of dependents of each such veteran.

(Added Pub. L. 110–389, title III, Sec. 334(a), Oct. 10, 2008, 122 Stat. 4172.)

Chapter 32 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 32—POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER I—PURPOSE; DEFINITIONS

§ 3201. Purpose

It is the purpose of this chapter (1) to provide educational assistance to those men and women who enter the Armed Forces after December 31, 1976, and before July 1, 1985, (2) to assist young men and women in obtaining an education they might not otherwise be able to afford, and (3) to promote and assist the all volunteer military program of the United States by attracting qualified men and women to serve in the Armed Forces.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2393, Sec. 1601; amended Pub. L. 99–576, title III, Sec. 309(a)(1), Oct. 28, 1986, 100 Stat. 3270; renumbered Sec. 3201, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3202. Definitions

For the purposes of this chapter—

(1)(A) The term "eligible veteran" means any veteran who is not eligible for educational assistance under chapter 34 of this title and who (i) entered military service on or after January 1, 1977, and before July 1, 1985, served on active duty for a period of more than 180 days commencing on or after January 1, 1977, and was discharged or released therefrom under conditions other than dis-

honorable, or (ii) entered military service on or after January 1, 1977, and before July 1, 1985, and was discharged or released from active duty after January 1, 1977, for a service-connected disability.

(B) The requirement of discharge or release, prescribed in subparagraph (A), shall be waived in the case of any participant who has completed his or her first obligated period of active duty (which began after December 31, 1976) or 6 years of active duty (which began after December 31, 1976), whichever period is less.

(C) For the purposes of subparagraphs (A) and (B), the term "active duty" does not include any period during which an individual (i) was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians, (ii) served as a cadet or midshipman at one of the service academies, or (iii) served under the provisions of section 511(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(D)(i) The requirement of ineligibility for educational assistance under chapter 34 of this title, prescribed in subparagraph (A), shall be waived in the case of a veteran described in division (ii) of this subparagraph who elects to receive benefits under this chapter instead of assistance under such chapter 34. A veteran who makes such an election shall be ineligible for assistance under such chapter. Such an election is irrevocable.

(ii) A veteran referred to in division (i) of this subparagraph is a veteran who before January 1, 1977, performed military service described in subparagraph (C)(iii), is entitled under section 3452(a)(3)(C) of this title to have such service considered to be "active duty" for the purposes of chapter 34 of this title, and is eligible for assistance under such chapter only by reason of having such service considered to be active duty.

(2) The term "program of education"—

(A) has the meaning given such term in section 3452(b) of this title, and

(B) includes (i) a full-time program of apprenticeship or other on-job training approved as provided in clause (1) or (2), as appropriate, of section 3687(a) of this title, and (ii) in the case of an individual who is not serving on active duty, a cooperative program (as defined in section 3482(a)(2) of this title).

(3) The term "participant" is a person who is participating in the educational benefits program established under this chapter.

(4) The term "educational institution" has the meaning given such term in section 3452(c) of this title.

(5) The term "training establishment" has the meaning given such term in section 3452(e) of this title.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2394, Sec. 1602; amended Pub. L. 96–466, title IV, Sec. 401, Oct. 17, 1980, 94 Stat. 2201; Pub. L. 98–223, title II, Sec. 203(a), Mar. 2, 1984, 98 Stat. 41; Pub. L. 99–576, title III, Sec. 309(a)(2), 310(a), Oct. 28, 1986, 100 Stat. 3270, 3271; Pub. L. 100–689, title I, Sec. 108(b)(1), Nov. 18, 1988, 102 Stat. 4169; Pub. L. 102–54, Sec. 14(c)(6), June 13, 1991, 105 Stat. 285; renumbered Sec. 3202 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 109–163, div. A, title V, Sec. 515(e)(3), Jan. 6, 2006, 119 Stat. 3236.)

SUBCHAPTER II—ELIGIBILITY; CONTRIBUTIONS; AND MATCHING FUND

§ 3221. Eligibility

(a) Each person entering military service on or after January 1, 1977, and before July 1, 1985, shall have the right to enroll in the educational benefits program provided by this chapter (hereinafter in this chapter referred to as the "program" except where the text indicates otherwise) at any time during such person's service on active duty before July 1, 1985. When a person elects to enroll in the program, such person must participate for at least 12 consecutive months before disenrolling or suspending participation.

(b) The requirement for 12 consecutive months of participation required by subsection (a) of this section shall not apply when (1) the participant suspends participation or disenrolls from the program because of personal hardship as defined in regulations issued jointly by the Secretary and the Secretary of Defense, or (2) the participant is discharged or released from active duty.

(c) A participant shall be permitted to suspend participation or disenroll from the program at the end of any 12-consecutive-month period of participation. If participation is suspended, the participant shall be eligible to make additional contributions to the program under such terms and conditions as shall be prescribed by regulations issued jointly by the Secretary and the Secretary of Defense.

(d) If a participant disenrolls from the program, such participant forfeits any entitlement to benefits under the program except as provided in subsection (e) of this section. A participant who disenrolls from the program is eligible for a refund of such participant's contributions as provided in section 3223 of this title.

(e) A participant who has disenrolled may be permitted to reenroll in the program under such conditions as shall be prescribed jointly by the Secretary and the Secretary of Defense.

(f) An individual who serves in the Selected Reserve may not receive credit for such service under both the program established by this chapter and the program established by chapter 106 of title 10 but shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) the program to which such service is to be credited.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2394, Sec. 1621; amended Pub. L. 99–576, title III, Sec. 309(a)(3), Oct. 28, 1986, 100 Stat. 3270; Pub. L. 101–237, title IV, Sec. 410, 423(b)(1)(A), (4)(A), (6), Dec. 18, 1989, 103 Stat. 2084, 2092, 2093; renumbered Sec. 3221 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3222. Contributions; matching fund

(a) Except as provided in subsections (c) and (d) of this section, each person electing to participate in the program shall agree to have a monthly deduction made from such person's military pay. Such monthly deduction shall be in any amount not less than $25 nor more than $100 except that the amount must be divisible by 5. Any such amount contributed by the participant or contributed by the Secretary of Defense pursuant to subsection (c) of this section shall be deposited in a deposit fund account entitled the "Post-

Vietnam Era Veterans Education Account" (hereinafter in this chapter referred to as the "fund") to be established in the Treasury of the United States. Contributions made by the participant shall be limited to a maximum of $2,700.

(b) Except as otherwise provided in this chapter, each monthly contribution made by a participant under subsection (a) shall entitle the participant to matching funds from the Department of Defense at the rate of $2 for each $1 contributed by the participant.

(c) The Secretary of Defense is authorized to contribute to the fund of any participant such contributions as the Secretary of Defense deems necessary or appropriate to encourage persons to enter or remain in the Armed Forces, including contributions in lieu of, or to reduce the amount of, monthly deductions under subsection (a) of this section. The Secretary of Defense is authorized to issue such rules and regulations as the Secretary of Defense deems necessary or appropriate to implement the provisions of this subsection.

(d) Subject to the maximum contribution prescribed by subsection (a) of this section, a participant shall be permitted, while serving on active duty, to make a lump-sum contribution to the fund. A lump-sum contribution to the fund by a participant shall be in addition to or in lieu of monthly deductions made from such participant's military pay and shall be considered, for the purposes of paragraph (2) of section 3231(a) of this title, to have been made by monthly deductions from such participant's military pay in the amount of $100 per month or in such lesser amount as may be specified by such participant pursuant to regulations issued jointly by the Secretary of Defense and the Secretary.

(e) Any amount transferred to the Secretary from the Secretary of a military department under an interagency agreement for the administration by the Department of Veterans Affairs of an educational assistance program established by the Secretary of Defense under chapter 107 of title 10 may be deposited into and disbursed from the fund for the purposes of such program.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2395, Sec. 1622; amended Pub. L. 94–502, title IV, Sec. 408(b), Oct. 15, 1976, 90 Stat. 2398; Pub. L. 96–466, title IV, Sec. 406, Oct. 17, 1980, 94 Stat. 2202; Pub. L. 97–306, title II, Sec. 209, 210, Oct. 14, 1982, 96 Stat. 1436; Pub. L. 98–160, title VII, Sec. 702(6), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 101–237, title IV, Sec. 423(b)(1), (4)(A), (B), (D), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3222 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3223. Refunds of contributions upon disenrollment

(a) Contributions made to the program by a participant may be refunded only after the participant has disenrolled from the program or as provided in section 3224 of this title.

(b) If a participant disenrolls from the program prior to discharge or release from active duty, such participant's contributions will be refunded on the date of the participant's discharge or release from active duty or within 60 days of receipt of notice by the Secretary of the participant's discharge or disenrollment, except that refunds may be made earlier in instances of hardship or other good reason as prescribed in regulations issued jointly by the Secretary and the Secretary of Defense.

(c) If a participant disenrolls from the program after discharge or release from active duty, the participant's contributions shall be refunded within 60 days of receipt of an application for a refund from the participant.

(d) In the event the participant (1) dies while on active duty, (2) dies after discharge or release from active duty, or (3) disenrolls or is disenrolled from the program without having utilized any entitlement, the participant may have accrued under the program, or, in the event the participant utilizes part of such participant's entitlement and disenrolls or is disenrolled from the program, the amount contributed by the Secretary of Defense under the authority of section 3222(c) of this title remaining in the fund shall be refunded to such Secretary.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2395, Sec. 1623; amended Pub. L. 98–160, title VII, Sec. 702(7), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (4)(A), (7), Dec. 18, 1989, 103 Stat. 2092, 2093; renumbered Sec. 3223 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3224. Death of participant

In the event of a participant's death, the amount of such participant's unused contributions to the fund shall be paid to the living person or persons first listed below:

(1) The beneficiary or beneficiaries designated by such participant under such participant's Servicemembers' Group Life Insurance policy.

(2) The surviving spouse of the participant.

(3) The surviving child or children of the participant, in equal shares.

(4) The surviving parent or parents of the participant, in equal shares.

If there is no such person living, such amount shall be paid to such participant's estate.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2395, Sec. 1624; amended Pub. L. 96–466, title IV, Sec. 402, Oct. 17, 1980, 94 Stat. 2201; renumbered Sec. 3224, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title IV, Sec. 405(c)(2), Oct. 9, 1996, 110 Stat. 3340.)

§ 3225. Discharge or release under conditions which would bar the use of benefits

If a participant in the program is discharged or released from active duty under dishonorable conditions, such participant is automatically disenrolled and any contributions made by such participant shall be refunded to such participant on the date of such participant's discharge or release from active duty or within 60 days from receipt of notice by the Secretary of such discharge or release, whichever is later.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2396, Sec. 1625; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3225, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

SUBCHAPTER III—ENTITLEMENT; DURATION

§ 3231. Entitlement; loan eligibility

(a)(1) Subject to the provisions of section 3695 of this title limiting the aggregate period for which any person may receive assistance under two or more programs of educational or vocational assistance administered by the Department of Veterans Affairs, a participant shall be entitled to a maximum of 36 monthly benefit payments (or their equivalent in the event of part-time benefits).

(2) Except as provided in paragraph (5)(E) of this subsection and in subsection (e) of this section and section 3233 of this title and subject to section 3241 of this title, the amount of the monthly payment to which any eligible veteran is entitled shall be ascertained by (A) adding all contributions made to the fund by the eligible veteran, (B) multiplying the sum by 3, (C) adding all contributions made to the fund for such veteran by the Secretary of Defense, and (D) dividing the sum by the lesser of 36 or the number of months in which contributions were made by such veteran.

(3) Payment of benefits under this chapter may be made only for periods of time during which an eligible veteran is actually enrolled in and pursuing an approved program of education and, except as provided in paragraph (4), only after an eligible veteran has been discharged or released from active duty.

(4) Payment of benefits under this chapter may be made after a participant has completed his or her first obligated period of active duty (which began after December 31, 1976), or 6 years of active duty (which began after December 31, 1976), whichever period is less.

(5)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph—

(i) shall not be charged against the entitlement of any eligible veteran under this chapter; and

(ii) shall not be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of assistance.

(B) The payment of an educational assistance allowance referred to in subparagraph (A) of this paragraph is any payment of a monthly benefit under this chapter to an eligible veteran for pursuit of a course or courses under this chapter if the Secretary finds that the eligible veteran—

(i) in the case of a person not serving on active duty, had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10; or

(ii) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered to a new duty location or assignment or to perform an increased amount of work; and

(iii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) or (ii) of this subparagraph, his or her course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(iii) of this paragraph.

(D) The amount in the fund for each eligible veteran who received a payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall be restored to the amount that would have been in the fund for the veteran if the payment had not been made. For purposes of carrying out the previous sentence, the Secretary of Defense shall deposit into the fund, on behalf of each such veteran, an amount equal to the entire amount of the payment made to the veteran.

(E) In the case of a veteran who discontinues pursuit of a course or courses as described in subparagraph (B) of this paragraph, the formula for ascertaining the amount of the monthly payment to which the veteran is entitled in paragraph (2) of this subsection shall be implemented as if—

(i) the payment made to the fund by the Secretary of Defense under subparagraph (D) of this paragraph, and

(ii) any payment for a course or courses described in subparagraph (B) of this paragraph that was paid out of the fund, had not been made or paid.

(b) Any enlisted member of the Armed Forces participating in the program shall be eligible to enroll in a course, courses, or program of education for the purpose of attaining a secondary school diploma (or an equivalency certificate), as authorized by section 3491(a) of this title, during the last six months of such member's first enlistment and at any time thereafter.

(c) When an eligible veteran is pursuing a program of education under this chapter by correspondence, such eligible veteran's entitlement shall be charged at the rate of 1 month's entitlement for each month of benefits paid to the eligible veteran (computed on the basis of the formula provided in subsection (a)(2) of this section).

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

(2) Paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a program of education under this chapter while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.

(e)(1) Subject to subsection (a)(1) of this section, each individual who is pursuing a program of education consisting exclusively of flight training approved as meeting the requirements of section 3241(b) of this title shall be paid educational assistance under this chapter in the amount equal to 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

(2) No payment may be paid under this chapter to an individual for any month during which such individual is pursuing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the institution providing such training a certification of the flight training received by the individual during that month and the tuition and other fees charged for that training.

(3) The entitlement of an eligible veteran pursuing a program of education described in paragraph (1) of this subsection shall be charged at the rate of one month for each amount of educational assistance paid which is equal to the monthly benefit otherwise payable to such veteran (computed on the basis of the formula provided in subsection (a)(2) of this section).

(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2396, Sec. 1631; amended Pub. L. 96–466, title IV, Sec. 403, 404, Oct. 17, 1980, 94 Stat. 2201; Pub. L. 97–35, title XX, Sec. 2003(a)(1), 2005(a), Aug. 13, 1981, 95 Stat. 782; Pub. L. 99–576, title III, Sec. 310(b)(1), Oct. 28, 1986, 100 Stat. 3271; Pub. L. 100–689, title I, Sec. 108(b)(2), 122, Nov. 18, 1988, 102 Stat. 4170, 4174; Pub. L. 101–237, title IV, Sec. 423(b)(1), (4)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–16, Sec. 7(b), Mar. 22, 1991, 105 Stat. 51; renumbered Sec. 3231 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–127, Sec. 2(b), Oct. 10, 1991, 105 Stat. 619; Pub. L. 102–568, title III, Sec. 310(c), Oct. 29, 1992, 106 Stat. 4330; Pub. L. 104–275, title I, Sec. 105(b), Oct. 9, 1996, 110 Stat. 3327; Pub. L. 105–368, title X, Sec. 1005(b)(7), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 107–103, title I, Sec. 103(a), (d), Dec. 27, 2001, 115 Stat. 979; Pub. L. 109–461, title X, Sec. 1002(c), Dec. 22, 2006, 120 Stat. 3465.)

§ 3232. Duration; limitations

(a)(1) Except as provided in paragraphs (2) and (3), and subject to paragraph (4), of this subsection, educational assistance benefits shall not be afforded an eligible veteran under this chapter more than 10 years after the date of such veteran's last discharge or release from active duty.

(2)(A) If any eligible veteran was prevented from initiating or completing such veteran's chosen program of education during the delimiting period determined under paragraph (1) of this subsection because of a physical or mental disability which was not the result of such veteran's own willful misconduct, such veteran shall,

upon application made in accordance with subparagraph (B) of this paragraph, be granted an extension of the applicable delimiting period for such length of time as the Secretary determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education.

(B) An extension of the delimiting period applicable to an eligible veteran may be granted under subparagraph (A) of this paragraph by reason of the veteran's mental or physical disability only if the veteran submits an application for such extension to the Secretary within one year after (i) the last date of the delimiting period otherwise applicable to the veteran under paragraph (1) of this subsection, or (ii) the termination date of the period of the veteran's mental or physical disability, whichever is later.

(3) When an extension of the applicable delimiting period is granted an eligible veteran under paragraph (2) of this subsection, the delimiting period with respect to such veteran shall again begin to run on the first day after such veteran's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations prescribed by the Secretary, for such veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

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

(b)(1) In the event that an eligible veteran has not utilized any or all of such veteran's entitlement by the end of the delimiting period applicable to the veteran under subsection (a) of this section and at the end of one year thereafter has not filed a claim for utilizing such entitlement, such eligible veteran is automatically disenrolled.

(2)(A) Any contributions which were made by a veteran disenrolled under paragraph (1) of this subsection and remain in the fund shall be refunded to the veteran after notice of disenrollment is transmitted to the veteran and the veteran applies for such refund.

(B) If no application for refund of contributions under subparagraph (A) of this paragraph is received from a disenrolled veteran within one year after the date the notice referred to in such subparagraph is transmitted to the veteran, it shall be presumed that the veteran's whereabouts is unknown and the funds shall be transferred to the Secretary for payments for entitlement earned under subchapter II of chapter 30.

(c)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a licensing or certification test described in section 3452(b) of this title is the lesser of $2,000 or the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for such licensing or certification test is equal to

the number (including any fraction) determined by dividing the total amount paid to such individual for such test by the full-time monthly institutional rate of the educational assistance allowance which, except for paragraph (1), such individual would otherwise be paid under this chapter.

(3) In no event shall payment of educational assistance under this subsection for such a test exceed the amount of the individual's available entitlement under this chapter.

(d)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2396, Sec. 1632; amended Pub. L. 97–258, Sec. 3(k)(2), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 98–160, title VII, Sec. 702(8), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 99–576, title III, Sec. 311, Oct. 28, 1986, 100 Stat. 3272; Pub. L. 101–237, title IV, Sec. 420(a)(2), 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2087, 2092; Pub. L. 102–16, Sec. 4, Mar. 22, 1991, 105 Stat. 49; renumbered Sec. 3232 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title I, Sec. 106(c)(1), Oct. 9, 1996, 110 Stat. 3329; Pub. L. 106–419, title I, Sec. 122(b)(2), Nov. 1, 2000, 114 Stat. 1834; Pub. L. 108–454, title I, Sec. 106(b)(2), Dec. 10, 2004, 118 Stat. 3603.)

§ 3233. Apprenticeship or other on-job training

(a) Except as provided in subsection (b) of this section, the amount of the monthly benefit payment to an individual pursuing a full-time program of apprenticeship or other on-job training under this chapter is—

(1) for each of the first six months of the individual's pursuit of such program, 75 percent of the monthly benefit payment otherwise payable to such individual under this chapter;

(2) for each of the second six months of the individual's pursuit of such program, 55 percent of such monthly benefit payment; and

(3) for each of the months following the first 12 months of the individual's pursuit of such program, 35 percent of such monthly benefit payment.

(b) In any month in which an individual pursuing a program of education consisting of a program of apprenticeship or other on-job training fails to complete 120 hours of training, the amount of the monthly benefit payment payable under this chapter to the individual shall be limited to the same proportion of the applicable rate determined under subsection (a) of this section as the number

of hours worked during such month, rounded to the nearest eight hours, bears to 120 hours.

(c) For each month that an individual is paid a monthly benefit payment under this chapter, the individual's entitlement under this chapter shall be charged at the rate of—

(1) 75 percent of a month in the case of payments made in accordance with subsection (a)(1) of this section;

(2) 55 percent of a month in the case of payments made in accordance with subsection (a)(2) of this section; and

(3) 35 percent of a month in the case of payments made in accordance with subsection (a)(3) of this section.

(d) For any month in which an individual fails to complete 120 hours of training, the entitlement otherwise chargeable under subsection (c) of this section shall be reduced in the same proportion as the monthly benefit payment payable is reduced under subsection (b) of this section.

(Added Pub. L. 99–576, title III, Sec. 310(b)(2), Oct. 28, 1986, 100 Stat. 3271, Sec. 1633; amended Pub. L. 101–237, title IV, Sec. 423(a)(7), Dec. 18, 1989, 103 Stat. 2091; renumbered Sec. 3233, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3234. Tutorial assistance

(a) An individual entitled to benefits under this chapter shall also be entitled to the benefits provided an eligible veteran under section 3492 of this title, subject to the conditions applicable to an eligible veteran under such section. Any amount paid to an individual under this section shall be in addition to the amount of other benefits paid under this chapter.

(b) An individual's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of educational assistance paid to the individual under this section in excess of $600.

(c) An individual's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of $600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.

(d) Payments of benefits under this section shall be made—

(1) in the case of the first $600 of such benefits paid to an individual, from funds appropriated, or otherwise available, to the Department of Veterans Affairs for the payment of readjustment benefits; and

(2) in the case of payments to an individual for such benefits in excess of $600, from the fund from contributions made to the fund by the veteran and by the Secretary of Defense in the same proportion as these contributions are used to pay other educational assistance to the individual under this chapter.

(Added Pub. L. 100–689, title I, Sec. 107(b)(1), Nov. 18, 1988, 102 Stat. 4168, Sec. 1634; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(B), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3234 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

SUBCHAPTER IV—ADMINISTRATION

§ 3241. Requirements

(a)(1) The provisions of sections 3470, 3471, 3474, 3476, 3483, 3485, and 3491(a)(1) of this title and the provisions of chapter 36 of this title (with the exception of section 3687) shall be applicable with respect to individuals who are pursuing programs of education while serving on active duty.

(2) The Secretary may, without regard to the application to this chapter of so much of the provisions of section 3471 of this title as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is "already qualified", and pursuant to such regulations as the Secretary shall prescribe, approve the enrollment of such individual in refresher courses (including courses which will permit such individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the period of such veteran's active military service), deficiency courses, or other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education.

(b) The Secretary may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of this title) by an individual entitled to basic educational assistance under this chapter if—

(1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

(2) the individual possesses a valid pilot certificate and meets, on the day the individual begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; and

(3) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

(c) The provisions of sections 3470, 3471, 3474, 3476, 3483, and 3491(a) (other than clause (1)) of this title and the provisions of chapter 36 of this title (with the exception of section 3687) shall be applicable with respect to individuals who are pursuing programs of education following discharge or release from active duty.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2397, Sec. 1641; amended Pub. L. 96–466, title IV, Sec. 405, Oct. 17, 1980, 94 Stat. 2202; Pub. L. 97–35, title XX, Sec. 2003(a)(2), Aug. 13, 1981, 95 Stat. 782; Pub. L. 99–576, title III, Sec. 308(b), 310(c), Oct. 28, 1986, 100 Stat. 3270, 3272; Pub. L. 100–689, title I, Sec. 106(b), Nov. 18, 1988, 102 Stat. 4167; Pub. L. 101–237, title IV, Sec. 423(a)(5)(B), (b)(1)(A), Dec. 18, 1989, 103 Stat. 2091, 2092; Pub. L. 102–16, Sec. 2(b)(2), 7(a), Mar. 22, 1991, 105 Stat. 49, 51; renumbered Sec. 3241 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 313(a)(5), Oct. 29, 1992, 106 Stat. 4332; Pub. L. 103–446, title VI, Sec. 601(b), title XII, Sec. 1201(d)(12), Nov. 2, 1994, 108 Stat. 4670, 4684; Pub. L. 105–368, title II, Sec. 204(a), Nov. 11, 1998, 112 Stat. 3327.)

[§ 3242. Vacant]

§ 3243. Deposits; reports

Deductions made by the Department of Defense from the military pay of any participant shall be promptly transferred to the Secretary for deposit in the fund. The Secretary of Defense shall also submit to the Secretary a report each month showing the name, service number, and the amount of the deduction made from the military pay of each initial enrollee, any contribution made by the Secretary of Defense pursuant to section 3222(c) of this title, as well as any changes in each participant's enrollment and/or contribution. The report shall also include any additional information the Secretary and the Secretary of Defense deem necessary to administer this program. The Secretary shall maintain accounts showing contributions made to the fund by individual participants and by the Secretary of Defense as well as disbursements made from the fund in the form of benefits.

(Added Pub. L. 94–502, title IV, Sec. 404, Oct. 15, 1976, 90 Stat. 2397, Sec. 1643; amended Pub. L. 98–160, title VII, Sec. 702(9), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (4)(D), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3243 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

Chapter 33 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[Chapter 33 effective as of August 1, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 33—POST-9/11 EDUCATIONAL ASSISTANCE

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SUBCHAPTER I—DEFINITIONS

§ 3301. Definitions

In this chapter:

(1) The term "active duty" has the meanings as follows (subject to the limitations specified in sections 3002(6) and 3311(b)):

(A) In the case of members of the regular components of the Armed Forces, the meaning given such term in section 101(21)(A).

(B) In the case of members of the reserve components of the Armed Forces, service on active duty under a call or order to active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10.

(2) The term "entry level and skill training" means the following:

(A) In the case of members of the Army, Basic Combat Training and Advanced Individual Training.

(B) In the case of members of the Navy, Recruit Training (or Boot Camp) and Skill Training (or so-called "A" School).

(C) In the case of members of the Air Force, Basic Military Training and Technical Training.

(D) In the case of members of the Marine Corps, Recruit Training and Marine Corps Training (or School of Infantry Training).

(E) In the case of members of the Coast Guard, Basic Training.

(3) The term "program of education" has the meaning given such term in section 3002, except to the extent otherwise provided in section 3313.

(4) The term "Secretary of Defense" means the Secretary of Defense, except that the term means the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2359.)

SUBCHAPTER II—EDUCATIONAL ASSISTANCE

§ 3311. Educational assistance for service in the Armed Forces commencing on or after September 11, 2001: entitlement

(a) ENTITLEMENT.—Subject to subsections (d) and (e), each individual described in subsection (b) is entitled to educational assistance under this chapter.

(b) COVERED INDIVIDUALS.—An individual described in this subsection is any individual as follows:

(1) An individual who—

(A) commencing on or after September 11, 2001, serves an aggregate of at least 36 months on active duty in the Armed Forces (including service on active duty in entry level and skill training); and

(B) after completion of service described in subparagraph (A)—

(i) continues on active duty; or

(ii) is discharged or released from active duty as described in subsection (c).

(2) An individual who—

(A) commencing on or after September 11, 2001, serves at least 30 continuous days on active duty in the Armed Forces; and

(B) after completion of service described in subparagraph (A), is discharged or released from active duty in the Armed Forces for a service-connected disability.

(3) An individual who—

(A) commencing on or after September 11, 2001, serves an aggregate of at least 30 months, but less than 36 months, on active duty in the Armed Forces (including service on active duty in entry level and skill training); and

(B) after completion of service described in subparagraph (A)—

(i) continues on active duty for an aggregate of less than 36 months; or

(ii) before completion of service on active duty of an aggregate of 36 months, is discharged or released from active duty as described in subsection (c).

(4) An individual who—

(A) commencing on or after September 11, 2001, serves an aggregate of at least 24 months, but less than 30 months, on active duty in the Armed Forces (including service on active duty in entry level and skill training); and

(B) after completion of service described in subparagraph (A)—

(i) continues on active duty for an aggregate of less than 30 months; or

(ii) before completion of service on active duty of an aggregate of 30 months, is discharged or released from active duty as described in subsection (c).

(5) An individual who—

(A) commencing on or after September 11, 2001, serves an aggregate of at least 18 months, but less than 24 months, on active duty in the Armed Forces (excluding service on active duty in entry level and skill training); and

(B) after completion of service described in subparagraph (A)—

(i) continues on active duty for an aggregate of less than 24 months; or

(ii) before completion of service on active duty of an aggregate of 24 months, is discharged or released from active duty as described in subsection (c).

(6) An individual who—

(A) commencing on or after September 11, 2001, serves an aggregate of at least 12 months, but less than 18 months, on active duty in the Armed Forces (excluding service on active duty in entry level and skill training); and

(B) after completion of service described in subparagraph (A)—

(i) continues on active duty for an aggregate of less than 18 months; or

(ii) before completion of service on active duty of an aggregate of 18 months, is discharged or released from active duty as described in subsection (c).

(7) An individual who—

(A) commencing on or after September 11, 2001, serves an aggregate of at least 6 months, but less than 12 months, on active duty in the Armed Forces (excluding service on active duty in entry level and skill training); and

(B) after completion of service described in subparagraph (A)—

(i) continues on active duty for an aggregate of less than 12 months; or

(ii) before completion of service on active duty of an aggregate of 12 months, is discharged or released from active duty as described in subsection (c).

(8) An individual who—

(A) commencing on or after September 11, 2001, serves an aggregate of at least 90 days, but less than 6 months, on active duty in the Armed Forces (excluding service on active duty in entry level and skill training); and

(B) after completion of service described in subparagraph (A)—

(i) continues on active duty for an aggregate of less than 6 months; or

(ii) before completion of service on active duty of an aggregate of 6 months, is discharged or released from active duty as described in subsection (c).

(c) COVERED DISCHARGES AND RELEASES.—A discharge or release from active duty of an individual described in this subsection is a discharge or release as follows:

(1) A discharge from active duty in the Armed Forces with an honorable discharge.

(2) A release after service on active duty in the Armed Forces characterized by the Secretary concerned as honorable service and placement on the retired list, transfer to the Fleet Reserve or Fleet Marine Corps Reserve, or placement on the temporary disability retired list.

(3) A release from active duty in the Armed Forces for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(4) A discharge or release from active duty in the Armed Forces for—

(A) a medical condition which preexisted the service of the individual as described in the applicable paragraph of subsection (b) and which the Secretary determines is not service-connected;

(B) hardship; or

(C) 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 concerned in accordance with regulations prescribed by the Secretary of Defense.

(d) PROHIBITION ON TREATMENT OF CERTAIN SERVICE AS PERIOD OF ACTIVE DUTY.—The following periods of service shall not be considered a part of the period of active duty on which an individual's entitlement to educational assistance under this chapter is based:

(1) A period of service on active duty of an officer pursuant to an agreement under section 2107(b) of title 10.

(2) A period of service on active duty of an officer pursuant to an agreement under section 4348, 6959, or 9348 of title 10.

(3) A period of service that is terminated because of a defective enlistment and induction based on—

(A) the individual's being a minor for purposes of service in the Armed Forces;

(B) an erroneous enlistment or induction; or

(C) a defective enlistment agreement.

(e) TREATMENT OF INDIVIDUALS ENTITLED UNDER MULTIPLE PROVISIONS.—In the event an individual entitled to educational assistance under this chapter is entitled by reason of both paragraphs (4) and (5) of subsection (b), the individual shall be treated as being entitled to educational assistance under this chapter by reason of paragraph (5) of subsection (b).

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2359.)

§ 3312. Educational assistance: duration

(a) IN GENERAL.—Subject to section 3695 and except as provided in subsections (b) and (c), an individual entitled to educational assistance under this chapter is entitled to a number of months of educational assistance under section 3313 equal to 36 months.

(b) CONTINUING RECEIPT.—The receipt of educational assistance under section 3313 by an individual entitled to educational assistance under this chapter is subject to the provisions of section 3321(b)(2).

(c) DISCONTINUATION OF EDUCATION FOR ACTIVE DUTY.—

(1) IN GENERAL.—Any payment of educational assistance described in paragraph (2) shall not—

(A) be charged against any entitlement to educational assistance of the individual concerned under this chapter; or

(B) be counted against the aggregate period for which section 3695 limits the individual's receipt of educational assistance under this chapter.

(2) DESCRIPTION OF PAYMENT OF EDUCATIONAL ASSISTANCE.—Subject to paragraph (3), the payment of educational assistance described in this paragraph is the payment of such assistance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

(A)(i) in the case of an individual not serving on active duty, had to discontinue such course pursuit as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10; or (ii) in the case of an individual serving on active duty, had to discontinue such course pursuit as a result of being ordered to a new duty location or assignment or to perform an increased amount of work; and

(B) failed to receive credit or lost training time toward completion of the individual's approved education, professional, or vocational objective as a result of having to discontinue, as described in subparagraph (A), the individual's course pursuit.

(3) PERIOD FOR WHICH PAYMENT NOT CHARGED.—The period for which, by reason of this subsection, educational assistance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall not exceed the portion of the period of enrollment in the

course or courses from which the individual failed to receive credit or with respect to which the individual lost training time, as determined under paragraph (2)(B).

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2362.)

§ 3313. Educational assistance: amount; payment

(a) PAYMENT.—The Secretary shall pay to each individual entitled to educational assistance under this chapter who is pursuing an approved program of education (other than a program covered by subsections (e) and (f)) the amounts specified in subsection (c) to meet the expenses of such individual's subsistence, tuition, fees, and other educational costs for pursuit of such program of education.

(b) APPROVED PROGRAMS OF EDUCATION.—A program of education is an approved program of education for purposes of this chapter if the program of education is offered by an institution of higher learning (as that term is defined in section 3452(f)) and is approved for purposes of chapter 30 (including approval by the State approving agency concerned).

(c) AMOUNT OF EDUCATIONAL ASSISTANCE.—The amounts payable under this subsection for pursuit of an approved program of education are amounts as follows:

(1) In the case of an individual entitled to educational assistance under this chapter by reason of section 3311(b)(1) or 3311(b)(2), amounts as follows:

(A) An amount equal to the established charges for the program of education, except that the amount payable under this subparagraph may not exceed the maximum amount of established charges regularly charged in-State students for full-time pursuit of approved programs of education for undergraduates by the public institution of higher education offering approved programs of education for undergraduates in the State in which the individual is enrolled that has the highest rate of regularly-charged established charges for such programs of education among all public institutions of higher education in such State offering such programs of education.

(B) A monthly stipend in an amount as follows:

(i) For each month the individual pursues the program of education (other than, in the case of assistance under this section only, a program of education offered through distance learning), a monthly housing stipend amount equal to the monthly amount of the basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution of higher education at which the individual is enrolled.

(ii) For the first month of each quarter, semester, or term, as applicable, of the program of education pursued by the individual, a lump sum amount for books, supplies, equipment, and other educational

costs with respect to such quarter, semester, or term in the amount equal to—

(I) $1,000, multiplied by

(II) the fraction which is the portion of a complete academic year under the program of education that such quarter, semester, or term constitutes.

(2) In the case of an individual entitled to educational assistance under this chapter by reason of section 3311(b)(3), amounts equal to 90 percent of the amounts that would be payable to the individual under paragraph (1) for the program of education if the individual were entitled to amounts for the program of education under paragraph (1) rather than this paragraph.

(3) In the case of an individual entitled to educational assistance under this chapter by reason of section 3311(b)(4), amounts equal to 80 percent of the amounts that would be payable to the individual under paragraph (1) for the program of education if the individual were entitled to amounts for the program of education under paragraph (1) rather than this paragraph.

(4) In the case of an individual entitled to educational assistance under this chapter by reason of section 3311(b)(5), amounts equal to 70 percent of the amounts that would be payable to the individual under paragraph (1) for the program of education if the individual were entitled to amounts for the program of education under paragraph (1) rather than this paragraph.

(5) In the case of an individual entitled to educational assistance under this chapter by reason of section 3311(b)(6), amounts equal to 60 percent of the amounts that would be payable to the individual under paragraph (1) for the program of education if the individual were entitled to amounts for the program of education under paragraph (1) rather than this paragraph.

(6) In the case of an individual entitled to educational assistance under this chapter by reason of section 3311(b)(7), amounts equal to 50 percent of the amounts that would be payable to the individual under paragraph (1) for the program of education if the individual were entitled to amounts for the program of education under paragraph (1) rather than this paragraph.

(7) In the case of an individual entitled to educational assistance under this chapter by reason of section 3311(b)(8), amounts equal to 40 percent of the amounts that would be payable to the individual under paragraph (1) for the program of education if the individual were entitled to amounts for the program of education under paragraph (1) rather than this paragraph.

(d) FREQUENCY OF PAYMENT.—

(1) QUARTER, SEMESTER, OR TERM PAYMENTS.—Payment of the amounts payable under subsection (c)(1)(A), and of similar amounts payable under paragraphs (2) through (7) of subsection (c), for pursuit of a program of education shall be made

for the entire quarter, semester, or term, as applicable, of the program of education.

(2) MONTHLY PAYMENTS.—Payment of the amount payable under subsection (c)(1)(B), and of similar amounts payable under paragraphs (2) through (7) of subsection (c), for pursuit of a program of education shall be made on a monthly basis.

(3) REGULATIONS.—The Secretary shall prescribe in regulations methods for determining the number of months (including fractions thereof) of entitlement of an individual to educational assistance this chapter that are chargeable under this chapter for an advance payment of amounts under paragraphs (1) and (2) for pursuit of a program of education on a quarter, semester, term, or other basis.

(e) PROGRAMS OF EDUCATION PURSUED ON ACTIVE DUTY.—

(1) IN GENERAL.—Educational assistance is payable under this chapter for pursuit of an approved program of education while on active duty.

(2) AMOUNT OF ASSISTANCE.—The amount of educational assistance payable under this chapter to an individual pursuing a program of education while on active duty is the lesser of—

(A) the established charges which similarly circumstanced nonveterans enrolled in the program of education involved would be required to pay; or

(B) the amount of the charges of the educational institution as elected by the individual in the manner specified in section 3014(b)(1) [1]

(3) QUARTER, SEMESTER, OR TERM PAYMENTS.—Payment of the amount payable under paragraph (2) for pursuit of a program of education shall be made for the entire quarter, semester, or term, as applicable, of the program of education.

(4) MONTHLY PAYMENTS.—For each month (as determined pursuant to the methods prescribed under subsection (d)(3)) for which amounts are paid an individual under this subsection, the entitlement of the individual to educational assistance under this chapter shall be charged at the rate of one month for each such month.

(f) PROGRAMS OF EDUCATION PURSUED ON HALF-TIME BASIS OR LESS.—

(1) IN GENERAL.—Educational assistance is payable under this chapter for pursuit of an approved program of education on half-time basis or less.

(2) AMOUNT OF ASSISTANCE.—The educational assistance payable under this chapter to an individual pursuing a program of education on half-time basis or less is the amounts as follows:

(A) The amount equal to the lesser of—

(i) the established charges which similarly circumstanced nonveterans enrolled in the program of education involved would be required to pay; or

(ii) the maximum amount that would be payable to the individual for the program of education under

[1] So in original. Should be followed by a period.

paragraph (1)(A) of subsection (c), or under the provisions of paragraphs (2) through (7) of subsection (c) applicable to the individual, for the program of education if the individual were entitled to amounts for the program of education under subsection (c) rather than this subsection.

(B) A stipend in an amount equal to the amount of the appropriately reduced amount of the lump sum amount for books, supplies, equipment, and other educational costs otherwise payable to the individual under subsection (c).

(3) QUARTER, TERM, OR SEMESTER PAYMENTS.—Payment of the amounts payable to an individual under paragraph (2) for pursuit of a program of education on half-time basis or less shall be made for the entire quarter, semester, or term, as applicable, of the program of education.

(4) MONTHLY PAYMENTS.—For each month (as determined pursuant to the methods prescribed under subsection (d)(3)) for which amounts are paid an individual under this subsection, the entitlement of the individual to educational assistance under this chapter shall be charged at a percentage of a month equal to—

(A) the number of course hours borne by the individual in pursuit of the program of education involved, divided by

(B) the number of course hours for full-time pursuit of such program of education.

(g) PAYMENT OF ESTABLISHED CHARGES TO EDUCATIONAL INSTITUTIONS.—Amounts payable under subsections (c)(1)(A) (and of similar amounts payable under paragraphs (2) through (7) of subsection (c)), (e)(2), and (f)(2)(A) shall be paid directly to the educational institution concerned.

(h) ESTABLISHED CHARGES DEFINED.—

(1) IN GENERAL.—In this section, 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.

(2) BASIS OF DETERMINATION.—Established charges shall be determined for purposes of this subsection 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.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2363.)

§ 3314. Tutorial assistance

(a) IN GENERAL.—Subject to subsection (b), an individual entitled to educational assistance under this chapter shall also be entitled to benefits provided an eligible veteran under section 3492.

(b) CONDITIONS.—

(1) IN GENERAL.—The provision of benefits under subsection (a) shall be subject to the conditions applicable to an eligible veteran under section 3492.

(2) CERTIFICATION.—In addition to the conditions specified in paragraph (1), benefits may not be provided to an individual under subsection (a) unless the professor or other individual teaching, leading, or giving the course for which such benefits are provided certifies that—

(A) such benefits are essential to correct a deficiency of the individual in such course; and

(B) such course is required as a part of, or is prerequisite or indispensable to the satisfactory pursuit of, an approved program of education.

(c) AMOUNT.—

(1) IN GENERAL.—The amount of benefits described in subsection (a) that are payable under this section may not exceed $100 per month, for a maximum of 12 months, or until a maximum of $1,200 is utilized.

(2) AS ADDITIONAL ASSISTANCE.—The amount provided an individual under this subsection is in addition to the amounts of educational assistance paid the individual under section 3313.

(d) NO CHARGE AGAINST ENTITLEMENT.—Any benefits provided an individual under subsection (a) are in addition to any other educational assistance benefits provided the individual under this chapter.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2366.)

§ 3315. Licensure and certification tests

(a) IN GENERAL.—An individual entitled to educational assistance under this chapter shall also be entitled to payment for one licensing or certification test described in section 3452(b).

(b) LIMITATION ON AMOUNT.—The amount payable under subsection (a) for a licensing or certification test may not exceed the lesser of—

(1) $2,000; or

(2) the fee charged for the test.

(c) NO CHARGE AGAINST ENTITLEMENT.—Any amount paid an individual under subsection (a) is in addition to any other educational assistance benefits provided the individual under this chapter.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2367.)

§ 3316. Supplemental educational assistance: members with critical skills or specialty; members serving additional service

(a) INCREASED ASSISTANCE FOR MEMBERS WITH CRITICAL SKILLS OR SPECIALTY.—

(1) IN GENERAL.—In the case of an individual who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, the Secretary concerned may increase the monthly amount of educational assistance otherwise payable to the individual under paragraph (1)(B) of section 3313(c), or under paragraphs (2) through (7) of such section (as applicable).

(2) MAXIMUM AMOUNT OF INCREASE IN ASSISTANCE.—The amount of the increase in educational assistance authorized by paragraph (1) may not exceed the amount equal to the monthly amount of increased basic educational assistance providable under section 3015(d)(1) at the time of the increase under paragraph (1).

(b) SUPPLEMENTAL ASSISTANCE FOR ADDITIONAL SERVICE.—

(1) IN GENERAL.—The Secretary concerned may provide for the payment to an individual entitled to educational assistance under this chapter of supplemental educational assistance for additional service authorized by subchapter III of chapter 30. The amount so payable shall be payable as an increase in the monthly amount of educational assistance otherwise payable to the individual under paragraph (1)(B) of section 3313(c), or under paragraphs (2) through (7) of such section (as applicable).

(2) ELIGIBILITY.—Eligibility for supplement educational assistance under this subsection shall be determined in accordance with the provisions of subchapter III of chapter 30, except that any reference in such provisions to eligibility for basic educational assistance under a provision of subchapter II of chapter 30 shall be treated as a reference to eligibility for educational assistance under the appropriate provision of this chapter.

(3) AMOUNT.—The amount of supplemental educational assistance payable under this subsection shall be the amount equal to the monthly amount of supplemental educational payable under section 3022.

(c) REGULATIONS.—The Secretaries concerned shall administer this section in accordance with such regulations as the Secretary of Defense shall prescribe.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2367.)

§ 3317. Public-private contributions for additional educational assistance

(a) ESTABLISHMENT OF PROGRAM.—In instances where the educational assistance provided pursuant to section 3313(c)(1)(A) does not cover the full cost of established charges (as specified in section 3313), the Secretary shall carry out a program under which colleges and universities can, voluntarily, enter into an agreement with the Secretary to cover a portion of those established charges not otherwise covered under section 3313(c)(1)(A), which contributions shall be matched by equivalent contributions toward such costs by the Secretary. The program shall only apply to covered individuals described in paragraphs (1) and (2) of section 3311(b).

(b) DESIGNATION OF PROGRAM.—The program under this section shall be known as the "Yellow Ribbon G.I. Education Enhancement Program".

(c) AGREEMENTS.—The Secretary shall enter into an agreement with each college or university seeking to participate in the program under this section. Each agreement shall specify the following:

(1) The manner (whether by direct grant, scholarship, or otherwise) of the contributions to be made by the college or university concerned.

(2) The maximum amount of the contribution to be made by the college or university concerned with respect to any particular individual in any given academic year.

(3) The maximum number of individuals for whom the college or university concerned will make contributions in any given academic year.

(4) Such other matters as the Secretary and the college or university concerned jointly consider appropriate.

(d) MATCHING CONTRIBUTIONS.—

(1) IN GENERAL.—In instances where the educational assistance provided an individual under section 3313(c)(1)(A) does not cover the full cost of tuition and mandatory fees at a college or university, the Secretary shall provide up to 50 percent of the remaining costs for tuition and mandatory fees if the college or university voluntarily enters into an agreement with the Secretary to match an equal percentage of any of the remaining costs for such tuition and fees.

(2) USE OF APPROPRIATED FUNDS.—Amounts available to the Secretary under section 3324(b) for payment of the costs of this chapter shall be available to the Secretary for purposes of paragraph (1).

(e) OUTREACH.—The Secretary shall make available on the Internet website of the Department available to the public a current list of the colleges and universities participating in the program under this section. The list shall specify, for each college or university so listed, appropriate information on the agreement between the Secretary and such college or university under subsection (c).

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2368.)

§ 3318. Additional assistance: relocation or travel assistance for individual relocating or traveling significant distance for pursuit of a program of education

(a) ADDITIONAL ASSISTANCE.—Each individual described in subsection (b) shall be paid additional assistance under this section in the amount of $500.

(b) COVERED INDIVIDUALS.—An individual described in this subsection is any individual entitled to educational assistance under this chapter—

(1) who resides in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile, according to the most recent decennial Census; and

(2) who—

(A) physically relocates a distance of at least 500 miles in order to pursue a program of education for which the individual utilizes educational assistance under this chapter; or

(B) travels by air to physically attend an institution of higher education for pursuit of such a program of education because the individual cannot travel to such institution by automobile or other established form of transportation due to an absence of road or other infrastructure.

(c) PROOF OF RESIDENCE.—For purposes of subsection (b)(1), an individual may demonstrate the individual's place of residence utilizing any of the following:

(1) DD Form 214, Certification of Release or Discharge from Active Duty.

(2) The most recent Federal income tax return.

(3) Such other evidence as the Secretary shall prescribe for purposes of this section.

(d) SINGLE PAYMENT OF ASSISTANCE.—An individual is entitled to only one payment of additional assistance under this section.

(e) NO CHARGE AGAINST ENTITLEMENT.—Any amount paid an individual under this section is in addition to any other educational assistance benefits provided the individual under this chapter.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2369.)

§ 3319. Authority to transfer unused education benefits to family members

(a) IN GENERAL.—Subject to the provisions of this section, the Secretary of Defense may authorize the Secretary concerned, to promote recruitment and retention of members of the Armed Forces, to permit an individual described in subsection (b) who is entitled to educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such individual's entitlement to such assistance, subject to the limitation under subsection (d).

(b) ELIGIBLE INDIVIDUALS.—An individual referred to in subsection (a) is any member of the Armed Forces who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, has completed at least—

(1) six years of service in the armed forces and enters into an agreement to serve at least four more years as a member of the Armed Forces; or

(2) the years of service as determined in regulations pursuant to section (k).

(c) ELIGIBLE DEPENDENTS.—An individual approved to transfer an entitlement to educational assistance under this section may transfer the individual's entitlement as follows:

(1) To the individual's spouse.

(2) To one or more of the individual's children.

(3) To a combination of the individuals referred to in paragraphs (1) and (2).

(d) LIMITATION ON MONTHS OF TRANSFER.—The total number of months of entitlement transferred by a individual under this section may not exceed 36 months. The Secretary of Defense may pre-

scribe regulations that would limit the months of entitlement that may be transferred under this section to no less than 18 months.

(e) DESIGNATION OF TRANSFEREE.—An individual transferring an entitlement to educational assistance under this section shall—

(1) designate the dependent or dependents to whom such entitlement is being transferred;

(2) designate the number of months of such entitlement to be transferred to each such dependent; and

(3) specify the period for which the transfer shall be effective for each dependent designated under paragraph (1).

(f) TIME FOR TRANSFER; REVOCATION AND MODIFICATION.—

(1) TIME FOR TRANSFER.—Subject to the time limitation for use of entitlement under section 3321 an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the armed forces when the transfer is executed.

(2) MODIFICATION OR REVOCATION.—

(A) IN GENERAL.—An individual transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred.

(B) NOTICE.—The modification or revocation of the transfer of entitlement under this paragraph shall be made by the submittal of written notice of the action to both the Secretary concerned and the Secretary of Veterans Affairs.

(3) PROHIBITION ON TREATMENT OF TRANSFERRED ENTITLEMENT AS MARITAL PROPERTY.—Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(g) COMMENCEMENT OF USE.—A dependent to whom entitlement to educational assistance is transferred under this section may not commence the use of the transferred entitlement until—

(1) in the case of entitlement transferred to a spouse, the completion by the individual making the transfer of at least—

(A) six years of service in the armed forces; or

(B) the years of service as determined in regulations pursuant to subsection (j); or

(2) in the case of entitlement transferred to a child, both—

(A) the completion by the individual making the transfer of at least—

(i) ten years of service in the armed forces; or

(ii) the years of service as determined in regulations pursuant to subsection (j); and

(B) either—

(i) the completion by the child of the requirements of a secondary school diploma (or equivalency certificate); or

(ii) the attainment by the child of 18 years of age.

(h) ADDITIONAL ADMINISTRATIVE MATTERS.—

(1) USE.—The use of any entitlement to educational assistance transferred under this section shall be charged against the entitlement of the individual making the transfer at the

rate of one month for each month of transferred entitlement that is used.

(2) NATURE OF TRANSFERRED ENTITLEMENT.—Except as provided under subsection (e)(2) and subject to paragraphs (5) and (6)—

(A) in the case of entitlement transferred to a spouse under this section, the spouse is entitled to educational assistance under this chapter in the same manner as the individual from whom the entitlement was transferred; or

(B) in the case of entitlement transferred to a child under this section, the child is entitled to educational assistance under this chapter in the same manner as the individual from whom the entitlement was transferred as if the individual were not on active duty.

(3) RATE OF PAYMENT.—The monthly rate of educational assistance payable to a dependent to whom entitlement referred to in paragraph (2) is transferred under this section shall be payable—

(A) in the case of a spouse, at the same rate as such entitlement would otherwise be payable under this chapter to the individual making the transfer; or

(B) in the case of a child, at the same rate as such entitlement would otherwise be payable under this chapter to the individual making the transfer as if the individual were not on active duty.

(4) DEATH OF TRANSFEROR.—The death of an individual transferring an entitlement under this section shall not affect the use of the entitlement by the dependent to whom the entitlement is transferred.

(5) LIMITATION ON AGE OF USE BY CHILD TRANSFEREES.—A child to whom entitlement is transferred under this section may use the benefit without regard to the 15-year delimiting date, but may not use any entitlement so transferred after attaining the age of 26 years.

(6) SCOPE OF USE BY TRANSFEREES.—The purposes for which a dependent to whom entitlement is transferred under this section may use such entitlement shall include the pursuit and completion of the requirements of a secondary school diploma (or equivalency certificate).

(7) ADDITIONAL ADMINISTRATIVE PROVISIONS.—The administrative provisions of this chapter shall apply to the use of entitlement transferred under this section, except that the dependent to whom the entitlement is transferred shall be treated as the eligible individual for purposes of such provisions.

(i) OVERPAYMENT.—

(1) JOINT AND SEVERAL LIABILITY.—In the event of an overpayment of educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the individual making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685.

(2) FAILURE TO COMPLETE SERVICE AGREEMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if an individual transferring entitlement under this

section fails to complete the service agreed to by the individual under subsection (b)(1) in accordance with the terms of the agreement of the individual under that subsection, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of educational assistance under paragraph (1).

(B) EXCEPTION.—Subparagraph (A) shall not apply in the case of an individual who fails to complete service agreed to by the individual—

(i) by reason of the death of the individual; or

(ii) for a reason referred to in section 3311(c)(4).

(j) REGULATIONS.—(1) The Secretary of Defense, in coordination with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section.

(2) Such regulations shall specify—

(A) the manner of authorizing the transfer of entitlements under this section;

(B) the eligibility criteria in accordance with subsection (b); and

(C) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2).

(k) SECRETARY CONCERNED DEFINED.—Notwithstanding section 101(25), in this section, the term "Secretary concerned" means—

(1) the Secretary of the Army with respect to matters concerning the Army;

(2) the Secretary of the Navy with respect to matters concerning the Navy or the Marine Corps;

(3) the Secretary of the Air Force with respect to matters concerning the Air Force; and

(4) the Secretary of Defense with respect to matters concerning the Coast Guard, or the Secretary of Homeland Security when it is not operating as a service in the Navy.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2369.)

SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

§ 3321. Time limitation for use of and eligibility for entitlement

(a) IN GENERAL.—Except as provided in 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 15-year period beginning on the date of such individual's last discharge or release from active duty.

(b) EXCEPTIONS.—

(1) APPLICABILITY OF SECTION 3031 TO RUNNING OF PERIOD.—Subsections (b), (c), and (d) of section 3031 shall apply with respect to the running of the 15-year period described in subsection (a) of this section in the same manner as such subsections apply under section 3031 with respect to the running of the 10-year period described in section 3031(a).

(2) APPLICABILITY OF SECTION 3031 TO TERMINATION.—Section 3031(f) shall apply with respect to the termination of an individual's entitlement to educational assistance under this

chapter in the same manner as such section applies to the termination of an individual's entitlement to educational assistance under chapter 30, except that, in the administration of such section for purposes of this chapter, the reference to section 3013 shall be deemed to be a reference to 3312.

(3) DETERMINATION OF LAST DISCHARGE OR RELEASE.—For purposes of subsection (a), an individual's last discharge or release from active duty shall not include any discharge or release from a period of active duty of less than 90 days of continuous service, unless the individual is discharged or released as described in section 3311(b)(2).

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2373.)

§ 3322. Bar to duplication of educational assistance benefits

(a) IN GENERAL.—An individual entitled to educational assistance under this chapter who is also eligible for educational assistance under chapter 30, 31, 32, or 35 of this title, chapter 107, 1606, or 1607 of title 10, or the provisions of the Hostage Relief Act of 1980 (Public Law 96–449; 5 U.S.C. 5561 note) may not receive assistance under two or more such programs concurrently, but shall elect (in such form and manner as the Secretary may prescribe) under which chapter or provisions to receive educational assistance.

(b) INAPPLICABILITY OF SERVICE TREATED UNDER EDUCATIONAL LOAN REPAYMENT PROGRAMS.—A period of service counted for purposes of repayment of an education loan under chapter 109 of title 10 may not be counted as a period of service for entitlement to educational assistance under this chapter.

(c) SERVICE IN SELECTED RESERVE.—An individual who serves in the Selected Reserve may receive credit for such service under only one of this chapter, chapter 30 of this title, and chapters 1606 and 1607 of title 10, and shall elect (in such form and manner as the Secretary may prescribe) under which chapter such service is to be credited.

(d) ADDITIONAL COORDINATION MATTERS.—In the case of an individual entitled to educational assistance under chapter 30, 31, 32, or 35 of this title, chapter 107, 1606, or 1607 of title 10, or the provisions of the Hostage Relief Act of 1980, or making contributions toward entitlement to educational assistance under chapter 30 of this title, as of August 1, 2009, coordination of entitlement to educational assistance under this chapter, on the one hand, and such chapters or provisions, on the other, shall be governed by the provisions of section 5003(c) of the Post-9/11 Veterans Educational Assistance Act of 2008.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2373.)

§ 3323. Administration

(a) IN GENERAL.—

(1) IN GENERAL.—Except as otherwise provided in this chapter, the provisions specified in section 3034(a)(1) shall apply to the provision of educational assistance under this chapter.

(2) SPECIAL RULE.—In applying the provisions referred to in paragraph (1) to an individual entitled to educational assistance under this chapter for purposes of this section, the reference in such provisions to the term "eligible veteran" shall be deemed to refer to an individual entitled to educational assistance under this chapter.

(3) RULE FOR APPLYING SECTION 3474.—In applying section 3474 to an individual entitled to educational assistance under this chapter for purposes of this section, the reference in such section 3474 to the term "educational assistance allowance" shall be deemed to refer to educational assistance payable under section 3313.

(4) RULE FOR APPLYING SECTION 3482.—In applying section 3482(g) to an individual entitled to educational assistance under this chapter for purposes of this section—

(A) the first reference to the term "educational assistance allowance" in such section 3482(g) shall be deemed to refer to educational assistance payable under section 3313; and

(B) the first sentence of paragraph (1) of such section 3482(g) shall be applied as if such sentence ended with "equipment".

(b) INFORMATION ON BENEFITS.—

(1) TIMING FOR PROVIDING.—The Secretary shall provide the information described in paragraph (2) to each member of the Armed Forces at such times as the Secretary and the Secretary of Defense shall jointly prescribe in regulations.

(2) DESCRIPTION OF INFORMATION.—The information described in this paragraph is information on benefits, limitations, procedures, eligibility requirements (including time-in-service requirements), and other important aspects of educational assistance under this chapter, including application forms for such assistance under section 5102.

(3) TO WHOM PROVIDED.—The Secretary of Veterans Affairs shall furnish the information and forms described in paragraph (2), and other educational materials on educational assistance under this chapter, to educational institutions, training establishments, military education personnel, and such other persons and entities as the Secretary considers appropriate.

(c) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall prescribe regulations for the administration of this chapter.

(2) UNIFORMITY.—Any regulations prescribed by the Secretary of Defense for purposes of this chapter shall apply uniformly across the Armed Forces.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2374.)

§ 3324. Allocation of administration and costs

(a) ADMINISTRATION.—Except as otherwise provided in this chapter, the Secretary shall administer the provision of educational assistance under this chapter.

(b) COSTS.—Payments for entitlement to educational assistance earned under this chapter shall be made from funds appropriated

to, or otherwise made available to, the Department for the payment of readjustment benefits.

(Added Pub. L. 110–252, title V, Sec. 5003(a)(1), June 30, 2008, 122 Stat. 2375.)

Chapter 34 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 34—VETERANS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER I—PURPOSE

§ 3451. Purpose

The Congress of the United States hereby declares that the education program created by this chapter is for the purpose of (1) enhancing and making more attractive service in the Armed Forces of the United States, (2) extending the benefits of a higher education to qualified and deserving young persons who might not otherwise be able to afford such an education, (3) providing vocational readjustment and restoring lost educational opportunities to those service men and women whose careers have been interrupted or impeded by reason of active duty after January 31, 1955, and (4) aiding such persons in attaining the vocational and educational status which they might normally have aspired to and obtained had they not served their country.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 12, Sec. 1651; renumbered Sec. 3451, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3452. Definitions

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

(a)(1) The term "eligible veteran" means any veteran who—

(A) served on active duty for a period of more than 180 days, any part of which occurred after January 31, 1955, and before January 1, 1977, and was discharged or released therefrom under conditions other than dishonorable;

(B) contracted with the Armed Forces and was enlisted in or assigned to a reserve component prior to January 1, 1977, and as a result of such enlistment or assignment served on active duty for a period of more than 180 days, any part of which commenced within 12 months after January 1, 1977, and was discharged or released from such active duty under conditions other than dishonorable; or

(C) was discharged or released from active duty, any part of which was performed after January 31, 1955, and before January 1, 1977, or following entrance into active service from an enlistment provided for under subparagraph (B), because of a service-connected disability.

(2) The requirement of discharge or release, prescribed in subparagraph (A) or (B) of paragraph (1), shall be waived in the case of any individual who served more than 180 days in an active-duty status for so long as such individual continues on active duty without a break therein.

(3) For purposes of paragraph (1)(A) and section 3461(a), the term "active duty" does not include any period during which an individual (A) was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians, (B) served as a cadet or midshipman at one of the service academies, or (C) served under the provisions of section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve unless at some time subsequent to the completion of such period of active duty for training such individual served on active duty for a consecutive period of one year or more (not including any service as a cadet or midshipman at one of the service academies).

(b) The term "program of education" means any curriculum or any combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. Such term also means any curriculum of unit courses or subjects pursued at an educational institution which fulfill requirements for the attainment of more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field. Such term also means any unit course or subject, or combination of courses or subjects, pursued by an eligible veteran at an educational institution, required by the Administrator of the Small

Business Administration as a condition to obtaining financial assistance under the provisions of section 7(i)(1) of the Small Business Act (15 U.S.C. 636(i)(1)). Such term also includes licensing or certification tests, the successful completion of which demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided such tests and the licensing or credentialing organizations or entities that offer such tests are approved by the Secretary in accordance with section 3689 of this title. Such term also includes any course, or combination of courses, offered by a qualified provider of entrepreneurship courses. Such term also includes national tests for admission to institutions of higher learning or graduate schools (such as the Scholastic Aptitude Test (SAT), Law School Admission Test (LSAT), Graduate Record Exam (GRE), and Graduate Management Admission Test (GMAT)) and national tests providing an opportunity for course credit at institutions of higher learning (such as the Advanced Placement (AP) exam and College-Level Examination Program (CLEP)).

(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. 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). Such term also includes any qualified provider of entrepreneurship courses.

(d) The term "dependent" means—

(1) a child of an eligible veteran;

(2) a dependent parent of an eligible veteran; and

(3) the spouse of an eligible veteran.

(e) The term "training establishment" means any of the following:

(1) An establishment providing apprentice or other on-job training, including those under the supervision of a college or university or any State department of education.

(2) An establishment providing self-employment on-job training consisting of full-time training for a period of less than six months that is needed or accepted for purposes of obtaining licensure to engage in a self-employment occupation or required for ownership and operation of a franchise that is the objective of the training.

(3) A State board of vocational education.

(4) A Federal or State apprenticeship registration agency.

(5) The sponsor of a program of apprenticeship.

(6) An agency of the Federal Government authorized to supervise such training.

(f) The term "institution of higher learning" means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution which is not located in a State, which offers a course leading to a standard college degree, or the equivalent, and which is recognized as such by the secretary of education (or comparable official) of the country or other jurisdiction in which the institution is located.

(g) The term "standard college degree" means an associate or higher degree awarded by (1) an institution of higher learning that is accredited as a collegiate institution by a recognized regional or national accrediting agency; or (2) an institution of higher learning that is a "candidate" for accreditation as that term is used by the regional or national accrediting agencies; or (3) an institution of higher learning upon completion of a course which is accredited by an agency recognized to accredit specialized degree-level programs. For the purpose of this section, the accrediting agency must be one recognized by the Secretary of Education under the provisions of section 3675 of this title.

(h) The term "qualified provider of entrepreneurship courses" means any of the following entities insofar as such entity offers, sponsors, or cosponsors an entrepreneurship course (as defined in section 3675(c)(2) of this title):

(1) Any small business development center described in section 21 of the Small Business Act (15 U.S.C. 648).

(2) The National Veterans Business Development Corporation (established under section 33 of the Small Business Act (15 U.S.C. 657c)).

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 13, Sec. 1652; amended Pub. L. 90–77, title III, Sec. 304(c), Aug. 31, 1967, 81 Stat. 186; Pub. L. 91–219, title II, Sec. 201, Mar. 26, 1970, 84 Stat. 78; Pub. L. 91–584, Sec. 10, Dec. 24, 1970, 84 Stat. 1577; Pub. L. 93–508, title II, Sec. 201, Dec. 3, 1974, 88 Stat. 1581; Pub. L. 94–502, title II, Sec. 202, 210(1), 211(1), title IV, Sec. 402, Oct. 15, 1976, 90 Stat. 2385, 2388, 2392; Pub. L. 96–466, title III, Sec. 307(a), title VIII, Sec. 801(a), Oct. 17, 1980, 94 Stat. 2193, 2216; Pub. L. 97–295, Sec. 4(38), Oct. 12, 1982, 96 Stat. 1307; renumbered Sec. 3452 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VI, Sec. 603(a), Nov. 2, 1994, 108 Stat. 4671; Pub. L. 104–275, title I, Sec. 102, Oct. 9, 1996, 110 Stat. 3326; Pub. L. 106–419, title I, Sec. 122(a), Nov. 1, 2000, 114 Stat. 1833; Pub. L. 107–14, Sec. 8(a)(4), June 5, 2001, 115 Stat. 34; Pub. L. 107–103, title I, Sec. 110(a), Dec. 27, 2001, 115 Stat. 986; Pub. L. 108–183, title III, Secs. 301(a), 305(c)–(e), Dec. 16, 2003, 117 Stat. 2658, 2660; Pub. L. 108–454, title I, Secs. 106(a), 110(a), Dec. 10, 2004, 118 Stat. 3602, 3605; Pub. L. 109–163, div. A, title V, Sec. 515(e)(4), Jan. 6, 2006, 119 Stat. 3236.)

SUBCHAPTER II—ELIGIBILITY AND ENTITLEMENT

§ 3461. Eligibility; entitlement; duration

(a) ENTITLEMENT.—Except as provided in subsection (c) and in the second sentence of this subsection, each eligible veteran shall be entitled to educational assistance under this chapter or chapter 36 for a period of one and one-half months (or the equivalent thereof in part-time educational assistance) for each month or fraction thereof of the veteran's service on active duty after January 31, 1955. If an eligible veteran has served a period of 18 months or more on active duty after January 31, 1955, and has been released from such service under conditions that would satisfy the veteran's active duty obligation, the veteran shall be entitled to educational assistance under this chapter for a period of 45 months (or the equivalent thereof in part-time educational assistance). In the case of any person serving on active duty on December 31, 1976, or a person whose eligibility is based on section 3452(a)(1)(B) of this chapter, the ending date for computing such person's entitlement shall be the date of such person's first discharge or release from active duty after December 31, 1976.

(b) ENTITLEMENT LIMITATIONS.—Whenever the period of entitlement under this section of an eligible veteran who is enrolled in an educational institution regularly operated on the quarter or semester system ends during a quarter or semester, such period shall be extended to the termination of such unexpired quarter or semester. In educational institutions not operated on the quarter or semester system, whenever the period of eligibility ends after a major portion of the course is completed such period shall be extended to the end of the course or for twelve weeks, whichever is the lesser period.

(c) DURATION OF ENTITLEMENT.—Except as provided in subsection (b) and in subchapter V of this chapter, no eligible veteran shall receive educational assistance under this chapter in excess of 45 months.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 13, Sec. 1661; amended Pub. L. 90–77, title III, Sec. 306(b)(2), Aug. 31, 1967, 81 Stat. 188; Pub. L. 90–631, Sec. 1(b), Oct. 23, 1968, 82 Stat. 1331; Pub. L. 91–219, title II, Sec. 204(a)(1), Mar. 26, 1970, 84 Stat. 79; Pub. L. 92–540, title IV, Sec. 401(1), Oct. 24, 1972, 86 Stat. 1089; Pub. L. 93–508, title II, Sec. 202, Dec. 3, 1974, 88 Stat. 1581; Pub. L. 94–502, title II, Sec. 203, 211(2), title IV, Sec. 403(a), Oct. 15, 1976, 90 Stat. 2386, 2388, 2393; Pub. L. 96–466, title VI, Sec. 601(b), Oct. 17, 1980, 94 Stat. 2208; renumbered Sec. 3461 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 109–233, title V, Sec. 503(8)(A), (B), June 15, 2006, 120 Stat. 416.)

§ 3462. Time limitations for completing a program of education

(a) DELIMITING PERIOD FOR COMPLETION.—(1) Subject to paragraph (4) of this subsection, no educational assistance shall be afforded an eligible veteran under this chapter beyond the date 10 years after the veteran's last discharge or release from active duty after January 31, 1955; except that, in the case of any eligible veteran who was prevented from initiating or completing such veteran's chosen program of education within such time period because of a physical or mental disability which was not the result of such veteran's own willful misconduct, such veteran shall, upon

application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of such mental or physical disability, or (C) October 1, 1980, whichever is the latest, be granted an extension of the applicable delimiting period for such length of time as the Secretary determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted a veteran under the preceding sentence, the delimiting period with respect to such veteran will again begin running on the first day following such veteran's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Secretary shall prescribe, for such veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter.

[(2) Repealed. Pub. L. 108–183, title III, Sec. 306(d), Dec. 16, 2003, 117 Stat. 2661.]

[(3) Repealed. Pub. L. 107–14, Sec. 8(a)(5), June 5, 2001, 115 Stat. 34.]

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

(b) CORRECTION OF DISCHARGE.—In the case of any eligible veteran who has been prevented, as determined by the Secretary, from completing a program of education under this chapter within the period prescribed by subsection (a), because the veteran had not met the nature of discharge requirements of this chapter before a change, correction, or modification of a discharge or dismissal made pursuant to section 1553 of title 10, the correction of the military records of the proper service department under section 1552 of title 10, or other corrective action by competent authority, then the 10-year delimiting period shall run from the date the veteran's discharge or dismissal was changed, corrected, or modified.

(c) SAVINGS CLAUSE.—In the case of any eligible veteran who was discharged or released from active duty before June 1, 1966, the 10-year delimiting period shall run from such date, if it is later than the date which otherwise would be applicable. In the case of any eligible veteran who was discharged or released from active duty before August 31, 1967, and who pursues a course of farm cooperative training, apprenticeship or other training on the job, the 10-year delimiting period shall run from August 31, 1967, if it is later than the date which would otherwise be applicable.

(d) PRISONERS OF WAR.—In the case of any veteran (1) who served on or after January 31, 1955, (2) who became eligible for educational assistance under the provisions of this chapter or chapter 36 of this title, and (3) who, subsequent to the veteran's last discharge or release from active duty, was captured and held as a prisoner of war by a foreign government or power, there shall be

excluded, in computing the veteran's 10-year period of eligibility for educational assistance, any period during which the veteran was so detained and any period immediately following the veteran's release from such detention during which the veteran was hospitalized at a military, civilian, or Department of Veterans Affairs medical facility.

(e) TERMINATION OF ASSISTANCE.—No educational assistance shall be afforded any eligible veteran under this chapter or chapter 36 of this title after December 31, 1989.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 14, Sec. 1662; amended Pub. L. 90–77, title III, Sec. 305, Aug. 31, 1967, 81 Stat. 188; Pub. L. 93–337, Sec. 1, July 10, 1974, 88 Stat. 292; Pub. L. 94–502, title II, Sec. 211(3), title IV, Sec. 403(b), Oct. 15, 1976, 90 Stat. 2388, 2393; Pub. L. 95–202, title II, Sec. 203(a)(1), (b)(1), Nov. 23, 1977, 91 Stat. 1439; Pub. L. 96–466, title III, Sec. 301, Oct. 17, 1980, 94 Stat. 2191; Pub. L. 97–35, title XX, Sec. 2003(b)(1), Aug. 13, 1981, 95 Stat. 782; Pub. L. 97–72, title II, Sec. 201(a), Nov. 3, 1981, 95 Stat. 1054; Pub. L. 97–295, Sec. 4(39), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 97–306, title II, Sec. 206(a), Oct. 14, 1982, 96 Stat. 1435; Pub. L. 98–160, title VII, Sec. 702(10), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 101–237, title IV, Sec. 420(a)(3), 423(b)(1), Dec. 18, 1989, 103 Stat. 2087, 2092; renumbered Sec. 3462 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–14, Sec. 8(a)(5), June 5, 2001, 115 Stat. 34; Pub. L. 108–183, title III, Sec. 306(d), Dec. 16, 2003, 117 Stat. 2661; Pub. L. 109–233, title V, Sec. 503(8)(A), (C), June 15, 2006, 120 Stat. 416.)

[§ 3463. Vacant]

SUBCHAPTER III—ENROLLMENT

§ 3470. Selection of program

Subject to the provisions of this chapter, each eligible veteran may select a program of education to assist the veteran in attaining an educational, professional, or vocational objective at any educational institution (approved in accordance with chapter 36 of this title) selected by the veteran, which will accept and retain the veteran as a student or trainee in any field or branch of knowledge which such institution finds the veteran qualified to undertake or pursue.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 15, Sec. 1670; amended Pub. L. 94–502, title II, Sec. 211(5), Oct. 15, 1976, 90 Stat. 2388; renumbered Sec. 3470, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3471. Applications; approval

Any eligible veteran, or any person on active duty (after consultation with the appropriate service education officer), who desires to initiate a program of education under this chapter shall submit an application to the Secretary which shall be in such form, and contain such information, as the Secretary shall prescribe. The Secretary shall approve such application unless the Secretary finds that (1) such veteran or person is not eligible for or entitled to the educational assistance for which application is made, (2) the veteran's or person's selected educational institution or training establishment fails to meet any requirement of this chapter or chapter 36 of this title, (3) the veteran's or person's enrollment in, or pursuit of, the program of education selected would violate any provision of this chapter or chapter 36 of this title, or (4) the veteran or person is already qualified, by reason of previous education or training, for the educational, professional, or vocational objective

for which the program of education is offered. The Secretary shall not treat a person as already qualified for the objective of a program of education offered by a qualified provider of entrepreneurship courses solely because such person is the owner or operator of a business. The Secretary shall notify the veteran or person of the approval or disapproval of the veteran's or person's application.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 15, Sec. 1671; amended Pub. L. 92–540, title III, Sec. 302, Oct. 24, 1972, 86 Stat. 1080; Pub. L. 94–502, title II, Sec. 211(6), Oct. 15, 1976, 90 Stat. 2388; Pub. L. 96–466, title III, Sec. 302, Oct. 17, 1980, 94 Stat. 2192; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3471, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 108–183, title III, Sec. 305(b), Dec. 16, 2003, 117 Stat. 2660.)

[§ 3472. Vacant]

[§ 3473. Repealed. Pub. L. 102–568, title III, Sec. 313(a)(3)(A), Oct. 29, 1992, 106 Stat. 4332]

§ 3474. Discontinuance for unsatisfactory conduct or progress

The Secretary shall discontinue the educational assistance allowance of an eligible veteran if, at any time, the Secretary finds that according to the regularly prescribed standards and practices of the educational institution, the veteran's attendance, conduct, or progress is unsatisfactory. The Secretary may renew the payment of the educational assistance allowance only if the Secretary finds that—

(1) the veteran will be resuming enrollment at the same educational institution in the same program of education and the educational institution has both approved such veteran's reenrollment and certified it to the Department of Veterans Affairs; or

(2) in the case of a proposed change of either educational institution or program of education by the veteran—

(A) the cause of the unsatisfactory attendance, conduct, or progress has been removed;

(B) the program proposed to be pursued is suitable to the veteran's aptitudes, interests, and abilities; and

(C) if a proposed change of program is involved, the change meets the requirements for approval under section 3691 of this title.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 16, Sec. 1674; amended Pub. L. 94–502, title II, Sec. 206, 211(8), Oct. 15, 1976, 90 Stat. 2387, 2388; Pub. L. 95–202, title III, Sec. 305(b)(1), Nov. 23, 1977, 91 Stat. 1443; Pub. L. 96–466, title III, Sec. 306, Oct. 17, 1980, 94 Stat. 2193; Pub. L. 101–237, title IV, Sec. 411(a), 412(b), 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2084, 2085, 2092; renumbered Sec. 3474 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

[§ 3475. Vacant]

§ 3476. Education outside the United States

An eligible veteran may not enroll in any course offered by an educational institution not located in a State unless that educational institution is an approved institution of higher learning and the course is approved by the Secretary. The Secretary may deny or discontinue educational assistance under this chapter in the case of any veteran enrolled in an institution of higher learning

not located in a State if the Secretary determines that such enrollment is not in the best interest of the veteran or the Federal Government.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 17, Sec. 1676; amended Pub. L. 94–502, title II, Sec. 211(9), Oct. 15, 1976, 90 Stat. 2389; Pub. L. 96–466, title III, Sec. 307(b), Oct. 17, 1980, 94 Stat. 2193; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3476, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VI, Sec. 604(a), Nov. 2, 1994, 108 Stat. 4671.)

[§§ 3477, 3478. Vacant]

SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS; VETERAN-STUDENT SERVICES

§ 3481. Educational assistance allowance

(a) GENERAL.—The Secretary shall, in accordance with the applicable provisions of this section and chapter 36 of this title, pay to each eligible veteran who is pursuing a program of education under this chapter an educational assistance allowance to meet, in part, the expenses of the veteran's subsistence, tuition, fees, supplies, books, equipment, and other educational costs.

(b) INSTITUTIONAL TRAINING.—The educational assistance allowance of an eligible veteran pursuing a program of education, other than a program exclusively by correspondence, at an educational institution shall be paid as provided in chapter 36 of this title.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 17, Sec. 1681; amended Pub. L. 91–219, title II, Sec. 205, Mar. 26, 1970, 84 Stat. 81; Pub. L. 91–584, Sec. 6, Dec. 24, 1970, 84 Stat. 1576; Pub. L. 92–540, title II, Sec. 202, Oct. 24, 1972, 86 Stat. 1079; Pub. L. 94–502, title II, Sec. 210(2), 211(10), Oct. 15, 1976, 90 Stat. 2388, 2389; Pub. L. 97–35, title XX, Sec. 2003(b)(4), Aug. 13, 1981, 95 Stat. 782; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3481, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; amended Pub. L. 109–233, title V, Sec. 503(8)(A), June 15, 2006, 120 Stat. 416.)

§ 3482. Computation of educational assistance allowances

(a)(1) Except as provided in subsection (b), (c), or (g) of this section, or section 3687 of this title, while pursuing a program of education under this chapter of half-time or more, each eligible veteran shall be paid the monthly educational assistance allowance set forth in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the applicable type of program as shown in column I:

Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time	$376	$448	$510	$32
Three-quarter-time	283	336	383	24
Half-time	188	224	255	17
Cooperative	304	355	404	23

(2) A "cooperative" program, other than a "farm cooperative" program, means a full-time program of education which consists of

institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion.

(b) The educational assistance allowance of an individual pursuing a program of education—

(1) while on active duty, or

(2) on less than a half-time basis,

shall be computed at the rate of (A) the established charges for tuition and fees which the institution requires similarly circumstanced nonveterans enrolled in the same program to pay, or (B) $376 per month for a full-time course, whichever is the lesser. An individual's entitlement shall be charged for institutional courses on the basis of the applicable monthly training time rate as determined under section 3688 of this title.

(c)(1) An eligible veteran who is enrolled in an educational institution for a "farm cooperative" program consisting of institutional agricultural courses prescheduled to fall within 44 weeks of any period of 12 consecutive months and who pursues such program on—

(A) a full-time basis (a minimum of ten clock hours per week or four hundred and forty clock hours in such year prescheduled to provide not less than eighty clock hours in any three-month period),

(B) a three-quarter-time basis (a minimum of 7 clock hours per week), or

(C) a half-time basis (a minimum of 5 clock hours per week),

shall be eligible to receive an educational assistance allowance at the appropriate rate provided in the table in paragraph (2) of this subsection, if such eligible veteran is concurrently engaged in agricultural employment which is relevant to such institutional agricultural courses as determined under standards prescribed by the Secretary. In computing the foregoing clock hour requirements there shall be included the time involved in field trips and individual and group instruction sponsored and conducted by the educational institution through a duly authorized instructor of such institution in which the veteran is enrolled.

(2) The monthly educational assistance allowance of an eligible veteran pursuing a farm cooperative program under this chapter shall be paid as set forth in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the basis shown in column I:

Column I	Column II	Column III	Column IV	Column V
Basis	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Full-time	$304	$355	$404	$23
Three-quarter-time	228	266	303	18
Half-time	152	178	202	12

(d)(1) Notwithstanding the prohibition in section 3471 of this title prohibiting enrollment of an eligible veteran in a program of

education in which such veteran has "already qualified," a veteran shall be allowed up to six months of educational assistance (or the equivalent thereof in part-time assistance) for the pursuit of refresher training to permit such veteran to update such veteran's knowledge and skills and to be instructed in the technological advances which have occurred in such veteran's field of employment during and since the period of such veteran's active military service.

(2) A veteran pursuing refresher training under this subsection shall be paid an educational assistance allowance based upon the rate prescribed in the table in subsection (a)(1) or in subsection (c)(2) of this section, whichever is applicable.

(3) The educational assistance allowance paid under the authority of this subsection shall be charged against the period of entitlement the veteran has earned pursuant to section 3461(a) of this title.

(e) The educational assistance allowance of an eligible veteran pursuing an independent study program which leads to a standard college degree shall be computed at the rate provided in subsection (b) of this section. If the entire training is to be pursued by independent study, the amount of such veteran's entitlement to educational assistance under this chapter shall be charged in accordance with the rate at which the veteran is pursuing the independent study program but at not more than the rate at which such entitlement is charged for pursuit of such program on less than a half-time basis. In any case in which independent study is combined with resident training, the educational assistance allowance shall be paid at the applicable institutional rate based on the total training time determined by adding the number of semester hours (or the equivalent thereof) of resident training to the number of semester hours (or the equivalent thereof) of independent study that do not exceed the number of semester hours (or the equivalent thereof) required for the less than half-time institutional rate, as determined by the Secretary, for resident training. A veteran's entitlement shall be charged for a combination of independent study and resident training on the basis of the applicable monthly training time rate as determined under section 3688 of this title.

(f) The educational assistance allowance of an eligible veteran pursuing a course by open circuit television shall be computed in the same manner that such allowance is computed under subsection (e) of this section for an independent study program.

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

title, whichever is the lesser. The amount of the educational assistance allowance payable to a veteran while so incarcerated shall be reduced to the extent that the tuition and fees of the veteran for any course are paid under any Federal program (other than a program administered by the Secretary) or under any State or local program.

(2) Paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a program of education under this chapter while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.

(h)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a licensing or certification test described in section 3452(b) of this title is the lesser of $2,000 or the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for such licensing or certification test is equal to the number (including any fraction) determined by dividing the total amount paid to such individual for such test by the full-time monthly institutional rate of the educational assistance allowance which, except for paragraph (1), such individual would otherwise be paid under this chapter.

(3) In no event shall payment of educational assistance under this subsection for such a test exceed the amount of the individual's available entitlement under this chapter.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 18, Sec. 1682; amended Pub. L. 90–77, title III, Sec. 301, 303(b), Aug. 31, 1967, 81 Stat. 184, 185; Pub. L. 90–631, Sec. 3, Oct. 23, 1968, 82 Stat. 1333; Pub. L. 91–219, title I, Sec. 103(a)–(d), title II, Sec. 204(a)(3), Mar. 26, 1970, 84 Stat. 76, 77, 79; Pub. L. 91–584, Sec. 9, Dec. 24, 1970, 84 Stat. 1577; Pub. L. 92–540, title I, Sec. 102(2)–(4), title III, Sec. 303, title IV, Sec. 401(4), (5), Oct. 24, 1972, 86 Stat. 1075, 1081, 1090; Pub. L. 93–508, title I, Sec. 102(2)–(4), title II, Sec. 204, Dec. 3, 1974, 88 Stat. 1579, 1582; Pub. L. 93–602, title II, Sec. 203(b), Jan. 2, 1975, 88 Stat. 1958; Pub. L. 94–502, title II, Sec. 201(1)–(3), 207, Oct. 15, 1976, 90 Stat. 2384, 2385, 2387; Pub. L. 95–202, title I, Sec. 102(2)–(4), Nov. 23, 1977, 91 Stat. 1434; Pub. L. 96–466, title II, Sec. 201(2)–(4), 211(2)–(4), title III, Sec. 308–310, title VI, Sec. 602(a), Oct. 17, 1980, 94 Stat. 2187–2190, 2194, 2208; Pub. L. 97–35, title XX, Sec. 2003(b)(5), Aug. 13, 1981, 95 Stat. 782; Pub. L. 97–306, title II, Sec. 204, 205(b), Oct. 14, 1982, 96 Stat. 1434; Pub. L. 98–160, title VII, Sec. 702(11), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 98–543, title II, Sec. 202(1)–(3), Oct. 24, 1984, 98 Stat. 2741; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3482 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–275, title I, Sec. 104(a), Oct. 9, 1996, 110 Stat. 3327; Pub. L. 106–419, title I, Sec. 122(b)(3), Nov. 1, 2000, 114 Stat. 1834; Pub. L. 109–461, title X, Sec. 1002(d), Dec. 22, 2006, 120 Stat. 3465.)

[§ 3482A. Vacant]

§ 3483. Approval of courses

An eligible veteran shall receive the benefits of this chapter while enrolled in a course of education offered by an educational institution only if such course is approved in accordance with the provisions of subchapter I of chapter 36 of this title.

(Added Pub. L. 89–358, Sec. 2, Mar. 3, 1966, 80 Stat. 19, Sec. 1685; renumbered Sec. 1686, Pub. L. 90–77, title III, Sec. 304(a), Aug. 31, 1967, 81 Stat. 186; renumbered Sec. 1683, Pub. L. 92–540, title IV, Sec. 401(7), Oct. 24, 1972, 86 Stat. 1090; renumbered Sec. 3483, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3484. Apprenticeship or other on-job training; correspondence courses

Any eligible veteran may pursue a program of apprenticeship or other on-job training or a program of education exclusively by correspondence and be paid an educational assistance allowance or training assistance allowance, as applicable, under the provisions of section 3687 or 3686 of this title.

(Added Pub. L. 92–540, title III, Sec. 304, Oct. 24, 1972, 86 Stat. 1081, Sec. 1684; renumbered Sec. 3484 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3485. Work-study allowance

(a)(1) Individuals utilized under the authority of subsection (b) shall be paid an additional educational assistance allowance (hereinafter in this section referred to as "work-study allowance"). Such allowance shall be paid in return for an individual's entering into an agreement described in paragraph (3).

(2) Such work-study allowance shall be paid in an amount equal to the product of—

(A) the applicable hourly minimum wage; and

(B) the number of hours worked during the applicable period.

(3) An agreement described in this paragraph is an agreement of an individual to perform services, during or between periods of enrollment, aggregating not more than a number of hours equal to 25 times the number of weeks in the semester or other applicable enrollment period, required in connection with a qualifying work-study activity.

(4) For the purposes of this section, the term "qualifying work-study activity" means any of the following:

(A) The outreach services program under chapter 63 of this title as carried out under the supervision of a Department employee or, during the period preceding June 30, 2010, outreach services to servicemembers and veterans furnished by employees of a State approving agency.

(B) The preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Department.

(C) The provision of hospital and domiciliary care and medical treatment under chapter 17 of this title, including, during the period preceding June 30, 2010, the provision of such care to veterans in a State home for which payment is made under section 1741 of this title.

(D) Any other activity of the Department as the Secretary determines appropriate.

(E) In the case of an individual who is receiving educational assistance under chapter 1606 or 1607 of title 10, an activity relating to the administration of that chapter at Department of Defense, Coast Guard, or National Guard facilities.

(F) During the period preceding June 30, 2010, an activity relating to the administration of a national cemetery or a State veterans' cemetery.

(5) An individual may elect, in a manner prescribed by the Secretary, to be paid in advance an amount equal to 40 percent of the total amount of the work-study allowance agreed to be paid under the agreement in return for the individual's agreement to perform the number of hours of work specified in the agreement (but not more than an amount equal to 50 times the applicable hourly minimum wage).

(6) For the purposes of this subsection and subsection (e), the term "applicable hourly minimum wages" means—

(A) the hourly minimum wage under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)); or

(B) the hourly minimum wage under comparable law of the State in which the services are to be performed, if such wage is higher than the wage referred to in subparagraph (A) and the Secretary has made a determination to pay such higher wage.

(b) Notwithstanding any other provision of law, the Secretary shall, subject to the provisions of subsection (e) of this section, utilize, in connection with the activities specified in subsection (a)(1) of this section, the service of individuals who are pursuing programs of rehabilitation, education, or training under chapter 30, 31, 32, 33, or 34 of this title or chapter 1606 or 1607 of title 10, at a rate equal to at least three-quarters of that required of a full-time student. In carrying out this section, the Secretary, wherever feasible, shall give priority to veterans with disabilities rated at 30 percent or more for purposes of chapter 11 of this title. In the event an individual ceases to be at least a three-quarter-time student before completing such agreement, the individual may, with the approval of the Secretary, be permitted to complete such agreement.

(c) The Secretary shall determine the number of individuals whose services the Department of Veterans Affairs can effectively utilize and the types of services that such individuals may be required to perform, on the basis of a survey, which the Secretary shall conduct annually, of each Department of Veterans Affairs regional office in order to determine the numbers of individuals whose services can effectively be utilized during an enrollment period in each geographical area where Department of Veterans Affairs activities are conducted, and shall determine which individuals shall be offered agreements under this section in accordance with regulations which the Secretary shall prescribe, including as criteria (1) the need of the individual to augment the veteran's educational assistance or subsistence allowance; (2) the availability to the individual of transportation to the place where the individual's services are to be performed; (3) the motivation of the individual; and (4) in the case of a disabled veteran pursuing a course of vocational rehabilitation under chapter 31 of this title, the compatibility of the work assignment to the veteran's physical condition.

(d) While performing the services authorized by this section, individuals shall be deemed employees of the United States for the purposes of the benefits of chapter 81 of title 5 but not for the purposes of laws administrated by the Office of Personnel Management.

(e)(1) Subject to paragraph (2) of this subsection, the Secretary may, notwithstanding any other provision of law, enter into an

agreement with an individual under this section, or a modification of such an agreement, whereby the individual agrees to perform a qualifying work-study activity described in subsection (a)(4) and agrees that the Secretary shall, in lieu of paying the work-study allowance payable for such services, as provided in subsection (a) of this section, deduct the amount of the allowance from the amount which the individual has been determined to be indebted to the United States by virtue of such individual's participation in a benefits program under this chapter, chapter 30, 31, 32, 33, 35, or 36 of this title, or chapter 1606 or 1607 of title 10 (other than an indebtedness arising from a refund penalty imposed under section 2135 of such title).

(2)(A) Subject to subparagraph (B) of this paragraph, the provisions of this section (other than those provisions which are determined by the Secretary to be inapplicable to an agreement under this subsection) shall apply to any agreement authorized under paragraph (1) of this subsection.

(B) For the purposes of this subsection, the Secretary may—

(i) waive, in whole or in part, the limitations in subsection (a) of this section concerning the number of hours and periods during which services can be performed by the individual and the provisions of subsection (b) of this section requiring the individual's pursuit of a program of rehabilitation, education, or training;

(ii) in accordance with such terms and conditions as may be specified in the agreement under this subsection, waive or defer charging interest and administrative costs pursuant to section 5315 of this title on the indebtedness to be satisfied by performance of the agreement; and

(iii) notwithstanding the indebtedness offset provisions of section 5314 of this title, waive or defer until the termination of an agreement under this subsection the deduction of all or any portion of the amount of indebtedness covered by the agreement from future payments to the individual as described in section 5314 of this title.

(3)(A) Subject to the provisions of subparagraphs (B) and (C) of this paragraph, an agreement authorized under this subsection shall terminate in accordance with the provisions of this section and the terms and conditions of the agreement which are consistent with this subsection.

(B) In no event shall an agreement under this subsection continue in force after the total amount of the individual's indebtedness described in paragraph (1) of this subsection has been recouped, waived, or otherwise liquidated.

(C) Notwithstanding the provisions of subparagraphs (A) and (B) of this paragraph, if the Secretary finds that an individual was without fault and was allowed to perform services described in the agreement after its termination, the Secretary shall, as reasonable compensation therefor, pay the individual at the applicable hourly minimum wage rate for such services as the Secretary determines were satisfactorily performed.

(4) The Secretary shall promulgate regulations to carry out this subsection.

(Added Pub. L. 92–540, title II, Sec. 203, Oct. 24, 1972, 86 Stat. 1079, Sec. 1685; amended Pub. L. 93–508, title II, Sec. 205, Dec. 3, 1974, 88 Stat. 1582; Pub. L. 94–502, title II, Sec. 208, 211(11), Oct. 15, 1976, 90 Stat. 2388, 2389; Pub. L. 95–202, title I, Sec. 105, Nov. 23, 1977, 91 Stat. 1435; Pub. L. 96–466, title VIII, Sec. 801(b), Oct. 17, 1980, 94 Stat. 2216; Pub. L. 97–295, Sec. 4(42), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 99–576, title III, Sec. 308(c), Oct. 28, 1986, 100 Stat. 3270; Pub. L. 101–237, title IV, Sec. 405(a)–(d)(2), (4)(A), 423(b)(1), Dec. 18, 1989, 103 Stat. 2080, 2081, 2092; Pub. L. 102–16, Sec. 6(a)–(b)(2), 10(a)(5), Mar. 22, 1991, 105 Stat. 50, 51, 55; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 3485 and amended Pub. L. 102–83, Sec. 2(c)(2), 5(a), Aug. 6, 1991, 105 Stat. 402, 406; Pub. L. 102–568, title III, Sec. 311, Oct. 29, 1992, 106 Stat. 4330; Pub. L. 105–368, title II, Sec. 202(a), Nov. 11, 1998, 112 Stat. 3326; Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35; Pub. L. 107–103, title I, Sec. 107(a), Dec. 27, 2001, 115 Stat. 983; Pub. L. 107–330, title III, Sec. 308(g)(11), Dec. 6, 2002, 116 Stat. 2829; Pub. L. 108–183, title III, Sec. 306(f)(1), Dec. 16, 2003, 117 Stat. 2661; Pub. L. 109–233, title IV, Sec. 402(e)(1), June 15, 2006, 120 Stat. 411; Pub. L. 109–444, Sec. 2(g), Dec. 21, 2006, 120 Stat. 3305; Pub. L. 109–461, title III, Secs. 304, 307, title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3428, 3429, 3468; Pub. L. 110–157, title III, Sec. 302, Dec. 26, 2007, 121 Stat. 1836; Pub. L. 110–252, title V, Sec. 5003(b)(2)(A)(i), June 30, 2008, 122 Stat. 2375 (conforming amendment effective August 1, 2009).)

[§§ 3486, 3487. Vacant]

SUBCHAPTER V—SPECIAL ASSISTANCE FOR THE EDUCATIONALLY DISADVANTAGED

§ 3490. Purpose

It is the purpose of this subchapter (1) to encourage and assist veterans who have academic deficiencies to attain a high school education or its equivalent and to qualify for and pursue courses of higher education, (2) to assist eligible veterans to pursue postsecondary education through tutorial assistance where required, and (3) to encourage educational institutions to develop programs which provide special tutorial, remedial, preparatory, or other educational or supplementary assistance to such veterans.

(Added Pub. L. 91–219, title II, Sec. 204(a)(4), Mar. 26, 1970, 84 Stat. 79, Sec. 1690; renumbered Sec. 3490, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3491. Elementary and secondary education and preparatory educational assistance

(a) In the case of any eligible veteran who—

(1) has not received a secondary school diploma (or an equivalency certificate), or

(2) is not on active duty and who, in order to pursue a program of education for which the veteran would otherwise be eligible, needs refresher courses, deficiency courses, or other preparatory or special educational assistance to qualify for admission to an appropriate educational institution,

the Secretary may, without regard to so much of the provisions of section 3471 of this title as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is "already qualified", approve the enrollment of such veteran in an appropriate course or courses or other special educational assistance program.

(b)(1) The Secretary shall pay to an eligible veteran pursuing a course or courses or program pursuant to subsection (a)(2) of this section, an educational assistance allowance as provided in sections 3481 and 3482(a) or (b) of this title.

(2) The Secretary shall pay to an eligible veteran described in subsection (a)(1) of this section who is pursuing a course or courses or program under this subchapter for the purpose of attaining a secondary school diploma (or an equivalency certificate) an educational assistance allowance (A) at the rate of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same course, courses, or program, or (B) at the institutional full-time rate provided in section 3482(a) of this title, whichever is the lesser.

(c) The provisions of section 3473(d)(1) of this title, relating to the disapproval of enrollment in certain courses, shall be applicable to the enrollment of an eligible veteran who, while serving on active duty, enrolls in one or more courses under this subchapter for the purpose of attaining a secondary school diploma (or an equivalency certificate).

(Added Pub. L. 91–219, title II, Sec. 204(a)(4), Mar. 26, 1970, 84 Stat. 79, Sec. 1691; amended Pub. L. 92–540, title III, Sec. 305, Oct. 24, 1972, 86 Stat. 1081; Pub. L. 94–502, title II, Sec. 211(12), Oct. 15, 1976, 90 Stat. 2389; Pub. L. 96–466, title III, Sec. 311, Oct. 17, 1980, 94 Stat. 2194; Pub. L. 97–295, Sec. 4(43), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 97–306, title II, Sec. 203(b), Oct. 14, 1982, 96 Stat. 1434; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3491 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3492. Tutorial assistance

(a) In the case of any eligible veteran who—

(1) is enrolled in and pursuing a postsecondary course of education on a half-time or more basis at an educational institution; and

(2) has a deficiency in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education,

the Secretary may approve individualized tutorial assistance for such veteran if such assistance is necessary for the veteran to complete such program successfully.

(b) The Secretary shall pay to an eligible veteran receiving tutorial assistance pursuant to subsection (a) of this section, in addition to the educational assistance allowance provided in section 3482 of this title, the cost of such tutorial assistance in an amount not to exceed $100 per month, for a maximum of twelve months, or until a maximum of $1,200 is utilized, upon certification by the educational institution that—

(1) the individualized tutorial assistance is essential to correct a deficiency of the eligible veteran in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

(2) the tutor chosen to perform such assistance is qualified and is not the eligible veteran's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and

(3) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

(Added Pub. L. 91–219, title II, Sec. 204(a)(4), Mar. 26, 1970, 84 Stat. 80, Sec. 1692; amended Pub. L. 92–540, title III, Sec. 306, Oct. 24, 1972, 86 Stat. 1081; Pub. L.

93–508, title II, Sec. 206, Dec. 3, 1974, 88 Stat. 1583; Pub. L. 94–502, title II, Sec. 209, Oct. 15, 1976, 90 Stat. 2388; Pub. L. 95–202, title I, Sec. 102(5), Nov. 23, 1977, 91 Stat. 1434; Pub. L. 96–466, title II, Sec. 201(5), 211(5), title III, Sec. 312, Oct. 17, 1980, 94 Stat. 2188, 2190, 2195; Pub. L. 98–543, title II, Sec. 202(4), Oct. 24, 1984, 98 Stat. 2742; Pub. L. 100–689, title I, Sec. 107(c)(1), (2)(A), Nov. 18, 1988, 102 Stat. 4169; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3492 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3493. Effect on educational entitlement

The educational assistance allowance or cost of individualized tutorial assistance authorized by this subchapter shall be paid without charge to any period of entitlement the veteran may have earned pursuant to section 3461(a) of this title.

(Added Pub. L. 91–219, title II, Sec. 204(a)(4), Mar. 26, 1970, 84 Stat. 80, Sec. 1693; renumbered Sec. 3493 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

[§§ 3495 to 3498. Vacant]

Chapter 35 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 35—SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER I—DEFINITIONS

§ 3500. Purpose

The Congress hereby declares that the educational program established by this chapter is for the purpose of providing opportunities for education to children whose education would otherwise be impeded or interrupted by reason of the disability or death of a parent from a disease or injury incurred or aggravated in the Armed Forces after the beginning of the Spanish-American War, and for the purpose of aiding such children in attaining the educational status which they might normally have aspired to and obtained but for the disability or death of such parent. The Congress further declares that the educational program extended to the surviving spouses of veterans who died of service-connected disabilities and to spouses of veterans with a service-connected total disability permanent in nature is for the purpose of assisting them in preparing to support themselves and their families at a standard of living level which the veteran, but for the veteran's death or service disability, could have expected to provide for the veteran's family.

(Added Pub. L. 90–631, Sec. 2(a)(1), Oct. 23, 1968, 82 Stat. 1331, Sec. 1700; amended Pub. L. 94–502, title III, Sec. 310(1), Oct. 15, 1976, 90 Stat. 2391; renumbered Sec. 3500, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3501. Definitions

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

(1) The term "eligible person" means any of the following:

(A) A child of a person who, as a result of qualifying service—

(i) died of a service-connected disability; or

(ii) has a total disability permanent in nature resulting from a service-connected disability, or who died while a disability so evaluated was in existence.

(B) The surviving spouse of any person who died of a service-connected disability sustained during a period of qualifying service.

(C) The spouse or child of any member of the Armed Forces serving on active duty who, at the time of application for benefits under this chapter is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than ninety days: (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power.

(D)(i) The spouse of any person who has a total disability permanent in nature resulting from a service-connected disability sustained during a period of qualifying service, or (ii) the surviving spouse of a veteran who died while a disability so evaluated was in existence.

(E) The spouse or child of a person who—

(i) at the time of the Secretary's determination under clause (ii), is a member of the Armed Forces

who is hospitalized or receiving outpatient medical care, services, or treatment;

(ii) the Secretary determines has a total disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service; and

(iii) is likely to be discharged or released from such service for such disability.

(2) The term "child" includes individuals who are married and individuals who are above the age of twenty-three years.

(3) The term "duty with the Armed Forces" as used in section 3512 of this title means (A) active duty, (B) active duty for training for a period of six or more consecutive months, or (C) active duty for training required by section 12103(d) of title 10.

(4) The term "guardian" includes a fiduciary legally appointed by a court of competent jurisdiction, or any other person who has been appointed by the Secretary under section 5502 of this title to receive payment of benefits for the use and benefit of the eligible person.

(5) The term "program of education" means any curriculum or any combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary to fulfill the requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. Such term also includes any preparatory course described in section 3002(3)(B) of this title. Such term also includes licensing or certification tests, the successful completion of which demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided such tests and the licensing or credentialing organizations or entities that offer such tests are approved by the Secretary in accordance with section 3689 of this title. Such term also includes national tests for admission to institutions of higher learning or graduate schools (such as the Scholastic Aptitude Test (SAT), Law School Admission Test (LSAT), Graduate Record Exam (GRE), and Graduate Management Admission Test (GMAT)) and national tests providing an opportunity for course credit at institutions of higher learning (such as the Advanced Placement (AP) exam and College-Level Examination Program (CLEP)).

(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).

(7) The term "special restorative training" means training furnished under subchapter V of this chapter.

(8) The term "total disability permanent in nature" means any disability rated total for the purposes of disability compensation which is based upon an impairment reasonably certain to continue throughout the life of the disabled person.

(9) The term "training establishment" means any establishment providing apprentice or other training on the job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established pursuant to the Act of August 16, 1937, popularly known as the "National Apprenticeship Act" (29 U.S.C. 50 et seq.), or any agency of the Federal Government authorized to supervise such training.

(10) The term "institution of higher learning" means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution which is not located in a State, which offers a course leading to a standard college degree, or the equivalent, and which is recognized by the secretary of education (or comparable official) of the country or other jurisdiction in which the institution is located.

(11) The term "standard college degree" means an associate or higher degree awarded by (A) an institution of higher learning that is accredited as a collegiate institution by a recognized regional or national accrediting agency; or (B) an institution of higher learning that is a "candidate" for accreditation as that term is used by the regional or national accrediting agencies; or (C) an institution of higher learning upon completion of a course which is accredited by an agency recognized to accredit specialized degree-level programs. For the purpose of this section, the accrediting agency must be one recognized by the Secretary of Education under the provisions of section 3675 of this title.

(12) The term "qualifying service" means service in the active military, naval, or air service after the beginning of the Spanish-American War that did not terminate under dishonorable conditions.

(b) If an eligible person has attained the person's majority and is under no known legal disability, all references in this chapter to "parent or guardian" shall refer to the eligible person.

(c) Any provision of this chapter which requires any action to be taken by or with respect to the parent or guardian of an eligible person who has not attained such person's majority, or who, having attained such person's majority, is under a legal disability, shall not apply when the Secretary determines that its application would not be in the best interest of the eligible person, would result in undue delay, or would not be administratively feasible. In such a case the Secretary, where necessary to protect the interest of the eligible person, may designate some other person (who may be the eligible person) as the person by or with respect to whom the action so required should be taken.

(d) No eligible person may be afforded educational assistance under this chapter unless such person was discharged or released after each period such person was on duty with the Armed Forces under conditions other than dishonorable, or while such person is on duty with the Armed Forces.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1193, Sec. 1701; Pub. L. 86–236, Sec. 1, Sept. 8, 1959, 73 Stat. 471; Pub. L. 86–785, Sec. 1–3, Sept. 14, 1960, 74 Stat. 1023; Pub. L. 88–361, Sec. 1, July 7, 1964, 78 Stat. 297; Pub. L. 89–222, Sec. 3, Sept. 30, 1965, 79 Stat. 896; Pub. L. 89–349, Sec. 1, Nov. 8, 1965, 79 Stat. 1313; Pub. L. 89–358, Sec. 4(j), Mar. 3, 1966, 80 Stat. 24; Pub. L. 90–631, Sec. 2(b), (c), Oct. 23, 1968, 82 Stat. 1332; Pub. L. 91–24, Sec. 9(a), June 11, 1969, 83 Stat. 34; Pub. L. 91–584, Sec. 1, Dec. 24, 1970, 84 Stat. 1575; Pub. L. 92–540, title III, Sec. 309, Oct. 24, 1972, 86 Stat. 1083; Pub. L. 93–295, title III, Sec. 302, May 31, 1974, 88 Stat. 184; Pub. L. 94–502, title III, Sec. 302, 310(2)–(5), Oct. 15, 1976, 90 Stat. 2389, 2391; Pub. L. 96–466, title III, Sec. 327(a), title VIII, Sec. 801(c), Oct. 17, 1980, 94 Stat. 2197, 2216; Pub. L. 98–160, title VII, Sec. 702(12), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 3501 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–106, div. A, title XV, Sec. 1501(e)(2)(C), Feb. 10, 1996, 110 Stat. 501; Pub. L. 106–419, title I, Secs. 114(a), 122(a), Nov. 1, 2000, 114 Stat. 1833; Pub. L. 107–103, title I, Secs. 108(a), 110(a), Dec. 27, 2001, 115 Stat. 985, 986; Pub. L. 108–454, title I, Sec. 106(a), Dec. 10, 2004, 118 Stat. 3602; Pub. L. 109–444, Sec. 3(a), (b)(1), Dec. 21, 2006, 120 Stat. 3305; Pub. L. 109–461, title III, Sec. 301(a), (b)(1), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3425, 3468.)

SUBCHAPTER II—ELIGIBILITY AND ENTITLEMENT

§ 3510. Eligibility and entitlement generally

Each eligible person shall, subject to the provisions of this chapter, be entitled to receive educational assistance.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1194, Sec. 1710; renumbered Sec. 3510, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3511. Duration of educational assistance

(a)(1) Each eligible person, whether made eligible by one or more of the provisions of section 3501(a)(1) of this title, shall be entitled to educational assistance under this chapter for an aggregate period not in excess of 45 months (or to the equivalent thereof in part-time training).

(2)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10 or of being involuntarily ordered to full-time National Guard duty under section 502(f) of title 32; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) of this subparagraph, his or her course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii) of this paragraph.

(b) If any eligible person pursuing a program of education, or of special restorative training, under this chapter ceases to be an "eligible person" because—

(1) the parent or spouse from whom eligibility is derived is found no longer to have a "total disability permanent in nature", as defined in section 3501(a)(8) of this title,

(2) the parent or spouse from whom eligibility is derived based upon section 3501(a)(1)(C) of this title is no longer listed in one of the categories specified therein,

(3) the spouse, as an eligible person under subparagraph (D) or (E) of section 3501(a)(1) of this title, is divorced, without fault on such person's part, from the person upon whose disability such person's eligibility is based, or

(4) the parent or spouse from whom such eligibility is derived based upon subparagraph (E) of section 3501(a)(1) of this title no longer meets a requirement under clause (i), (ii), or (iii) of that subparagraph,

then such eligible person (if such person has sufficient remaining entitlement) may, nevertheless, be afforded educational assistance under this chapter until the end of the quarter or semester for which enrolled if the educational institution in which such person is enrolled is operated on a quarter or semester system, or if the educational institution is not so operated until the end of the course, or until 12 weeks have expired, whichever first occurs.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1194, Sec. 1711; Pub. L. 88–361, Sec. 2, July 7, 1964, 78 Stat. 297; Pub. L. 89–358, Sec. 4(k), Mar. 3, 1966, 80 Stat. 24; Pub. L. 90–631, Sec. 1(c), 2(d), Oct. 23, 1968, 82 Stat. 1331, 1332; Pub. L. 91–24, Sec. 9(b),

June 11, 1969, 83 Stat. 34; Pub. L. 91–584, Sec. 2, Dec. 24, 1970, 84 Stat. 1575; Pub. L. 94–502, title III, Sec. 303, 310(6), Oct. 15, 1976, 90 Stat. 2390, 2391; renumbered Sec. 3511 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–127, Sec. 2(c), Oct. 10, 1991, 105 Stat. 620; Pub. L. 107–103, title I, Secs. 103(a), 108(b)(1), (c)(1), Dec. 27, 2001, 115 Stat. 979, 985; Pub. L. 109–233, title V, Sec. 503(7), June 15, 2006, 120 Stat. 416; Pub. L. 109–444, Sec. 3(b)(2), Dec. 21, 2006, 120 Stat. 3306; Pub. L. 109–461, title III, Secs. 301(b)(2), 302(a), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3425, 3428, 3468.)

§ 3512. Periods of eligibility

(a) The educational assistance to which an eligible person whose eligibility is based on the death or disability of a parent or on a parent being listed in one of the categories referred to in section 3501(a)(1)(C) of this title is entitled under section 3511 of this title or subchapter V of this chapter may be afforded the person during the period beginning on the person's eighteenth birthday, or on the successful completion of the person's secondary schooling, whichever first occurs, and ending on the person's twenty-sixth birthday, except that—

(1) if the person is above the age of compulsory school attendance under applicable State law, and the Secretary determines that the person's best interests will be served thereby, such period may begin before the person's eighteenth birthday;

(2) if the person has a mental or physical handicap, and the Secretary determines that the person's best interests will be served by pursuing a program of special restorative training or a specialized course of vocational training approved under section 3536 of this title, such period may begin before the person's eighteenth birthday, but not before the person's fourteenth birthday;

(3) if the Secretary first finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature, or if the death of the parent from whom eligibility is derived occurs, after the eligible person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless paragraph (4) of (5) applies) such period shall end 8 years after the date that is elected by that person to be the beginning date of entitlement under section 3511 of this title or subchapter V of this chapter if—

(A) the Secretary approves that beginning date;

(B) the eligible person elects that beginning date by not later than the end of the 60-day period beginning on the date on which the Secretary provides written notice to that person of that person's opportunity to make such election, such notice including a statement of the deadline for the election imposed under this subparagraph; and

(C) that beginning date—

(i) in the case of a person whose eligibility is based on a parent who has a service-connected total disability permanent in nature, is the date determined pursuant to subsection (d), subsection (d), or any date between the two dates described in subsection (d); and

(ii) in the case of a person whose eligibility is based on the death of a parent, is between—

(I) the date of the parent's death; and

(II) the date of the Secretary's decision that the death was service-connected;

(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person's entitlement shall be the date of the Secretary's decision that the parent has a service-connected total disability permanent in nature, or that the parent's death was service-connected, whichever is applicable;

(5) if the person serves on duty with the Armed Forces as an eligible person after the person's eighteenth birthday but before the person's twenty-sixth birthday, then such period shall end 8 years after the person's first discharge or release from such duty with the Armed Forces (excluding from such 8 years all periods during which the eligible person served on active duty before August 1, 1962, pursuant to (A) a call or order thereto issued to the person as a Reserve after July 30, 1961, or (B) an extension of enlistment, appointment, or period of duty with the Armed Forces pursuant to section 2 of Public Law 87–117); however, in no event shall such period be extended beyond the person's thirty-first birthday by reason of this paragraph;

(6) if the person becomes eligible by reason of a parent being listed in one of the categories referred to in section 3501(a)(1)(C) of this title after the person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless paragraph (5) applies) such period shall end eight years after the date on which the person becomes eligible by reason of such provisions, but in no event shall such period be extended beyond the person's thirty-first birthday by reason of this clause;

(7)(A) if such person is enrolled in an educational institution regularly operated on the quarter or semester system and such period ends during a quarter or semester, such period shall be extended to the end of the quarter or semester; or

(B) if such person is enrolled in an educational institution operated on other than a quarter or semester system and such period ends after a major portion of the course is completed, such period shall be extended to the end of the course, or until 12 weeks have expired, whichever first occurs; and

(8) if the person is pursuing a preparatory course described in section 3002(3)(B) of this title, such period may begin on the date that is the first day of such course pursuit, notwithstanding that such date may be before the person's eighteenth birthday, except that in no case may such person be afforded educational assistance under this chapter for pursuit of secondary schooling unless such course pursuit would otherwise be authorized under this subsection.

(b)(1)(A) Except as provided in subparagraph (B), (C), or (D), a person made eligible by subparagraph (B) or (D) of section 3501(a)(1) of this title or a person made eligible by the disability of a spouse under section 3501(a)(1)(E) of this title may be afforded educational assistance under this chapter during the 10-year period beginning on the date (as determined by the Secretary) the person

becomes an eligible person within the meaning of section 3501(a)(1)(B), 3501(a)(1)(D)(i), 3501(a)(1)(D)(ii), or 3501(a)(1)(E) of this title. In the case of a surviving spouse made eligible by clause (ii) of section 3501(a)(1)(D) of this title, the 10-year period may not be reduced by any earlier period during which the person was eligible for educational assistance under this chapter as a spouse made eligible by clause (i) of that section.

(B) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph may, subject to the Secretary's approval, elect a later beginning date for the 10-year period than would otherwise be applicable to the person under that subparagraph. The beginning date so elected may be any date between the beginning date determined for the person under subparagraph (A) and whichever of the following dates applies:

(i) The date on which the Secretary notifies the veteran from whom eligibility is derived that the veteran has a service-connected total disability permanent in nature.

(ii) The date on which the Secretary determines that the veteran from whom eligibility is derived died of a service-connected disability.

(iii) The date on which the Secretary notifies the member of the Armed Forces from whom eligibility is derived that the member has a total disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service.

(C) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph who is made eligible under section 3501(a)(1)(B) of this title by reason of the death of a person on active duty may be afforded educational assistance under this chapter during the 20-year period beginning on the date (as determined by the Secretary) such person becomes an eligible person within the meaning of such section.

(D) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph who is made eligible under section 3501(a)(1)(D)(i) of this title by reason of a service-connected disability that was determined to be a total disability permanent in nature not later than three years after discharge from service may be afforded educational assistance under this chapter during the 20-year period beginning on the date the disability was so determined to be a total disability permanent in nature, but only if the eligible person remains the spouse of the disabled person throughout the period.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the case of any eligible person (as defined in section 3501(a)(1)(B), (C), (D), or (E) of this title) whose eligibility is based on the death or disability of a spouse or on a spouse being listed in one of the categories referred to in section 3501(a)(1)(C) of this title who was prevented from initiating or completing such person's chosen program of education within such period because of a physical or mental disability which was not the result of such person's own willful misconduct, such person shall, upon application made within one year after (A) the last date of the delimiting period otherwise applicable under this section, (B) the termination of the period of mental or physical disability, or (C) October 1, 1980, which-

ever is the latest, be granted an extension of the applicable delimiting period for such length of time as the Secretary determines, from the evidence, that such person was so prevented from initiating or completing such program of education. When an extension of the applicable delimiting period is granted under the exception in the preceding sentence, the delimiting period will again begin running on the first day following such eligible person's recovery from such disability on which it is reasonably feasible, as determined in accordance with regulations which the Secretary shall prescribe, for such eligible person to initiate or resume pursuit of a program of education with educational assistance under this chapter.

(c) Notwithstanding the provisions of subsection (a) of this section, an eligible person may be afforded educational assistance beyond the age limitation applicable to such person under such subsection if (1) such person suspends pursuit of such person's program of education after having enrolled in such program within the time period applicable to such person under such subsection, (2) such person is unable to complete such program after the period of suspension and before attaining the age limitation applicable to such person under such subsection, and (3) the Secretary finds that the suspension was due to conditions beyond the control of such person; but in no event shall educational assistance be afforded such person by reason of this subsection beyond the age limitation applicable to such person under subsection (a) of this section plus a period of time equal to the period such person was required to suspend the pursuit of such person's program, or beyond such person's thirty-first birthday, whichever is earlier.

(d) The term "first finds" as used in this section means the effective date of the rating or date of notification to the person from whom eligibility is derived establishing a service-connected total disability permanent in nature whichever is more advantageous to the eligible person.

(e) No person made eligible by section 3501(a)(1)(C) of this title based on a spouse being listed in one of the categories referred to in section 3501(a)(1)(C) of this title may be afforded educational assistance under this chapter beyond 10 years after the date on which the spouse was so listed.

[(f) Repealed. Pub. L. 108–183, title III, Sec. 306(f)(2), Dec. 16, 2003, 117 Stat. 2661.]

[(g) Repealed. Pub. L. 107–103, title I, Sec. 108(b)(2), Dec. 27, 2001, 115 Stat. 985.]

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

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1194, Sec. 1712; Pub. L. 87–815, Sec. 2(a), Oct. 15, 1962, 76 Stat. 926; Pub. L. 87–819, Sec. 2, Oct. 15, 1962, 76 Stat. 935; Pub. L. 88–361, Sec. 3, July 7, 1964, 78 Stat. 297; Pub. L. 90–77, title III, Sec. 307(a),

Aug. 31, 1967, 81 Stat. 189; Pub. L. 90–631, Sec. 2(e), Oct. 23, 1968, 82 Stat. 1333; Pub. L. 91–219, title II, Sec. 208, Mar. 26, 1970, 84 Stat. 83; Pub. L. 91–584, Sec. 3, Dec. 24, 1970, 84 Stat. 1575; Pub. L. 92–540, title IV, Sec. 402(1), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 93–337, Sec. 2, July 10, 1974, 88 Stat. 292; Pub. L. 94–502, title III, Sec. 304, 310(7)–(9), Oct. 15, 1976, 90 Stat. 2390, 2391; Pub. L. 95–202, title II, Sec. 203(a)(2), (b)(2), Nov. 23, 1977, 91 Stat. 1439, 1440; Pub. L. 96–466, title III, Sec. 321, 322, Oct. 17, 1980, 94 Stat. 2195; Pub. L. 97–66, title VI, Sec. 605(a), Oct. 17, 1981, 95 Stat. 1036; Pub. L. 97–295, Sec. 4(44), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 98–160, title VII, Sec. 702(13), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 99–576, title III, Sec. 313, Oct. 28, 1986, 100 Stat. 3273; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3512 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 106–419, title I, Secs. 112, 114(b), Nov. 1, 2000, 114 Stat. 1831, 1833; Pub. L. 107–14, Secs. 7(f)(1), 8(a)(6), June 5, 2001, 115 Stat. 33, 34; Pub. L. 107–103, title I, Secs. 103(b), 108(b)(2), (c)(2), (3), Dec. 27, 2001, 115 Stat. 979, 985; Pub. L. 107–330, title III, Sec. 308(e)(1), Dec. 6, 2002, 116 Stat. 2828; Pub. L. 108–183, title III, Secs. 303(a), 306(f)(2), Dec. 16, 2003, 117 Stat. 2659, 2661; Pub. L. 108–454, title I, Sec. 105, Dec. 10, 2004, 118 Stat. 3602; Pub. L. 109–444, Sec. 3(b)(3), Dec. 21, 2006, 120 Stat. 3306; Pub. L. 109–461, title III, Sec. 301(b)(3), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3426, 3468; Pub. L. 110–389, title III, Sec. 321, Oct. 10, 2008, 122 Stat. 4168.)

§ 3513. Application

The parent or guardian of a person or the eligible person if such person has attained legal majority for whom educational assistance is sought under this chapter shall submit an application to the Secretary which shall be in such form and contain such information as the Secretary shall prescribe. If the Secretary finds that the person on whose behalf the application is submitted is an eligible person, the Secretary shall approve the application provisionally. The Secretary shall notify the parent or guardian or eligible person (if the person has attained legal majority) of the provisional approval or of the disapproval of the application.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1195, Sec. 1713; Pub. L. 94–502, title III, Sec. 305, Oct. 15, 1976, 90 Stat. 2390; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3513, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3514. Processing of applications

(a) Further processing of an application for educational assistance and the award of such assistance shall be pursuant to the requirements of subchapters III and IV of this chapter unless the parent or guardian requests special restorative training for the eligible person, in which case the application will be processed under subchapter V of this chapter.

(b) If the request for special restorative training is approved, educational assistance will be afforded pursuant to the terms of subchapter V of this chapter. If the request for special restorative training is disapproved, or if approved the restorative training is completed or discontinued, any educational assistance subsequently afforded will be in accordance with subchapters III and IV of this chapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1195, Sec. 1714; renumbered Sec. 3514, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

SUBCHAPTER III—PROGRAM OF EDUCATION

§ 3520. Educational and vocational counseling

The Secretary may, upon request, arrange for educational or vocational counseling for persons eligible for benefits under this chapter to assist such persons in selecting their educational, vocational, or professional objectives and in developing their programs of education.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1195, Sec. 1720; Pub. L. 90–631, Sec. 2(g), Oct. 23, 1968, 82 Stat. 1333; Pub. L. 91–584, Sec. 4, Dec. 24, 1970, 84 Stat. 1576; Pub. L. 92–540, title III, Sec. 310, Oct. 24, 1972, 86 Stat. 1083; Pub. L. 94–502, title III, Sec. 310(10), Oct. 15, 1976, 90 Stat. 2391; Pub. L. 96–466, title III, Sec. 323(a), Oct. 17, 1980, 94 Stat. 2196; Pub. L. 97–295, Sec. 4(45), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 99–576, title III, Sec. 314(a), Oct. 28, 1986, 100 Stat. 3273; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3520, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3521. Approval of application

The Secretary shall approve an application if the Secretary finds that—

(1) the proposed program of education constitutes a "program of education" as that term is defined in this chapter;

(2) the eligible person is not already qualified, by reason of previous education or training, for the educational, professional, or vocational objective for which the program of education is offered;

(3) the eligible person's proposed educational institution or training establishment is in compliance with all the requirements of this chapter and chapter 36 of this title; and

(4) it does not appear that the enrollment in or pursuit of such person's program of education would violate any provisions of this chapter or chapter 36 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1196, Sec. 1721; Pub. L. 94–502, title III, Sec. 310(11), Oct. 15, 1976, 90 Stat. 2391; Pub. L. 96–466, title III, Sec. 324, Oct. 17, 1980, 94 Stat. 2196; Pub. L. 99–576, title III, Sec. 314(b)(1), (2), Oct. 28, 1986, 100 Stat. 3273; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3521, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

[§ 3522. Vacant]

§ 3523. Disapproval of enrollment in certain courses

(a) The Secretary shall not approve the enrollment of an eligible person in—

(1) any bartending course or personality development course;

(2) any sales or sales management course which does not provide specialized training within a specific vocational field;

(3) any type of course which the Secretary finds to be avocational or recreational in character (or the advertising for which the Secretary finds contains significant avocational or recreational themes) unless the eligible person submits justification showing that the course will be a bona fide use in the pursuit of the person's present or contemplated business or occupation; or

(4) any independent study program except an accredited independent study program (including open circuit television) leading to a standard college degree.

(b) The Secretary shall not approve the enrollment of an eligible person in any course of flight training other than one given by an educational institution of higher learning for credit toward a standard college degree the eligible person is seeking.

(c) The Secretary shall not approve the enrollment of an eligible person in any course to be pursued by radio.

(d) The Secretary shall not approve the enrollment of an eligible person in any course which is to be pursued as a part of such person's regular secondary school education (except as provided in section 3533 of this title), but this subsection shall not prevent the enrollment of an eligible person in a course not leading to a standard college degree if the Secretary finds that such person has ended such person's secondary school education (by completion or otherwise) and that such course is a specialized vocational course pursued for the purpose of qualifying in a bona fide vocational objective.

(e) An eligible person may not enroll in any course at an educational institution which is not located in a State or in the Republic of the Philippines, unless such course is pursued at an approved institution of higher learning and the course is approved by the Secretary. The Secretary, in the Secretary's discretion, may deny or discontinue educational assistance under this chapter in the case of any eligible person in such an institution if the Secretary determines that such enrollment is not in the best interest of the eligible person or the Federal Government.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1196, Sec. 1723; Pub. L. 86–785, Sec. 4, Sept. 14, 1960, 74 Stat. 1024; Pub. L. 87–546, July 25, 1962, 76 Stat. 216; Pub. L. 91–219, title II, Sec. 209, Mar. 26, 1970, 84 Stat. 83; Pub. L. 92–540, title III, Sec. 311, Oct. 24, 1972, 86 Stat. 1083; Pub. L. 93–508, title II, Sec. 207, Dec. 3, 1974, 88 Stat. 1583; Pub. L. 94–502, title III, Sec. 306, 310(12)–(14), Oct. 15, 1976, 90 Stat. 2390, 2392; Pub. L. 96–466, title III, Sec. 325, 326, 327(b), Oct. 17, 1980, 94 Stat. 2196, 2197; Pub. L. 97–306, title II, Sec. 202(b), Oct. 14, 1982, 96 Stat. 1433; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (2), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3523 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 313(a)(7), Oct. 29, 1992, 106 Stat. 4333; Pub. L. 104–275, title I, Sec. 104(b), Oct. 9, 1996, 110 Stat. 3327.)

§ 3524. Discontinuance for unsatisfactory progress

The Secretary shall discontinue the educational assistance allowance on behalf of an eligible person if, at any time, the Secretary finds that according to the regularly prescribed standards and practices of the educational institution such person is attending, the person's attendance, conduct, or progress is unsatisfactory. The Secretary may renew the payment of the educational assistance allowance only if the Secretary finds that—

(1) the eligible person will be resuming enrollment at the same educational institution in the same program of education and the educational institution has both approved such eligible person's reenrollment and certified it to the Department of Veterans Affairs; or

(2) in the case of a proposed change of either educational institution or program of education by the eligible person—

(A) the cause of the unsatisfactory attendance, conduct, or progress has been removed;

(B) the program proposed to be pursued is suitable to the eligible person's aptitudes, interests, and abilities; and

(C) if a proposed change of program is involved, the change meets the requirements for approval under section 3691 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1197, Sec. 1724; Pub. L. 94–502, title III, Sec. 307, 310(15), Oct. 15, 1976, 90 Stat. 2390, 2392; Pub. L. 95–202, title III, Sec. 305(b)(1), Nov. 23, 1977, 91 Stat. 1443; Pub. L. 96–466, title III, Sec. 328, Oct. 17, 1980, 94 Stat. 2197; Pub. L. 101–237, title IV, Sec. 411(b), 412(b), 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2084, 2085, 2092; renumbered Sec. 3524 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

[§§ 3525, 3526. Vacant]

SUBCHAPTER IV—PAYMENTS TO ELIGIBLE PERSONS

§ 3531. Educational assistance allowance

(a) The Secretary shall, in accordance with the provisions of chapter 36 of this title, pay to the parent or guardian of each eligible person who is pursuing a program of education under this chapter, and who applies therefor on behalf of such eligible person, an educational assistance allowance to meet, in part, the expenses of the eligible person's subsistence, tuition, fees, supplies, books, equipment, and other educational costs.

(b) The educational assistance allowance of an eligible person pursuing a program of education at an educational institution shall be paid as provided in chapter 36 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1197, Sec. 1731; Pub. L. 89–358, Sec. 4(l), Mar. 3, 1966, 80 Stat. 24; Pub. L. 92–540, title III, Sec. 312, Oct. 24, 1972, 86 Stat. 1083; Pub. L. 94–502, title III, Sec. 309(c), 310(16), Oct. 15, 1976, 90 Stat. 2391, 2392; Pub. L. 96–466, title III, Sec. 329, Oct. 17, 1980, 94 Stat. 2197; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3531, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3532. Computation of educational assistance allowance

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

(2) The educational assistance allowance on behalf of an eligible person pursuing a program of education on less than a half-time basis shall be paid at the rate of the lesser of—

(A) the established charges for tuition and fees that the educational institution involved requires similarly circumstanced nonveterans enrolled in the same program to pay; or

(B) $788 per month for a full-time course.

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

(c)(1) An eligible person who is enrolled in an educational institution for a "farm cooperative" program consisting of institutional agricultural courses prescheduled to fall within forty-four weeks of any period of twelve consecutive months and who pursues such program on—

(A) a full-time basis (a minimum of ten clock hours per week or four hundred and forty clock hours in such year prescheduled to provide not less than eighty clock hours in any three-month period),

(B) a three-quarter-time basis (a minimum of seven clock hours per week), or

(C) a half-time basis (a minimum of five clock hours per week),

shall be eligible to receive an educational assistance allowance at the appropriate rate provided in paragraph (2) of this subsection, if such eligible person is concurrently engaged in agricultural employment which is relevant to such institutional agricultural courses as determined under standards prescribed by the Secretary. In computing the foregoing clock hour requirements there shall be included the time involved in field trips and individual and group instruction sponsored and conducted by the educational institution through a duly authorized instructor of such institution in which the person is enrolled.

(2) The monthly educational assistance allowance to be paid on behalf of an eligible person pursuing a farm cooperative program under this chapter shall be $636 for full-time, $477 for three-quarter-time, or $319 for half-time pursuit.

(d) If a program of education is pursued by an eligible person at an institution located in the Republic of the Philippines, the educational assistance allowance computed for such person under this section shall be paid at the rate of $0.50 for each dollar.

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

(f)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a licensing or certification test described in section 3501(a)(5) of this title is the lesser of $2,000 or the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for such licensing or certification test is equal to the number (including any fraction) determined by dividing the total amount paid to such individual for such test by the full-time monthly institutional rate of the educational assistance allowance which, except for paragraph (1), such individual would otherwise be paid under this chapter.

(3) In no event shall payment of educational assistance under this subsection for such a test exceed the amount of the individual's available entitlement under this chapter.

(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3501(a)(5) of this title is the amount of the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1198, Sec. 1732; Pub. L. 89–222, Sec. 1, Sept. 30, 1965, 79 Stat. 896; Pub. L. 91–219, title I, Sec. 104(a), (b), title II, Sec. 210, Mar. 25, 1970, 84 Stat. 77, 78, 83; Pub. L. 92–540, title I, Sec. 103(1)–(3), Oct. 24, 1972, 86 Stat. 1075, 1076; Pub. L. 93–508, title I, Sec. 103(1)–(3), title II, Sec. 208, Dec. 3, 1974, 88 Stat. 1580, 1584; Pub. L. 93–602, title II, Sec. 204(a), Jan. 2, 1975, 88 Stat. 1958; Pub. L. 94–502, title III, Sec. 301(1), 308, Oct. 15, 1976, 90 Stat. 2389, 2390; Pub. L. 95–202, title I, Sec. 103(1), Nov. 23, 1977, 91 Stat. 1434; Pub. L. 96–466, title II, Sec. 202(1), 212(1), title III, Sec. 330, title VI, Sec. 602(b), Oct. 17, 1980, 94 Stat. 2188, 2190, 2198, 2209; Pub. L. 98–543, title II, Sec. 203(1), Oct. 24, 1984, 98 Stat. 2742; Pub. L. 101–237, title IV, Sec. 403(a)(1)–(7), 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2078, 2079, 2092; Pub. L. 102–16, Sec. 10(a)(6), Mar. 22, 1991, 105 Stat. 56; renumbered Sec. 3532 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 316(b), Oct. 29, 1992, 106 Stat. 4334; Pub. L. 103–446, title V, Sec. 507(b), Nov. 2, 1994, 108 Stat. 4664; Pub. L. 104–275, title I, Sec. 105(c), Oct. 9, 1996, 110 Stat. 3327; Pub. L. 105–178, title VIII, Sec. 8210(a), as added Pub. L. 105–206, title IX, Sec. 9014(b), July 22, 1998, 112 Stat. 866; Pub. L. 106–419, title I, Secs. 111(a), 122(b)(4), Nov. 1, 2000, 114 Stat. 1830, 1834; Pub. L. 107–103, title I, Sec. 102(a), Dec. 27, 2001, 115 Stat. 978; Pub. L. 108–183, title III, Sec. 302(a), Dec. 16, 2003, 117 Stat. 2658; Pub. L. 108–454, title I, Sec. 106(b)(3), Dec. 10, 2004, 118 Stat. 3603; Pub. L. 109–461, title X, Sec. 1002(e), Dec. 22, 2006, 120 Stat. 3465.)

§ 3533. Special assistance for the educationally disadvantaged

(a)(1) Any eligible person shall be entitled to the assistance provided an eligible veteran under section 3491(a) (if pursued in a State) of this title and be paid an educational assistance allowance therefor in the manner prescribed by section 3491(b) of this title, except that the corresponding rate provisions of this chapter shall apply, as determined by the Secretary, to such pursuit by an eligible person.

(2) Educational assistance under this chapter for the first five months of full-time pursuit of a program (or the equivalent thereof in part-time educational assistance) consisting of such course or courses shall be provided without charge to entitlement.

(b) Any eligible person shall, without charge to any entitlement such person may have under section 3511 of this title, be entitled to the benefits provided an eligible veteran under section 3492 of this title.

(Added Pub. L. 92–540, title III, Sec. 313, Oct. 24, 1972, 86 Stat. 1084, Sec. 1733; amended Pub. L. 94–502, title III, Sec. 310(17), (18), Oct. 15, 1976, 90 Stat. 2392; Pub. L. 98–223, title II, Sec. 203(b), Mar. 2, 1984, 98 Stat. 41; Pub. L. 100–689, title I, Sec. 106(c), Nov. 18, 1988, 102 Stat. 4167; Pub. L. 101–237, title IV, Sec. 403(a)(8), Dec. 18, 1989, 103 Stat. 2079; Pub. L. 102–16, Sec. 10(a)(6), Mar. 22, 1991, 105 Stat. 56; renumbered Sec. 3533 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

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

(a) Any eligible person shall be entitled to pursue, in a State, a program of apprenticeship or other on-job training and be paid a training assistance allowance as provided in section 3687 of this title.

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

(Added Pub. L. 92–540, title III, Sec. 313, Oct. 24, 1972, 86 Stat. 1084, Sec. 1734; amended Pub. L. 94–502, title III, Sec. 310(19), Oct. 15, 1976, 90 Stat. 2392; Pub. L. 101–237, title IV, Sec. 403(a)(9), Dec. 18, 1989, 103 Stat. 2079; renumbered Sec. 3534 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–178, title VIII, Sec. 8210(b), as added Pub. L. 105–206, title IX, Sec. 9014(b), July 22, 1998, 11 Stat. 966; Pub. L. 106–419, title I, Sec. 111(b), Nov. 1, 2000, 114 Stat. 1830; Pub. L. 107–103, title I, Sec. 102(b), Dec. 27, 2001, 115 Stat. 978; Pub. L. 108–183, title III, Sec. 302(b), Dec. 16, 2003, 117 Stat. 2659.)

§ 3535. Approval of courses

An eligible person shall receive the benefits of this chapter while enrolled in a course of education offered by an educational institution only if such course (1) is approved in accordance with the provisions of subchapter I of chapter 36 of this title, or (2) is approved for the enrollment of the particular individual under the provisions of section 3536 of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1199, Sec. 1735; Pub. L. 88–126, Sec. 2, Sept. 23, 1963, 77 Stat. 162; Pub. L. 89–358, Sec. 4(n), Mar. 3, 1966, 80 Stat. 25; Pub. L. 92–540, title IV, Sec. 402(4), Oct. 24, 1972, 86 Stat. 1090; renumbered Sec. 3535 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3536. Specialized vocational training courses

The Secretary may approve a specialized course of vocational training leading to a predetermined vocational objective for the enrollment of an eligible person under this subchapter if the Secretary finds that such course, either alone or when combined with other courses, constitutes a program of education which is suitable for that person and is required because of a mental or physical handicap.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1199, Sec. 1737; Pub. L. 88–126, Sec. 4, Sept. 23, 1963, 77 Stat. 162; renumbered Sec. 1736, Pub. L. 92–540, title IV, Sec. 402(3), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 94–502, title III, Sec. 310(20), Oct. 15, 1976, 90 Stat. 2392; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3536, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3537. Work-study allowance

(a) Subject to subsection (b) of this section, the Secretary shall utilize, in connection with the activities described in section 3485(a) of this title, the services of any eligible person who is pursuing, in a State, at least a three-quarter-time program of education (other than a course of special restorative training) and shall pay to such person an additional educational assistance allowance (hereinafter in this section referred to as "work-study allowance") in return for such eligible person's agreement to perform such services. The amount of the work-study allowance shall be determined in accordance with section 3485(a) of this title.

(b) The Secretary's utilization of, and payment of a work-study allowance for, the services of an eligible person pursuant to subsection (a) of this section shall be subject to the same requirements, terms, and conditions as are set out in section 3485 of this title with regard to individuals pursuing at least three-quarter-time programs of education referred to in subsection (b) of such section.

(Added Pub. L. 101–237, title IV, Sec. 406(a)(1), Dec. 18, 1989, 103 Stat. 2082, Sec. 1737; renumbered Sec. 3537 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

[§ 3538. Vacant]

SUBCHAPTER V—SPECIAL RESTORATIVE TRAINING

§ 3540. Purpose

The purpose of special restorative training is to overcome, or lessen, the effects of a manifest physical or mental disability which would handicap an eligible person (other than a person made eligible under subparagraph (C) of such section by reason of a spouse being listed in one of the categories referred to in that subparagraph) in the pursuit of a program of education.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1200, Sec. 1740; Pub. L. 96–466, title III, Sec. 331, Oct. 17, 1980, 94 Stat. 2198; renumbered Sec. 3540 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–103, title I, Sec. 109(a), Dec. 27, 2001, 115 Stat. 986; Pub. L. 109–444, Sec. 3(b)(4), Dec. 21, 2006, 120 Stat. 3307; Pub. L. 109–461, title III, Sec. 301(b)(4), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3427, 3468.)

§ 3541. Entitlement to special restorative training

(a) The Secretary at the request of an eligible person is authorized—

(1) to determine whether such person is in need of special restorative training; and

(2) where need is found to exist, to prescribe a course which is suitable to accomplish the purposes of this chapter.

Such a course, at the discretion of the Secretary, may contain elements that would contribute toward an ultimate objective of a program of education.

(b) The total period of educational assistance under this subchapter and other subchapters of this chapter may not exceed the amount of entitlement as established in section 3511 of this title, except that the Secretary may extend such period in the case of any person if the Secretary finds that additional assistance is nec-

essary to accomplish the purpose of special restorative training as stated in subsection (a) of this section.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1200, Sec. 1741; Pub. L. 88–361, Sec. 6, July 7, 1964, 78 Stat. 298; Pub. L. 94–502, title III, Sec. 310(21), Oct. 15, 1976, 90 Stat. 2392; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3541 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–103, title I, Sec. 109(b)(1), Dec. 27, 2001, 115 Stat. 986.)

§ 3542. Special training allowance

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

(b) No payments of a special training allowance shall be made for the same period for which the payment of an educational assistance allowance is made or for any period during which the training is pursued on less than a full-time basis.

(c) Full-time training for the purpose of this section shall be determined by the Secretary with respect to the capacities of the individual trainee.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1200, Sec. 1742; Pub. L. 89–222, Sec. 2, Sept. 30, 1965, 79 Stat. 896; Pub. L. 91–219, title I, Sec. 104(c), Mar. 26, 1970, 84 Stat. 78; Pub. L. 92–540, title I, Sec. 103(4), Oct. 24, 1972, 86 Stat. 1076; Pub. L. 93–508, title I, Sec. 103(4), Dec. 3, 1974, 88 Stat. 1580; Pub. L. 93–602, title II, Sec. 204(b), Jan. 2, 1975, 88 Stat. 1958; Pub. L. 94–502, title III, Sec. 301(2), Oct. 15, 1976, 90 Stat. 2389; Pub. L. 95–202, title I, Sec. 103(2), Nov. 23, 1977, 91 Stat. 1435; Pub. L. 96–466, title II, Sec. 202(2), 212(2), Oct. 17, 1980, 94 Stat. 2188, 2190; Pub. L. 98–543, title II, Sec. 203(2), Oct. 24, 1984, 98 Stat. 2742; Pub. L. 101–237, title IV, Sec. 403(a)(10), 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2080, 2092; renumbered Sec. 3542, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–178, title VIII, Sec. 8210(c), as added Pub. L. 105–206, title IX, Sec. 9014(b), July 22, 1998, 112 Stat. 866; Pub. L. 106–419, title I, Sec. 111(c), Nov. 1, 2000, 114 Stat. 1830; Pub. L. 107–103, title I, Secs. 102(c), 109(b)(2), Dec. 27, 2001, 115 Stat. 978, 986; Pub. L. 108–183, title III, Sec. 302(c), Dec. 16, 2003, 117 Stat. 2659.)

§ 3543. Special administrative provisions

(a) In carrying out the Secretary's responsibilities under this chapter the Secretary may by agreement arrange with public or private educational institutions or others to provide training arrangements as may be suitable and necessary to accomplish the purposes of this subchapter. In any instance where the Secretary finds that a customary tuition charge is not applicable, the Secretary may agree on the fair and reasonable amounts which may be charged for the training provided to the eligible person.

(b) The Secretary shall make such rules and regulations as the Secretary may deem necessary in order to promote good conduct on the part of the persons who are following courses of special restorative training and otherwise to carry out the purposes of this chapter.

(c) In a case in which the Secretary authorizes training under section 3541(a) of this title on behalf of an eligible person, the parent or guardian shall be entitled—

(1) to receive on behalf of the eligible person the special training allowance provided for under section 3542(a) of this title;

(2) to elect an increase in the basic monthly allowance provided for under such section; and

(3) to agree with the Secretary on the fair and reasonable amounts which may be charged under subsection (a).

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1200, Sec. 1743; Pub. L. 94–502, title III, Sec. 310(22), Oct. 15, 1976, 90 Stat. 2392; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (2), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3543, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–103, title I, Sec. 109(b)(3), (4), Dec. 27, 2001, 115 Stat. 986.)

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

§ 3561. Authority and duties of Secretary

(a) The Secretary may provide the educational and vocational counseling authorized under section 3520 of this title, and may provide additional counseling if the Secretary deems it to be necessary to accomplish the purposes of this chapter.

(b) Where any provision of this chapter authorizes or requires any function, power, or duty to be exercised by a State, or by any officer or agency thereof, such function, power, or duty shall, with respect to the Republic of the Philippines, be exercised by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1200, Sec. 1761; Pub. L. 89–358, Sec. 3(a)(1), Mar. 3, 1966, 80 Stat. 19; Pub. L. 94–502, title III, Sec. 310(23), Oct. 15, 1976, 90 Stat. 2392; Pub. L. 96–466, title III, Sec. 323(b), Oct. 17, 1980, 94 Stat. 2196; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3561 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3562. Nonduplication of benefits

The commencement of a program of education or special restorative training under this chapter shall be a bar (1) to subsequent payments of compensation, dependency and indemnity compensation, or pension based on the death of a parent to an eligible person over the age of eighteen by reason of pursuing a course in an educational institution, or (2) to increased rates, or additional amounts, of compensation, dependency and indemnity compensation, or pension because of such a person whether eligibility is based upon the death or upon the total permanent disability of the parent.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1201, Sec. 1762; Pub. L. 88–361, Sec. 4, July 7, 1964, 78 Stat. 298; Pub. L. 89–358, Sec. 3(a)(2), Mar. 3, 1966, 80 Stat. 20; renumbered Sec. 3562, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3563. Notification of eligibility

The Secretary shall notify the parent or guardian of each eligible person whose eligibility is based on the death or disability of a parent or on a parent being listed in one of the categories referred to in section 3501(a)(1)(C) of this title of the educational assistance available to such person under this chapter. Such notifica-

tion shall be provided not later than the month in which such eligible person attains such person's thirteenth birthday or as soon thereafter as feasible.

(Added Pub. L. 91–219, title II, Sec. 207(a), Mar. 26, 1970, 84 Stat. 82, Sec. 1763; amended Pub. L. 94–502, title III, Sec. 310(24), Oct. 15, 1976, 90 Stat. 2392; Pub. L. 97–295, Sec. 4(46), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3563 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 109–444, Sec. 3(b)(5), Dec. 21, 2006, 120 Stat. 3307; Pub. L. 109–461, title III, Sec. 301(b)(5), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3427, 3468.)

§ 3564. Annual adjustment of amounts of educational assistance

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

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

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

(b) Any increase under subsection (a) in a rate with respect to a fiscal year after fiscal year 2004 and before fiscal year 2014 shall be rounded down to the next lower whole dollar amount. Any such increase with respect to a fiscal year after fiscal year 2013 shall be rounded to the nearest whole dollar amount.

(Added Pub. L. 106–419, title I, Sec. 111(f)(1)(A), Nov. 1, 2000, 114 Stat. 1831; amended Pub. L. 108–183, title III, Sec. 304(b), Dec. 16, 2003, 117 Stat. 2660.)

SUBCHAPTER VII—PHILIPPINE COMMONWEALTH ARMY AND PHILIPPINE SCOUTS

§ 3565. Children of certain Philippine veterans

(a) BASIC ELIGIBILITY.—The term "eligible person" as used in section 3501(a)(1) of this title includes the children of those Commonwealth Army veterans and "New" Philippine Scouts who meet the requirements of service-connected disability or death, based on service as defined in section 3566 of this title.

(b) ADMINISTRATIVE PROVISIONS.—The provisions of this chapter and chapter 36 shall apply to the educational assistance for children of Commonwealth Army veterans and "New" Philippine Scouts, except that—

(1) educational assistance allowances authorized by section 3532 of this title and the special training allowance authorized by section 3542 of this title shall be paid at the rate of $0.50 for each dollar, and

(2) any reference to a State approving agency shall be deemed to refer to the Secretary.

(c) DELIMITING DATES.—In the case of any individual who is an eligible person solely by virtue of subsection (a) of this section, and who is above the age of seventeen years and below the age of twenty-three years on September 30, 1966, the period referred to in sec-

tion 3512 of this title shall not end until the expiration of the five-year period which begins on September 30, 1966.

(Added Pub. L. 89–613, Sec. 1, Sept. 30, 1966, 80 Stat. 861, Sec. 1765; amended Pub. L. 91–24, Sec. 9(c), June 11, 1969, 83 Stat. 34; Pub. L. 97–295, Sec. 4(47), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3565 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title V, Sec. 507(b), Nov. 2, 1994, 108 Stat. 4664; Pub. L. 109–233, title V, Sec. 503(8)(A), June 15, 2006, 120 Stat. 416.)

§ 3566. Definitions

(a) The term "Commonwealth Army veterans" means persons who served before July 1, 1946, in the organized military forces of the Government of the Philippines, while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander-in-Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who were discharged or released from such service under conditions other than dishonorable.

(b) The term ""New" Philippine Scouts" means Philippine Scouts who served under section 14 of the Armed Forces Voluntary Recruitment Act of 1945, and who were discharged or released from such service under conditions other than dishonorable.

(Added Pub. L. 89–613, Sec. 1, Sept. 30, 1966, 80 Stat. 861, Sec. 1766; renumbered Sec. 3566, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

CHAPTER 36 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS

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[3698. Repealed.]
[3699. Repealed.]

SUBCHAPTER I—STATE APPROVING AGENCIES

§ 3670. Scope of approval

(a) A course approved under and for the purposes of this chapter shall be deemed approved for the purposes of chapters 34 and 35 of this title.

(b) Any course approved under chapter 33 of this title, prior to February 1, 1965, under subchapter VII of chapter 35 of this title, prior to March 3, 1966, and not disapproved under section 3483, section 1656 (as in effect prior to February 1, 1965), or section 3679 of this title, shall be deemed approved for the purposes of this chapter.

(Added Pub. L. 89–358, Sec. 3(a)(5), Mar. 3, 1966, 80 Stat. 20, Sec. 1770; amended Pub. L. 92–540, title IV, Sec. 403(1), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 97–295, Sec. 4(49), Oct. 12, 1982, 96 Stat. 1308; renumbered Sec. 3670 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3671. Designation

(a) Unless otherwise established by the law of the State concerned, the chief executive of each State is requested to create or designate a State department or agency as the "State approving agency" for such State for the purposes of this chapter and chapters 34 and 35 of this title.

(b)(1) If any State fails or declines to create or designate a State approving agency, or fails to enter into an agreement under section 3674(a), the provisions of this chapter which refer to the State approving agency shall, with respect to such State, be deemed to refer to the Secretary.

(2) In the case of courses subject to approval by the Secretary under section 3672 of this title, the provisions of this chapter which refer to a State approving agency shall be deemed to refer to the Secretary.

(Added Pub. L. 88–126, Sec. 1, Sept. 23, 1963, 77 Stat. 158, Sec. 1771; amended Pub. L. 89–358, Sec. 3(a)(6), Mar. 3, 1966, 80 Stat. 20; Pub. L. 92–540, title IV, Sec. 403(2), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 94–502, title V, Sec. 513(a)(1), Oct. 15, 1976, 90 Stat. 2402; Pub. L. 100–323, Sec. 13(b)(4), May 20, 1988, 102 Stat. 573; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3671 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3672. Approval of courses

(a) An eligible person or veteran shall receive the benefits of this chapter and chapters 34 and 35 of this title while enrolled in a course of education offered by an educational institution only if (1) such course is approved as provided in this chapter and chapters 34 and 35 of this title by the State approving agency for the State where such educational institution is located, or by the Secretary, or (2) such course is approved (A) for the enrollment of the particular individual under the provisions of section 3536 of this title or (B) for special restorative training under subchapter V of chapter 35 of this title. Approval of courses by State approving agencies shall be in accordance with the provisions of this chapter and chapters 34 and 35 of this title and such other regulations and policies as the State approving agency may adopt. Each State approving agency shall furnish the Secretary with a current list of

educational institutions specifying courses which it has approved, and, in addition to such list, it shall furnish such other information to the Secretary as it and the Secretary may determine to be necessary to carry out the purposes of this chapter and chapters 34 and 35 of this title. Each State approving agency shall notify the Secretary of the disapproval of any course previously approved and shall set forth the reasons for such disapproval.

(b) The Secretary shall be responsible for the approval of courses of education offered by any agency of the Federal Government authorized under other laws to supervise such education. The Secretary may approve any course in any other educational institution in accordance with the provisions of this chapter and chapters 34 and 35 of this title.

(c)(1) In the case of programs of apprenticeship where—

(A) the apprenticeship standards have been approved by the Secretary of Labor pursuant to section 2 of the Act of August 16, 1937 (popularly known as the "National Apprenticeship Act") (29 U.S.C. 50a), as a national apprenticeship program for operation in more than one State, and

(B) the training establishment is a carrier directly engaged in interstate commerce which provides such training in more than one State,

the Secretary shall act as a "State approving agency" as such term is used in section 3687(a)(1) of this title and shall be responsible for the approval of all such programs.

(2) The period of a program of apprenticeship may be determined based upon a specific period of time (commonly referred to as a "time-based program"), based upon the demonstration of successful mastery of skills (commonly referred to as a "competency-based program"), or based upon a combination thereof.

(3)(A) In the case of a competency-based program of apprenticeship, State approving agencies shall determine the period for which payment may be made for such a program under chapters 30 and 35 of this title and chapter 1606 of title 10. In determining the period of such a program, State approving agencies shall take into consideration the approximate term of the program recommended in registered apprenticeship program standards recognized by the Secretary of Labor.

(B) The sponsor of a competency-based program of apprenticeship shall provide notice to the State approving agency involved of any such standards that may apply to the program and the proposed approximate period of training under the program.

(4) The sponsor of a competency-based program of apprenticeship shall notify the Secretary upon the successful completion of a program of apprenticeship by an individual under chapter 30 or 35 of this title, or chapter 1606 of title 10, as the case may be.

(d)(1) Pursuant to regulations prescribed by the Secretary in consultation with the Secretary of Labor, the Secretary and State approving agencies shall actively promote the development of apprenticeship and on the job training programs for the purposes of sections 3677 and 3687 of this title and shall utilize the services of disabled veterans' outreach program specialists under section 4103A of this title to promote the development of such programs. The Secretary of Labor shall provide assistance and services to the

Secretary, and to State approving agencies, to increase the use of apprenticeships.

(2) In conjunction with outreach services provided by the Secretary under chapter 77 of this title for education and training benefits, each State approving agency shall conduct outreach programs and provide outreach services to eligible persons and veterans about education and training benefits available under applicable Federal and State law.

(e) A program of education exclusively by correspondence, and the correspondence portion of a combination correspondence-residence course leading to a vocational objective, that is offered by an educational institution (as defined in section 3452(c) of this title) may be approved only if (1) the educational institution is accredited by an entity recognized by the Secretary of Education, and (2) at least 50 percent of those pursuing such a program or course require six months or more to complete the program or course.

(Added Pub. L. 88–126, Sec. 1, Sept. 23, 1963, 77 Stat. 158, Sec. 1772; amended Pub. L. 89–358, Sec. 3(a)(7), (8), Mar. 3, 1966, 80 Stat. 20, 21; Pub. L. 91–219, title II, Sec. 211, Mar. 26, 1970, 84 Stat. 83; Pub. L. 92–540, title IV, Sec. 403(3)–(5), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 96–466, title V, Sec. 502, Oct. 17, 1980, 94 Stat. 2203; Pub. L. 97–295, Sec. 4(50), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3672 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VI, Sec. 605(a)(1), Nov. 2, 1994, 108 Stat. 4671; Pub. L. 107–103, title III, Sec. 303, Dec. 27, 2001, 115 Stat. 992; Pub. L. 108–454, title I, Secs. 104(a), (b), 110(b), Dec. 10, 2004, 118 Stat. 3601, 3602, 3605.)

§ 3673. Approval activities: cooperation and coordination of activities

(a) COOPERATION IN ACTIVITIES.—The Secretary and each State approving agency shall take cognizance of the fact that definite duties, functions, and responsibilities are conferred upon the Secretary and each State approving agency under the educational programs established under this chapter and chapters 34 and 35 of this title. To assure that such programs are effectively and efficiently administered, the cooperation of the Secretary and the State approving agencies is essential. It is necessary to establish an exchange of information pertaining to activities of educational institutions, and particular attention should be given to the enforcement of approval standards, enforcement of enrollment restrictions, and fraudulent and other criminal activities on the part of persons connected with educational institutions in which eligible persons or veterans are enrolled under this chapter and chapters 34 and 35 of this title.

(b) COORDINATION OF ACTIVITIES.—The Secretary shall take appropriate actions to ensure the coordination of approval activities performed by State approving agencies under this chapter and chapters 34 and 35 of this title and approval activities performed by the Department of Labor, the Department of Education, and other entities in order to reduce overlap and improve efficiency in the performance of such activities.

(c) AVAILABILITY OF INFORMATION MATERIAL.—The Secretary will furnish the State approving agencies with copies of such Department of Veterans Affairs informational material as may aid them in carrying out chapters 34 and 35 of this title.

(Added Pub. L. 88–126, Sec. 1, Sept. 23, 1963, 77 Stat. 158, Sec. 1773; amended Pub. L. 89–358, Sec. 3(a)(7), (11), Mar. 3, 1966, 80 Stat. 20, 21; Pub. L. 92–540, title IV, Sec. 403(6), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 97–295, Sec. 4(51), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3673, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 110–389, title III, Sec. 326(a)(1), (2)(A), (3), Oct. 10, 2008, 122 Stat. 4169.)

§ 3674. Reimbursement of expenses

(a)(1) Subject to paragraphs (2) through (4) of this subsection, the Secretary is authorized to enter into contracts or agreements with State and local agencies to pay such State and local agencies for reasonable and necessary expenses of salary and travel incurred by employees of such agencies and an allowance for administrative expenses in accordance with the formula contained in subsection (b) of this section in (A) rendering necessary services in ascertaining the qualifications of educational institutions for furnishing courses of education to eligible persons or veterans under this chapter and chapters 30 through 35 of this title and chapter 106 of title 10, and in the supervision of such educational institutions, and (B) furnishing, at the request of the Secretary, any other services in connection with such chapters. Each such contract or agreement shall be conditioned upon compliance with the standards and provisions of such chapters. The Secretary may also reimburse such agencies for work performed by their subcontractors where such work has a direct relationship to the requirements of such chapters, and has had the prior approval of the Secretary.

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

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

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

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

port. The report shall be submitted in the form and manner required by the Secretary.

(4) The total amount made available under this section for any fiscal year shall be $19,000,000.

(b) The allowance for administrative expenses incurred pursuant to subsection (a) of this section shall be paid in accordance with the following formula:

Total salary cost reimbursable under this section	Allowable for administrative expense
$5,000 or less	$693.
Over $5,000 but not exceeding $10,000	$1,247.
Over $10,000 but not exceeding $35,000	$1,247 for the first $10,000, plus $1,155 for each additional $5,000 or fraction thereof.
Over $35,000 but not exceeding $40,000	$7,548.
Over $40,000 but not exceeding $75,000	$7,548 for the first $40,000, plus $999 for each additional $5,000 or fraction thereof.
Over $75,000 but not exceeding $80,000	$14,969.
Over $80,000	$14,969 for the first $80,000, plus $872 for each additional $5,000 or fraction thereof.

(c) Each State and local agency with which the Secretary contracts or enters into an agreement under subsection (a) of this section shall report to the Secretary periodically, but not less often than annually, as determined by the Secretary, on the activities in the preceding twelve months (or the period which has elapsed since the last report under this subsection was submitted) carried out under such contract or agreement. Each such report shall describe, in such detail as the Secretary shall prescribe, services performed and determinations made in connection with ascertaining the qualifications of educational institutions in connection with this chapter and chapters 32, 34, and 35 of this title and in supervising such institutions.

(Added Pub. L. 88–126, Sec. 1, Sept. 23, 1963, 77 Stat. 159, Sec. 1774; amended Pub. L. 89–358, Sec. 3(a)(7), (8), (11), Mar. 3, 1966, 80 Stat. 20, 21; Pub. L. 90–631, Sec. 4, Oct. 23, 1968, 82 Stat. 1334; Pub. L. 92–540, title IV, Sec. 403(7), 411, Oct. 24, 1972, 86 Stat. 1090, 1092; Pub. L. 93–508, title II, Sec. 210(1), Dec. 3, 1974, 88 Stat. 1584; Pub. L. 94–502, title V, Sec. 503, Oct. 15, 1976, 90 Stat. 2399; Pub. L. 95–202, title III, Sec. 303, Nov. 23, 1977, 91 Stat. 1441; Pub. L. 96–466, title II, Sec. 203(1), 213(1), Oct. 17, 1980, 94 Stat. 2188, 2190; Pub. L. 97–295, Sec. 4(51), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 100–323, Sec. 13(a)(1), (b)(5), May 20, 1988, 102 Stat. 571, 573; Pub. L. 101–237, title IV, Sec. 414, 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2085, 2092; Pub. L. 102–16, Sec. 10(a)(7), Mar. 22, 1991, 105 Stat. 56; renumbered Sec. 3674 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VI, Sec. 606(a)(1), (b), Nov. 2, 1994, 108 Stat. 4672; Pub. L. 106–419, title I, Sec. 123, Nov. 1, 2000, 114 Stat. 1837; Pub. L. 107–14, Sec. 8(a)(7), June 5, 2001, 115 Stat. 34; Pub. L. 107–330, title III, Sec. 301, Dec. 6, 2002, 116 Stat. 2824; Pub. L. 110–252, title V, Sec. 5005, June 30, 2008, 122 Stat. 2379.)

§ 3674A. Evaluations of agency performance; qualifications and performance of agency personnel

(a) The Secretary shall—

(1)(A) conduct, in conjunction with State approving agencies, an annual evaluation of each State approving agency on the basis of standards developed by the Secretary in conjunction with the State approving agencies, and (B) provide each such agency an opportunity to comment on the evaluation;

(2) take into account the results of annual evaluations carried out under paragraph (1) when negotiating the terms and conditions of a contract or agreement under section 3674 of this title;

(3) cooperate with State approving agencies in developing and implementing a uniform national curriculum, to the extent practicable, for training new employees and for continuing the training of employees of such agencies, and sponsor, with the agencies, such training and continuation of training; and

(4) prescribe prototype qualification and performance standards, developed in conjunction with State approving agencies, for use by such agencies in the development of qualification and performance standards for State approving agency personnel carrying out approval responsibilities under a contract or agreement entered into under section 3674(a).

(b)(1) Each State approving agency carrying out a contract or agreement with the Secretary under section 3674(a) of this title shall—

(A) apply qualification and performance standards based on the standards developed under subsection (a)(4); and

(B) make available to any person, upon request, the criteria used to carry out its functions under a contract or agreement entered into under section 3674(a) of this title.

(2) In developing and applying standards described in subsection (a)(4), the State approving agency may take into consideration the State's merit system requirements and other local requirements and conditions.

(3) The Secretary shall provide assistance in developing such standards to a State approving agency that requests it.

(Added Pub. L. 100–323, Sec. 13(b)(1)(A), May 20, 1988, 102 Stat. 572, Sec. 1774A; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3674A and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VI, Sec. 606(c), Nov. 2, 1994, 108 Stat. 4672; Pub. L. 105–368, title X, Sec. 1005(b)(8), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 107–14, Sec. 8(a)(8), June 5, 2001, 115 Stat. 35.)

§ 3675. Approval of accredited courses

(a)(1) A State approving agency may approve the courses offered by an educational institution when—

(A) such courses have been accredited and approved by a nationally recognized accrediting agency or association;

(B) such courses are conducted under the Act of February 23, 1917 (20 U.S.C. 11 et seq.);

(C) such courses are accepted by the State department of education for credit for a teacher's certificate or a teacher's degree; or

(D) such courses are approved by the State as meeting the requirement of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395i-3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).

(2)(A) For the purposes of this chapter, the Secretary of Education shall publish a list of nationally recognized accrediting agencies and associations which that Secretary determines to be reliable

authority as to the quality of training offered by an educational institution.

(B) Except as provided in section 3672(e) of this title, a State approving agency may utilize the accreditation of any accrediting association or agency listed pursuant to subparagraph (A) of this paragraph for approval of courses specifically accredited and approved by such accrediting association or agency.

(3)(A) An educational institution shall submit an application for approval of courses to the appropriate State approving agency. In making application for approval, the institution (other than an elementary school or secondary school) shall transmit to the State approving agency copies of its catalog or bulletin which must be certified as true and correct in content and policy by an authorized representative of the institution.

(B) Each catalog or bulletin transmitted by an institution under subparagraph (A) of this paragraph shall—

(i) state with specificity the requirements of the institution with respect to graduation;

(ii) include the information required under paragraphs (6) and (7) of section 3676(b) of this title; and

(iii) include any attendance standards of the institution, if the institution has and enforces such standards.

(b) As a condition of approval under this section, the State approving agency must find the following:

(1) The educational institution keeps adequate records, as prescribed by the State approving agency, to show the progress and grades of the eligible person or veteran and to show that satisfactory standards relating to progress and conduct are enforced.

(2) The educational institution maintains a written record of the previous education and training of the eligible person or veteran that clearly indicates that appropriate credit has been given by the educational institution for previous education and training, with the training period shortened proportionately.

(3) The educational institution and its approved courses meet the criteria of paragraphs (1), (2), and (3) of section 3676(c) of this title.

(c)(1) A State approving agency may approve the entrepreneurship courses offered by a qualified provider of entrepreneurship courses.

(2) For purposes of this subsection, the term "entrepreneurship course" means a non-degree, non-credit course of business education that enables or assists a person to start or enhance a small business concern (as defined pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a))).

(3) Subsection (a) and paragraphs (1) and (2) of subsection (b) shall not apply to—

(A) an entrepreneurship course offered by a qualified provider of entrepreneurship courses; and

(B) a qualified provider of entrepreneurship courses by reason of such provider offering one or more entrepreneurship courses.

(4) Notwithstanding paragraph (3), a qualified provider of entrepreneurship courses shall maintain such records as the Sec-

retary determines to be necessary to comply with reporting requirements that apply under section 3684(a)(1) of this title with respect to eligible persons and veterans enrolled in an entrepreneurship course offered by the provider.

(Added Pub. L. 88–126, Sec. 1, Sept. 23, 1963, 77 Stat. 159, Sec. 1775; amended Pub. L. 89–358, Sec. 3(a)(8), Mar. 3, 1966, 80 Stat. 21; Pub. L. 94–502, title V, Sec. 504, 513(a)(2), Oct. 15, 1976, 90 Stat. 2399, 2402; Pub. L. 96–466, title VIII, Sec. 801(d), Oct. 17, 1980, 94 Stat. 2216; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3675 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 312, Oct. 29, 1992, 106 Stat. 4330; Pub. L. 103–446, title VI, Sec. 605(a)(2)(A), Nov. 2, 1994, 108 Stat. 4672; Pub. L. 104–275, title I, Sec. 103(c), Oct. 9, 1996, 110 Stat. 3326; Pub. L. 108–183, title III, Sec. 305(a), Dec. 16, 2003, 117 Stat. 2660; Pub. L. 108–454, title I, Sec. 110(c)(1), Dec. 10, 2004, 118 Stat. 3605.)

§ 3676. Approval of nonaccredited courses

(a) No course of education which has not been approved by a State approving agency pursuant to section 3675 of this title, which is offered by a public or private, profit or nonprofit, educational institution shall be approved for the purposes of this chapter unless the educational institution offering such course submits to the appropriate State approving agency a written application for approval of such course in accordance with the provisions of this chapter.

(b) Such application shall be accompanied by not less than two copies of the current catalog or bulletin which is certified as true and correct in content and policy by an authorized owner or official and includes the following:

(1) Identifying data, such as volume number and date of publication;

(2) Names of the institution and its governing body, officials and faculty;

(3) A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term, or semester, and other important dates;

(4) Institution policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course;

(5) Institution policy and regulations relative to leave, absences, class cuts, makeup work, tardiness and interruptions for unsatisfactory attendance;

(6) Institution policy and regulations relative to standards of progress required of the student by the institution (this policy will define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress and a description of the probationary period, if any, allowed by the institution, and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student);

(7) Institution policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct;

(8) Detailed schedules of fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges;

(9) Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees, and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom;

(10) A description of the available space, facilities, and equipment;

(11) A course outline for each course for which approval is requested, showing subjects or units in the course, type of work or skill to be learned, and approximate time and clock hours to be spent on each subject or unit; and

(12) Policy and regulations of the institution relative to granting credit for previous educational training.

(c) The appropriate State approving agency may approve the application of such institution when the institution and its non-accredited courses are found upon investigation to have met the following criteria:

(1) The courses, curriculum, and instruction are consistent in quality, content, and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.

(2) There is in the institution adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(3) Educational and experience qualifications of directors, administrators, and instructors are adequate.

(4) The institution maintains a written record of the previous education and training of the eligible person and clearly indicates that appropriate credit has been given by the institution for previous education and training, with the training period shortened proportionately and the eligible person so notified.

(5) A copy of the course outline, schedule of tuition, fees, and other charges, regulations pertaining to absence, grading policy, and rules of operation and conduct will be furnished the eligible person upon enrollment.

(6) Upon completion of training, the eligible person is given a certificate by the institution indicating the approved course and indicating that training was satisfactorily completed.

(7) Adequate records as prescribed by the State approving agency are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced.

(8) The institution complies with all local, city, county, municipal, State, and Federal regulations, such as fire codes, building and sanitation codes. The State approving agency may require such evidence of compliance as is deemed necessary.

(9) The institution is financially sound and capable of fulfilling its commitments for training.

(10) The institution does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation. The institution shall not be deemed to have met this requirement until the State approving agency (A) has ascertained from the Federal Trade Commission

whether the Commission has issued an order to the institution to cease and desist from any act or practice, and (B) has, if such an order has been issued, given due weight to that fact.

(11) The institution does not exceed its enrollment limitations as established by the State approving agency.

(12) The institution's administrators, directors, owners, and instructors are of good reputation and character.

(13) The institution has and maintains a policy for the refund of the unused portion of tuition, fees, and other charges in the event the eligible person fails to enter the course or withdraws or is discontinued therefrom at any time before completion and—

(A) in the case of an institution (other than (i) a Federal, State, or local Government institution or (ii) an institution described in subparagraph (B)), such policy provides that the amount charged to the eligible person for tuition, fees, and other charges for a portion of the course shall not exceed the approximate pro rata portion of the total charges for tuition, fees, and other charges that the length of the completed portion of the course bears to its total length; or

(B) in the case of an institution that is a nonaccredited public educational institution, the institution has and maintains a refund policy regarding the unused portion of tuition, fees, and other charges that is substantially the same as the refund policy followed by accredited public educational institutions located within the same State as such institution.

(14) Such additional criteria as may be deemed necessary by the State approving agency.

(d) The Secretary may waive, in whole or in part, the requirements of subsection (c)(13) of this section in the case of an educational institution which—

(1) is a college, university, or similar institution offering postsecondary level academic instruction that leads to an associate or higher degree,

(2) is operated by an agency of a State or of a unit of local government,

(3) is located within such State or, in the case of an institution operated by an agency of a unit of local government, within the boundaries of the area over which such unit has taxing jurisdiction, and

(4) is a candidate for accreditation by a regional accrediting association,

if the Secretary determines, pursuant to regulations which the Secretary shall prescribe, that such requirements would work an undue administrative hardship because the total amount of tuition, fees, and other charges at such institution is nominal.

(e) Notwithstanding any other provision of this title, a course of education shall not be approved under this section if it is to be pursued in whole or in part by independent study.

(Added Pub. L. 88–126, Sec. 1, Sept. 23, 1963, 77 Stat. 159, Sec. 1776; amended Pub. L. 89–358, Sec. 3(a)(9), Mar. 3, 1966, 80 Stat. 21; Pub. L. 97–66, title VI, Sec. 606, Oct. 17, 1981, 95 Stat. 1037; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec.

18, 1989, 103 Stat. 2092; renumbered Sec. 3676 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 313(a)(1), Oct. 29, 1992, 106 Stat. 4331; Pub. L. 109–461, title III, Sec. 303, Dec. 22, 2006, 120 Stat. 3428; Pub. L. 110–389, title III, Sec. 322, Oct. 10, 2008, 122 Stat. 4168.)

§ 3677. Approval of training on the job

(a) Any State approving agency may approve a program of training on the job (other than a program of apprenticeship) only when it finds that the job which is the objective of the training is one in which progression and appointment to the next higher classification are based upon skills learned through organized and supervised training on the job and not on such factors as length of service and normal turnover, and that the provisions of subsections (b) and (c) of this section are met.

(b)(1) The training establishment offering training which is desired to be approved for the purposes of this chapter must submit to the appropriate State approving agency a written application for approval which, in addition to furnishing such information as is required by the State approving agency, contains a certification that—

(A) the wages to be paid the eligible veteran or person (i) upon entrance into training, are not less than wages paid nonveterans in the same training position and are at least 50 per centum of the wages paid for the job for which the veteran or person is to be trained, and (ii) such wages will be increased in regular periodic increments until, not later than the last full month of the training period, they will be at least 85 per centum of the wages paid for the job for which such eligible veteran or person is being trained; and

(B) there is reasonable certainty that the job for which the eligible veteran or person is to be trained will be available to the veteran or person at the end of the training period.

(2) The requirement under paragraph (1)(A)(ii) shall not apply with respect to a training establishment operated by the United States or by a State or local government.

(3) The requirement for certification under paragraph (1) shall not apply to training described in section 3452(e)(2) of this title.

(c) As a condition for approving a program of training on the job (other than a program of apprenticeship) the State approving agency must find upon investigation that the following criteria are met:

(1) The training content of the course is adequate to qualify the eligible veteran or person for appointment to the job for which the veteran or person is to be trained.

(2) The job customarily requires full-time training for a period of not less than six months and not more than two years.

(3) The length of the training period is not longer than that customarily required by the training establishments in the community to provide an eligible veteran or person with the required skills, arrange for the acquiring of job knowledge, technical information, and other facts which the eligible veteran or person will need to learn in order to become competent on the job for which the veteran or person is being trained.

(4) Provision is made for related instruction for the individual eligible veteran or person who may need it.

(5) There is in the training establishment adequate space, equipment, instructional material, and instructor personnel to provide satisfactory training on the job.

(6) Adequate records are kept to show the progress made by each eligible veteran or person toward such veteran's or person's job objective.

(7) No course of training will be considered bona fide if given to an eligible veteran or person who is already qualified by training and experience for the job.

(8) A signed copy of the training agreement for each eligible veteran or person, including the training program and wage scale as approved by the State approving agency, is provided to the veteran or person and to the Secretary and the State approving agency by the employer.

(9) That the course meets such other criteria as may be established by the State approving agency.

(d)(1) The Secretary may conduct a pilot program under which the Secretary operates a program of training on the job under this section for a period (notwithstanding subsection (c)(2)) of up to three years in duration to train employees of the Department to become qualified adjudicators of claims for compensation, dependency and indemnity compensation, and pension.

(2)(A) Not later than three years after the implementation of the pilot project, the Secretary shall submit to Congress an initial report on the pilot project. The report shall include an assessment of the usefulness of the program in recruiting and retaining of personnel of the Department as well as an assessment of the value of the program as a training program.

(B) Not later than 18 months after the date on which the initial report under subparagraph (A) is submitted, the Secretary shall submit to Congress a final report on the pilot project. The final report shall include recommendations of the Secretary with respect to continuation of the pilot project and with respect to expansion of the types of claims for which the extended period of on the job training is available to train such employees.

(Added Pub. L. 90–77, title III, Sec. 304(d), Aug. 31, 1967, 81 Stat. 186, Sec. 1777; amended Pub. L. 91–219, title II, Sec. 212, Mar. 26, 1970, 84 Stat. 83; Pub. L. 92–540, title III, Sec. 314, Oct. 24, 1972, 86 Stat. 1084; Pub. L. 94–502, title V, Sec. 513(a)(3), Oct. 15, 1976, 90 Stat. 2402; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3677, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–368, title II, Sec. 205(a), Nov. 11, 1998, 112 Stat. 3327; Pub. L. 108–454, title I, Sec. 108, Dec. 10, 2004, 118 Stat. 3604; Pub. L. 110–389, title III, Sec. 325, Oct. 10, 2008, 122 Stat. 4169.)

§ 3678. Notice of approval of courses

The State approving agency, upon determining that an educational institution has complied with all the requirements of this chapter, will issue a letter to such institution setting forth the courses which have been approved for the purposes of this chapter, and will furnish an official copy of such letter and any subsequent amendments to the Secretary. The letter of approval shall be accompanied by a copy of the catalog or bulletin of the institution, as approved by the State approving agency, and shall contain the following information:

(1) date of letter and effective date of approval of courses;

(2) proper address and name of each educational institution;

(3) authority for approval and conditions of approval, referring specifically to the approved catalog or bulletin published by the educational institution;

(4) name of each course approved;

(5) where applicable, enrollment limitations such as maximum numbers authorized and student-teacher ratio;

(6) signature of responsible official of State approving agency; and

(7) such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency.

(Added Pub. L. 88–126, Sec. 1, Sept. 23, 1963, 77 Stat. 162, Sec. 1777; renumbered Sec. 1778, Pub. L. 90–77, title III, Sec. 304(d), Aug. 31, 1967, 81 Stat. 186; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3678, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3679. Disapproval of courses

(a) Any course approved for the purposes of this chapter which fails to meet any of the requirements of this chapter shall be immediately disapproved by the appropriate State approving agency. An educational institution which has its courses disapproved by a State approving agency will be notified of such disapproval by a certified or registered letter of notification and a return receipt secured.

(b) Each State approving agency shall notify the Secretary of each course which it has disapproved under this section. The Secretary shall notify the State approving agency of the Secretary's disapproval of any educational institution under chapter 31 of this title.

(Added Pub. L. 88–126, Sec. 1, Sept. 23, 1963, 77 Stat. 162, Sec. 1778; renumbered Sec. 1779, Pub. L. 90–77, title III, Sec. 304(d), Aug. 31, 1967, 81 Stat. 186; amended Pub. L. 94–502, title V, Sec. 513(a)(4), Oct. 15, 1976, 90 Stat. 2402; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (2), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3679, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

§ 3680. Payment of educational assistance or subsistence allowances

(a) PERIOD FOR WHICH PAYMENT MAY BE MADE.—Payment of educational assistance or subsistence allowances to eligible veterans or eligible persons pursuing a program of education or training, other than a program by correspondence, in an educational institution under chapter 31, 34, or 35 of this title shall be paid as provided in this section and, as applicable, in section 3108, 3482, 3491, or 3532 of this title. Such payments shall be paid only for the period of such veterans' or persons' enrollment in, and pursuit of, such program, but no amount shall be paid—

(1) to any eligible veteran or eligible person for any period when such veteran or person is not pursuing such veteran's or person's course in accordance with the regularly established policies and regulations of the educational institution, with the provisions of such regulations as may be prescribed by the Secretary pursuant to subsection (g) of this section, and with the

requirements of this chapter or of chapter 34 or 35 of this title, but payment may be made for an actual period of pursuit of one or more unit subjects pursued for a period of time shorter than the enrollment period at the educational institution;

(2) to any eligible veteran or person for auditing a course; or

(3) to any eligible veteran or person for a course for which the grade assigned is not used in computing the requirements for graduation including a course from which the student withdraws unless—

(A) the eligible veteran or person withdraws because he or she is ordered to active duty; or

(B) the Secretary finds there are mitigating circumstances, except that, in the first instance of withdrawal (without regard to withdrawals described in subclause (A) of this clause) by the eligible veteran or person from a course or courses with respect to which the veteran or person has been paid assistance under this title, mitigating circumstances shall be considered to exist with respect to courses totaling not more than six semester hours or the equivalent thereof.

Notwithstanding the foregoing, the Secretary may, subject to such regulations as the Secretary shall prescribe, continue to pay allowances to eligible veterans and eligible persons enrolled in courses set forth in clause (1) of this subsection—

(A) during periods when the schools are temporarily closed under an established policy based upon an Executive order of the President or due to an emergency situation;

(B) during periods between consecutive school terms where such veterans or persons transfer from one approved educational institution to another approved educational institution for the purpose of enrolling in and pursuing a similar course at the second institution if the period between such consecutive terms does not exceed 30 days; or

(C) during periods between school terms where the educational institution certifies the enrollment of the eligible veteran or eligible person on an individual term basis if (i) the period between those terms does not exceed eight weeks, and (ii) both the terms preceding and following the period are not shorter in length than the period.

(b) CORRESPONDENCE TRAINING CERTIFICATIONS.—No educational assistance allowance shall be paid to an eligible veteran or spouse or surviving spouse enrolled in and pursuing a program of education exclusively by correspondence until the Secretary shall have received—

(1) from the eligible veteran or spouse or surviving spouse a certificate as to the number of lessons actually completed by the veteran or spouse or surviving spouse and serviced by the educational institution; and

(2) from the training establishment a certification or an endorsement on the veteran's or spouse's or surviving spouse's certificate, as to the number of lessons completed by the veteran or spouse or surviving spouse and serviced by the institution.

(c) APPRENTICESHIP AND OTHER ON-JOB TRAINING.—No training assistance allowance shall be paid to an eligible veteran or eligible person enrolled in and pursuing a program of apprenticeship or other on-job training until the Secretary shall have received—

(1) from such veteran or person a certification as to such veteran's or person's actual attendance during such period; and

(2) from the training establishment a certification, or an endorsement on the veteran's or person's certificate, that such veteran or person was enrolled in and pursuing a program of apprenticeship or other on-job training during such period.

(d) ADVANCE PAYMENT OF INITIAL EDUCATIONAL ASSISTANCE OR SUBSISTENCE ALLOWANCE.—(1) The educational assistance or subsistence allowance advance payment provided for in this subsection is based upon a finding by the Congress that eligible veterans and eligible persons may need additional funds at the beginning of a school term to meet the expenses of books, travel, deposits, and payment for living quarters, the initial installment of tuition, and the other special expenses which are concentrated at the beginning of a school term.

(2) Subject to the provisions of this subsection, and under regulations which the Secretary shall prescribe, an eligible veteran or eligible person shall be paid an educational assistance allowance or subsistence allowance, as appropriate, advance payment. Such advance payment shall be made in an amount equivalent to the allowance for the month or fraction thereof in which pursuit of the program will commence, plus the allowance for the succeeding month. In the case of a person on active duty, who is pursuing a program of education, the advance payment shall be in a lump sum based upon the amount payable for the entire quarter, semester, or term, as applicable. In no event shall an advance payment be made under this subsection to a veteran or person intending to pursue a program of education on less than a half-time basis. An advance payment may not be made under this subsection to any veteran or person unless the veteran or person requests such payment and the Secretary finds that the educational institution at which such veteran or person is accepted or enrolled has agreed to, and can satisfactorily, carry out the provisions of paragraphs (4)(B) and (C) and (5) of this subsection. The application for advance payment, to be made on a form prescribed by the Secretary, shall—

(A) in the case of an initial enrollment of a veteran or person in an educational institution, contain information showing that the veteran or person (i) is eligible for educational benefits, (ii) has been accepted by the institution, and (iii) has notified the institution of such veteran's or person's intention to attend that institution; and

(B) in the case of a re-enrollment of a veteran or person, contain information showing that the veteran or person (i) is eligible to continue such veteran's or person's program of education or training and (ii) intends to re-enroll in the same institution,

and, in either case, shall also state the number of semester or clock-hours to be pursued by such veteran or person.

(3) For purposes of the Secretary's determination whether any veteran or person is eligible for an advance payment under this

section, the information submitted by the institution, the veteran or person, shall establish such veteran's or person's eligibility unless there is evidence in such veteran's or person's file in the processing office establishing that the veteran or person is not eligible for such advance payment.

(4) The advance payment authorized by paragraph (2) of this subsection shall, in the case of an eligible veteran or eligible person, be (A) drawn in favor of the veteran or person; (B) mailed to the educational institution listed on the application form for temporary care and delivery to the veteran or person by such institution; and (C) delivered to the veteran or person upon such veteran's or person's registration at such institution, but in no event shall such delivery be made earlier than thirty days before the program of education is to commence.

(5) Upon delivery of the advance payment pursuant to paragraph (4) of this subsection, the institution shall submit to the Secretary a certification of such delivery. If such delivery is not effected within thirty days after commencement of the program of education in question, such institution shall return such payment to the Secretary forthwith.

(e) RECOVERY OF ERRONEOUS PAYMENTS.—(1) Subject to paragraph (2), if an eligible veteran or eligible person fails to enroll in or pursue a course for which an educational assistance or subsistence allowance advance payment is made, the amount of such payment and any amount of subsequent payments which, in whole or in part, are due to erroneous information required to be furnished under subsection (d)(2) of this section, shall become an overpayment and shall constitute a liability of such veteran or person to the United States and may be recovered, unless waived pursuant to section 5302 of this title, from any benefit otherwise due such veteran or person under any law administered by the Department of Veterans Affairs or may be recovered in the same manner as any other debt due the United States.

(2) Paragraph (1) shall not apply to the recovery of an overpayment of an educational allowance or subsistence allowance advance payment to an eligible veteran or eligible person who fails to enroll in or pursue a course of education for which the payment is made if such failure is due to the death of the veteran or person.

(f) PAYMENTS FOR LESS THAN HALF-TIME TRAINING.—Payment of educational assistance allowance in the case of any eligible veteran or eligible person pursuing a program of education on less than a half-time basis shall be made in an amount computed for the entire quarter, semester, or term not later than the last day of the month immediately following the month in which certification is received from the educational institution that such veteran or person has enrolled in and is pursuing a program at such institution. Such lump sum payment shall be computed at the rate provided in section 3482(b) or 3532(a)(2) of this title, as applicable.

(g) DETERMINATION OF ENROLLMENT, PURSUIT, AND ATTENDANCE.—(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 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 or 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.

(Added Pub. L. 92–540, title II, Sec. 201, Oct. 24, 1972, 86 Stat. 1076, Sec. 1780; amended Pub. L. 93–208, Dec. 28, 1973, 87 Stat. 907; Pub. L. 93–508, title II, Sec. 209, Dec. 3, 1974, 88 Stat. 1584; Pub. L. 94–502, title V, Sec. 505, 506, 513(a)(5)–(12), Oct. 15, 1976, 90 Stat. 2400, 2402, 2403; Pub. L. 96–466, title III, Sec. 341, 342, title VI, Sec. 601(c), (d), 602(c), Oct. 17, 1980, 94 Stat. 2198, 2208, 2209; Pub. L. 97–35, title XX, Sec. 2003(c), Aug. 13, 1981, 95 Stat. 782; Pub. L. 97–295, Sec. 4(52), Oct. 12, 1982, 96 Stat. 1308; Pub. L. 97–306, title II, Sec. 205(c), Oct. 14, 1982, 96 Stat. 1434; Pub. L. 99–576, title III, Sec. 315(a)(1), 316, title VII, Sec. 701(59), Oct. 28, 1986, 100 Stat. 3274, 3296; Pub. L. 100–689, title I, Sec. 121(a), Nov. 18, 1988, 102 Stat. 4173; Pub. L. 101–237, title IV, Sec. 412(a), 415(a), 423(b)(1), (2), Dec. 18, 1989, 103 Stat. 2085, 2086, 2092; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 3680 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–127, Sec. 6(a), Oct. 10, 1991, 105 Stat. 622; Pub. L. 102–568, title III, Sec. 314, Oct. 29, 1992, 106 Stat. 4333; Pub. L. 103–446, title VI, Sec. 605(a)(2)(B), title XII, Sec. 1201(i)(6), Nov. 2, 1994, 108 Stat. 4672, 4688; Pub. L. 106–419, title I, Sec. 121(a), Nov. 1, 2000, 114 Stat. 1833; Pub. L. 107–103, title I, Sec. 104(b), Dec. 27, 2001, 115 Stat. 981; Pub. L. 109–233, title V, Sec. 503(8)(A), June 15, 2006, 120 Stat. 416.)

§ 3680A. Disapproval of enrollment in certain courses

(a) The Secretary shall not approve the enrollment of an eligible veteran in—

(1) any bartending course or personality development course;

(2) any sales or sales management course which does not provide specialized training within a specific vocational field;

(3) any type of course which the Secretary finds to be avocational or recreational in character (or the advertising for which the Secretary finds contains significant avocational or recreational themes) unless the veteran submits justification showing that the course will be of bona fide use in the pursuit of the veteran's present or contemplated business or occupation; or

(4) any independent study program except an accredited independent study program (including open circuit television) leading (A) to a standard college degree, or (B) to a certificate

that reflects educational attainment offered by an institution of higher learning.

(b) Except to the extent otherwise specifically provided in this title or chapter 106 of title 10, the Secretary shall not approve the enrollment of an eligible veteran in any course of flight training other than one given by an educational institution of higher learning for credit toward a standard college degree the eligible veteran is seeking.

(c) The Secretary shall not approve the enrollment of an eligible veteran in any course to be pursued by radio.

(d)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall not approve the enrollment of any eligible veteran, not already enrolled, in any course for any period during which the Secretary finds that more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or by the Department of Veterans Affairs under this title or under chapter 106 of title 10. The Secretary may waive the requirements of this subsection, in whole or in part, if the Secretary determines, pursuant to regulations which the Secretary shall prescribe, it to be in the interest of the eligible veteran and the Federal Government. The provisions of this subsection shall not apply to any course offered by an educational institution if the total number of veterans and persons receiving assistance under this chapter or chapter 30, 31, 32, or 35 of this title or under chapter 106 of title 10 who are enrolled in such institution equals 35 percent or less, or such other percent as the Secretary prescribes in regulations, of the total student enrollment at such institution (computed separately for the main campus and any branch or extension of such institution), except that the Secretary may apply the provisions of this subsection with respect to any course in which the Secretary has reason to believe that the enrollment of such veterans and persons may be in excess of 85 percent of the total student enrollment in such course.

(2) Paragraph (1) of this subsection does not apply with respect to the enrollment of a veteran—

(A) in a course offered pursuant to section 3019, 3034(a)(3), 3234, or 3241(a)(2) of this title;

(B) in a farm cooperative training course; or

(C) in a course described in subsection (g).

(e) The Secretary may not approve the enrollment of an eligible veteran in a course not leading to a standard college degree offered by a proprietary profit or proprietary nonprofit educational institution if—

(1) the educational institution has been operating for less than two years;

(2) the course is offered at a branch of the educational institution and the branch has been operating for less than two years; or

(3) following either a change in ownership or a complete move outside its original general locality, the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality (as determined in accordance

with regulations the Secretary shall prescribe) unless the educational institution following such change or move has been in operation for at least two years.

(f) The Secretary may not approve the enrollment of an eligible veteran in a course as a part of a program of education offered by an educational institution if the course is provided under contract by another educational institution or entity and—

(1) the Secretary would be barred under subsection (e) from approving the enrollment of an eligible veteran in the course of the educational institution or entity providing the course under contract; or

(2) the educational institution or entity providing the course under contract has not obtained approval for the course under this chapter.

(g) Notwithstanding subsections (e) and (f)(1), the Secretary may approve the enrollment of an eligible veteran in a course approved under this chapter if the course is offered by an educational institution under contract with the Department of Defense or the Department of Homeland Security and is given on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve.

(Added Pub. L. 102–568, title III, Sec. 313(a)(2), Oct. 29, 1992, 106 Stat. 4331; Pub. L. 104–275, title I, Secs. 103(a)(2), (b), 104(c), Oct. 9, 1996, 110 Stat. 3326, 3327; Pub. L. 105–114, title IV, Sec. 401(d), (e), Nov. 21, 1997, 111 Stat. 2293; Pub. L. 105–368, title X, Sec. 1005(b)(9), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 107–103, title I, Sec. 111(a), Dec. 27, 2001, 115 Stat. 986; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315.)

§ 3681. Limitations on educational assistance

(a) No educational assistance allowance granted under chapter 30, 34, 35, or 36 of this title or 106 or 107 of title 10, or subsistence allowance granted under chapter 31 of this title shall be paid to any eligible person (1) who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service; or (2) who is attending a course of education or training paid for under chapter 41 of title 5.

(b) No person may receive benefits concurrently under two or more of the provisions of law listed below:

(1) Chapters 30, 31, 32, 34, 35, and 36 of this title.

(2) Chapters 106 and 107 of title 10.

(3) Section 903 of the Department of Defense Authorization Act, 1981 (Public Law 96–342, 10 U.S.C. 2141 note).

(4) The Hostage Relief Act of 1980 (Public Law 96–449, 5 U.S.C. 5561 note).

(5) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99–399).

(Added Pub. L. 89–358, Sec. 3(b), Mar. 3, 1966, 80 Stat. 21, Sec. 1781; amended Pub. L. 91–219, title II, Sec. 213(1), Mar. 26, 1970, 84 Stat. 83; Pub. L. 92–540, title IV, Sec. 403(8), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 94–502, title V, Sec. 513(a)(13), Oct. 15, 1976, 90 Stat. 2403; Pub. L. 96–466, title I, Sec. 102, title VIII, Sec. 801(e), Oct. 17, 1980, 94 Stat. 2187, 2216; Pub. L. 97–295, Sec. 4(53), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 98–223, title II, Sec. 203(c)(1), Mar. 2, 1984, 98 Stat. 41; Pub. L. 98–525, title VII, Sec. 703(c), Oct. 19, 1984, 98 Stat. 2564; Pub. L. 99–576, title III, Sec. 317, 321(9), Oct. 28, 1986, 100 Stat. 3275, 3278; Pub. L. 101–237, title IV, Sec. 423(a)(8)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3681, Pub. L. 102–83,

Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 315, Oct. 29, 1992, 106 Stat. 4333.)

§ 3682. Control by agencies of the United States

Except as provided in section 3674A of this title, no department, agency, or officer of the United States, in carrying out this chapter, shall exercise any supervision or control, whatsoever, over any State approving agency, or State educational agency, or any educational institution. Nothing in this section shall be deemed to prevent any department, agency, or officer of the United States from exercising any supervision or control which such department, agency, or officer is authorized by law to exercise over any Federal educational institution or to prevent the furnishing of education under this chapter or chapter 34 or 35 of this title in any institution over which supervision or control is exercised by such other department, agency, or officer under authority of law.

(Added Pub. L. 89–358, Sec. 3(b), Mar. 3, 1966, 80 Stat. 21, Sec. 1782; amended Pub. L. 92–540, title IV, Sec. 403(9), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 100–323, Sec. 13(b)(6), May 20, 1988, 102 Stat. 574; renumbered Sec. 3682 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3683. Conflicting interests

(a) Every officer or employee of the Department of Veterans Affairs who has, while such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any educational institution operated for profit in which an eligible person or veteran was pursuing a program of education or course under this chapter or chapter 34 or 35 of this title shall be immediately dismissed from such officer's or employee's office or employment.

(b) If the Secretary finds that any person who is an officer or employee of a State approving agency has, while such person was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, an educational institution operated for profit in which an eligible person or veteran was pursuing a program of education or course under this chapter or chapter 34 or 35 of this title, the Secretary shall discontinue making payments under section 3674 of this title to such State approving agency unless such agency shall, without delay, take such steps as may be necessary to terminate the employment of such person and such payments shall not be resumed while such person is an officer or employee of the State approving agency, or State department of veterans' affairs or State department of education.

(c) A State approving agency shall not approve any course offered by an educational institution operated for profit, and, if any such course has been approved, shall disapprove each such course, if it finds that any officer or employee of the Department of Veterans Affairs or the State approving agency owns an interest in, or receives any wages, salary, dividends, profits, gratuities, or services from, such institution.

(d) The Secretary may, after reasonable notice and public hearings, waive in writing the application of this section in the case of any officer or employee of the Department of Veterans Affairs or of a State approving agency, if the Secretary finds that no det-

riment will result to the United States or to eligible persons or veterans by reasons of such interest or connection of such officer or employee.

(Added Pub. L. 89–358, Sec. 3(b), Mar. 3, 1966, 80 Stat. 22, Sec. 1783; amended Pub. L. 92–540, title IV, Sec. 403(10), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 94–502, title V, Sec. 513(a)(14)–(16), Oct. 15, 1976, 90 Stat. 2403; Pub. L. 97–295, Sec. 4(54), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3683 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3684. Reports by veterans, eligible persons, and institutions; reporting fee

(a)(1) Except as provided in paragraph (2) of this subsection, the veteran or eligible person and the educational institution offering a course in which such veteran or eligible person is enrolled under chapter 31, 34,,[1] 35, or 36 of this title shall, without delay, report to the Secretary, in the form prescribed by the Secretary, such enrollment and any interruption or termination of the education of each such veteran or eligible person. The date of such interruption or termination will be the last date of pursuit, or, in the case of correspondence training, the last date a lesson was serviced by a school.

(2)(A) In the case of a program of independent study pursued on less than a half-time basis in an educational institution, the Secretary may approve a delay by the educational institution in reporting the enrollment or reenrollment of an eligible veteran or eligible person until the end of the term, quarter, or semester if the educational institution requests the delay and the Secretary determines that it is not feasible for the educational institution to monitor interruption or termination of the veteran's or eligible person's pursuit of such program.

(B) An educational institution which, pursuant to subparagraph (A) of this paragraph, is delaying the reporting of the enrollment or reenrollment of a veteran shall provide the veteran with notice of the delay at the time that the veteran enrolls or reenrolls.

(3)(A) Subject to subparagraph (B) of this paragraph, an educational institution offering courses on a term, quarter, or semester basis may certify the enrollment of a veteran who is not on active duty, or of an eligible person, in such courses for more than one term, quarter, or semester at a time, but not for a period extending beyond the end of a school year (including the summer enrollment period).

(B) Subparagraph (A) of this paragraph shall not apply with respect to any term, quarter, or semester for which the veteran or eligible person is enrolled on a less than half-time basis and shall not be construed as restricting the Secretary from requiring that an educational institution, in reporting an enrollment for more than one term, quarter, or semester, specify the dates of any intervals within or between any such terms, quarters, or semesters.

(b) The Secretary, prior to making payment of a reporting fee to an educational institution, as provided for in subsection (c) of this section, shall require such institution to certify that it has exercised reasonable diligence in determining whether such institu-

[1] So in original.

tion or any course offered by such institution approved for the enrollment of veterans or eligible persons meets all of the applicable requirements of chapters 31, 34, 35, and 36 of this title and that it will, without delay, report any failure to meet any such requirement to the Secretary.

(c) The Secretary may pay to any educational institution, or to the sponsor of a program of apprenticeship, furnishing education or training under either this chapter or chapter 31, 34, or 35 of this title, a reporting fee which will be in lieu of any other compensation or reimbursement for reports or certifications which such educational institution or joint apprenticeship training committee is required to submit to the Secretary by law or regulation. Such reporting fee shall be computed for each calendar year by multiplying $7 by the number of eligible veterans or eligible persons enrolled under this chapter or chapter 31, 34, or 35 of this title, or $11 in the case of those eligible veterans and eligible persons whose educational assistance checks are directed in care of each institution for temporary custody and delivery and are delivered at the time of registration as provided under section 3680(d)(4) of this title, during the calendar year. The reporting fee shall be paid to such educational institution or joint apprenticeship training committee as soon as feasible after the end of the calendar year for which it is applicable. No reporting fee payable to an educational institution under this subsection shall be subject to offset by the Secretary against any liability of such institution for any overpayment for which such institution may be administratively determined to be liable under section 3685 of this title unless such liability is not contested by such institution or has been upheld by a final decree of a court of appropriate jurisdiction. The reporting fee payable under this subsection shall be paid from amounts appropriated for readjustment benefits.

(Added Pub. L. 89–358, Sec. 3(b), Mar. 3, 1966, 80 Stat. 22, Sec. 1784; amended Pub. L. 90–77, title III, Sec. 308(a), Aug. 31, 1967, 81 Stat. 189; Pub. L. 92–540, title III, Sec. 315, Oct. 24, 1972, 86 Stat. 1084; Pub. L. 93–508, title II, Sec. 210(2), Dec. 3, 1974, 88 Stat. 1585; Pub. L. 94–502, title V, Sec. 507, 508, 513(a)(17), Oct. 15, 1976, 90 Stat. 2400, 2403; Pub. L. 95–202, title III, Sec. 304(a)(1), Nov. 23, 1977, 91 Stat. 1442; Pub. L. 96–466, title III, Sec. 343(a), (b)(1), title VI, Sec. 601(e), Oct. 17, 1980, 94 Stat. 2198, 2208; Pub. L. 97–295, Sec. 4(55), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 99–576, title III, Sec. 318, 319, Oct. 28, 1986, 100 Stat. 3275; Pub. L. 101–237, title IV, Sec. 416(a), 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2086, 2092; renumbered Sec. 3684 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–368, title II, Sec. 201(a), (b), Nov. 11, 1998, 112 Stat. 3326; Pub. L. 106–419, title IV, Sec. 404(a)(7), Nov. 1, 2000, 114 Stat. 1865; Pub. L. 108–454, title I, Sec. 110(d), Dec. 10, 2004, 118 Stat. 3605.)

§ 3684A. Procedures relating to computer matching program

(a)(1) Notwithstanding section 552a(p) of title 5 and subject to paragraph (2) of this subsection, the Secretary may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under an educational assistance program provided for in chapter 30 or 32 of this title or in chapter 106 of title 10 in the case of any individual, or take other adverse action against such individual, based on information produced by a matching program with the Department of Defense.

(2) The Secretary may not take any action referred to in paragraph (1) of this subsection until—

(A) the individual concerned has been provided a written notice containing a statement of the findings of the Secretary based on the matching program, a description of the proposed action, and notice of the individual's right to contest such findings within 10 days after the date of the notice; and

(B) the 10-day period referred to in subparagraph (A) of this paragraph has expired.

(3) In computing the 10-day period referred to in paragraph (2) of this subsection, Saturdays, Sundays, and Federal holidays shall be excluded.

(b) For the purposes of subsection (q) of section 552a of title 5, compliance with the provisions of subsection (a) of this section shall be considered compliance with the provisions of subsection (p) of such section 552a.

(c) For purposes of this section, the term "matching program" has the same meaning provided in section 552a(a)(8) of title 5.

(Added Pub. L. 101–366, title II, Sec. 206(a), Aug. 15, 1990, 104 Stat. 441, Sec. 1784A; renumbered Sec. 3684A, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3685. Overpayments to eligible persons or veterans

(a) Whenever the Secretary finds that an overpayment has been made to a veteran or eligible person, the amount of such overpayment shall constitute a liability of such veteran or eligible person to the United States.

(b) Whenever the Secretary finds that an overpayment has been made to a veteran or eligible person as the result of (1) the willful or negligent failure of an educational institution to report, as required under this chapter or chapter 34 or 35 of this title, to the Department of Veterans Affairs excessive absences from a course, or discontinuance or interruption of a course by the veteran or eligible person, or (2) the willful or negligent false certification by an educational institution, the amount of such overpayment shall constitute a liability of the educational institution to the United States.

(c) Any overpayment referred to in subsection (a) or (b) of this section may be recovered, except as otherwise provided in the last sentence of section 3684(c) of this title, in the same manner as any other debt due the United States.

(d) Any overpayment referred to in subsection (a) or (b) of this section may be waived as to a veteran or eligible person as provided in section 5302 of this title. Waiver of any such overpayment as to a veteran or eligible person shall in no way release any educational institution from liability under subsection (b) of this section.

(e)(1) Any amount collected from a veteran or eligible person pursuant to this section shall be reimbursed to the educational institution which is liable pursuant to subsection (b) of this section to the extent that collection was made from the educational institution.

(2) Nothing in this section or any other provision of this title shall be construed as (A) precluding the imposition of any civil or criminal liability under this title or any other law, or (B) requiring

any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(Added Pub. L. 89–358, Sec. 3(b), Mar. 3, 1966, 80 Stat. 22, Sec. 1785; amended Pub. L. 92–540, title IV, Sec. 403(11), Oct. 24, 1972, 86 Stat. 1090; Pub. L. 95–202, title III, Sec. 304(a)(2), Nov. 23, 1977, 91 Stat. 1442; Pub. L. 96–466, title III, Sec. 344, Oct. 17, 1980, 94 Stat. 2199; Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 3685 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3686. Correspondence courses

(a)(1) Each eligible veteran (as defined in section 3452(a)(1) and (2) of this title) and each eligible spouse or surviving spouse (as defined in section 3501(a)(1)(B), (C), (D), or (E) of this title) who enters into an enrollment agreement to pursue a program of education exclusively by correspondence shall be paid an educational assistance allowance computed at the rate of 55 percent of the established charge which the institution requires nonveterans to pay for the course or courses pursued by the eligible veteran or spouse or surviving spouse. The term "established charge" as used herein means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the veteran or spouse or surviving spouse, whichever is the lesser. Such allowance shall be paid quarterly on a pro rata basis for the lessons completed by the veteran or spouse or surviving spouse and serviced by the institution.

(2) The period of entitlement of any veteran or spouse or surviving spouse who is pursuing any program of education exclusively by correspondence shall be charged with one month for each $376 which is paid to the veteran or spouse or surviving spouse as an educational assistance allowance for such course.

(3) Notwithstanding any other provision of law unless enacted in express limitation of this paragraph, funds in the Department of Veterans Affairs readjustment benefits account shall be available for payments under paragraph (1) of this subsection for pursuit of a program of education exclusively by correspondence in which the veteran or spouse or surviving spouse enrolls after September 30, 1981.

(b) The enrollment agreement shall fully disclose the obligation of both the institution and the veteran or spouse or surviving spouse and shall prominently display the provisions for affirmance, termination, refunds, and the conditions under which payment of the allowance is made by the Secretary to the veteran or spouse or surviving spouse. A copy of the enrollment agreement shall be furnished to each such veteran or spouse or surviving spouse at the time such veteran or spouse or surviving spouse signs such agreement. No such agreement shall be effective unless such veteran or spouse or surviving spouse shall, after the expiration of five days after the enrollment agreement is signed, have signed and submitted to the Secretary a written statement, with a signed copy to the institution, specifically affirming the enrollment agreement. In the event the veteran or spouse or surviving spouse at any time notifies the institution of such veteran's or spouse's intention not to affirm the agreement in accordance with the preceding sentence,

the institution, without imposing any penalty or charging any fee shall promptly make a full refund of all amounts paid.

(c) In the event a veteran or spouse or surviving spouse elects to terminate such veteran's or spouse's enrollment under an affirmed enrollment agreement, the institution may charge the veteran or spouse or surviving spouse a registration or similar fee not in excess of 10 percent of the tuition for the course, or $50, whichever is less. Where the veteran or spouse or surviving spouse elects to terminate the agreement after completion of one or more but less than 25 percent of the total number of lessons comprising the course, the institution may retain such registration or similar fee plus 25 percent of the tuition for the course. Where the veteran or spouse or surviving spouse elects to terminate the agreement after completion of 25 percent but less than 50 percent of the lessons comprising the course, the institution may retain the full registration or similar fee plus 50 percent of the course tuition. If 50 percent or more of the lessons are completed, no refund of tuition is required.

(Added Pub. L. 92–540, title III, Sec. 316(1), Oct. 24, 1972, 86 Stat. 1084, Sec. 1786; amended Pub. L. 93–508, title I, Sec. 104(1), Dec. 3, 1974, 88 Stat. 1580; Pub. L. 93–602, title II, Sec. 205(a), Jan. 2, 1975, 88 Stat. 1958; Pub. L. 94–502, title V, Sec. 501(1), 513(a)(18), Oct. 15, 1976, 90 Stat. 2398, 2403; Pub. L. 95–202, title I, Sec. 104(1), Nov. 23, 1977, 91 Stat. 1435; Pub. L. 96–466, title II, Sec. 203(2), 213(2), title VI, Sec. 604, Oct. 17, 1980, 94 Stat. 2189, 2191, 2209; Pub. L. 97–35, title XX, Sec. 2004(a), Aug. 13, 1981, 95 Stat. 782; Pub. L. 97–174, Sec. 5(a), May 4, 1982, 96 Stat. 75; Pub. L. 97–295, Sec. 4(56), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 98–543, title II, Sec. 204(1), Oct. 24, 1984, 98 Stat. 2742; Pub. L. 101–237, title IV, Sec. 423(b)(1), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3686 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VI, Sec. 605(a)(2)(C), Nov. 2, 1994, 108 Stat. 4672; Pub. L. 109–444, Sec. 3(c)(1), Dec. 21, 2006, 120 Stat. 3307; Pub. L. 109–461, title III, Sec. 301(c)(1), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3427, 3468; Pub. L. 110–389, title III, Sec. 323, Oct. 10, 2008, 122 Stat. 4168.)

§ 3687. Apprenticeship or other on-job training

(a) An eligible veteran (as defined in section 3452(a)(1) of this title) or an eligible person (as defined in section 3501(a) of this title) shall be paid a training assistance allowance as prescribed by subsection (b) of this section while pursuing a full-time—

(1) program of apprenticeship approved by a State approving agency as meeting the standards of apprenticeship published by the Secretary of Labor pursuant to section 2 of the Act of August 16, 1937 (popularly known as the "National Apprenticeship Act") (29 U.S.C. 50a), or

(2) program of other on-job training approved under provisions of section 3677 of this title,

subject to the conditions and limitations of chapters 34 and 35 of this title with respect to educational assistance.

(b)(1) The monthly training assistance allowance of an eligible veteran pursuing a program described under subsection (a) shall be as follows:

Column I	Column II	Column III	Column IV	Column V
Periods of training	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
First 6 months	$274	$307	$336	$14
Second 6 months	205	239	267	14
Third 6 months	136	171	198	14
Fourth and any succeeding 6-month periods	68	101	131	14

(2) The monthly training assistance allowance of an eligible person pursuing a program described under subsection (a) shall be $574 for the first six months, $429 for the second six months, $285 for the third six months, and $144 for the fourth and any succeeding six-month period of training.

(3) In any month in which an eligible veteran or person pursuing a program of apprenticeship or a program of other on-job training fails to complete one hundred and twenty hours of training in such month, the monthly training assistance allowance set forth in subsection (b)(1) or (2) of this section, as applicable, shall be reduced proportionately in the proportion that the number of hours worked bears to one hundred and twenty hours rounded off to the nearest eight hours.

(c) For the purpose of this chapter, the terms "program of apprenticeship" and "program of other on-job training" shall have the same meaning as "program of education"; and the term "training assistance allowance" shall have the same meaning as "educational assistance allowance" as set forth in chapters 34 and 35 of this title.

(d) With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the rates payable under subsection (b)(2) equal to the percentage by which—

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

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

(e)(1) For each month that an individual (as defined in paragraph (3)) is paid a training assistance allowance under subsection (a), the entitlement of the individual shall be charged at a percentage rate (rounded to the nearest percent) that is equal to the ratio of—

(A) the training assistance allowance for the month involved, to (B) the monthly educational assistance allowance otherwise payable for full-time enrollment in an educational institution..

(2) For any month in which an individual fails to complete 120 hours of training, the entitlement otherwise chargeable under para-

graph (1) shall be reduced in the same proportion as the monthly training assistance allowance payable is reduced under subsection (b)(3).

(3) In this section, the term "individual" means—

(A) an eligible veteran who is entitled to monthly educational assistance allowances payable under section 3015(e) of this title, or

(B) an eligible person who is entitled to monthly educational assistance allowances payable under section 3532(a) of this title, as the case may be.

(Added Pub. L. 92–540, title III, Sec. 316(1), Oct. 24, 1972, 86 Stat. 1085, Sec. 1787; amended Pub. L. 93–508, title I, Sec. 104(2), (3), Dec. 3, 1974, 88 Stat. 1580; Pub. L. 93–602, title II, Sec. 205(b), Jan. 2, 1975, 88 Stat. 1959; Pub. L. 94–502, title V, Sec. 501(2), Oct. 15, 1976, 90 Stat. 2398; Pub. L. 95–202, title I, Sec. 104(2), Nov. 23, 1977, 91 Stat. 1435; Pub. L. 96–466, title II, Sec. 203(3), 213(3), Oct. 17, 1980, 94 Stat. 2189, 2191; Pub. L. 97–295, Sec. 4(57), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 98–543, title II, Sec. 204(2), Oct. 24, 1984, 98 Stat. 2742; Pub. L. 101–237, title IV, Sec. 403(b), Dec. 18, 1989, 103 Stat. 2080; renumbered Sec. 3687 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–178, title VIII, Sec. 8210(d), as added Pub. L. 105–206, title IX, Sec. 9014(b), July 22, 1998, 112 Stat. 866; Pub. L. 106–419, title I, Sec. 111(d), (f)(2), Nov. 1, 2000, 114 Stat. 1830, 1831; Pub. L. 107–103, title I, Sec. 102(d), Dec. 27, 2001, 115 Stat. 978; Pub. L. 108–183, title III, Sec. 302(d), Dec. 16, 2003, 117 Stat. 2659; Pub. L. 108–454, title I, Sec. 102(a), Dec. 10, 2004, 118 Stat. 3600.)

§ 3688. Measurement of courses

(a) For the purposes of this chapter and chapters 34 and 35 of this title—

(1) an institutional trade or technical course offered on a clock-hour basis, not leading to a standard college degree, involving shop practice as an integral part thereof, shall be considered a full-time course when a minimum of 22 hours per week of attendance (excluding supervised study) is required, with no more than 2 1/2 hours of rest periods per week allowed;

(2) an institutional course offered on a clock-hour basis, not leading to a standard college degree, in which theoretical or classroom instruction predominates shall be considered a full-time course when a minimum of 18 hours per week net of instruction (excluding supervised study but which may include customary intervals not to exceed 10 minutes between hours of instruction) is required;

(3) an academic high school course requiring sixteen units for a full course shall be considered a full-time course when (A) a minimum of four units per year is required or (B) an individual is pursuing a program of education leading to an accredited high school diploma at a rate which, if continued, would result in receipt of such a diploma in four ordinary school years. For the purpose of subclause (A) of this clause, a unit is defined to be not less than one hundred and twenty sixty-minute hours or their equivalent of study in any subject in one academic year;

(4) an institutional undergraduate course offered by a college or university on a standard quarter-or semester-hour basis, other than a course pursued as part of a program of education beyond the baccalaureate level, shall be considered a

full-time course when a minimum of fourteen semester hours per semester or the equivalent thereof (including such hours for which no credit is granted but which are required to be taken to correct an educational deficiency and which the educational institution considers to be quarter or semester hours for other administrative purposes), for which credit is granted toward a standard college degree, is required, except that where such college or university certifies, upon the request of the Secretary, that (A) full-time tuition is charged to all undergraduate students carrying a minimum of less than fourteen such semester hours or the equivalent thereof, or (B) all undergraduate students carrying a minimum of less than fourteen such semester hours or the equivalent thereof, are considered to be pursuing a full-time course for other administrative purposes, then such an institutional undergraduate course offered by such college or university with such minimum number of such semester hours shall be considered a full-time course, but in the event such minimum number of semester hours is less than twelve semester hours or the equivalent thereof, then twelve semester hours or the equivalent thereof shall be considered a full-time course;

(5) a program of apprenticeship or a program of other on-job training shall be considered a full-time program when the eligible veteran or person is required to work the number of hours constituting the standard workweek of the training establishment, but a workweek of less than thirty hours shall not be considered to constitute full-time training unless a lesser number of hours has been established as the standard workweek for the particular establishment through bona fide collective bargaining;

(6) an institutional course offered as part of a program of education, not leading to a standard college degree, under section 3034(a)(3), 3241(a)(2), or 3533(a) of this title shall be considered a full-time course on the basis of measurement criteria provided in clause (2), (3), or (4) of this subsection as determined by the educational institution; and

(7) an institutional course not leading to a standard college degree offered by an educational institution on a standard quarter-or semester-hour basis shall be measured as full time on the same basis as provided in paragraph (4) of this subsection, but if the educational institution offering the course is not an institution of higher learning, then in no event shall such course be considered full time when it requires less than the minimum weekly hours of attendance required for full time by paragraph (1) or (2) of this subsection, as appropriate.

(b) The Secretary shall define part-time training in the case of the types of courses referred to in subsection (a), and shall define full-time and part-time training in the case of all other types of courses pursued under this chapter, chapter 30, 32, 33, or 35 of this title, or chapter 106 of title 10.

(Added Pub. L. 92–540, title III, Sec. 316(2), Oct. 24, 1972, 86 Stat. 1086, Sec. 1788; amended Pub. L. 93–508, title II, Sec. 211, Dec. 3, 1974, 88 Stat. 1585; Pub. L. 94–502, title V, Sec. 509(a), Oct. 15, 1976, 90 Stat. 2400; Pub. L. 95–202, title III, Sec. 304(a)(3), Nov. 23, 1977, 91 Stat. 1442; Pub. L. 96–466, title III, Sec. 345, title VI,

Sec. 601(f), Oct. 17, 1980, 94 Stat. 2199, 2208; Pub. L. 97–295, Sec. 4(58), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 99–576, title III, Sec. 315(a)(2), (b), Oct. 28, 1986, 100 Stat. 3274; Pub. L. 100–322, title III, Sec. 321(a), May 20, 1988, 102 Stat. 535; Pub. L. 101–237, title IV, Sec. 413(a), 417, 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2085, 2086, 2092; renumbered Sec. 3688 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 316(a), Oct. 29, 1992, 106 Stat. 4333; Pub. L. 103–446, title VI, Sec. 607, title XII, Sec. 1201(e)(12), Nov. 2, 1994, 108 Stat. 4672, 4685; Pub. L. 110–252, title V, Sec. 5003(b)(2)(A)(ii), June 30, 2008, 122 Stat. 2375 (conforming amendment effective August 1, 2009).)

§ 3689. Approval requirements for licensing and certification testing

(a) IN GENERAL.—(1) No payment may be made for a licensing or certification test described in section 3452(b) or 3501(a)(5) of this title unless the Secretary determines that the requirements of this section have been met with respect to such test and the organization or entity offering the test. The requirements of approval for tests and organizations or entities offering tests shall be in accordance with the provisions of this chapter and chapters 30, 32, 33, 34, and 35 of this title and with regulations prescribed by the Secretary to carry out this section.

(2) To the extent that the Secretary determines practicable, State approving agencies may, in lieu of the Secretary, approve licensing and certification tests, and organizations and entities offering such tests, under this section.

(b) REQUIREMENTS FOR TESTS.—(1) Subject to paragraph (2), a licensing or certification test is approved for purposes of this section only if—

(A) the test is required under Federal, State, or local law or regulation for an individual to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession; or

(B) the Secretary determines that the test is generally accepted, in accordance with relevant government, business, or industry standards, employment policies, or hiring practices, as attesting to a level of knowledge or skill required to qualify to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession.

(2) A licensing or certification test offered by a State, or a political subdivision of a State, is deemed approved by the Secretary for purposes of this section.

(c) REQUIREMENTS FOR ORGANIZATIONS OR ENTITIES OFFERING TESTS.—(1) Each organization or entity that is not an entity of the United States, a State, or political subdivision of a State, that offers a licensing or certification test for which payment may be made under chapter 30, 32, 33, 34, or 35 of this title and that meets the following requirements, shall be approved by the Secretary to offer such test:

(A) The organization or entity certifies to the Secretary that the licensing or certification test offered by the organization or entity is generally accepted, in accordance with relevant government, business, or industry standards, employment policies, or hiring practices, as attesting to a level of knowledge or skill required to qualify to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession.

(B) The organization or entity is licensed, chartered, or incorporated in a State and has offered such test, or a test to certify or license in a similar or related occupation, for a minimum of two years before the date on which the organization or entity first submits to the Secretary an application for approval under this section.

(C) The organization or entity employs, or consults with, individuals with expertise or substantial experience with respect to all areas of knowledge or skill that are measured by the test and that are required for the license or certificate issued.

(D) The organization or entity has no direct financial interest in—

(i) the outcome of the test; or

(ii) organizations that provide the education or training of candidates for licenses or certificates required for vocations or professions.

(E) The organization or entity maintains appropriate records with respect to all candidates who take the test for a period prescribed by the Secretary, but in no case for a period of less than three years.

(F)(i) The organization or entity promptly issues notice of the results of the test to the candidate for the license or certificate.

(ii) The organization or entity has in place a process to review complaints submitted against the organization or entity with respect to the test or the process for obtaining a license or certificate required for vocations or professions.

(G) The organization or entity furnishes to the Secretary such information with respect to the test as the Secretary requires to determine whether payment may be made for the test under chapter 30, 32, 33, 34, or 35 of this title, including personal identifying information, fee payment, and test results. Such information shall be furnished in the form prescribed by the Secretary.

(H) The organization or entity furnishes to the Secretary the following information:

(i) A description of the licensing or certification test offered by the organization or entity, including the purpose of the test, the vocational, professional, governmental, and other entities that recognize the test, and the license or certificate issued upon successful completion of the test.

(ii) The requirements to take the test, including the amount of the fee charged for the test and any prerequisite education, training, skills, or other certification.

(iii) The period for which the license or certificate awarded upon successful completion of the test is valid, and the requirements for maintaining or renewing the license or certificate.

(I) Upon request of the Secretary, the organization or entity furnishes such information to the Secretary that the Secretary determines necessary to perform an assessment of—

(i) the test conducted by the organization or entity as compared to the level of knowledge or skills that a license or certificate attests; and

(ii) the applicability of the test over such periods of time as the Secretary determines appropriate.

(2) With respect to each organization or entity that is an entity of the United States, a State, or political subdivision of a State, that offers a licensing or certification test for which payment may be made under chapters 30, 32, 34, or 35 of this title, the following provisions of paragraph (1) shall apply to the entity: subparagraphs (E), (F), (G), and (H).

(d) ADMINISTRATION.—Except as otherwise specifically provided in this section or chapter 30, 32, 33, 34, or 35 of this title, in implementing this section and making payment under any such chapter for a licensing or certification test, the test is deemed to be a "course" and the organization or entity that offers such test is deemed to be an "institution" or "educational institution", respectively, as those terms are applied under and for purposes of sections 3671, 3673, 3674, 3678, 3679, 3681, 3682, 3683, 3685, 3690, and 3696 of this title.

(e) PROFESSIONAL CERTIFICATION AND LICENSURE ADVISORY COMMITTEE.—(1) There is established within the Department a committee to be known as the Professional Certification and Licensure Advisory Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall advise the Secretary with respect to the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapter 30, 32, 33, 34, or 35 of this title, and such other related issues as the Committee determines to be appropriate.

(3)(A) The Secretary shall appoint seven individuals with expertise in matters relating to licensing and certification tests to serve as members of the Committee.

(B) The Secretary of Labor and the Secretary of Defense shall serve as ex officio members of the Committee.

(C) A vacancy in the Committee shall be filled in the manner in which the original appointment was made.

(4)(A) The Secretary shall appoint the chairman of the Committee.

(B) The Committee shall meet at the call of the chairman.

(5) The Committee shall terminate December 31, 2006.

(Added Pub. L. 106–419, title I, Sec. 122(c)(1), Nov. 1, 2000, 114 Stat. 1835; amended Pub. L. 107–330, title III, Sec. 308(d), Dec. 6, 2002, 116 Stat. 2828; Pub. L. 110–252, title V, Sec. 5003(b)(2)(A)(iii), June 30, 2008, 122 Stat. 2375, 2378 (conforming amendment effective August 1, 2009).)

§ 3690. Overcharges by educational institutions; discontinuance of allowances; examination of records; false or misleading statements

(a) OVERCHARGES BY EDUCATIONAL INSTITUTIONS.—If the Secretary finds that an educational institution has—

(1) charged or received from any eligible veteran or eligible person pursuing a program of education under this chapter or

chapter 34 or 35 of this title any amount for any course in excess of the charges for tuition and fees which such institution requires similarly circumstanced nonveterans not receiving assistance under such chapters who are enrolled in the same course to pay, or

(2) instituted, after October 24, 1972, a policy or practice with respect to the payment of tuition, fees, or other charges in the case of eligible veterans and the Secretary finds that the effect of such policy or practice substantially denies to veterans the benefits of the advance allowances under such section,

the Secretary may disapprove such educational institution for the enrollment of any eligible veteran or eligible person not already enrolled therein under this chapter or chapter 31, 34, or 35 of this title.

(b) DISCONTINUANCE OF ALLOWANCES.—(1) The Secretary may discontinue the educational assistance allowance of any eligible veteran or eligible person if the Secretary finds that the program of education or any course in which the veteran or person is enrolled fails to meet any of the requirements of this chapter or chapter 34 or 35 of this title, or if the Secretary finds that the educational institution offering such program or course has violated any provision of this chapter or chapter 34 or 35 of this title, or fails to meet any of the requirements of such chapters.

(2) Except as provided in paragraph (3) of this subsection, any action by the Secretary under paragraph (1) of this subsection to discontinue (including to suspend) assistance provided to any eligible veteran or eligible person under this chapter or chapter 31, 32, 34, or 35 of this title shall be based upon evidence that the veteran or eligible person is not or was not entitled to such assistance. Whenever the Secretary so discontinues any such assistance, the Secretary shall concurrently provide written notice to such veteran or person of such discontinuance and that such veteran or person is entitled thereafter to a statement of the reasons for such action and an opportunity to be heard thereon.

(3)(A) The Secretary may suspend educational assistance to eligible veterans and eligible persons already enrolled, and may disapprove the enrollment or reenrollment of any eligible veteran or eligible person, in any course as to which the Secretary has evidence showing a substantial pattern of eligible veterans or eligible persons, or both, who are receiving such assistance by virtue of their enrollment in such course but who are not entitled to such assistance because (i) the course approval requirements of this chapter are not being met, or (ii) the educational institution offering such course has violated one or more of the recordkeeping or reporting requirements of this chapter or chapter 30, 32, 33, 34, or 35 of this title.

(B) Action may be taken under subparagraph (A) of this paragraph only after—

(i) the Secretary provides to the State approving agency concerned and the educational institution concerned written notice of any such failure to meet such approval requirements and any such violation of such recordkeeping or reporting requirements;

(ii) such institution refuses to take corrective action or does not within 60 days after such notice (or within such longer period as the Secretary determines is reasonable and appropriate) take corrective action; and

(iii) the Secretary, not less than 30 days before taking action under such subparagraph, provides to each eligible veteran and eligible person already enrolled in such course written notice of the Secretary's intent to take such action (and the reasons therefor) unless such corrective action is taken within such 60 days (or within such longer period as the Secretary has determined is reasonable and appropriate), and of the date on which the Secretary intends to take action under such subparagraph.

(c) EXAMINATION OF RECORDS.—Notwithstanding any other provision of law, the records and accounts of educational institutions pertaining to eligible veterans or eligible persons who received educational assistance under this chapter or chapter 31, 32, 34, or 35 of this title, as well as the records of other students which the Secretary determines necessary to ascertain institutional compliance with the requirements of such chapters, shall be available for examination by duly authorized representatives of the Government.

(d) FALSE OR MISLEADING STATEMENTS.—Whenever the Secretary finds that an educational institution has willfully submitted a false or misleading claim, or that a veteran or person, with the complicity of an educational institution, has submitted such a claim, the Secretary shall make a complete report of the facts of the case to the appropriate State approving agency and, where deemed advisable, to the Attorney General of the United States for appropriate action.

(Added Pub. L. 92–540, title III, Sec. 316(2), Oct. 24, 1972, 86 Stat. 1088, Sec. 1790; amended Pub. L. 94–502, title V, Sec. 510, 513(a)(19), Oct. 15, 1976, 90 Stat. 2401, 2403; Pub. L. 95–202, title III, Sec. 306, Nov. 23, 1977, 91 Stat. 1445; Pub. L. 96–466, title VIII, Sec. 801(f), Oct. 17, 1980, 94 Stat. 2216; Pub. L. 97–295, Sec. 4(59), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 97–306, title II, Sec. 207, Oct. 14, 1982, 96 Stat. 1435; Pub. L. 101–237, title IV, Sec. 423(a)(9), (b)(1)(A), (2), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3690, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–86, title V, Sec. 506(b)(1), Aug. 14, 1991, 105 Stat. 426; Pub. L. 109–233, title V, Sec. 503(8)(A), June 15, 2006, 120 Stat. 416; Pub. L. 110–252, title V, Sec. 5003(b)(2)(A)(iv), June 30, 2008, 122 Stat. 2375 (conforming amendment effective August 1, 2009).)

§ 3691. Change of program

(a) Except as provided in subsections (b) and (c) of this section, each eligible veteran and eligible person may make not more than one change of program of education, but an eligible veteran or eligible person whose program has been interrupted or discontinued due to the veteran's or person's own misconduct, the veteran's or person's own neglect, or the veteran's or person's own lack of application shall not be entitled to any such change.

(b) The Secretary, in accordance with procedures that the Secretary may establish, may approve a change other than a change under subsection (a) of this section (or an initial change in the case of a veteran or person not eligible to make a change under subsection (a)) in program if the Secretary finds that—

(1) the program of education which the eligible veteran or eligible person proposes to pursue is suitable to the veteran's or person's aptitudes, interests, and abilities; and

(2) in any instance where the eligible veteran or eligible person has interrupted, or failed to progress in, the veteran's or person's program due to the veteran's or person's own misconduct, the veteran's or person's own neglect, or the veteran's or person's own lack of application, there exists a reasonable likelihood with respect to the program which the eligible veteran or eligible person proposes to pursue that there will not be a recurrence of such an interruption or failure to progress.

(c) The Secretary may also approve additional changes in program if the Secretary finds such changes are necessitated by circumstances beyond the control of the eligible veteran or eligible person.

(d)(1) For the purposes of this section, the term "change of program of education" shall not be deemed to include a change by a veteran or eligible person from the pursuit of one program to the pursuit of another program if—

(A) the veteran or eligible person has successfully completed the former program;

(B) the program leads to a vocational, educational, or professional objective in the same general field as the former program;

(C) the former program is a prerequisite to, or generally required for, pursuit of the subsequent program;

(D) in the case of a change from the pursuit of a subsequent program to the pursuit of a former program, the veteran or eligible person resumes pursuit of the former program without loss of credit or standing in the former program; or

(E) the change from the program to another program is at the same educational institution and such educational institution determines that the new program is suitable to the aptitudes, interests, and abilities of the veteran or eligible person and certifies to the Secretary the enrollment of the veteran or eligible person in the new program.

(2) A veteran or eligible person undergoing a change from one program of education to another program of education as described in paragraph (1)(E) shall not be required to apply to the Secretary for approval of such change.

(Added Pub. L. 92–540, title III, Sec. 316(2), Oct. 24, 1972, 86 Stat. 1089, Sec. 1791; amended Pub. L. 94–502, title V, Sec. 513(a)(20), Oct. 15, 1976, 90 Stat. 2403; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 101–366, title II, Sec. 208(a), Aug. 15, 1990, 104 Stat. 443; renumbered Sec. 3691, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title III, Sec. 317, Oct. 29, 1992, 106 Stat. 4334; Pub. L. 110–389, title III, Sec. 324, Oct. 10, 2008, 122 Stat. 4168.)

§ 3692. Advisory committee

(a) There shall be a Veterans' Advisory Committee on Education formed by the Secretary which shall be composed of persons who are eminent in their respective fields of education, labor, and management and of representatives of institutions and establishments furnishing education to eligible veterans or persons enrolled under chapter 30, 32, 33, or 35 of this title and chapter 1606 of

title 10. The committee shall also, to the maximum extent practicable, include veterans representative of World War II, the Korean conflict era, the post-Korean conflict era, the Vietnam era, the post-Vietnam era, and the Persian Gulf War. The Assistant Secretary of Education for Postsecondary Education (or such other comparable official of the Department of Education as the Secretary of Education may designate) and the Assistant Secretary of Labor for Veterans' Employment and Training shall be ex officio members of the advisory committee.

(b) The Secretary shall consult with and seek the advice of the committee from time to time with respect to the administration of this chapter, chapters 30, 32, 33, and 35 of this title, and chapter 1606 of title 10. The committee may make such reports and recommendations as it considers desirable to the Secretary and the Congress.

(c) The committee shall remain in existence until December 31, 2009.

(Added Pub. L. 89–358, Sec. 3(b), Mar. 3, 1966, 80 Stat. 23, Sec. 1788; renumbered Sec. 1792 and amended Pub. L. 92–540, title III, Sec. 316(2), (3), Oct. 24, 1972, 86 Stat. 1086, 1089; Pub. L. 96–466, title III, Sec. 346, Oct. 17, 1980, 94 Stat. 2200; Pub. L. 99–576, title III, Sec. 304, Oct. 28, 1986, 100 Stat. 3269; Pub. L. 100–689, title I, Sec. 123, Nov. 18, 1988, 102 Stat. 4174; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–25, title III, Sec. 338, Apr. 6, 1991, 105 Stat. 91; Pub. L. 102–54, Sec. 14(c)(7), June 13, 1991, 105 Stat. 285; renumbered Sec. 3692, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–210, Sec. 2(d), Dec. 20, 1993, 107 Stat. 2497; Pub. L. 103–446, title VI, Sec. 608, Nov. 2, 1994, 108 Stat. 4672; Pub. L. 108–183, title III, Sec. 307, Dec. 16, 2003, 117 Stat. 2661; Pub. L. 110–252, title V, Sec. 5003(b)(2)(A)(v), June 30, 2008, 122 Stat. 2375 (conforming amendment effective August 1, 2009).)

§ 3693. Compliance surveys

(a) Except as provided in subsection (b) of this section, the Secretary shall conduct an annual compliance survey of each institution offering one or more courses approved for the enrollment of eligible veterans or persons if at least 300 veterans or persons are enrolled in such course or courses under provisions of this title or if any such course does not lead to a standard college degree. Such compliance survey shall be designed to ensure that the institution and approved courses are in compliance with all applicable provisions of chapters 30 through 36 of this title. The Secretary shall assign at least one education compliance specialist to work on compliance surveys in any year for each 40 compliance surveys required to be made under this section for such year.

(b) The Secretary may waive the requirement in subsection (a) of this section for an annual compliance survey with respect to an institution if the Secretary determines, based on the institution's demonstrated record of compliance with all the applicable provisions of chapters 30 through 36 of this title, that the waiver would be appropriate and in the best interest of the United States Government.

(Added Pub. L. 94–502, title V, Sec. 511(1), Oct. 15, 1976, 90 Stat. 2401, Sec. 1793; amended Pub. L. 100–322, title III, Sec. 322, May 20, 1988, 102 Stat. 535; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3693, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3694. Use of other Federal agencies

(a) IN GENERAL.—In carrying out the Secretary's functions under this chapter or chapter 34 or 35 of this title, the Secretary may utilize the facilities and services of any other Federal department or agency. Any such utilization shall be pursuant to proper agreement with the Federal department or agency concerned; and payment to cover the cost thereof shall be made either in advance or by way of reimbursement, as may be provided in such agreement.

(b) COORDINATION OF INFORMATION AMONG THE DEPARTMENTS OF VETERANS AFFAIRS, DEFENSE, AND LABOR WITH RESPECT TO ON-JOB TRAINING.—At the time of a servicemember's discharge or release from active duty service, the Secretary of Defense shall furnish to the Secretary such pertinent information concerning each registered apprenticeship pursued by the servicemember during the period of active duty service of the servicemember. The Secretary, in conjunction with the Secretary of Labor, shall encourage and assist States and private organizations to give credit to servicemembers for the registered apprenticeship program so pursued in the case of any related apprenticeship program the servicemember may pursue as a civilian.

(Added Pub. L. 89–358, Sec. 3(b), Mar. 3, 1966, 80 Stat. 23, Sec. 1790; renumbered Sec. 1794, Pub. L. 92–540, title III, Sec. 316(2), Oct. 24, 1972, 86 Stat. 1086; amended Pub. L. 94–502, title V, Sec. 513(a)(21), Oct. 15, 1976, 90 Stat. 2403; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (2), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3694, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 108–454, title I, Sec. 107, Dec. 10, 2004, 118 Stat. 3603.)

§ 3695. Limitation on period of assistance under two or more programs

(a) The aggregate period for which any person may receive assistance under two or more of the provisions of law listed below may not exceed 48 months (or the part-time equivalent thereof):

(1) Parts VII or VIII, Veterans Regulation numbered 1(a), as amended.

(2) Title II of the Veterans' Readjustment Assistance Act of 1952.

(3) The War Orphans' Educational Assistance Act of 1956.

(4) Chapters 30, 32, 33, 34, 35, and 36 of this title, and the former chapter 33.

(5) Chapters 107, 1606, 1607, and 1611 of title 10.

(6) Section 903 of the Department of Defense Authorization Act, 1981 (Public Law 96–342, 10 U.S.C. 2141 note).

(7) The Hostage Relief Act of 1980 (Public Law 96–449, 5 U.S.C. 5561 note).

(8) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99–399).

(b) No person may receive assistance under chapter 31 of this title in combination with assistance under any of the provisions of law cited in subsection (a) of this section in excess of 48 months (or the part-time equivalent thereof) unless the Secretary determines that additional months of benefits under chapter 31 of this title are necessary to accomplish the purposes of a rehabilitation

program (as defined in section 3101(5) of this title) in the individual case.

(Added Pub. L. 90–631, Sec. 1(d)(1), Oct. 23, 1968, 82 Stat. 1331, Sec. 1791; renumbered Sec. 1795 and amended Pub. L. 92–540, title III, Sec. 316(2), title IV, Sec. 403(13), Oct. 24, 1972, 86 Stat. 1086, 1090; Pub. L. 96–466, title I, Sec. 103, Oct. 17, 1980, 94 Stat. 2187; Pub. L. 98–223, title II, Sec. 203(c)(2), Mar. 2, 1984, 98 Stat. 41; Pub. L. 98–525, title VII, Sec. 703(d), Oct. 19, 1984, 98 Stat. 2564; Pub. L. 101–237, title IV, Sec. 423(a)(8)(B), (b)(1)(A), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3695 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 106–65, div. A, title V, Sec. 551(b), Oct. 5, 1999, 113 Stat. 614; Pub. L. 107–103, title V, Sec. 509(d), Dec. 27, 2001, 115 Stat. 997; Pub. L. 107–107, div. A, title X, Sec. 1048(i)(8), Dec. 28, 2001, 115 Stat. 1229; Pub. L. 108–375, div. A, title V, Sec. 527(b)(2), Oct. 28, 2004, 118 Stat. 1894; Pub. L. 110–252, title V, Sec. 5003(b)(1)(B), June 30, 2008, 122 Stat. 2375 (conforming amendment effective August 1, 2009).)

§ 3696. Limitation on certain advertising, sales, and enrollment practices

(a) The Secretary shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.

(b) To ensure compliance with this section, any institution offering courses approved for the enrollment of eligible persons or veterans shall maintain a complete record of all advertising, sales, or enrollment materials (and copies thereof) utilized by or on behalf of the institution during the preceding 12-month period. Such record shall be available for inspection by the State approving agency or the Secretary. Such materials shall include but are not limited to any direct mail pieces, brochures, printed literature used by sales persons, films, video tapes, and audio tapes disseminated through broadcast media, material disseminated through print media, tear sheets, leaflets, handbills, fliers, and any sales or recruitment manuals used to instruct sales personnel, agents, or representatives of such institution.

(c) The Secretary shall, pursuant to section 3694 of this title, enter into an agreement with the Federal Trade Commission to utilize, where appropriate, its services and facilities, consistent with its available resources, in carrying out investigations and making the Secretary's determinations under subsection (a) of this section. Such agreement shall provide that cases arising under subsection (a) of this section or any similar matters with respect to any of the requirements of this chapter or chapters 34 and 35 of this title shall be referred to the Federal Trade Commission which in its discretion will conduct an investigation and make preliminary findings. The findings and results of any such investigations shall be referred to the Secretary who shall take appropriate action in such cases within ninety days after such referral.

(Added Pub. L. 93–508, title II, Sec. 212(a), Dec. 3, 1974, 88 Stat. 1585, Sec. 1796; amended Pub. L. 94–502, title V, Sec. 512, 513(a)(22), Oct. 15, 1976, 90 Stat. 2402, 2403; Pub. L. 98–543, title IV, Sec. 401, Oct. 24, 1984, 98 Stat. 2749; Pub. L. 101–237, title IV, Sec. 423(b)(1)(A), (2), Dec. 18, 1989, 103 Stat. 2092; renumbered Sec. 3696 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3697. Funding of contract educational and vocational counseling

(a) Subject to subsection (b) of this section, educational or vocational counseling services obtained by the Department of Veterans Affairs by contract and provided to an individual under section 3697A of this title or to an individual applying for or receiving benefits under section 1524 or chapter 30, 32, 33, 34, or 35 of this title, or chapter 106 of title 10, shall be paid for out of funds appropriated, or otherwise available, to the Department of Veterans Affairs for payment of readjustment benefits.

(b) Payments under this section shall not exceed $6,000,000 in any fiscal year.

(Added Pub. L. 100–687, div. B, title XIII, Sec. 1302(a), Nov. 18, 1988, 102 Stat. 4127, Sec. 1797; amended Pub. L. 101–237, title IV, Sec. 423(b)(1)(B), Dec. 18, 1989, 103 Stat. 2092; Pub. L. 102–16, Sec. 2(b)(3), Mar. 22, 1991, 105 Stat. 49; renumbered Sec. 3697 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VI, Sec. 609(a), Nov. 2, 1994, 108 Stat. 4673; Pub. L. 110–252, title V, Sec. 5003(b)(2)(A)(vi), June 30, 2008, 122 Stat. 2375 (conforming amendment effective August 1, 2009).)

§ 3697A. Educational and vocational counseling

(a) The Secretary shall make available to an individual described in subsection (b) of this section, upon such individual's request, counseling services, including such educational and vocational counseling and guidance, testing, and other assistance as the Secretary determines necessary to aid the individual in selecting—

(1) an educational or training objective and an educational institution or training establishment appropriate for the attainment of such objective; or

(2) an employment objective that would be likely to provide such individual with satisfactory employment opportunities in the light of the individual's personal circumstances.

(b) For the purposes of this section, the term "individual" means an individual who—

(1) is eligible for educational assistance under chapter 30, 31, 32, or 33 of this title or chapter 106 or 107 of title 10;

(2) was discharged or released from active duty under conditions other than dishonorable if not more than one year has elapsed since the date of such last discharge or release from active duty; or

(3) is serving on active duty in any State with the Armed Forces and is within 180 days of the estimated date of such individual's discharge or release from active duty under conditions other than dishonorable, including those who are making a determination of whether to continue as members of the Armed Forces.

(c) In any case in which the Secretary has rated the individual as being incompetent, the counseling services described in subsection (a) of this section shall be required to be provided to the individual before the selection of a program of education or training.

(d) At such intervals as the Secretary determines necessary, the Secretary shall make available information concerning the need for general education and for trained personnel in the various

crafts, trades, and professions. Facilities of other Federal agencies collecting such information shall be utilized to the extent the Secretary determines practicable.

(e) The Secretary shall take appropriate steps (including individual notification where feasible) to acquaint all individuals described in subsection (b) of this section with the availability and advantages of counseling services under this section.

(Added Pub. L. 102–16, Sec. 2(a), Mar. 22, 1991, 105 Stat. 48, Sec. 1797A; renumbered Sec. 3697A, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; amended Pub. L. 110–252, title V, Sec. 5003(b)(2)(B), June 30, 2008, 122 Stat. 2375 (conforming amendment effective August 1, 2009).)

SUBCHAPTER III—REPEALED

[§ 3698. Repealed. Pub. L. 108–183, title III, Sec. 306(e), Dec. 16, 2003, 117 Stat. 2661]

[§ 3699. Repealed. Pub. L. 108–183, title III, Sec. 306(e), Dec. 16, 2003, 117 Stat. 2661]

Chapter 37 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 37—HOUSING AND SMALL BUSINESS LOANS

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SUBCHAPTER I—GENERAL

§ 3701. Definitions

(a) For the purpose of this chapter, the term "housing loan" means a loan for any of the purposes specified by sections 3710(a) and 3712(a)(1) of this title.

(b) For the purposes of housing loans under this chapter—

(1) The term "World War II" (A) means the period beginning on September 16, 1940, and ending on July 25, 1947, and (B) includes, in the case of any veteran who enlisted or reenlisted in a Regular component of the Armed Forces after October 6, 1945, and before October 7, 1946, the period of the first such enlistment or reenlistment.

(2) The term "veteran" includes the surviving spouse of any veteran (including a person who died in the active military, naval, or air service) who died from a service-connected disability, but only if such surviving spouse is not eligible for benefits under this chapter on the basis of the spouse's own active duty. The active duty or service in the Selected Reserve of the deceased spouse shall be deemed to have been active duty or service in the Selected Reserve by such surviving spouse for the purposes of this chapter.

(3) The term "veteran" also includes, for purposes of home loans, the spouse of any member of the Armed Forces serving on active duty who is listed, pursuant to section 556 of title 37, United States Code, and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than ninety days: (A) missing in action, (B) captured in line of duty by a hostile force, or (C) forcibly detained or interned in line of duty by a foreign government or power. The active duty of the member shall be deemed to have been active duty by such spouse for the purposes of this chapter. The loan eligibility of such spouse under this paragraph shall be limited to one loan guaranteed or made for the acquisition of a home, and entitlement to such loan shall terminate automatically, if not used, upon receipt by such spouse of official notice that the member is no longer listed in one of the categories specified in the first sentence of this paragraph.

(4) The term "veteran" also includes an individual serving on active duty.

(5)(A) The term "veteran" also includes an individual who is not otherwise eligible for the benefits of this chapter and (i) who has completed a total service of at least 6 years in the Se-

lected Reserve and, following the completion of such service, was discharged from service with an honorable discharge, was placed on the retired list, was transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or continues serving in the Selected Reserve, or (ii) who was discharged or released from the Selected Reserve before completing 6 years of service because of a service-connected disability.

(B) The term "Selected Reserve" means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 10143(a) of title 10.

(c) Benefits shall not be afforded under this chapter to any individual on account of service as a commissioned officer of the National Oceanic and Atmospheric Administration (or predecessor entity), or of the Regular or Reserve Corps of the Public Health Service, unless such service would have qualified such individual for benefits under title III of the Servicemen's Readjustment Act of 1944.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1203, Sec. 1801; Pub. L. 91–584, Sec. 5(a), Dec. 24, 1970, 84 Stat. 1576; Pub. L. 94–324, Sec. 7(1), (2), June 30, 1976, 90 Stat. 721; Pub. L. 97–72, title III, Sec. 303(a), Nov. 3, 1981, 95 Stat. 1059; Pub. L. 97–295, Sec. 4(62), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 100–322, title IV, Sec. 415(c)(1), May 20, 1988, 102 Stat. 551; Pub. L. 101–237, title III, Sec. 313(a), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3701 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–547, Sec. 2(a)(1), Oct. 28, 1992, 106 Stat. 3633; Pub. L. 103–446, title IX, Sec. 901, Nov. 2, 1994, 108 Stat. 4675; Pub. L. 104–106, div. A, title XV, Sec. 1501(e)(2)(B), Feb. 10, 1996, 110 Stat. 501.)

§ 3702. Basic entitlement

(a)(1) The veterans described in paragraph (2) of this subsection are eligible for the housing loan benefits of this chapter. In the case of any veteran who served on active duty during two or more of the periods specified in paragraph (2) for which eligibility for the housing loan benefits under this chapter may be granted, entitlement derived from service during the most recent such period (A) shall cancel any unused entitlement derived from service during any earlier such period, and (B) shall be reduced by the amount by which entitlement from service during any earlier such period has been used to obtain a direct, guaranteed, or insured housing loan—

(i) on real property which the veteran owns at the time of application; or

(ii) as to which the Secretary has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Secretary the resulting indebtedness of the veteran to the United States has been paid in full.

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

(A) Each veteran who served on active duty at any time during World War II, the Korean conflict, or the Vietnam era and whose total service was for 90 days or more.

(B) Each veteran who after September 15, 1940, was discharged or released from a period of active duty for a service-connected disability.

(C) Each veteran, other than a veteran described in clause (A) or (B) of this paragraph, who—

(i) served after July 25, 1947, for a period of more than 180 days and was discharged or released therefrom under conditions other than dishonorable; or

(ii) has served more than 180 days in active duty status and continues on active duty without a break therein.

(D) Each veteran who served on active duty for 90 days or more at any time during the Persian Gulf War, other than a veteran ineligible for benefits under this title by reason of section 5303A(b) of this title.

(E) Each veteran described in section 3701(b)(5) this title.

(F) Each veteran who was discharged or released from a period of active duty of 90 days or more by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10).

(3) Any unused entitlement of World War II or Korean conflict veterans which expired under provisions of law in effect before October 23, 1970, is hereby restored and shall not expire until used.

(4) A veteran's entitlement under this chapter shall not be reduced by any entitlement used by the veteran's spouse which was based upon the provisions of paragraph (3) of section 3701(b) of this title.

(b) In computing the aggregate amount of guaranty or insurance housing loan entitlement available to a veteran under this chapter, the Secretary may exclude the amount of guaranty or insurance housing loan entitlement used for any guaranteed, insured, or direct loan under the following circumstances:

(1)(A) The property which secured the loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard; and

(B) the loan has been repaid in full, or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on such loan, the loss has been paid in full.

(2) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of the veteran-transferee's entitlement, to the extent that the entitlement of the veteran-transferor had been used originally, in place of the veteran-transferor's for the guaranteed, insured, or direct loan, and the veteran-transferee otherwise meets the requirements of this chapter.

(3)(A) The loan has been repaid in full; and

(B) the loan for which the veteran seeks to use entitlement under this chapter is secured by the same property which secured the loan referred to in subparagraph (A) of this paragraph.

(4) In a case not covered by paragraph (1) or (2)—

(A) the loan has been repaid in full and, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or

(B) the Secretary has been released from liability as to the loan and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

The Secretary may, in any case involving circumstances the Secretary deems appropriate, waive one or more of the conditions prescribed in paragraph (1). The authority of the Secretary under this subsection to exclude an amount of guaranty or insurance housing loan entitlement previously used by a veteran may be exercised only once for that veteran under the authority of paragraph (4).

(c) An honorable discharge shall be deemed to be a certificate of eligibility to apply for a guaranteed loan. Any veteran who does not have a discharge certificate, or who received a discharge other than honorable, may apply to the Secretary for a certificate of eligibility. Upon making a loan guaranteed or insured under this chapter, the lender shall forthwith transmit to the Secretary a report thereon in such detail as the Secretary may, from time to time, prescribe. Where the loan is guaranteed, the Secretary shall provide the lender with a loan guaranty certificate or other evidence of the guaranty. The Secretary shall also endorse on the veteran's discharge, or eligibility certificate, the amount and type of guaranty used, and the amount, if any, remaining. Nothing in this chapter shall preclude the assignment of any guaranteed loan or the security therefor.

(d) Housing loans will be automatically guaranteed under this chapter only if made (1) by any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union, or mortgage and loan company, that is subject to examination and supervision by an agency of the United States or of any State, or (2) by any State, or (3) by any lender approved by the Secretary pursuant to standards established by the Secretary. Any housing loan proposed to be made to a veteran pursuant to this chapter by any lender not of a class specified in the preceding sentence may be guaranteed by the Secretary if the Secretary finds that it is in accord otherwise with the provisions of this chapter.

(e) The Secretary may at any time upon thirty days' notice require housing loans to be made by any lender or class of lenders to be submitted to the Secretary for prior approval. No guaranty or insurance liability shall exist with respect to any such loan unless evidence of guaranty or insurance is issued by the Secretary.

(f) Any housing loan at least 20 percent of which is guaranteed under this chapter may be made by any national bank or Federal savings and loan association, or by any bank, trust company, building and loan association, or insurance company, organized or authorized to do business in the District of Columbia. Any such loan may be so made without regard to the limitations and restrictions of any other law relating to—

(1) ratio of amount of loan to the value of the property;

(2) maturity of loan;

(3) requirement for mortgage or other security;

(4) dignity of lien; or

(5) percentage of assets which may be invested in real estate loans.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1203, Sec. 1802; Pub. L. 86–73, Sec. 1, June 30, 1959, 73 Stat. 156; Pub. L. 87–84, Sec. 1(b), July 6, 1961, 75 Stat. 201; Pub. L. 90–19, Sec. 25(1), May 25, 1967, 81 Stat. 28; Pub. L. 90–77, title IV, Sec. 403(a), Aug. 31, 1967, 81 Stat. 190; Pub. L. 91–506, Sec. 2(a), Oct. 23, 1970, 84 Stat. 1108; Pub. L. 91–584, Sec. 5(b), Dec. 24, 1970, 84 Stat. 1576; Pub. L. 93–569, Sec. 2(a), (b), Dec. 31, 1974, 88 Stat. 1863; Pub. L. 94–324, Sec. 7(3)–(5), June 30, 1976, 90 Stat. 721; Pub. L. 95–476, title I, Sec. 102, Oct. 18, 1978, 92 Stat. 1497; Pub. L. 97–72, title III, Sec. 303(b), Nov. 3, 1981, 95 Stat. 1060; Pub. L. 97–295, Sec. 4(61), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 98–223, title II, Sec. 204, Mar. 2, 1984, 98 Stat. 42; Pub. L. 100–322, title IV, Sec. 415(a)(1), (2), May 20, 1988, 102 Stat. 549, 550; Pub. L. 101–237, title III, Sec. 310, 313(b)(1), Dec. 18, 1989, 103 Stat. 2075, 2077; Pub. L. 102–25, title III, Sec. 341, Apr. 6, 1991, 105 Stat. 92; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 3702 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–547, Sec. 2(a)(2), Oct. 28, 1992, 106 Stat. 3633; Pub. L. 103–446, title IX, Sec. 902, title XII, Sec. 1201(f)(4), Nov. 2, 1994, 108 Stat. 4676, 4687; Pub. L. 105–368, title VI, Sec. 603(a), Nov. 11, 1998, 112 Stat. 3348; Pub. L. 106–117, title VII, Sec. 711, Nov. 30, 1999, 113 Stat. 1584; Pub. L. 107–103, title IV, Sec. 405(a), Dec. 27, 2001, 115 Stat. 993; Pub. L. 108–183, title IV, Sec. 403, Dec. 16, 2003, 117 Stat. 2664; Pub. L. 110–317, Sec. 6(a), Aug. 29, 2008, 122 Stat. 3528.)

§ 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;

(II) in the case of any loan of more than $45,000, but not more than $56,250, $22,500;

(III) except as provided in subclause (IV) of this clause, in the case of any loan of more than $56,250, the lesser of $36,000 or 40 percent of the loan; or

(IV) in the case of any loan of more than $144,000 for a purpose specified in clause (1), (2), (3), (5), (6), or (8) of section 3710(a) of this title, the lesser of the maximum guaranty amount (as defined in subparagraph (C)) or 25 percent of the loan; or

(ii) the maximum amount of guaranty entitlement available to the veteran as specified in subparagraph (B) of this paragraph.

(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, the maximum guaranty amount (as defined in subparagraph (C)), 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.

(C) In this paragraph, the term "maximum guaranty amount" means the dollar amount that is equal to 25 percent of the Freddie Mac conforming loan limit limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12

U.S.C. 1454(a)(2)) for a single-family residence, as adjusted for the year involved.

(2)(A) Any housing loan which might be guaranteed under the provisions of this chapter, when made or purchased by any financial institution subject to examination and supervision by any agency of the United States or of any State may, in lieu of such guaranty, be insured by the Secretary under an agreement whereby the Secretary will reimburse any such institution for losses incurred on such loan up to 15 per centum of the aggregate of loans so made or purchased by it.

(B) Loans insured under this section shall be made on such other terms, conditions, and restrictions as the Secretary may prescribe within the limitations set forth in this chapter.

(b) The liability of the United States under any guaranty, within the limitations of this chapter, shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation.

(c)(1) Loans guaranteed or insured under this chapter shall be payable upon such terms and conditions as may be agreed upon by the parties thereto, subject to the provisions of this chapter and regulations of the Secretary issued pursuant to this chapter, and shall bear interest not in excess of such rate as the Secretary may from time to time find the loan market demands, except that in establishing the rate of interest that shall be applicable to such loans, the Secretary shall consult with the Secretary of Housing and Urban Development regarding the rate of interest applicable to home loans insured under section 203(b) of the National Housing Act (12 U.S.C. 1709(b)). In establishing rates of interest under this paragraph for one or more of the purposes described in clauses (4) and (7) of section 3710(a) of this title, the Secretary may establish a rate or rates higher than the rate specified for other purposes under such section, but any such rate may not exceed such rate as the Secretary may from time to time find the loan market demands for loans for such purposes.

(2) The provisions of the Servicemen's Readjustment Act of 1944 which were in effect before April 1, 1958, with respect to the interest chargeable on loans made or guaranteed under such Act shall, notwithstanding the provisions of paragraph (1) of this subsection, continue to be applicable—

(A) to any loan made or guaranteed before April 1, 1958; and

(B) to any loan with respect to which a commitment to guarantee was entered into by the Secretary before April 1, 1958.

(3) This section shall not be construed to prohibit a veteran from paying to a lender any reasonable discount required by such lender, when the proceeds from the loan are to be used—

(A) to refinance indebtedness pursuant to clause (5), (8), or (9)(B)(i) of section 3710(a) of this title or section 3712(a)(1)(F) of this title;

(B) to repair, alter, or improve a farm residence or other dwelling pursuant to clauses (4) and (7) of section 3710(a) of this title;

(C) to construct a dwelling or farm residence on land already owned or to be acquired by the veteran except where the land is directly or indirectly acquired from a builder or developer who has contracted to construct such dwelling for the veteran;

(D) to purchase a dwelling from a class of sellers which the Secretary determines are legally precluded under all circumstances from paying such a discount if the best interest of the veteran would be so served; or

(E) to refinance indebtedness and purchase a manufactured-home lot pursuant to section 3710(a)(9)(B)(ii) or 3712(a)(1)(G) of this title, but only with respect to that portion of the loan used to refinance such indebtedness.

(4)(A) In guaranteeing or insuring loans under this chapter, the Secretary may elect whether to require that such loans bear interest at a rate that is—

(i) agreed upon by the veteran and the mortgagee; or

(ii) established under paragraph (1).

The Secretary may, from time to time, change the election under this subparagraph.

(B) Any veteran, under a loan described in subparagraph (A)(i), may pay reasonable discount points in connection with the loan. Except in the case of a loan for the purpose specified in section 3710(a)(8), 3710(b)(7), or 3712(a)(1)(F) of this title, discount points may not be financed as part of the principal amount of a loan guaranteed or insured under this chapter.

(C) Not later than 10 days after an election under subparagraph (A), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a notification of the election, together with an explanation of the reasons therefor.

(d)(1) The maturity of any housing loan shall not be more than thirty years and thirty-two days.

(2)(A) Any loan for a term of more than five years shall be amortized in accordance with established procedure.

(B) The Secretary may guarantee loans with provisions for various rates of amortization corresponding to anticipated variations in family income. With respect to any loan guaranteed under this subparagraph—

(i) the initial principal amount of the loan may not exceed the reasonable value of the property as of the time the loan is made; and

(ii) the principal amount of the loan thereafter (including the amount of all interest to be deferred and added to principal) may not at any time be scheduled to exceed the projected value of the property.

(C) For the purposes of subparagraph (B) of this paragraph, the projected value of the property shall be calculated by the Secretary by increasing the reasonable value of the property as of the time the loan is made at a rate not in excess of 2.5 percent per year, but in no event may the projected value of the property for the purposes of such subparagraph exceed 115 percent of such reasonable value. A loan made for a purpose other than the acquisi-

tion of a single-family dwelling unit may not be guaranteed under such subparagraph.

(3) Any real estate housing loan (other than for repairs, alterations, or improvements) shall be secured by a first lien on the realty. In determining whether a loan for the purchase or construction of a home is so secured, the Secretary may disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Secretary determines that the interests of the veteran borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien to be created after June 6, 1969, the Secretary's determination must have been made prior to the recordation of the covenant.

(e)(1) Except as provided in paragraph (2) of this subsection, an individual who pays a fee under section 3729 of this title, or who is exempted under section 3729(c)(1) of this title from paying such fee, with respect to a housing loan guaranteed or insured under this chapter that is closed after December 31, 1989, shall have no liability to the Secretary with respect to the loan for any loss resulting from any default of such individual except in the case of fraud, misrepresentation, or bad faith by such individual in obtaining the loan or in connection with the loan default.

(2) The exemption from liability provided by paragraph (1) of this subsection shall not apply to—

(A) an individual from whom a fee is collected (or who is exempted from such fee) under section 3729(b)(2)(I) of this title; or

(B) a loan made for any purpose specified in section 3712 of this title.

(f) The application for or obtaining of a loan made, insured, or guaranteed under this chapter shall not be subject to reporting requirements applicable to requests for, or receipts of, Federal contracts, grants, loans, loan guarantees, loan insurance, or cooperative agreements except to the extent that such requirements are provided for in, or by the Secretary pursuant to, this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1205, 1212, Sec. 1803; Pub. L. 86–73, Sec. 2, June 30, 1959, 73 Stat. 156; Pub. L. 86–665, Sec. 1, July 14, 1960, 74 Stat. 531; Pub. L. 87–84, Sec. 1(a), July 6, 1961, 75 Stat. 201; Pub. L. 89–358, Sec. 5(d), Mar. 3, 1966, 80 Stat. 26; Pub. L. 90–77, title IV, Sec. 403(b), Aug. 31, 1967, 81 Stat. 190; Pub. L. 91–22, Sec. 4, June 6, 1969, 83 Stat. 32; Pub. L. 91–506, Sec. 2(b), (c), Oct. 23, 1970, 84 Stat. 1108; Pub. L. 93–75, July 26, 1973, 87 Stat. 176; Pub. L. 93–569, Sec. 2(c), 8(1)–(5), Dec. 31, 1974, 88 Stat. 1863, 1866; Pub. L. 94–324, Sec. 7(6), (16), June 30, 1976, 90 Stat. 721; Pub. L. 95–476, title I, Sec. 103, Oct. 18, 1978, 92 Stat. 1498; Pub. L. 96–385, title IV, Sec. 401(c)(1), Oct. 7, 1980, 94 Stat. 1533; Pub. L. 97–66, title V, Sec. 501(a), Oct. 17, 1981, 95 Stat. 1031; Pub. L. 97–72, title III, Sec. 303(c), (e), Nov. 3, 1981, 95 Stat. 1060; Pub. L. 97–295, Sec. 4(61), (63), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 97–306, title IV, Sec. 406(b), Oct. 14, 1982, 96 Stat. 1444; Pub. L. 98–223, title II, Sec. 205(c), Mar. 2, 1984, 98 Stat. 43; Pub. L. 100–198, Sec. 3(a)(1), Dec. 21, 1987, 101 Stat. 1315; Pub. L. 100–253, Sec. 3(a), Feb. 29, 1988, 102 Stat. 20; Pub. L. 100–322, title IV, Sec. 415(a)(3), (c)(2), (d)(1), May 20, 1988, 102 Stat. 550–552; Pub. L. 101–237, title III, Sec. 304(a), 306(a), 313(b)(1), (6), Dec. 18, 1989, 103 Stat. 2073, 2074, 2077; Pub. L. 102–54, Sec. 4(b), 6, June 13, 1991, 105 Stat. 268; renumbered Sec. 3703 and amended Pub. L. 102–

83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–547, Sec. 10(a), Oct. 28, 1992, 106 Stat. 3643; Pub. L. 103–78, Sec. 6, Aug. 13, 1993, 107 Stat. 769; Pub. L. 103–353, Sec. 7, Oct. 13, 1994, 108 Stat. 3175; Pub. L. 104–110, title I, Sec. 101(d), Feb. 10, 1996, 110 Stat. 768; Pub. L. 107–103, title IV, Sec. 401, Dec. 27, 2001, 115 Stat. 993; Pub. L. 107–330, title III, Sec. 308(f)(1), Dec. 6, 2002, 116 Stat. 2828; Pub. L. 108–454, title IV, Sec. 403, Dec. 10, 2004, 118 Stat. 3616; Pub. L. 110–389, title V, Sec. 504(a), Oct. 10, 2008, 122 Stat. 4176.)

§ 3704. Restrictions on loans

(a) No loan for the purchase or construction of residential property shall be financed through the assistance of this chapter unless the property meets or exceeds minimum requirements for planning, construction, and general acceptability prescribed by the Secretary; however, this subsection shall not apply to a loan for the purchase of residential property on which construction is fully completed more than one year before such loan is made.

(b) Subject to notice and opportunity for a hearing, the Secretary may refuse to appraise any dwelling or housing project owned, sponsored, or to be constructed by any person identified with housing previously sold to veterans under this chapter as to which substantial deficiencies have been discovered, or as to which there has been a failure or indicated inability to discharge contractual liabilities to veterans, or as to which it is ascertained that the type of contract of sale or the methods or practices pursued in relation to the marketing of such properties were unfair or unduly prejudicial to veteran purchasers. The Secretary may also refuse to appraise any dwelling or housing project owned, sponsored, or to be constructed by any person refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development.

(c)(1) Except as provided in paragraph (2) of this subsection, no loan for the purchase or construction of residential property shall be financed through the assistance of this chapter unless the veteran applicant, at the time that the veteran applies for the loan, and also at the time that the loan is closed, certifies in such form as the Secretary may require, that the veteran intends to occupy the property as the veteran's home. Except as provided in paragraph (2) of this subsection, no loan for the repair, alteration, or improvement of residential property shall be financed through the assistance of the provisions of this chapter unless the veteran applicant, at the time that the veteran applies to the lender for the loan, and also at the time that the loan is closed, certifies, in such form as may be required by the Secretary, that the veteran occupies the property as the veteran's home. Notwithstanding the foregoing provisions of this subsection, in the case of a loan automatically guaranteed under this chapter, the veteran shall be required to make the certification only at the time the loan is closed. For the purposes of this chapter the requirement that the veteran recipient of a guaranteed or direct home loan must occupy or intend to occupy the property as the veteran's home means that the veteran as of the date of the veteran's certification actually lives in the property personally as the veteran's residence or actually intends upon completion of the loan and acquisition of the dwelling unit to move into the property personally within a reasonable time and to utilize such property as the veteran's residence. Notwith-

standing the foregoing requirements of this subsection, the provisions for certification by the veteran at the time the veteran applies for the loan and at the time the loan is closed shall be considered to be satisfied if the Secretary finds that (1) in the case of a loan for repair, alteration, or improvement the veteran in fact did occupy the property at such times, or (2) in the case of a loan for construction or purchase the veteran intended to occupy the property as the veteran's home at such times and the veteran did in fact so occupy it when, or within a reasonable time after, the loan was closed.

(2) In any case in which a veteran is in active duty status as a member of the Armed Forces and is unable to occupy a property because of such status, the occupancy requirements of—

(A) paragraph (1) of this subsection;

(B) paragraphs (1) through (5) and paragraph (7) of section 3710(a) of this title;

(C) section 3712(a)(5)(A)(i) of this title; and

(D) section 3712(e)(5) of this title;

shall be considered to be satisfied if the spouse of the veteran occupies the property as the spouse's home and the spouse makes the certification required by paragraph (1) of this subsection.

(d) Subject to notice and opportunity for a hearing, whenever the Secretary finds with respect to guaranteed or insured loans that any lender or holder has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government, the Secretary may refuse either temporarily or permanently to guarantee or insure any loans made by such lender or holder and may bar such lender or holder from acquiring loans guaranteed or insured under this chapter; however, the Secretary shall not refuse to pay a guaranty or insurance claim on loans theretofore entered into in good faith between a veteran and such lender. The Secretary may also refuse either temporarily or permanently to guarantee or insure any loans made by a lender or holder refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development.

(e) Any housing loan which is financed through the assistance of this chapter and to which section 3714 of this chapter applies shall include a provision that the loan is immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to such section 3714.

(f) A loan for the purchase or construction of new residential property, the construction of which began after the energy efficiency standards under section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709), as amended by section 101(c) of the Energy Policy Act of 1992, take effect, may not be financed through the assistance of this chapter unless the new residential property is constructed in compliance with such standards.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1206, Sec. 1804; Pub. L. 86–73, Sec. 3, June 30, 1959, 73 Stat. 156; Pub. L. 86–665, Sec. 5, July 14, 1960, 74 Stat. 532; Pub.

L. 89–117, title II, Sec. 217(b), Aug. 10, 1965, 79 Stat. 473; Pub. L. 90–19, Sec. 25(2), May 25, 1967, 81 Stat. 28; Pub. L. 91–506, Sec. 2(d), Oct. 23, 1970, 84 Stat. 1108; Pub. L. 93–569, Sec. 2(d), (e), Dec. 31, 1974, 88 Stat. 1863, 1864; Pub. L. 94–324, Sec. 7(7), (8), June 30, 1976, 90 Stat. 721; Pub. L. 97–295, Sec. 4(64), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 100–198, Sec. 8(a)(1), 10(b), Dec. 21, 1987, 101 Stat. 1319, 1323; Pub. L. 100–322, title IV, Sec. 415(c)(3), May 20, 1988, 102 Stat. 551; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3704 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–486, title I, Sec. 101(c)(2), Oct. 24, 1992, 106 Stat. 2787; Pub. L. 103–446, title IX, Sec. 903, Nov. 2, 1994, 108 Stat. 4676.)

§ 3705. Warranties

(a) The Secretary shall require that in connection with any property upon which there is located a dwelling designed principally for not more than a four-family residence and which is appraised for guaranty or insurance before the beginning of construction, the seller or builder, and such other person as may be required by the Secretary to become warrantor, shall deliver to the purchaser or owner of such property a warranty that the dwelling is constructed in substantial conformity with the plans and specifications (including any amendments thereof, or changes and variations therein, which have been approved in writing by the Secretary) on which the Secretary based the Secretary's valuation of the dwelling. The Secretary shall deliver to the builder, seller, or other warrantor the Secretary's written approval (which shall be conclusive evidence of such appraisal) of any amendment of, or change or variation in, such plans and specifications which the Secretary deems to be a substantial amendment thereof, or change or variation therein, and shall file a copy of such written approval with such plans and specifications. Such warranty shall apply only with respect to such instances of substantial nonconformity to such approved plans and specifications (including any amendments thereof, or changes or variations therein, which have been approved in writing, as provided in this section, by the Secretary) as to which the purchaser or home owner has given written notice to the warrantor within one year from the date of conveyance of title to, or initial occupancy of, the dwelling, whichever first occurs. Such warranty shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument. The provisions of this section shall apply to any such property covered by a mortgage insured or guaranteed by the Secretary on and after October 1, 1954, unless such mortgage is insured or guaranteed pursuant to a commitment therefor made before October 1, 1954.

(b) The Secretary shall permit copies of the plans and specifications (including written approvals of any amendments thereof, or changes or variations therein, as provided in this section) for dwellings in connection with which warranties are required by subsection (a) of this section to be made available in their appropriate local offices for inspection or for copying by any purchaser, home owner, or warrantor during such hours or periods of time as the Secretary may determine to be reasonable.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1206, Sec. 1805; Pub. L. 94–324, Sec. 7(9), June 30, 1976, 90 Stat. 721; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102–54, Sec. 15(a)(1), June 13, 1991, 105 Stat. 288; renum-

bered Sec. 3705, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1202(a)(2), Nov. 2, 1994, 108 Stat. 4689.)

§ 3706. Escrow of deposits and downpayments

(a) Any deposit or downpayment made by an eligible veteran in connection with the purchase of proposed or newly constructed and previously unoccupied residential property in a project on which the Secretary has issued a Certificate of Reasonable Value, which purchase is to be financed with a loan guaranteed, insured, or made under the provisions of this chapter, shall be deposited forthwith by the seller, or the agent of the seller, receiving such deposit or payment, in a trust account to safeguard such deposit or payment from the claims of creditors of the seller. The failure of the seller or the seller's agent to create such trust account and to maintain it until the deposit or payment has been disbursed for the benefit of the veteran purchaser at settlement or, if the transaction does not materialize, is otherwise disposed of in accordance with the terms of the contract, may constitute an unfair marketing practice within the meaning of section 3704(b) of this title.

(b) If an eligible veteran contracts for the construction of a property in a project on which the Secretary has issued a Certificate of Reasonable Value and such construction is to be financed with the assistance of a construction loan to be guaranteed, insured, or made under the provisions of this chapter, it may be considered an unfair marketing practice under section 3704(b) of this title if any deposit or downpayment of the veteran is not maintained in a special trust account by the recipient until it is either (1) applied on behalf of the veteran to the cost of the land or to the cost of construction or (2), if the transaction does not materialize, is otherwise disposed of in accordance with the terms of the contract.

(Added Pub. L. 86–665, Sec. 6(a), July 14, 1960, 74 Stat. 532, Sec. 1806; amended Pub. L. 94–324, Sec. 7(10), June 30, 1976, 90 Stat. 721; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3706 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1201(e)(13), Nov. 2, 1994, 108 Stat. 4685.)

§ 3707. Adjustable rate mortgages

(a) The Secretary shall carry out a demonstration project under this section during fiscal years 1993 through 2012 for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the National Housing Act.

(b) Interest rate adjustment provisions of a mortgage guaranteed under this section shall—

(1) correspond to a specified national interest rate index approved by the Secretary, information on which is readily accessible to mortgagors from generally available published sources;

(2) be made by adjusting the monthly payment on an annual basis;

(3) be limited, with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and

(4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

(c) The Secretary shall promulgate underwriting standards for loans guaranteed under this section, taking into account—

(1) the status of the interest rate index referred to in subsection (b)(1) and available at the time an underwriting decision is made, regardless of the actual initial rate offered by the lender;

(2) the maximum and likely amounts of increases in mortgage payments that the loans would require;

(3) the underwriting standards applicable to adjustable rate mortgages insured under title II of the National Housing Act; and

(4) such other factors as the Secretary finds appropriate.

(d) The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage term.

(Added Pub. L. 102–547, Sec. 3(a)(1), Oct. 28, 1992, 106 Stat. 3634; amended Pub. L. 103–78, Sec. 7, Aug. 13, 1993, 107 Stat. 769; Pub. L. 108–454, title IV, Sec. 404, Dec. 10, 2004, 118 Stat. 3616; Pub. L. 110–389, title V, Sec. 505(a), Oct. 10, 2008, 122 Stat. 4176.)

§ 3707A. Hybrid adjustable rate mortgages

(a) The Secretary shall carry out a demonstration project under this section during fiscal years 2004 through 2012 for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the National Housing Act in accordance with the provisions of this section with respect to hybrid adjustable rate mortgages described in subsection (b).

(b) Adjustable rate mortgages that are guaranteed under this section shall be adjustable rate mortgages (commonly referred to as "hybrid adjustable rate mortgages") having interest rate adjustment provisions that—

(1) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

(2) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (1); and

(3) comply in such initial adjustment, and any subsequent adjustment, with subsection (c).

(c) Interest rate adjustment provisions of a mortgage guaranteed under this section shall—

(1) correspond to a specified national interest rate index approved by the Secretary, information on which is readily accessible to mortgagors from generally available published sources;

(2) be made by adjusting the monthly payment on an annual basis;

(3) in the case of the initial contract interest rate adjustment—

(A) if the initial contract interest rate remained fixed for less than 5 years, be limited to a maximum increase or decrease of 1 percentage point; or

(B) if the initial contract interest rate remained fixed for 5 years or more, be limited to a maximum increase or decrease of such percentage point or points as the Secretary may prescribe;

(4) in the case of any single annual interest rate adjustment after the initial contract interest rate adjustment, be limited to a maximum increase or decrease of such percentage points as the Secretary may prescribe; and

(5) be limited, over the term of the mortgage, to a maximum increase of such number of percentage points as the Secretary shall prescribe for purposes of this section.

(d) The Secretary shall promulgate underwriting standards for loans guaranteed under this section, taking into account—

(1) the status of the interest rate index referred to in subsection (c)(1) and available at the time an underwriting decision is made, regardless of the actual initial rate offered by the lender;

(2) the maximum and likely amounts of increases in mortgage payments that the loans would require;

(3) the underwriting standards applicable to adjustable rate mortgages insured under title II of the National Housing Act; and

(4) such other factors as the Secretary finds appropriate.

(e) The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage term.

(Added Pub. L. 107–330, title III, Sec. 303(a), Dec. 6, 2002, 116 Stat. 2825; amended Pub. L. 108–454, title IV, Sec. 405(a), (b), Dec. 10, 2004, 118 Stat. 3616; Pub. L. 109–233, title I, Sec. 102, June 15, 2006, 120 Stat. 399; Pub. L. 110–389, title V, Sec. 505(b), Oct. 10, 2008, 122 Stat. 4176.)

§ 3708. Authority to buy down interest rates: pilot program

(a) In order to enable the purchase of housing in areas where the supply of suitable military housing is inadequate, the Secretary may conduct a pilot program under which the Secretary may make periodic or lump sum assistance payments on behalf of an eligible veteran for the purpose of buying down the interest rate on a loan to that veteran that is guaranteed under this chapter for a purpose described in paragraph (1), (6), or (10) of section 3710(a) of this title.

(b) An individual is an eligible veteran for the purposes of this section if—

(1) the individual is a veteran, as defined in section 3701(b)(4) of this title;

(2) the individual submits an application for a loan guaranteed under this chapter within one year of an assignment of

the individual to duty at a military installation in the United States designated by the Secretary of Defense as a housing shortage area;

(3) at the time the loan referred to in subsection (a) is made, the individual is an enlisted member, warrant officer, or an officer (other than a warrant officer) at a pay grade of O-3 or below;

(4) the individual has not previously used any of the individual's entitlement to housing loan benefits under this chapter; and

(5) the individual receives comprehensive prepurchase counseling from the Secretary (or the designee of the Secretary) before making application for a loan guaranteed under this chapter.

(c) Loans with respect to which the Secretary may exercise the buy down authority under subsection (a) shall—

(1) provide for a buy down period of not more than three years in duration;

(2) specify the maximum and likely amounts of increases in mortgage payments that the loans would require; and

(3) be subject to such other terms and conditions as the Secretary may prescribe by regulation.

(d) The Secretary shall promulgate underwriting standards for loans for which the interest rate assistance payments may be made under subsection (a). Such standards shall be based on the interest rate for the second year of the loan.

(e) The Secretary or lender shall provide comprehensive prepurchase counseling to eligible veterans explaining the features of interest rate buy downs under subsection (a), including a hypothetical payment schedule that displays the increases in monthly payments to the mortgagor over the first five years of the mortgage term. For the purposes of this subsection, the Secretary may assign personnel to military installations referred to in subsection (b)(2).

(f) There is authorized to be appropriated $3,000,000 annually to carry out this section.

(g) The Secretary may not guarantee a loan under this chapter after September 30, 1998, on which the Secretary is obligated to make payments under this section.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2822(b)(1), Feb. 10, 1996, 110 Stat. 556.)

SUBCHAPTER II—LOANS

§ 3710. Purchase or construction of homes

(a) Except as provided in section 3704(c)(2) of this title, any loan to a veteran, if made pursuant to the provisions of this chapter, is automatically guaranteed if such loan is for one or more of the following purposes:

(1) To purchase or construct a dwelling to be owned and occupied by the veteran as a home.

(2) To purchase a farm on which there is a farm residence to be owned and occupied by the veteran as the veteran's home.

(3) To construct on land owned by the veteran a farm residence to be occupied by the veteran as the veteran's home.

(4) To repair, alter, or improve a farm residence or other dwelling owned by the veteran and occupied by the veteran as the veteran's home.

(5) To refinance existing mortgage loans or other liens which are secured of record on a dwelling or farm residence owned and occupied by the veteran as the veteran's home.

(6) To purchase a one-family residential unit in a condominium housing development or project, if such development or project is approved by the Secretary under criteria which the Secretary shall prescribe in regulations.

(7) To improve a dwelling or farm residence owned by the veteran and occupied by the veteran as the veteran's home through energy efficiency improvements, as provided in subsection (d).

(8) To refinance in accordance with subsection (e) of this section an existing loan guaranteed, insured, or made under this chapter.

(9)(A)(i) To purchase a manufactured home to be permanently affixed to a lot that is owned by the veteran.

(ii) To purchase a manufactured home and a lot to which the home will be permanently affixed.

(B)(i) To refinance, in accordance with the terms and conditions applicable under the provisions of subsection (e) of this section (other than paragraph (1)(E) of such subsection) to the guaranty of a loan for the purpose specified in clause (8) of this subsection, an existing loan guaranteed, insured, or made under this chapter that is secured by a manufactured home permanently affixed to a lot that is owned by the veteran.

(ii) To refinance, in accordance with section 3712(a)(5) of this title, an existing loan that was made for the purchase of, and that is secured by, a manufactured home that is permanently affixed to a lot and to purchase the lot to which the manufactured home is affixed.

(10) To purchase a dwelling to be owned and occupied by the veteran as a home and make energy efficiency improvements, as provided in subsection (d).

(11) To refinance in accordance with subsection (e) an existing loan guaranteed, insured, or made under this chapter, and to improve the dwelling securing such loan through energy efficiency improvements, as provided in subsection (d).

(12) With respect to a loan guaranteed after the date of the enactment of this paragraph and before the date that is five years after that date, to purchase stock or membership in a cooperative housing corporation for the purpose of entitling the veteran to occupy for dwelling purposes a single family residential unit in a development, project, or structure owned or leased by such corporation, in accordance with subsection (h).

If there is an indebtedness which is secured by a lien against land owned by the veteran, the proceeds of a loan guaranteed under this section or made under section 3711 of this title for construction of a dwelling or farm residence on such land may be used also to liq-

uidate such lien, but only if the reasonable value of the land is equal to or greater than the amount of the lien.

(b) No loan may be guaranteed under this section or made under section 3711 of this title unless—

(1) the proceeds of such loan will be used to pay for the property purchased, constructed, or improved;

(2) the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the construction cost bear a proper relation to the veteran's present and anticipated income and expenses;

(3) the veteran is a satisfactory credit risk, as determined in accordance with the credit underwriting standards established pursuant to subsection (g) of this section;

(4) the nature and condition of the property is such as to be suitable for dwelling purposes;

(5) except in the case of a loan described in clause (7) or (8) of this subsection, the loan to be paid by the veteran for such property or for the cost of construction, repairs, or alterations, does not exceed the reasonable value thereof as determined pursuant to section 3731 of this title;

(6) if the loan is for repair, alteration, or improvement of property, such repair, alteration, or improvement substantially protects or improves the basic livability or utility of such property;

(7) in the case of a loan (other than a loan made for a purpose specified in subsection (a)(8) of this section) that is made to refinance—

(A) a construction loan,

(B) an installment land sales contract, or

(C) a loan assumed by the veteran that provides for a lower interest rate than the loan being refinanced,

the amount of the loan to be guaranteed or made does not exceed the lesser of—

(i) the reasonable value of the dwelling or farm residence securing the loan, as determined pursuant to section 3731 of this title; or

(ii) the sum of the outstanding balance on the loan to be refinanced and the closing costs (including discounts) actually paid by the veteran, as specified by the Secretary in regulations; and

(8) in the case of a loan to refinance a loan (other than a loan or installment sales contract described in clause (7) of this subsection or a loan made for a purpose specified in subsection (a)(8) of this section), the amount of the loan to be guaranteed or made does not exceed 100 percent of the reasonable value of the dwelling or farm residence securing the loan, as determined pursuant to section 3731 of this title.

[(c) Repealed. Pub. L. 100–198, Sec. 3(a)(2), Dec. 21, 1987, 101 Stat. 1315.]

(d)(1) The Secretary shall carry out a program to demonstrate the feasibility of guaranteeing loans for the acquisition of an existing dwelling and the cost of making energy efficiency improvements to the dwelling or for energy efficiency improvements to a dwelling owned and occupied by a veteran. A loan may be guaran-

teed under this subsection only if it meets the requirements of this chapter, except as those requirements are modified by this subsection.

(2) The cost of energy efficiency measures that may be financed by a loan guaranteed under this section may not exceed the greater of—

(A) the cost of the energy efficiency improvements, up to $3,000; or

(B) $6,000, if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficiency improvements.

(3) Notwithstanding the provisions of section 3703(a)(1)(A) of this title, any loan guaranteed under this subsection shall be guaranteed in an amount equal to the sum of—

(A) the guaranty that would be provided under those provisions for the dwelling without the energy efficiency improvements; and

(B) an amount that bears the same relation to the cost of the energy efficiency improvements as the guaranty referred to in subparagraph (A) bears to the amount of the loan minus the cost of such improvements.

(4) The amount of the veteran's entitlement, calculated in accordance with section 3703(a)(1)(B) of this title, shall not be affected by the amount of the guaranty referred to in paragraph (3)(B).

(5) The Secretary shall take appropriate actions to notify eligible veterans, participating lenders, and interested realtors of the availability of loan guarantees under this subsection and the procedures and requirements that apply to the obtaining of such guarantees.

(6) For the purposes of this subsection:

(A) The term "energy efficiency improvement" includes a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system, and the application of a residential energy conservation measure.

(B) The term "solar heating" has the meaning given such term in section 3(1) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502(1)) and, in addition, includes a passive system based on conductive, convective, or radiant energy transfer.

(C) The terms "solar heating and cooling" and "combined solar heating and cooling" have the meaning given such terms in section 3(2) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502(2)) and, in addition, include a passive system based on conductive, convective, or radiant energy transfer.

(D) The term "passive system" includes window and skylight glazing, thermal floors, walls, and roofs, movable insulation panels (when in conjunction with glazing), portions of a residential structure that serve as solar furnaces so as to add heat to the structure, double-pane window insulation, and such other energy-related components as are determined by the Sec-

retary to enhance the natural transfer of energy for the purpose of heating or heating and cooling a residence.

(E) The term "residential energy conservation measure" means—

(i) caulking and weatherstripping of all exterior doors and windows;

(ii) furnace efficiency modifications limited to—

(I) replacement burners, boilers, or furnaces designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

(II) devices for modifying flue openings which will increase the efficiency of the heating system, and

(III) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(iii) clock thermostats;

(iv) ceiling, attic, wall, and floor insulation;

(v) water heater insulation;

(vi) storm windows and doors;

(vii) heat pumps; and

(viii) such other energy conservation measures as the Secretary may identify for the purposes of this subparagraph.

(e)(1) For a loan to be guaranteed for the purpose specified in subsection (a)(8) or for the purpose specified in subsection (a)(11) of this section—

(A) the interest rate of the loan must be less than the interest rate of the loan being refinanced or, in a case in which the loan is a fixed rate loan and the loan being refinanced is an adjustable rate loan, the loan bears interest at a rate that is agreed upon by the veteran and the mortgagee;

(B) the loan must be secured by the same dwelling or farm residence as was the loan being refinanced;

(C) the amount of the loan may not exceed—

(i) an amount equal to the sum of the balance of the loan being refinanced and such closing costs (including any discount permitted pursuant to section 3703(c)(3)(A) of this title) as may be authorized by the Secretary (under regulations which the Secretary shall prescribe) to be included in the loan; or

(ii) in the case of a loan for the purpose specified in subsection (a)(11), an amount equal to the sum of the amount referred to with respect to the loan under clause (i) and the amount specified under subsection (d)(2);

(D) notwithstanding section 3703(a)(1) of this title, the amount of the guaranty of the loan may not exceed the greater of (i) the original guaranty amount of the loan being refinanced, or

(ii) 25 percent of the loan;

(E) the term of the loan may not exceed the original term of the loan being refinanced by more than 10 years; and

(F) the veteran must own the dwelling or farm residence securing the loan and—

(i) must occupy such dwelling or residence as such veteran's home;

(ii) must have previously occupied such dwelling or residence as such veteran's home and must certify, in such form as the Secretary shall require, that the veteran has previously so occupied such dwelling or residence; or

(iii) in any case in which a veteran is in active duty status as a member of the Armed Forces and is unable to occupy such residence or dwelling as a home because of such status, the spouse of the veteran must occupy, or must have previously occupied, such dwelling or residence as such spouse's home and must certify such occupancy in such form as the Secretary shall require.

(2) A loan to a veteran may be guaranteed by the Secretary under this chapter for the purpose specified in clause (8) of subsection (a) of this section without regard to the amount of outstanding guaranty entitlement available for use by such veteran, and the amount of such veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for such purpose. For purposes of section 3702(b) of this title, such loan shall be deemed to have been obtained with the guaranty entitlement used to obtain the loan being refinanced.

(3) If a veteran is deceased and if such veteran's surviving spouse was a co-obligor under an existing loan guaranteed, insured, or made under this chapter, such surviving spouse shall, only for the purpose specified in subsection (a)(8) of this section, be deemed to be a veteran eligible for benefits under this chapter.

(f)(1) For a loan to be guaranteed for the purpose specified in subclause (A)(ii) or (B)(ii) of subsection (a)(9) of this section, the purchase of (or the refinancing of a loan secured by) the manufactured home and the lot for that home shall be considered as one loan and must comply with such criteria as may be prescribed by the Secretary in regulations.

(2) A loan may not be guaranteed for the purposes of subsection (a)(9) of this section unless the manufactured home purchased, upon being permanently affixed to the lot, is considered to be real property under the laws of the State where the lot is located.

(g)(1) For the purposes of this subsection, the term "veteran", when used with respect to a loan guaranteed or to be guaranteed under this chapter, includes the veteran's spouse if the spouse is jointly liable with the veteran under the loan.

(2) For the purpose of determining whether a veteran meets the standards referred to in subsection (b)(3) of this section and section 3712(e)(2) of this title, the Secretary shall prescribe regulations which establish—

(A) credit underwriting standards to be used in evaluating loans to be guaranteed under this chapter; and

(B) standards to be used by lenders in obtaining credit information and processing loans to be guaranteed under this chapter.

(3) In the regulations prescribed under paragraph (2) of this subsection, the Secretary shall establish standards that include—

(A) debt-to-income ratios to apply in the case of the veteran applying for the loan;

(B) criteria for evaluating the reliability and stability of the income of the veteran applying for the loan; and

(C) procedures for ascertaining the monthly income required by the veteran to meet the anticipated loan payment terms.

If the procedures described in clause (C) of this paragraph include standards for evaluating residual income, the Secretary shall, in establishing such standards, give appropriate consideration to State statistics (in States as to which the Secretary determines that such statistics are reliable) pertinent to residual income and the cost of living in the State in question rather than in a larger region.

(4)(A) Any lender making a loan under this chapter shall certify, in such form as the Secretary shall prescribe, that the lender has complied with the credit information and loan processing standards established under paragraph (2)(B) of this subsection, and that, to the best of the lender's knowledge and belief, the loan meets the underwriting standards established under paragraph (2)(A) of this subsection.

(B) Any lender who knowingly and willfully makes a false certification under subparagraph (A) of this paragraph shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater. All determinations necessary to carry out this subparagraph shall be made by the Secretary.

(5) Pursuant to regulations prescribed to carry out this paragraph, the Secretary may, in extraordinary situations, waive the application of the credit underwriting standards established under paragraph (2) of this subsection when the Secretary determines, considering the totality of circumstances, that the veteran is a satisfactory credit risk.

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

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

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

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

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

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1207, Sec. 1810; Pub. L. 90–301, Sec. 1(a), 2(a), May 7, 1968, 82 Stat. 113; Pub. L. 91–506, Sec. 3, Oct. 23, 1970, 84 Stat. 1108; Pub. L. 93–569, Sec. 3, Dec. 31, 1974, 88 Stat. 1864; Pub. L. 94–324, Sec. 7(11),

June 30, 1976, 90 Stat. 721; Pub. L. 95–476, title I, Sec. 104, 105(a), Oct. 18, 1978, 92 Stat. 1498, 1499; Pub. L. 96–385, title IV, Sec. 401(a), 402(a), Oct. 7, 1980, 94 Stat. 1532, 1533; Pub. L. 98–223, title II, Sec. 205(a), Mar. 2, 1984, 98 Stat. 42; Pub. L. 99–576, title IV, Sec. 402(a), (b), Oct. 28, 1986, 100 Stat. 3280; Pub. L. 100–198, Sec. 3(a)(2), 7(a), (c), 8(a)(2), 11(b), 13, Dec. 21, 1987, 101 Stat. 1315, 1318–1320, 1325; Pub. L. 100–322, title IV, Sec. 415(c)(4), May 20, 1988, 102 Stat. 551; Pub. L. 101–237, title III, Sec. 309, 313(b)(1), Dec. 18, 1989, 103 Stat. 2075, 2077; renumbered Sec. 3710 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(iv), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 102–547, Sec. 6(1), 9(a), (b), Oct. 28, 1992, 106 Stat. 3636, 3641, 3642; Pub. L. 103–446, title IX, Sec. 904(a), (b), 905, Nov. 2, 1994, 108 Stat. 4676, 4677; Pub. L. 104–110, title I, Sec. 101(e), Feb. 13, 1996, 110 Stat. 768; Pub. L. 109–461, title V, Sec. 501, Dec. 22, 2006, 120 Stat. 3431; Pub. L. 110–389, title V, Sec. 504(b), Oct. 10, 2008, 122 Stat. 4176.)

§ 3711. Direct loans to veterans

(a) The Congress finds that housing credit for purposes specified in section 3710 or 3712 of this title is not and has not been generally available to veterans living in rural areas, or in small cities and towns not near large metropolitan areas. It is therefore the purpose of this section to provide housing credit for veterans living in such rural areas and such small cities and towns.

(b) Whenever the Secretary finds that private capital is not generally available in any rural area or small city or town for the financing of loans guaranteed for purposes specified in section 3710 or 3712 of this title, the Secretary shall designate such rural area or small city or town as a "housing credit shortage area". The Secretary shall, with respect to any such area, make, or enter into commitments to make, to any veteran eligible under this title, a loan for any or all of the purposes described in section 3710(a) or 3712 of this title (other than the refinancing of a loan under section 3710(a)(8) or 3712(a)(1)(F)).

(c) No loan may be made under this section to a veteran unless the veteran shows to the satisfaction of the Secretary that—

(1) the veteran is unable to obtain from a private lender in such housing credit shortage area, at an interest rate not in excess of the rate authorized for guaranteed home loans or manufactured home loans, as appropriate, a loan for such purpose for which the veteran is qualified under section 3710 or 3712 of this title, as appropriate; and

(2) the veteran is unable to obtain a loan for such purpose from the Secretary of Agriculture under title III of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.).

(d)(1) Loans made under this section shall bear interest at a rate determined by the Secretary, not to exceed the rate authorized for guaranteed home loans, or manufactured home loans, as appropriate, and shall be subject to such requirements or limitations prescribed for loans guaranteed under this title as may be applicable.

(2)(A) Except for any loan made under this chapter for the purposes described in section 3712 of this title, the original principal amount of any loan made under this section shall not exceed an amount which bears the same ratio to $33,000 as the amount of guaranty to which the veteran is entitled under section 3710 of this title at the time the loan is made bears to $36,000; and the guaranty entitlement of any veteran who heretofore or hereafter has been granted a loan under this section shall be charged with an

amount which bears the same ratio to $36,000 as the amount of the loan bears to $33,000.

(B) The original principal amount of any loan made under this section for the purposes described in section 3712 of this title shall not exceed the amount that bears the same ratio to $33,000 as the amount of guaranty to which the veteran is entitled under such section at the time the loan is made bears to $20,000. The amount of the guaranty entitlement for purposes specified in section 3710 of this title of any veteran who is granted a loan under this section, or who before October 18, 1978, was granted a loan under this section, shall be charged with the amount that bears the same ratio to $20,000 as the amount of the loan bears to $33,000.

(3) No veteran may obtain loans under this section aggregating more than $33,000.

(e) Loans made under this section shall be repaid in monthly installments, except that in the case of any such loan made for any of the purposes described in paragraphs (2), (3), or (4) of section 3710(a) of this title, the Secretary may provide that such loan shall be repaid in quarterly, semiannual, or annual installments.

(f) In connection with any loan under this section, the Secretary may make advances in cash to pay taxes and assessments on the real estate, to provide for repairs, alterations, and improvements, and to meet the incidental expenses of the transaction. The Secretary shall determine the expenses incident to origination of loans made under this section, which expenses, or a reasonable flat allowance in lieu thereof, shall be paid by the veteran in addition to the loan closing costs.

(g) The Secretary may sell, and shall offer for sale, to any person or entity approved for such purpose by the Secretary, any loan made under this section at a price which the Secretary determines to be reasonable under the conditions prevailing in the mortgage market when the agreement to sell the loan is made; and shall guarantee any loan thus sold subject to the same conditions, terms, and limitations which would be applicable were the loan guaranteed for purposes specified in section 3710 or 3712 of this title, as appropriate.

(h) The Secretary may exempt dwellings constructed through assistance provided by this section from the minimum land planning and subdivision requirements prescribed pursuant to subsection (a) of section 3704 of this title, and with respect to such dwellings may prescribe special minimum land planning and subdivision requirements which shall be in keeping with the general housing facilities in the locality but shall require that such dwellings meet minimum requirements of structural soundness and general acceptability.

(i) The Secretary is authorized, without regard to the provisions of subsections (a), (b), and (c) of this section, to make or enter into a commitment to make a loan to any veteran to assist the veteran in acquiring a specially adapted housing unit authorized under chapter 21 of this title, if the veteran is determined to be eligible for the benefits of such chapter 21, and is eligible for loan guaranty benefits under this chapter.

(j)(1) If any builder or sponsor proposes to construct one or more dwellings in a housing credit shortage area, or in any area

for a veteran who is determined to be eligible for assistance in acquiring a specially adapted housing unit under chapter 21 of this title, the Secretary may enter into commitment with such builder or sponsor, under which funds available for loans under this section will be reserved for a period not in excess of three months, or such longer period as the Secretary may authorize to meet the needs in any particular case, for the purpose of making loans to veterans to purchase such dwellings. Such commitment may not be assigned or transferred except with the written approval of the Secretary. The Secretary shall not enter into any such commitment unless such builder or sponsor pays a nonrefundable commitment fee to the Secretary in an amount determined by the Secretary, not to exceed 2 percent of the funds reserved for such builder or sponsor.

(2) Whenever the Secretary finds that a dwelling with respect to which funds are being reserved under this subsection has been sold, or contracted to be sold, to a veteran eligible for a direct loan under this section, the Secretary shall enter into a commitment to make the veteran a loan for the purchase of such dwelling. With respect to any loan made to an eligible veteran under this subsection, the Secretary may make advances during the construction of the dwelling, up to a maximum in advances of (A) the cost of the land plus (B) 80 percent of the value of the construction in place.

(k) Without regard to any other provision of this chapter, the Secretary may take or cause to be taken such action as in the Secretary's judgment may be necessary or appropriate for or in connection with the custody, management, protection, and realization or sale of investments under this section, may determine the Secretary's necessary expenses and expenditures, and the manner in which the same shall be incurred, allowed and paid, may make such rules, regulations, and orders as the Secretary may deem necessary or appropriate for carrying out the Secretary's functions under this section and, except as otherwise expressly provided in this chapter, may employ, utilize, compensate, and, to the extent not inconsistent with the Secretary's basic responsibilities under this chapter, delegate any of the Secretary's functions under this section to such persons and such corporate or other agencies, including agencies of the United States, as the Secretary may designate.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1208, Sec. 1811; Pub. L. 86–665, Sec. 2, July 14, 1960, 74 Stat. 531; Pub. L. 87–84, Sec. 2, July 6, 1961, 75 Stat. 201; Pub. L. 88–402, Aug. 4, 1964, 78 Stat. 380; Pub. L. 89–358, Sec. 5(e), Mar. 3, 1966, 80 Stat. 26; Pub. L. 90–77, title IV, Sec. 404, Aug. 31, 1967, 81 Stat. 190; Pub. L. 90–301, Sec. 1(b), May 7, 1968, 82 Stat. 113; Pub. L. 91–22, Sec. 3, June 6, 1969, 83 Stat. 32; Pub. L. 91–506, Sec. 4, Oct. 23, 1970, 84 Stat. 1109; Pub. L. 92–66, Aug. 5, 1971, 85 Stat. 173; Pub. L. 93–569, Sec. 4, Dec. 31, 1974, 88 Stat. 1864; Pub. L. 94–324, Sec. 3, 7(12)–(15), June 30, 1976, 90 Stat. 720, 721; Pub. L. 95–476, title I, Sec. 105(b), Oct. 18, 1978, 92 Stat. 1499; Pub. L. 96–385, title IV, Sec. 401(c)(2), 402(b), Oct. 7, 1980, 94 Stat. 1533; Pub. L. 97–295, Sec. 4(65), Oct. 12, 1982, 96 Stat. 1309; Pub. L. 97–306, title IV, Sec. 406(c)(1), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 100–198, Sec. 3(c), Dec. 21, 1987, 101 Stat. 1316; Pub. L. 100–322, title IV, Sec. 415(c)(5), (d)(2) May 20, 1988, 102 Stat. 551, 552; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3711 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–368, title VI, Sec. 602(e)(1)(B), Nov. 11, 1998, 112 Stat. 3346.)

§ 3712. Loans to purchase manufactured homes and lots

(a)(1) Notwithstanding any other provision of this chapter, any loan to a veteran eligible for the housing loan benefits of this chapter, if made pursuant to the provisions of this section, may be guaranteed if such loan is for one of the following purposes:

(A) To purchase a lot on which to place a manufactured home already owned by the veteran.

(B) To purchase a single-wide manufactured home.

(C) To purchase a single-wide manufactured home and a lot on which to place such home.

(D) To purchase a double-wide manufactured home.

(E) To purchase a double-wide manufactured home and a lot on which to place such home.

(F) To refinance in accordance with paragraph (4) of this subsection an existing loan guaranteed, insured, or made under this section.

(G) To refinance in accordance with paragraph (5) of this subsection an existing loan that was made for the purchase of, and that is secured by, a manufactured home and to purchase a lot on which such manufactured home is or will be placed.

(2) A loan for any of the purposes described in paragraph (1) of this subsection (other than the refinancing under clause (F) of such paragraph of an existing loan) may include an amount determined by the Secretary to be appropriate to cover the cost of necessary preparation of a lot already owned or to be acquired by the veteran, including the costs of installing utility connections and sanitary facilities, of paving, and of constructing a suitable pad for the manufactured home.

(3) Any loan made for the purposes described in clause (C), (E), or (G) of paragraph (1) of this subsection shall be considered as part of one loan. The transaction may be evidenced by a single loan instrument or by separate loan instruments for (A) that portion of the loan which finances the purchase of the manufactured home, and (B) that portion of the loan which finances the purchase of the lot and the necessary preparation of such lot.

(4)(A) For a loan to be guaranteed for the purpose specified in clause (F) of paragraph (1) of this subsection—

(i) the interest rate of the loan must be less than the interest rate of the loan being refinanced;

(ii) the loan must be secured by the same manufactured home or manufactured-home lot, or manufactured home and manufactured-home lot, as was the loan being refinanced;

(iii) the amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs (including any discount permitted pursuant to section 3703(c)(3)(A) of this title) as may be authorized by the Secretary, under regulations which the Secretary shall prescribe, to be included in such loan;

(iv) notwithstanding section 3703(a)(1) of this title, the amount of the guaranty of the loan may not exceed the greater of (I) the original guaranty amount of the loan being refinanced, or

(II) 25 percent of the loan;

(v) the term of the loan may not exceed the original term of the loan being refinanced;

(vi) the veteran must own the manufactured home, or the manufactured-home lot, or the manufactured home and the manufactured-home lot, securing the loan and—

(I) must occupy the home, a manufactured home on the lot, or the home and the lot, securing the loan;

(II) must have previously occupied the home, a manufactured home on the lot, or the home and the lot, securing the loan as the veteran's home and must certify, in such form as the Secretary shall require, that the veteran has previously so occupied the home (or such a home on the lot); or

(III) in any case in which a veteran is in active duty status as a member of the Armed Forces and is unable to occupy the home, a manufactured home on the lot, or the home and the lot, as a home because of such status, the spouse of the veteran must occupy, or must have previously occupied, the manufactured home on the lot, or the home and the lot, as such spouse's home and must certify such occupancy in such form as the Secretary shall require.

(B) A loan to a veteran may be guaranteed by the Secretary under this chapter for the purpose specified in clause (F) of paragraph (1) of this subsection without regard to the amount of outstanding guaranty entitlement available for use by such veteran, and the amount of such veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for such purpose. For purposes of section 3702(b) of this title, such loan shall be deemed to have been obtained with the guaranty entitlement used to obtain the loan being refinanced.

(C) If a veteran is deceased and if such veteran's surviving spouse was a co-obligor under an existing loan previously guaranteed, insured, or made for purposes specified in this section, such surviving spouse shall, only for the purpose specified in clause (F) of paragraph (1) of this subsection, be deemed to be a veteran eligible for benefits under this chapter.

(5)(A) For a loan to be guaranteed for the purpose specified in paragraph (1)(G) of this subsection or section 3710(a)(9)(B)(ii) of this title—

(i) the loan must be secured by the same manufactured home as was the loan being refinanced and such manufactured home must be owned and occupied by the veteran (except as provided in section 3704(c)(2) of this title) as such veteran's home; and

(ii) the amount of the loan may not exceed an amount equal to the sum of—

(I) the purchase price of the lot,

(II) the amount (if any) determined by the Secretary to be appropriate under paragraph (2) of this subsection to cover the cost of necessary preparation of such lot,

(III) the balance of the loan being refinanced, and

(IV) such closing costs (including any discount permitted pursuant to section 3703(c)(3)(E) of this title) as

may be authorized by the Secretary, under regulations which the Secretary shall prescribe, to be included in such loan.

(B) When a loan is made to a veteran for the purpose specified in paragraph (1)(G) of this subsection or section 3710(a)(9)(B)(ii) of this title, and the loan being refinanced was guaranteed, insured, or made under this section, the portion of the loan made for the purpose of refinancing such loan may be guaranteed by the Secretary under this chapter without regard to the amount of outstanding guaranty entitlement available for use by such veteran, and the amount of such veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for such portion of such loan. For the purposes of section 3702(b) of this title, such portion of such loan shall be deemed to have been obtained with the guaranty entitlement used to obtain the loan being refinanced.

(b)(1) Use of entitlement for purposes specified in this section for the purchase of a manufactured home unit shall preclude the use of remaining entitlement for the purchase of an additional manufactured home unit until the unit which secured the loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard.

(2) The Secretary shall restore entitlement to all housing loan benefits under this chapter for the veteran when the conditions prescribed in section 3702(b) of this title have been met.

(c)(1) Loans for any of the purposes authorized by subsection (a) of this section shall be submitted to the Secretary for approval prior to the closing of the loan, except that the Secretary may exempt any lender of a class listed in section 3702(d) of this title from compliance with such prior approval requirement if the Secretary determines that the experience of such lender or class of lenders in manufactured home financing warrants such exemption.

(2) Upon determining that a loan submitted for prior approval is eligible for guaranty for purposes specified in this section, the Secretary shall issue a commitment to guarantee such loan and shall thereafter guarantee the loan when made if such loan qualifies therefor in all respects.

(3)(A) The Secretary's guaranty may not exceed the lesser of (i) the lesser of $20,000 or 40 percent of the loan, or (ii) the maximum amount of the guaranty entitlement available to the veteran as specified in paragraph (4) of this subsection.

(B) A claim under the Secretary's guaranty shall, at the election of the holder of a loan, be made by the filing of an accounting with the Secretary—

(i) within a reasonable time after the receipt by such holder of an appraisal by the Secretary of the value of the security for the loan; or

(ii) after liquidation of the security for the loan.

(C) If the holder of a loan applies for payment of a claim under clause (i) of subparagraph (B) of this paragraph, the amount of such claim payable by the Secretary shall be the lesser of—

(i) the amount equal to the excess, if any, of the total indebtedness over the amount of the appraisal referred to in such clause; or

(ii) the amount equal to the guaranty under this section.

(D) If the holder of a loan files for payment of a claim under clause (ii) of subparagraph (B) of this paragraph, the amount of such claim payable by the Secretary shall be the lesser of—

(i) the amount equal to the excess, if any, of the total indebtedness over the greater of the value of the property securing the loan, as determined by the Secretary, or the amount of the liquidation or resale proceeds; or

(ii) the amount equal to the guaranty under this section.

(E) In any accounting filed pursuant to subparagraph (B)(ii) of this paragraph, the Secretary shall permit to be included therein accrued unpaid interest from the date of the first uncured default to such cutoff date as the Secretary may establish, and the Secretary shall allow the holder of the loan to charge against the liquidation or resale proceeds accrued interest from the cutoff date established to such further date as the Secretary may determine and such costs and expenses as the Secretary determines to be reasonable and proper.

(F) The liability of the United States under the guaranty provided for by this paragraph shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation.

(4) The maximum amount of guaranty entitlement available to a veteran for purposes specified in this section shall be $20,000 reduced by the amount of any such entitlement previously used by the veteran. Use of entitlement for purposes specified in section 3710 or 3711 of this title shall reduce entitlement available for use for purposes specified in this section to the same extent that entitlement available for purposes specified in such section 3710 is reduced below $20,000.

(5) The amount of any loan guaranteed for purposes specified in this section shall not exceed an amount equal to 95 percent of the purchase price of the property securing the loan.

(d)(1) The maturity of any loan guaranteed for purposes specified in this section shall not be more than—

(A) fifteen years and thirty-two days, in the case of a loan for the purchase of a lot;

(B) twenty years and thirty-two days, in the case of a loan for the purchase of—

(i) a single-wide manufactured home; or

(ii) a single-wide manufactured home and a lot;

(C) twenty-three years and thirty-two days, in the case of a loan for the purchase of a double-wide manufactured home; or

(D) twenty-five years and thirty-two days, in the case of a loan for the purchase of a double-wide manufactured home and a lot.

(2) Nothing in paragraph (1) of this subsection shall preclude the Secretary, under regulations which the Secretary shall prescribe, from consenting to necessary advances for the protection of the security or the holder's lien, to a reasonable extension of the term of such loan, or to a reasonable reamortization of such loan.

(e) No loan shall be guaranteed for purposes specified in this section unless—

(1) the loan is repayable in approximately equal monthly installments;

(2) the terms of repayment bear a proper relationship to the veteran's present and anticipated income and expenses, and the veteran is a satisfactory credit risk, as determined in accordance with the regulations prescribed under section 3710(g) of this title and taking into account the purpose of this program to make available lower cost housing to low and lower income veterans, especially those who have been recently discharged or released from active military, naval, or air service, who may not have previously established credit ratings;

(3) the loan is secured by a first lien on the manufactured home purchased with the proceeds of the loan and on any lot acquired or improved with the proceeds of the loan;

(4) the amount of the loan to be paid by the veteran is not in excess of the amount determined to be reasonable, based upon—

(A) with respect to any portion of the loan to purchase a new manufactured home, such cost factors as the Secretary considers proper to take into account;

(B) with respect to any portion of the loan to purchase a used manufactured home, the reasonable value of the property, as determined by the Secretary;

(C) with respect to any portion of the loan to purchase a lot, the reasonable value of such lot, as determined by the Secretary; and

(D) with respect to any portion of the loan to cover the cost of necessary site preparation, an appropriate amount, as determined by the Secretary;

(5) the veteran certifies, in such form as the Secretary shall prescribe, that the veteran will personally occupy the property as the veteran's home; except that the requirement of this clause shall not apply (A) in the case of a guaranteed loan that is for the purpose described in paragraph (1)(F) of subsection (a), or

(B) in the case described in section 3704(c)(2);

(6) the manufactured home is or will be placed on a site which meets specifications which the Secretary shall establish by regulation; and

(7) the interest rate to be charged on the loan does not exceed the permissible rate established by the Secretary.

(f) The Secretary shall establish such rate of interest for manufactured home loans and manufactured home lot loans as the Secretary determines to be necessary in order to assure a reasonable supply of manufactured home loan financing for veterans for purposes specified in this section.

(g) The Secretary shall promulgate such regulations as the Secretary determines to be necessary or appropriate in order to fully implement the provisions of this section, and such regulations may specify which provisions in other sections of this chapter the Secretary determines should be applicable to loans guaranteed or made for purposes specified in this section. The Secretary shall have such powers and responsibilities in respect to matters arising

under this section as the Secretary has in respect to loans made or guaranteed or under other sections of this chapter.

(h)(1) No loan for the purchase of a manufactured home shall be guaranteed for purposes specified in this section unless the manufactured home and lot, if any, meet or exceed standards for planning, construction, and general acceptability as prescribed by the Secretary and no loan for the purchase of a lot on which to place a manufactured home owned by a veteran shall be guaranteed for purposes specified in this section unless the lot meets such standards prescribed for manufactured home lots. Such standards shall be designed to encourage the maintenance and development of sites for manufactured homes which will be attractive residential areas and which will be free from, and not substantially contribute to, adverse scenic or environmental conditions.

(2) Any manufactured housing unit properly displaying a certification of conformity to all applicable Federal manufactured home construction and safety standards pursuant to section 616 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5415) shall be deemed to meet the standards required by paragraph (1).

(i) The Secretary shall require the manufacturer to become a warrantor of any new manufactured home which is approved for purchase with financing through the assistance of this chapter and to furnish to the purchaser a written warranty in such form as the Secretary shall require. Such warranty shall include (1) a specific statement that the manufactured home meets the standards prescribed by the Secretary pursuant to the provisions of subsection (h) of this section; and (2) a provision that the warrantor's liability to the purchaser or owner is limited under the warranty to instances of substantial nonconformity to such standards which become evident within one year from date of purchase and as to which the purchaser or owner gives written notice to the warrantor not later than ten days after the end of the warranty period. The warranty prescribed herein shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument and shall so provide in the warranty document.

(j) Subject to notice and opportunity for a hearing, the Secretary is authorized to deny guaranteed or direct loan financing in the case of—

(1) manufactured homes constructed by a manufacturer who fails or is unable to discharge the manufacturer's obligations under the warranty;

(2) manufactured homes which are determined by the Secretary not to conform to the standards provided for in subsection (h); or

(3) a manufacturer of manufactured homes who has engaged in procedures or practices determined by the Secretary to be unfair or prejudicial to veterans or the Government.

(k) Subject to notice and opportunity for a hearing, the Secretary may refuse to approve as acceptable any site in a manufactured home park or subdivision owned or operated by any person whose rental or sale methods, procedures, requirements, or practices are determined by the Secretary to be unfair or prejudicial to

veterans renting or purchasing such sites. The Secretary may also refuse to guarantee or make direct loans for veterans to purchase manufactured homes offered for sale by any dealer if substantial deficiencies have been discovered in such homes, or if the Secretary determines that there has been a failure or indicated inability of the dealer to discharge contractual liabilities to veterans, or that the type of contract of sale or methods, procedures, or practices pursued by the dealer in the marketing of such properties have been unfair or prejudicial to veteran purchasers.

(l) The provisions of sections 3704(d) and 3721 of this title shall be fully applicable to lenders making guaranteed manufactured home loans and manufactured home lot loans and holders of such loans.

(Added Pub. L. 91–506, Sec. 5, Oct. 23, 1970, 84 Stat. 1110, Sec. 1819; amended Pub. L. 93–569, Sec. 5, Dec. 31, 1974, 88 Stat. 1864; Pub. L. 94–324, Sec. 5, 7(20)–(23), June 30, 1976, 90 Stat. 720, 722; Pub. L. 95–476, title I, Sec. 107, Oct. 18, 1978, 92 Stat. 1500; Pub. L. 96–385, title IV, Sec. 401(b), 402(c), Oct. 7, 1980, 94 Stat. 1532, 1533; Pub. L. 97–66, title V, Sec. 503, Oct. 17, 1981, 95 Stat. 1032; Pub. L. 97–72, title III, Sec. 303(h), (i), Nov. 3, 1981, 95 Stat. 1060; Pub. L. 97–295, Sec. 4(66), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 97–306, title IV, Sec. 406(a), (c)(2), Oct. 14, 1982, 96 Stat. 1444, 1445; Pub. L. 98–223, title II, Sec. 205(b), Mar. 2, 1984, 98 Stat. 43; Pub. L. 99–576, title IV, Sec. 402(c)(2), Oct. 28, 1986, 100 Stat. 3281; Pub. L. 100–198, Sec. 3(b), 7(b), 8(b), Dec. 21, 1987, 101 Stat. 1315, 1318, 1320; Pub. L. 100–253, Sec. 3(b), Feb. 29, 1988, 102 Stat. 20; renumbered Sec. 1812 and amended Pub. L. 100–322, title IV, Sec. 415(b)(4), May 20, 1988, 102 Stat. 551; Pub. L. 101–237, title III, Sec. 313(b)(1), (7), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 101–508, title VIII, Sec. 8031(a), Nov. 5, 1990, 104 Stat. 1388–348; Pub. L. 102–54, Sec. 14(c)(8), June 13, 1991, 105 Stat. 285; renumbered Sec. 3712 and amended Pub. L. 102–83, Sec. 4(a)(2)(A)(v), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 102–547, Sec. 6(2), Oct. 28, 1992, 106 Stat. 3636; Pub. L. 103–446, title IX, Sec. 906, title XII, Sec. 1201(e)(14), Nov. 2, 1994, 108 Stat. 4677, 4685; Pub. L. 104–66, title I, Sec. 1141(b), Dec. 21, 1995, 109 Stat. 726.)

§ 3713. Release from liability under guaranty

(a) Whenever any veteran disposes of residential property securing a guaranteed, insured, or direct housing loan obtained by the veteran, the Secretary, upon application made by such veteran and by the transferee incident to such disposal, shall issue to such veteran in connection with such disposal a release relieving the veteran of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as the Secretary may deem appropriate, that (1) the loan is current, and (2) the purchaser of such property from such veteran (A) is obligated by contract to purchase such property and to assume full liability for the repayment of the balance of the loan remaining unpaid, and has assumed by contract all of the obligations of the veteran under the terms of the instruments creating and securing the loan, and (B) qualifies from a credit standpoint, to the same extent as if the transferee were a veteran eligible for purposes specified in section 3710 of this title, for a guaranteed or insured or direct loan in an amount equal to the unpaid balance of the obligation for which the transferee has assumed liability.

(b) If any veteran disposes of residential property securing a guaranteed, insured, or direct housing loan obtained by the veteran under this chapter without receiving a release from liability with

respect to such loan under subsection (a), and a default subsequently occurs which results in liability of the veteran to the Secretary on account of the loan, the Secretary may relieve the veteran of such liability if the Secretary determines, after such investigation as the Secretary deems appropriate, that the property was disposed of by the veteran in such a manner, and subject to such conditions, that the Secretary would have issued the veteran a release from liability under subsection (a) with respect to the loan if the veteran had made application therefor incident to such disposal. Failure of a transferee to assume by contract all of the liabilities of the original veteran-borrower shall bar such release of liability only in cases in which no acceptable transferee, either immediate or remote, is legally liable to the Secretary for the indebtedness of the original veteran-borrower arising from termination of the loan. The failure of a veteran to qualify for release from liability under this subsection does not preclude relief from being granted under section 5302(b) of this title, if the veteran is eligible for relief under that section.

(c) This section shall apply only to loans for which commitments are made before March 1, 1988.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1212, Sec. 1817; Pub. L. 92–328, title II, Sec. 204, June 30, 1972, 86 Stat. 397; Pub. L. 94–324, Sec. 7(18), (19), June 30, 1976, 90 Stat. 722; Pub. L. 97–72, title III, Sec. 303(f), Nov. 3, 1981, 95 Stat. 1060; Pub. L. 100–198, Sec. 10(a)(2), Dec. 21, 1987, 101 Stat. 1323; renumbered Sec. 1813 and amended Pub. L. 100–322, title IV, Sec. 415(b)(2), May 20, 1988, 102 Stat. 550; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102–40, title IV, Sec. 402(d)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 3713 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1201(e)(15), Nov. 2, 1994, 108 Stat. 4686.)

§ 3714. Assumptions; release from liability

(a)(1) Except as provided in subsection (f) of this section, if a veteran or any other person disposes of residential property securing a loan guaranteed, insured, or made under this chapter and the veteran or other person notifies the holder of the loan in writing before the property is disposed of, the veteran or other person, as the case may be, shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that—

(A) the loan is current; and

(B) the purchaser of the property from such veteran or other person—

(i) is obligated by contract to purchase such property and to assume full liability for the repayment of the balance of the loan remaining unpaid and has assumed by contract all of the obligations of the veteran under the terms of the instruments creating and securing the loan; and

(ii) qualifies from a credit standpoint, to the same extent as if the purchaser were a veteran eligible under section 3710 of this title, for a guaranteed or insured or direct loan in an amount equal to the unpaid balance of the obligation for which the purchaser is to assume liability.

(2) For the purposes of paragraph (1), paragraph (3), and paragraph (4)(C)(ii) of this subsection, the Secretary shall be considered to be the holder of the loan if the actual holder is not an approved lender described in section 3702.

(3) If the holder of the loan determines that the loan is not current or that the purchaser of the property does not meet the requirements of paragraph (1)(B) of this subsection, the holder shall—

(A) notify the transferor and the Secretary of such determination; and

(B) notify the transferor that the transferor may appeal the determination to the Secretary.

(4)(A) Upon the appeal of the transferor after a determination described in paragraph (3) is made, the Secretary shall, in a timely manner, review and make a determination (or a redetermination in any case in which the Secretary made the determination described in such paragraph) with respect to whether the loan is current and whether the purchaser of the property meets the requirements of paragraph (1)(B) of this subsection. The Secretary shall transmit, in writing, a notice of the nature of such determination to the transferor and the holder and shall inform them of the action that shall or may be taken under subparagraph (B) of this paragraph as a result of the determination of the Secretary.

(B)(i) If the Secretary determines under subparagraph (A) of this paragraph that the loan is current and that the purchaser meets the requirements of paragraph (1)(B) of this subsection, the holder shall approve the assumption of the loan, and the transferor shall be relieved of all liability to the Secretary with respect to such loan.

(ii) If the Secretary determines under subparagraph (A) of this paragraph that the purchaser does not meet the requirements of paragraph (1)(B) of this subsection, the Secretary may direct the holder to approve the assumption of the loan if—

(I) the Secretary determines that the transferor of the property is unable to make payments on the loan and has made reasonable efforts to find a buyer who meets the requirements of paragraph (1)(B) of this subsection and that, as a result, the proposed transfer is in the best interests of the Department and the transferor;

(II) the transferor has requested, within 15 days after receiving the notice referred to in subparagraph (A) of this paragraph, that the Secretary approve the assumption; and

(III) the transferor will, upon assumption of the loan by the purchaser, be secondarily liable on the loan.

(C) If—

(i) the loan is not approved for assumption under subparagraph (B) of this paragraph or paragraph (1) of this subsection; or

(ii) no appeal is made by the transferor under subparagraph (A) of this paragraph within 30 days after the holder informs the transferor of its determination under paragraph (3) of this subsection,

the holder may demand immediate, full payment of the principal, and all interest earned thereon, of such loan if the transferor disposes of the property.

(b) If a person disposes of residential property described in subsection (a)(1) of this section and the person fails to notify the holder of the loan before the property is disposed of, the holder, upon learning of such action by the person, may demand immediate and full payment of the principal, interest, and all other amounts owing under the terms of the loan.

(c)(1) In any case in which the holder of a loan described in subsection (a)(1) of this section has knowledge of a person's disposing of residential property securing the loan, the holder shall notify the Secretary of such action.

(2) If the holder fails to notify the Secretary in such a case, the holder shall be liable to the Secretary for any damage sustained by the Secretary as a result of the holder's failure, as determined at the time the Secretary is required to make payments in accordance with any insurance or guaranty provided by the Secretary with respect to the loan concerned.

(d) With respect to a loan guaranteed, insured, or made under this chapter, the Secretary shall provide, by regulation, that at least one instrument evidencing either the loan or the mortgage or deed of trust therefor, shall conspicuously contain, in such form as the Secretary shall specify, a notice in substantially the following form: "This loan is not assumable without the approval of the Department of Veterans Affairs or its authorized agent".

(e) The Secretary shall establish in regulations a reasonable amount as the maximum amount that a lender may charge for processing an application for a creditworthiness determination and assumption of a loan pursuant to this section. Such regulations shall establish requirements for the timely processing of applications for acceptance of assumptions.

(f)(1) This section shall apply—

(A) in the case of loans other than loans to finance the purchase of real property described in section 3733(a)(1) of this title, only to loans for which commitments are made on or after March 1, 1988; and

(B) in the case of loans to finance the purchase of such property, only to loans which are closed after January 1, 1989.

(2) This section shall not apply to a loan which the Secretary has sold without recourse.

(Added Pub. L. 100–198, Sec. 10(a)(1), Dec. 21, 1987, 101 Stat. 1321, Sec. 1817A; renumbered Sec. 1814, Pub. L. 100–322, title IV, Sec. 415(b)(2)(B), May 20, 1988, 102 Stat. 551; amended Pub. L. 100–689, title III, Sec. 302, Nov. 18, 1988, 102 Stat. 4176; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3714 and amended Pub. L. 102–83, Sec. 4(a)(2)(B)(iv), (3), (4), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403, 404, 406; Pub. L. 105–368, title X, Sec. 1005(b)(10), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 107–103, title IV, Sec. 403, Dec. 27, 2001, 115 Stat. 993.)

[§§ 3715 to 3719. Vacant]

SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

§ 3720. Powers of Secretary

(a) Notwithstanding the provisions of any other law, with respect to matters arising by reason of this chapter, the Secretary may—

(1) sue and be sued in the Secretary's official capacity in any court of competent jurisdiction, State or Federal, but nothing in this clause shall be construed as authorizing garnishment or attachment against the Secretary, the Department of Veterans Affairs, or any of its employees;

(2) subject to specific limitations in this chapter, consent to the modification, with respect to rate of interest, time of payment of principal or interest or any portion thereof, security or other provisions of any note, contract, mortgage or other instrument securing a loan which has been guaranteed, insured, made or acquired under this chapter;

(3) pay, or compromise, any claim on, or arising because of, any such guaranty or insurance;

(4) pay, compromise, waive or release any right, title, claim, lien or demand, however acquired, including any equity or any right of redemption;

(5) purchase at any sale, public or private, upon such terms and for such prices as the Secretary determines to be reasonable, and take title to, property, real, personal or mixed; and similarly sell, at public or private sale, exchange, assign, convey, or otherwise dispose of any such property; and

(6) complete, administer, operate, obtain and pay for insurance on, and maintain, renovate, repair, modernize, lease, or otherwise deal with any property acquired or held pursuant to this chapter. The acquisition of any such property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction of, on, or over such property (including power to tax) or impair the rights under the State or local law of any persons on such property. Without regard to section 3302(b) of title 31 or any other provision of law not expressly in limitation of this paragraph, the Secretary may permit brokers utilized by the Secretary in connection with such properties to deduct from rental collections amounts covering authorized fees, costs, and expenses incurred in connection with the management, repair, sale, or lease of any such properties and remit the net balances to the Secretary.

(b) The powers granted by this section may be exercised by the Secretary without regard to any other provision of law not enacted expressly in limitation of this section, which otherwise would govern the expenditure of public funds, except that title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) shall apply to any contract for services or supplies on account of any property acquired pursuant to this section.

(c) The financial transactions of the Secretary incident to, or arising out of, the guaranty or insurance of loans pursuant to this chapter, and the acquisition, management, and disposition of prop-

erty, real, personal, or mixed, incident to such activities and pursuant to this section, shall be final and conclusive upon all officers of the Government.

(d) The right to redeem provided for by section 2410(c) of title 28 shall not arise in any case in which the subordinate lien or interest of the United States derives from a guaranteed or insured loan.

[(e) Repealed. Pub. L. 105–368, title VI, Sec. 602(c)(1), Nov. 11, 1998, 112 Stat. 3346]

(f) Whenever loss, destruction, or damage to any residential property securing loans guaranteed, insured, made, or acquired by the Secretary under this chapter occurs as the result of a major disaster as determined by the President under the Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall (1) provide counseling and such other service to the owner of such property as may be feasible and shall inform such owner concerning the disaster assistance available from other Federal agencies and from State or local agencies, and (2) pursuant to subsection (a)(2) of this section, extend on an individual case basis such forebearance or indulgence to such owner as the Secretary determines to be warranted by the facts of the case and the circumstances of such owner.

(g) The Secretary shall, at the request of the Secretary of Housing and Urban Development and without reimbursement, certify to such Secretary whether an applicant for assistance under any law administered by the Department of Housing and Urban Development is a veteran.

(h)(1) The Secretary may, upon such terms and conditions as the Secretary considers appropriate, issue or approve the issuance of, and guarantee the timely payment of principal and interest on, certificates or other securities evidencing an interest in a pool of mortgage loans made in connection with the sale of properties acquired under this chapter.

(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, 2011.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1213, Sec. 1820; Pub. L. 88–151, Sec. 1, Oct. 17, 1963, 77 Stat. 271; Pub. L. 88–560, title VII, Sec. 701(e)(1), Sept. 2, 1964, 78 Stat. 800; Pub. L. 89–625, Oct. 4, 1966, 80 Stat. 874; Pub. L. 89–769, Sec. 3(c), Nov. 6, 1966, 80 Stat. 1316; Pub. L. 90–448, title VIII, Sec. 807(h), Aug. 1, 1968, 82 Stat. 545; Pub. L. 91–606, title II, Sec. 233, Dec. 31, 1970, 84 Stat. 1753; Pub. L. 92–328, title II, Sec. 205, June 30, 1972, 86 Stat. 397; Pub. L. 93–288, title VII, Sec. 702(l), formerly title VI, Sec. 602(l), May 22, 1974, 88 Stat. 164, renumbered title VII, Sec. 702(l), Pub. L. 103–337, div. C, title XXXIV, Sec. 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 94–324, Sec. 7(24)–(26), June 30, 1976, 90 Stat. 722; Pub. L. 95–117, title IV, Sec. 403(a), Oct. 3, 1977, 91 Stat. 1066; Pub. L. 97–258, Sec. 3(k)(3), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 97–295, Sec. 4(67), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 98–160, title VII, Sec. 702(14), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 99–576, title IV, Sec. 404, Oct. 28, 1986, 100 Stat. 3281; Pub. L. 100–707, title I, Sec. 109(n), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 101–237, title III, Sec. 313(b)(1), (2), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102–54, Sec. 4(a), June 13, 1991, 105 Stat. 268; renumbered Sec. 3720 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–291, Sec. 5(a), May 20, 1992, 106 Stat. 179; Pub. L. 102–547, Sec. 4, Oct. 28, 1992, 106 Stat. 3636; Pub. L. 104–110, title I, Sec. 101(f), Feb. 13, 1996, 110 Stat. 768; Pub. L. 104–275, title II, Sec. 201, Oct. 9, 1996, 110 Stat. 3330; Pub. L. 105–33, title VIII, Sec. 8011, Aug. 5, 1997, 111 Stat. 664; Pub. L. 105–368, title VI, Secs. 602(c)(1), 604(a), Nov. 11, 1998, 112 Stat.

3346, 3348; Pub. L. 106–419, title IV, Sec. 402(a), Nov. 1, 2000, 114 Stat. 1861; Pub. L. 107–103, title IV, Sec. 405(b), Dec. 27, 2001, 115 Stat. 994.)

§ 3721. Incontestability

Any evidence of guaranty or insurance issued by the Secretary shall be conclusive evidence of the eligibility of the loan for guaranty or insurance under the provisions of this chapter and of the amount of such guaranty or insurance. Nothing in this section shall preclude the Secretary from establishing, as against the original lender, defenses based on fraud or material misrepresentation. The Secretary shall not, by reason of anything contained in this section, be barred from establishing, by regulations in force at the date of such issuance or disbursement, whichever is the earlier, partial defenses to the amount payable on the guaranty or insurance.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1213, Sec. 1821; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3721, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3722. Veterans Housing Benefit Program Fund

(a) There is hereby established in the Treasury of the United States a fund known as the Veterans Housing Benefit Program Fund (hereinafter in this section referred to as the "Fund").

(b) The Fund shall be available to the Secretary, without fiscal year limitation, for all housing loan operations under this chapter, other than administrative expenses, consistent with the Federal Credit Reform Act of 1990.

(c) There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Any amount appropriated to the Fund.

(2) Amounts paid into the Fund under section 3729 of this title or any other provision of law or regulation established by the Secretary imposing fees on persons or other entities participating in the housing loan programs under this chapter.

(3) All other amounts received by the Secretary on or after October 1, 1998, incident to housing loan operations under this chapter, including—

(A) collections of principal and interest on housing loans made by the Secretary under this chapter;

(B) proceeds from the sale, rental, use, or other disposition of property acquired under this chapter;

(C) proceeds from the sale of loans pursuant to sections 3720(h) and 3733(a)(3) of this title; and

(D) penalties collected pursuant to section 3710(g)(4)(B) of this title.

(d) Amounts deposited into the Fund under paragraphs (2) and (3) of subsection (c) shall be deposited in the appropriate financing or liquidating account of the Fund.

(e) For purposes of this section, the term "housing loan" shall not include a loan made pursuant to subchapter V of this chapter.

(Added Pub. L. 105–368, title VI, Sec. 602(a)(2), Nov. 11, 1998, 112 Stat. 3345; amended Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

[§ 3723. Repealed. Pub. L. 105–368, title VI, Sec. 602(a)(1), Nov. 11, 1998, 112 Stat. 3345]

[§ 3724. Repealed. Pub. L. 105–368, title VI, Sec. 602(a)(1), Nov. 11, 1998, 112 Stat. 3345]

[§ 3725. Repealed. Pub. L. 105–368, title VI, Sec. 602(a)(1), Nov. 11, 1998, 112 Stat. 3345]

§ 3726. Withholding of payments, benefits, etc

(a) No officer, employee, department, or agency of the United States shall set off against, or otherwise withhold from, any veteran or the surviving spouse of any veteran any payments (other than benefit payments under any law administered by the Department of Veterans Affairs) which such veteran or surviving spouse would otherwise be entitled to receive because of any liability to the Secretary allegedly arising out of any loan made to, assumed by, or guaranteed or insured on account of, such veteran or surviving spouse under this chapter, unless the Secretary provides such veteran or surviving spouse with notice by certified mail with return receipt requested of the authority of the Secretary to waive the payment of indebtedness under section 5302(b) of this title.

(b) If the Secretary does not waive the entire amount of the liability, the Secretary shall then determine whether the veteran or surviving spouse should be released from liability under section 3713(b) of this title.

(c) If the Secretary determines that the veteran or surviving spouse should not be released from liability, the Secretary shall notify the veteran or surviving spouse of that determination and provide a notice of the procedure for appealing that determination, unless the Secretary has previously made such determination and notified the veteran or surviving spouse of the procedure for appealing the determination.

(Added Pub. L. 89–358, Sec. 5(f)(1), Mar. 3, 1966, 80 Stat. 26, Sec. 1826; amended Pub. L. 94–324, Sec. 7(30), June 30, 1976, 90 Stat. 722; Pub. L. 97–66, title V, Sec. 504, Oct. 17, 1981, 95 Stat. 1033; Pub. L. 101–237, title III, Sec. 313(b)(1), (2), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3726, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–33, title VIII, Sec. 8033(a), Aug. 5, 1997, 111 Stat. 669.)

§ 3727. Expenditures to correct or compensate for structural defects in mortgaged homes

(a) The Secretary is authorized, with respect to any property improved by a one-to four-family dwelling inspected during construction by the Department of Veterans Affairs or the Federal Housing Administration which the Secretary finds to have structural defects seriously affecting the livability of the property, to make expenditures for (1) correcting such defects, (2) paying the claims of the owner of the property arising from such defects, or (3) acquiring title to the property; except that such authority of the Secretary shall exist only (A) if the owner requests assistance under this section not later than four years (or such shorter time as the Secretary may prescribe) after the mortgage loan was made, guaranteed, or insured, and (B) if the property is encumbered by

a mortgage which is made, guaranteed, or insured under this chapter after May 7, 1968.

(b) The Secretary shall by regulation prescribe the terms and conditions under which expenditures and payments may be made under the provisions of this section, and the Secretary's decisions regarding such expenditures or payments, and the terms and conditions under which the same are approved or disapproved, shall be final and conclusive, and shall not be subject to judicial review.

(c) The Secretary is authorized to make expenditures for the purposes of this section from the fund established pursuant to section 3722 of this title.

(Added Pub. L. 90–301, Sec. 5(a), May 7, 1968, 82 Stat. 116, Sec. 1827; amended Pub. L. 94–324, Sec. 7(31), June 30, 1976, 90 Stat. 722; Pub. L. 101–237, title III, Sec. 313(b)(1), (2), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3727 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–368, title VI, Sec. 602(e)(1)(C), title X, Sec. 1005(b)(11), Nov. 11, 1998, 112 Stat. 3346, 3365.)

§ 3728. Exemption from State anti-usury provisions

If, under any law of the United States, loans and mortgages insured under title I or title II of the National Housing Act are exempt from the application of the provisions of any State constitution or law (1) limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders, (2) restricting the manner of calculating such interest (including prohibition of the charging of interest on interest), or (3) requiring a minimum amortization of principal, then loans guaranteed or insured under this chapter are also exempt from the application of such provisions.

(Added Pub. L. 96–128, title IV, Sec. 401(a), Nov. 28, 1979, 93 Stat. 986, Sec. 1828; amended Pub. L. 97–66, title V, Sec. 501(b), Oct. 17, 1981, 95 Stat. 1032; renumbered Sec. 3728, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3729. Loan fee

(a) REQUIREMENT OF FEE.—(1) Except as provided in subsection (c), a fee shall be collected from each person obtaining a housing loan guaranteed, insured, or made under this chapter, and each person assuming a loan to which section 3714 of this title applies. No such loan may be guaranteed, insured, made, or assumed until the fee payable under this section has been remitted to the Secretary.

(2) The fee may be included in the loan and paid from the proceeds thereof.

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

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

LOAN FEE TABLE

Type of loan	Active duty veteran	Reservist	Other obligor
(A)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed before January 1, 2004)	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 January 1, 2004, and before October 1, 2004)	2.20	2.40	NA
(A)(iii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2004, and before October 1, 2011)	2.15	2.40	NA
(A)(iv) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2011)	1.40	1.65	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 January 1, 2004)	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 January 1, 2004, and before October 1, 2011)	3.30	3.30	NA
(B)(iii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2011 and before October 1, 2013)	2.15	2.15	NA
(B)(iv) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2013)	1.25	1.25	NA
(C)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed before October 1, 2011)	1.50	1.75	NA
(C)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after October 1, 2011)	0.75	1.00	NA
(D)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed before October 1, 2011)	1.25	1.50	NA
(D)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after October 1, 2011)	0.50	0.75	NA

LOAN FEE TABLE—Continued

Type of loan	Active duty veteran	Reservist	Other obligor
(E) Interest rate reduction refinancing loan	0.50	0.50	NA
(F) Direct loan under section 3711	1.00	1.00	NA
(G) Manufactured home loan under section 3712 (other than an interest rate reduction refinancing loan)	1.00	1.00	NA
(H) Loan to Native American veteran under section 3762 (other than an interest rate reduction refinancing loan)	1.25	1.25	NA
(I) Loan assumption under section 3714	0.50	0.50	0.50
(J) Loan under section 3733(a)	2.25	2.25	2.25

(3) Any reference to a section in the "Type of loan" column in the loan fee table in paragraph (2) refers to a section of this title.

(4) For the purposes of paragraph (2):

(A) The term "active duty veteran" means any veteran eligible for the benefits of this chapter other than a Reservist.

(B) The term "Reservist" means a veteran described in section 3701 (b)(5)(A) of this title who is eligible under section 3702(a)(2)(E) of this title.

(C) The term "other obligor" means a person who is not a veteran, as defined in section 101 of this title or other provision of this chapter.

(D) The term "initial loan" means a loan to a veteran guaranteed under section 3710 or made under section 3711 of this title if the veteran has never obtained a loan guaranteed under section 3710 or made under section 3711 of this title.

(E) The term "subsequent loan" means a loan to a veteran, other than an interest rate reduction refinancing loan, guaranteed under section 3710 or made under section 3711 of this title if the veteran has previously obtained a loan guaranteed under section 3710 or made under section 3711 of this title.

(F) The term "interest rate reduction refinancing loan" means a loan described in section 3710(a)(8), 3710(a)(9)(B)(i), 3710(a)(11), 3712(a)(1)(F), or 3762(h) of this title.

(G) The term "0-down" means a downpayment, if any, of less than 5 percent of the total purchase price or construction cost of the dwelling.

(H) The term "5-down" means a downpayment of at least 5 percent or more, but less than 10 percent, of the total purchase price or construction cost of the dwelling.

(I) The term "10-down" means a downpayment of 10 percent or more of the total purchase price or construction cost of the dwelling.

(c) WAIVER OF FEE.—(1) A fee may not be collected under this section from a veteran who is receiving compensation (or who, but for the receipt of retirement pay, would be entitled to receive compensation) or from a surviving spouse of any veteran (including a

person who died in the active military, naval, or air service) who died from a service-connected disability.

(2) A veteran who is rated eligible to receive compensation as a result of a pre-discharge disability examination and rating shall be treated as receiving compensation for purposes of this subsection as of the date on which the veteran is rated eligible to receive compensation as a result of the pre-discharge disability examination and rating without regard to whether an effective date of the award of compensation is established as of that date.

(Added Pub. L. 97–253, title IV, Sec. 406(a)(1), Sept. 8, 1982, 96 Stat. 805, Sec. 1829; amended Pub. L. 98–369, div. B, title V, Sec. 2511(a), July 18, 1984, 98 Stat. 1117; Pub. L. 100–198, Sec. 2, 10(c), Dec. 21, 1987, 101 Stat. 1315, 1323; Pub. L. 100–203, title VII, Sec. 7002, Dec. 22, 1987, 101 Stat. 1330–279; Pub. L. 100–322, title IV, Sec. 415(c)(6), May 20, 1988, 102 Stat. 551; Pub. L. 101–237, title III, Sec. 303(a), 313(b)(1), Dec. 18, 1989, 103 Stat. 2071, 2077; Pub. L. 101–239, title V, Sec. 5001, Dec. 19, 1989, 103 Stat. 2136; Pub. L. 101–508, title VIII, Sec. 8032, Nov. 5, 1990, 104 Stat. 1388–348; Pub. L. 102–54, Sec. 15(a)(3), (4), June 13, 1991, 105 Stat. 289; renumbered Sec. 3729 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–547, Sec. 2(b)(1), 5, Oct. 28, 1992, 106 Stat. 3633, 3636; Pub. L. 103–66, title XII, Sec. 12007, Aug. 10, 1993, 107 Stat. 414; Pub. L. 103–446, title IX, Sec. 904(c), Nov. 2, 1994, 108 Stat. 4677; Pub. L. 104–275, title II, Sec. 202(b), Oct. 9, 1996, 110 Stat. 3330; Pub. L. 105–33, title VIII, Secs. 8012, 8032, Aug. 5, 1997, 111 Stat. 664, 669; Pub. L. 105–368, title VI, Secs. 602(e)(1)(D), 603(b), Nov. 11, 1998, 112 Stat. 3346, 3348; Pub. L. 106–419, title IV, Sec. 402(b), Nov. 1, 2000, 114 Stat. 1861; Pub. L. 107–14, Sec. 8(b)(4), June 5, 2001, 115 Stat. 36; Pub. L. 107–103, title IV, Secs. 405(c), 406, Dec. 27, 2001, 115 Stat. 994; Pub. L. 108–183, title IV, Sec. 405, Dec. 16, 2003, 117 Stat. 2665; Pub. L. 108–454, title IV, Sec. 406, Dec. 10, 2004, 118 Stat. 3617.)

§ 3730. Use of attorneys in court

(a) The Secretary shall authorize attorneys employed by the Department of Veterans Affairs to exercise the right of the United States to bring suit in court to foreclose a loan made or acquired by the Secretary under this chapter and to recover possession of any property acquired by the Secretary under this chapter. The Secretary may acquire the services of attorneys, other than those who are employees of the Department of Veterans Affairs, to exercise that right. The activities of attorneys in bringing suit under this section shall be subject to the direction and supervision of the Attorney General and to such terms and conditions as the Attorney General may prescribe.

(b) Nothing in this section derogates from the authority of the Attorney General under sections 516 and 519 of title 28 to direct and supervise all litigation to which the United States or an agency or officer of the United States is a party.

(Added Pub. L. 98–369, div. B, title V, Sec. 2512(b)(1), July 18, 1984, 98 Stat. 1120, Sec. 1830; amended Pub. L. 99–576, title IV, Sec. 406, Oct. 28, 1986, 100 Stat. 3282; Pub. L. 101–237, title III, Sec. 313(b)(1), (2), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3730, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–368, title X, Sec. 1005(b)(12), Nov. 11, 1998, 112 Stat. 3365.)

§ 3731. Appraisals

(a) The Secretary shall—

(1) subject to subsection (b)(2) and in consultation with appropriate representatives of institutions which are regularly engaged in making housing loans, prescribe uniform qualifications for appraisers, including the successful completion of a written test, submission of a sample appraisal, certification of

an appropriate number of years of experience as an appraiser, and submission of recommendations from other appraisers;

(2) use such qualifications in determining whether to approve an appraiser to make appraisals of the reasonable value of any property, construction, repairs, or alterations for the purposes of this chapter; and

(3) in consultation with local representatives of institutions described in clause (1) of this subsection, develop and maintain lists of appraisers who are approved under clause (2) of this subsection to make appraisals for the purposes of this chapter.

(b)(1) The Secretary shall select appraisers from a list required by subsection (a)(3) of this section on a rotating basis to make appraisals for the purposes of this chapter.

(2) If uniform qualifications become applicable for appraisers who perform appraisals for or in connection with the Federal Government, the qualifications required by subsection (a)(1) of this section may be more stringent than such uniform qualifications, but the Secretary may use no written test in determining the qualifications of appraisers other than the test prescribed to implement such uniform qualifications.

(c) Except as provided in subsection (f) of this section, the appraiser shall forward an appraisal report to the Secretary for review. Upon receipt of such report, the Secretary shall determine the reasonable value of the property, construction, repairs, or alterations for purposes of this chapter, and notify the veteran of such determination. Upon request, the Secretary shall furnish a copy of the appraisal made of property for the purposes of this chapter to the lender proposing to make the loan which is to be secured by such property and is to be guaranteed under this chapter.

(d) If a lender (other than a lender authorized under subsection (f) of this section to determine reasonable value)—

(1) has proposed to make a loan to be guaranteed under this chapter,

(2) has been furnished a certificate of reasonable value of any property or of any construction, repairs, or alterations of property which is to be the security for such loan, and

(3) within a reasonable period prescribed by the Secretary, has furnished to the Secretary an additional appraisal of the reasonable value of such property, construction, repairs, or alterations which was made by an appraiser selected by the lender from the list required by subsection (a)(3) of this section,

the Secretary shall consider both the initial appraisal and the additional appraisal and shall, if appropriate, issue a revised certificate of reasonable value of such property, construction, repairs, or alterations.

(e)(1) In no case may a veteran be required to pay all or any portion of the cost of the additional appraisal described in subsection (d)(3) of this section.

(2) If a veteran, within a reasonable period prescribed by the Secretary, has furnished to the Secretary an additional appraisal of the reasonable value of such property, construction, repairs, or alterations which was made by an appraiser selected by the veteran from the list required by subsection (a)(3) of this section, the

Secretary shall consider such appraisal, along with other appraisals furnished to the Secretary, and shall, if appropriate, issue a revised certificate of reasonable value of such property, construction, repairs, or alterations.

(f)(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, the Secretary may, in accordance with standards and procedures established in regulations prescribed by the Secretary, authorize a lender to determine the reasonable value of property for the purposes of this chapter if the lender is authorized to make loans which are automatically guaranteed under section 3702(d) of this title. In such a case, the appraiser selected by the Secretary pursuant to subsection (b) of this section shall submit the appraisal report directly to the lender for review, and the lender shall, as soon as possible thereafter, furnish a copy of the appraisal to the veteran who is applying for the loan concerned and to the Secretary.

(2) In exercising the authority provided in paragraph (1) of this subsection, the Secretary shall assign a sufficient number of personnel to carry out an appraisal-review system to monitor, on at least a random-sampling basis, the making of appraisals by appraisers and the effectiveness and the efficiency of the determination of reasonable value of property by lenders.

(4) Not later than April 30 of each year following a year in which the Secretary authorizes lenders to determine reasonable value of property under this subsection, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report relating to the exercise of that authority during the year in which the authority was exercised.

(5) A report submitted pursuant to paragraph (4) of this subsection shall include, for the period covered by each report—

(A) the number and value of loans made by lenders exercising the authority of this subsection;

(B) the number and value of such loans reviewed by the appraisal-review monitors referred to in paragraph (2) of this subsection;

(C) the number and value of loans made under this subsection of which the Secretary received notification of default;

(D) the amount of guaranty paid by the Secretary to such lenders by reason of defaults on loans as to which reasonable value was determined under this subsection; and

(E) such recommendations as the Secretary considers appropriate to improve the exercise of the authority provided for in this subsection and to protect the interests of the United States.

(Added Pub. L. 99–576, title IV, Sec. 407(a), Oct. 28, 1986, 100 Stat. 3282, Sec. 1831; amended Pub. L. 100–198, Sec. 11(a), (b), Dec. 21, 1987, 101 Stat. 1324; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102–54, Sec. 3(b), (c), June 13, 1991, 105 Stat. 267; renumbered Sec. 3731 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–547, Sec. 7, Oct. 28, 1992, 106 Stat. 3636; Pub. L. 104–110, title I, Sec. 101(g), Feb. 13, 1996, 110 Stat. 768.)

§ 3732. Procedure on default

(a)(1) In the event of default in the payment of any loan guaranteed under this chapter, the holder of the obligation shall notify

the Secretary of such default. Upon receipt of such notice, the Secretary may, subject to subsection (c) of this section, pay to such holder the guaranty not in excess of the pro rata portion of the amount originally guaranteed. Except as provided in section 3703(e) of this title, if the Secretary makes such a payment, the Secretary shall be subrogated to the rights of the holder of the obligation to the extent of the amount paid on the guaranty.

(2) Before suit or foreclosure the holder of the obligation shall notify the Secretary of the default, and within thirty days thereafter the Secretary may, at the Secretary's option, pay the holder of the obligation the unpaid balance of the obligation plus accrued interest and receive an assignment of the loan and security. Nothing in this section shall preclude any forebearance for the benefit of the veteran as may be agreed upon by the parties to the loan and approved by the Secretary.

(3) The Secretary may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

(4)(A) Upon receiving a notice pursuant to paragraph (1) of this subsection, the Secretary shall—

(i) provide the veteran with information and, to the extent feasible, counseling regarding—

(I) alternatives to foreclosure, as appropriate in light of the veteran's particular circumstances, including possible methods of curing the default, conveyance of the property to the Secretary by means of a deed in lieu of foreclosure, and the actions authorized by paragraph (2) of this subsection; and

(II) what the Department of Veterans Affairs' and the veteran's liabilities would be with respect to the loan in the event of foreclosure; and

(ii) advise the veteran regarding the availability of such counseling;

except with respect to loans made by a lender which the Secretary has determined has a demonstrated record of consistently providing timely and accurate information to veterans with respect to such matters.

(B) The Secretary shall, to the extent of the availability of appropriations, ensure that sufficient personnel are available to administer subparagraph (A) of this paragraph effectively and efficiently.

(5) In the event of default in the payment of any loan guaranteed or insured under this chapter in which a partial payment has been tendered by the veteran concerned and refused by the holder, the holder of the obligation shall notify the Secretary as soon as such payment has been refused. The Secretary may require that any such notification include a statement of the circumstances of the default, the amount tendered, the amount of the indebtedness on the date of the tender, and the reasons for the holder's refusal.

(b) With respect to any loan made under section 3711 which has not been sold as provided in subsection (g) of such section, if the Secretary finds, after there has been a default in the payment of any installment of principal or interest owing on such loan, that the default was due to the fact that the veteran who is obligated

under the loan has become unemployed as the result of the closing (in whole or in part) of a Federal installation, the Secretary shall (1) extend the time for curing the default to such time as the Secretary determines is necessary and desirable to enable such veteran to complete payments on such loan, including an extension of time beyond the stated maturity thereof, or (2) modify the terms of such loan for the purpose of changing the amortization provisions thereof by recasting, over the remaining term of the loan, or over such longer period as the Secretary may determine, the total unpaid amount then due with the modification to become effective currently or upon the termination of an agreed-upon extension of the period for curing the default.

(c)(1) For purposes of this subsection—

(A) The term "defaulted loan" means a loan that is guaranteed under this chapter, that was made for a purpose described in section 3710(a) of this title, and that is in default.

(B) The term "liquidation sale" means a judicial sale or other disposition of real property to liquidate a defaulted loan that is secured by such property.

(C) The term "net value", with respect to real property, means the amount equal to (i) the fair market value of the property, minus (ii) the total of the amounts which the Secretary estimates the Secretary would incur (if the Secretary were to acquire and dispose of the property) for property taxes, assessments, liens, property maintenance, property improvement, administration, resale (including losses sustained on the resale of the property), and other costs resulting from the acquisition and disposition of the property, excluding any amount attributed to the cost to the Government of borrowing funds.

(D) Except as provided in subparagraph (D) of paragraph (10) of this subsection, the term "total indebtedness", with respect to a defaulted loan, means the amount equal to the total of (i) the unpaid principal of the loan, (ii) the interest on the loan as of the date applicable under paragraph (10) of this subsection, and (iii) such reasonably necessary and proper charges (as specified in the loan instrument and permitted by regulations prescribed by the Secretary to implement this subsection) associated with liquidation of the loan, including advances for taxes, insurance, and maintenance or repair of the real property securing the loan.

(2)(A) Except as provided in subparagraph (B) of this paragraph, this subsection applies to any case in which the holder of a defaulted loan undertakes to liquidate the loan by means of a liquidation sale.

(B) This subsection does not apply to a case in which the Secretary proceeds under subsection (a)(2) of this section.

(3)(A) Before carrying out a liquidation sale of real property securing a defaulted loan, the holder of the loan shall notify the Secretary of the proposed sale. Such notice shall be provided in accordance with regulations prescribed by the Secretary to implement this subsection.

(B) After receiving a notice described in subparagraph (A) of this paragraph, the Secretary shall determine the net value of the property securing the loan and the amount of the total indebted-

ness under the loan and shall notify the holder of the loan of the determination of such net value.

(4) A case referred to in paragraphs (5), (6), and (7) of this subsection as being described in this paragraph is a case in which the net value of the property securing a defaulted loan exceeds the amount of the total indebtedness under the loan minus the amount guaranteed under this chapter.

(5) In a case described in paragraph (4) of this subsection, if the holder of the defaulted loan acquires the property securing the loan at a liquidation sale for an amount that does not exceed the lesser of the net value of the property or the total indebtedness under the loan—

(A) the holder shall have the option to convey the property to the United States in return for payment by the Secretary of an amount equal to the lesser of such net value or total indebtedness; and

(B) the liability of the United States under the loan guaranty under this chapter shall be limited to the amount of such total indebtedness minus the net value of the property.

(6) In a case described in paragraph (4) of this subsection, if the holder of the defaulted loan does not acquire the property securing the loan at the liquidation sale, the liability of the United States under the loan guaranty under this chapter shall be limited to the amount equal to (A) the amount of such total indebtedness, minus (B) the amount realized by the holder incident to the sale or the net value of the property, whichever is greater.

(7) In a case described in paragraph (4) of this subsection, if the holder of the defaulted loan acquires the property securing the loan at the liquidation sale for an amount that exceeds the lesser of the total indebtedness under the loan or the net value and—

(A)(i) the amount was the minimum amount for which, under applicable State law, the property was permitted to be sold at the liquidation sale, the holder shall have the option to convey the property to the United States in return for payment by the Secretary of an amount equal to the lesser of the amount for which the holder acquired the property or the total indebtedness under the loan; or

(ii) there was no minimum amount for which the property had to be sold at the liquidation sale under applicable State law, the holder shall have the option to convey the property to the United States in return for payment by the Secretary of an amount equal to the lesser of such net value or total indebtedness; and

(B) the liability of the United States under the loan guaranty under this chapter is as provided in paragraph (6) of this subsection.

(8) If the net value of the property securing a defaulted loan is not greater than the amount of the total indebtedness under the loan minus the amount guaranteed under this chapter—

(A) the Secretary may not accept conveyance of the property from the holder of the loan; and

(B) the liability of the United States under the loan guaranty shall be limited to the amount of the total indebtedness

under the loan minus the amount realized by the holder of the loan incident to the sale at a liquidation sale of the property.

(9) In no event may the liability of the United States under a guaranteed loan exceed the amount guaranteed with respect to that loan under section 3703(b) of this title. All determinations under this subsection of net value and total indebtedness shall be made by the Secretary.

(10)(A) Except as provided in subparagraphs (B) and (C) of this paragraph, the date referred to in paragraph (1)(D)(ii) of this subsection shall be the date of the liquidation sale of the property securing the loan (or such earlier date following the expiration of a reasonable period of time for such sale to occur as the Secretary may specify pursuant to regulations prescribed by the Secretary to implement this subsection).

(B)(i) Subject to division (ii) of this subparagraph, in any case in which there is a substantial delay in such sale caused by the holder of the loan exercising forebearance at the request of the Secretary, the date referred to in paragraph (1)(D)(ii) of this subsection shall be such date, on or after the date on which forebearance was requested and prior to the date of such sale, as the Secretary specifies pursuant to regulations which the Secretary shall prescribe to implement this paragraph.

(ii) The Secretary may specify a date under subdivision (i) of this subparagraph only if, based on the use of a date so specified for the purposes of such paragraph (1)(D)(ii), the Secretary is authorized, under paragraph (5)(A) or (7)(A) of this subsection, to accept conveyance of the property.

(C) In any case in which there is an excessive delay in such liquidation sale caused—

(i) by the Department of Veterans Affairs (including any delay caused by its failure to provide bidding instructions in a timely fashion); or

(ii) by a voluntary case commenced under title 11, United States Code (relating to bankruptcy);

the date referred to in paragraph (1)(D)(ii) of this subsection shall be a date, earlier than the date of such liquidation sale, which the Secretary specifies pursuant to regulations which the Secretary shall prescribe to implement this paragraph.

(D) For the purpose of determining the liability of the United States under a loan guaranty under paragraphs (5)(B), (6), (7)(B), and (8)(B), the amount of the total indebtedness with respect to such loan guaranty shall include, in any case in which there was an excessive delay caused by the Department of Veterans Affairs in the liquidation sale of the property securing such loan, any interest which had accrued as of the date of such sale and which would not be included, except for this subparagraph, in the calculation of such total indebtedness as a result of the specification of an earlier date under subparagraph (C)(i) of this paragraph.

(11) This subsection shall apply to loans closed before October 1, 2012.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1212, Sec. 1816(a)–(c); Pub. L. 89–117, title I, Sec. 107(f), Aug. 10, 1965, 79 Stat. 460; Pub. L. 94–324, Sec. 7(17), June 30, 1976, 90 Stat. 722; Pub. L. 98–369, div. B, title V, Sec. 2512(a), July 18, 1984, 98 Stat. 1117; Pub. L. 100–198, Sec. 4(a), 5(a), Dec. 21, 1987, 101 Stat. 1316; renumbered

Sec. 1832 and amended Pub. L. 100–322, title IV, Sec. 415(b)(1)(A)–(C), (5), May 20, 1988, 102 Stat. 550, 551; Pub. L. 101–237, title III, Sec. 304(b), 307–308(b)(1), 313(b)(1), (2), Dec. 18, 1989, 103 Stat. 2073–2075, 2077; Pub. L. 102–54, Sec. 1, 3(a), 14(g)(1), June 13, 1991, 105 Stat. 267, 288; renumbered Sec. 3732 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–66, title XII, Sec. 12006(a), Aug. 10, 1993, 107 Stat. 414; Pub. L. 103–446, title IX, Sec. 907, Nov. 2, 1994, 108 Stat. 4677; Pub. L. 105–33, title VIII, Sec. 8013, Aug. 5, 1997, 111 Stat. 664; Pub. L. 106–419, title IV, Sec. 402(c), Nov. 1, 2000, 114 Stat. 1863; Pub. L. 107–103, title IV, Sec. 405(d), Dec. 27, 2001, 115 Stat. 994; Pub. L. 108–183, title IV, Sec. 406, Dec. 16, 2003, 117 Stat. 2666; Pub. L. 109–233, title V, Sec. 503(9), June 15, 2006, 120 Stat. 416.)

§ 3733. Property management

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

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

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

(A) with recourse; or

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

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

(B)(i) The Secretary may waive the provisions of subparagraph (A) in the case of any loan described in paragraph (5).

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

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

(6) The Secretary shall make a loan to finance the sale of real property described in paragraph (1) at an interest rate that is lower than the prevailing mortgage market interest rate in areas where, and to the extent, the Secretary determines, in light of prevailing conditions in the real estate market involved, that such lower interest rate is necessary in order to market the property competitively and is in the interest of the long-term stability and

solvency of the Veterans Housing Benefit Program Fund established by section 3722(a) of this title.

(7) During the period that begins on December 16, 2003 and ends on September 30, 2013, the Secretary shall carry out the provisions of this subsection as if—

(A) the references in the first sentence of paragraph (1) to "65 percent" and "may be financed" were references to "85 percent" and "shall be financed", respectively;

(B) the second sentence of paragraph (1) were repealed; and

(C) the reference in paragraph (2) to "September 30, 1990," were a reference to "September 30, 2013,".

(b) The Secretary may not make a loan to finance a purchase of property acquired by the Secretary as a result of a default on a loan guaranteed under this chapter unless the purchaser meets the credit underwriting standards established under section 3710(g)(2)(A) of this title.

(c)(1) The Secretary shall identify and compile information on common factors which the Secretary finds contribute to foreclosures on loans guaranteed under this chapter.

(2) The Secretary shall include a summary of the information compiled, and the Secretary's findings, under paragraph (1) in the annual report submitted to the Congress under section 529 of this title. As part of such summary and findings, the Secretary shall provide a separate analysis of the factors which contribute to foreclosures of loans which have been assumed.

(d)(1) The Secretary shall furnish to real estate brokers and other real estate sales professionals information on the availability of real property for disposition under this chapter and the procedures used by the Department of Veterans Affairs to dispose of such property.

(2) For the purpose of facilitating the most expeditious sale, at the highest possible price, of real property acquired by the Secretary as the result of a default on a loan guaranteed, insured, or made under this chapter, the Secretary shall list all such property with real estate brokers under such arrangements as the Secretary determines to be most appropriate and cost effective.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1212, Sec. 1816(d)–(f), 1832; Pub. L. 98–369, div. B, title V, Sec. 2512(a)(2), July 18, 1984, 98 Stat. 1117; Pub. L. 99–576, title IV, Sec. 402(c)(1), 403, 408(a), Oct. 28, 1986, 100 Stat. 3281, 3283; Pub. L. 100–136, Sec. 2, Oct. 16, 1987, 101 Stat. 813; Pub. L. 100–198, Sec. 6(a)(1), (b)(1), 14, Dec. 21, 1987, 101 Stat. 1317, 1318, 1325; Pub. L. 100–203, title VII, Sec. 7001, 7003(a), Dec. 22, 1987, 101 Stat. 1330–278, 1330–279; Pub. L. 100–253, Sec. 2, Feb. 29, 1988, 102 Stat. 20; renumbered Sec. 1833 and amended Pub. L. 100–322, title IV, Sec. 415(b)(1)(D), (5)(B), (C), May 20, 1988, 102 Stat. 550, 551; Pub. L. 100–689, title III, Sec. 301, Nov. 18, 1988, 102 Stat. 4176; Pub. L. 101–237, title III, Sec. 305(a), 313(b)(1), (2), Dec. 18, 1989, 103 Stat. 2073, 2077; Pub. L. 101–239, title V, Sec. 5002, 5003(a), Dec. 19, 1989, 103 Stat. 2136; Pub. L. 102–54, Sec. 2, 14(g)(1), 15(a)(5), June 13, 1991, 105 Stat. 267, 288, 289; renumbered Sec. 3733 and amended Pub. L. 102–83, Sec. 2(c)(3), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 402, 406; Pub. L. 102–291, Sec. 5(b), May 20, 1992, 106 Stat. 180; Pub. L. 105–368, title VI, Sec. 602(c)(2), (e)(1)(E), Nov. 11, 1998, 112 Stat. 3346; Pub. L. 108–183, title IV, Sec. 404, Dec. 16, 2003, 117 Stat. 2664; Pub. L. 109–233, title V, Sec. 503(10), June 15, 2006, 120 Stat. 416.)

§ 3734. Annual submission of information on the Veterans Housing Benefit Program Fund and housing programs

(a) In the documents providing detailed information on the budget for the Department of Veterans Affairs that the Secretary submits to the Congress in conjunction with the President's budget submission for each fiscal year pursuant to section 1105 of title 31, the Secretary shall include—

(1) a description of the operations of the Veterans Housing Benefit Program Fund and the Guaranty and Indemnity Fund during the fiscal year preceding the fiscal year in which such budget is submitted; and

(2) the needs of such fund, if any, for appropriations for—

(A) the fiscal year in which the budget is submitted; and

(B) the fiscal year for which the budget is submitted.

(b) The matters submitted under subsection (a) of this section shall include, with respect to the fund referred to in subsection (a), the following:

(1) Information and financial data on the operations of the fund during the fiscal year before the fiscal year in which such matters are submitted and estimated financial data and related information on the operation of the fund for—

(A) the fiscal year of the submission; and

(B) the fiscal year following the fiscal year of the submission.

(2) Estimates of the amount of revenues derived by the fund in the fiscal year preceding the fiscal year of the submission, in the fiscal year of the submission, and in the fiscal year following the fiscal year of the submission from each of the following sources:

(A) Fees collected under section 3729(a) of this title for each category of loan guaranteed, insured, or made under this chapter or collected under section 3729(b) of this title for assumed loans.

(B) Investment income.

(C) Sales of foreclosed properties.

(D) Loan asset sales.

(E) Each additional source of revenue.

(3) Information, for each fiscal year referred to in paragraph (2) of this subsection, regarding the types of dispositions made and anticipated to be made of defaults on loans guaranteed, insured, or made under this chapter, including the cost to the fund, and the numbers, of such types of dispositions.

(c) The information submitted under subsection (a) shall include a statement that summarizes the financial activity of each of the housing programs operated under this chapter. The statement shall be presented in a form that is simple, concise, and readily understandable, and shall not include references to financing accounts, liquidating accounts, or program accounts.

(Added Pub. L. 101–237, title III, Sec. 302(b)(1), Dec. 18, 1989, 103 Stat. 2070, Sec. 1834; renumbered Sec. 3734 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105–368, title VI, Sec. 602(d), (e)(1)(F), (3)(A), Nov. 11,

1998, 112 Stat. 3346, 3347; Pub. L. 107–14, Sec. 8(a)(9), June 5, 2001, 115 Stat. 35; Pub. L. 107–330, title III, Sec. 308(g)(12), Dec. 6, 2002, 116 Stat. 2829.)

[§ 3735. Renumbered 2041]

§ 3736. Reporting requirements

The annual report required by section 529 of this title shall include a discussion of the activities under this chapter. Beginning with the report submitted at the close of fiscal year 1996, and every second year thereafter, this discussion shall include information regarding the following:

(1) Loans made to veterans whose only qualifying service was in the Selected Reserve.

(2) Interest rates and discount points which were negotiated between the lender and the veteran pursuant to section 3703(c)(4)(A)(i) of this title.

(3) The determination of reasonable value by lenders pursuant to section 3731(f) of this title.

(4) Loans that include funds for energy efficiency improvements pursuant to section 3710(a)(10) of this title.

(5) Direct loans to Native American veterans made pursuant to subchapter V of this chapter.

(Added Pub. L. 104–110, title II, Sec. 201(a)(1), Feb. 13, 1996, 110 Stat. 770.)

SUBCHAPTER IV—SMALL BUSINESS LOANS

§ 3741. Definitions

For the purposes of this subchapter—

(1) The term "disabled veteran" means (A) a veteran who is entitled to compensation under laws administered by the Secretary for a disability rated at 30 percent or more, or (B) a veteran whose discharge or release from active duty was for a disability incurred or aggravated in line of duty.

(2) The term "veteran of the Vietnam era" means a person (A) who served on active duty for a period of more than 180 days, any part of which occurred during the Vietnam era, and who was discharged or released therefrom with other than a dishonorable discharge, or (B) who was discharged or released from active duty for a service-connected disability if any part of such active duty was performed during the Vietnam era.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1055, Sec. 1841; amended Pub. L. 99–576, title VII, Sec. 702(9), Oct. 28, 1986, 100 Stat. 3302; renumbered Sec. 3741 and amended Pub. L. 102–83, Sec. 4(a)(1), 5(a), Aug. 6, 1991, 105 Stat. 403, 406.)

§ 3742. Small business loan program

(a)(1) Subject to subsection (b) of this section, the Secretary may provide financial assistance to veterans' small business concerns for the purpose of (A) financing plant construction, conversion, or expansion (including the acquisition of land), (B) financing the acquisition of equipment, facilities, machinery, supplies, or materials, or (C) supplying such concerns with working capital.

(2) Subject to paragraph (3)(A) of this subsection, financial assistance under this section may be provided in the form of (A) loan guaranties, or (B) direct loans.

(3) The Secretary shall specify in regulations the criteria to be met for a business concern to qualify as a veterans' small business concern for the purposes of this subchapter. Such regulations shall include requirements—

(A) that at least 51 percent of a business concern must be owned by individuals who are veterans of the Vietnam era or disabled veterans in order for such concern to qualify for a loan guaranty and that at least 51 percent of a business concern must be owned by disabled veterans in order for such concern to qualify for a direct loan; and

(B) that the management and daily business operations of the concern must be directed by one or more of the veterans whose ownership interest is part of the majority ownership for the purposes of meeting the requirement in clause (A) of this paragraph.

(b) The availability of financial assistance under subsection (a) of this section is subject to the following limitations:

(1) The Secretary may not make a direct loan under this section unless the veterans' small business concern applying for the loan shows to the satisfaction of the Secretary that the concern is unable to obtain a loan guaranteed by the Department under this section or made or guaranteed by the Small Business Administration.

(2) The Secretary may not guarantee a loan under this section if the loan bears a rate of interest in excess of the maximum rate of interest prescribed under section 3745 of this title.

(3) The Secretary may not make or guarantee a loan under this section for an amount in excess of $200,000.

(4) The original liability of the Secretary on any loan guaranteed under this section may not exceed 90 percent of the amount of the loan, and such liability shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the loan, but such liability may not exceed the amount of the original guaranty.

(c) Each loan made or guaranteed under this subchapter shall be of such sound value, taking into account the creditworthiness of the veterans' small business concern (and the individual owners) applying for such loan, or so secured as reasonably to assure payment.

(d)(1) Except as provided in paragraph (2) of this subsection, the Secretary may not make or guarantee a loan under this subchapter to a veterans' small business concern in which an ownership interest is held by a veteran who also has an ownership interest in another small business concern if such ownership interest was considered in qualifying that other concern for an outstanding loan made or guaranteed under this subchapter or the Small Business Act (15 U.S.C. 631 et seq.).

(2) Paragraph (1) of this subsection shall not apply if 51 percent or more of the business concern seeking a direct or guaranteed loan under this subchapter is owned by veterans of the Vietnam era or disabled veterans without including the ownership interest of the veteran whose ownership interest in another small business concern was previously considered in qualifying that other concern

for an outstanding guaranteed or direct business loan under this subchapter or the Small Business Act (15 U.S.C. 631 et seq.).

(e)(1) In order to protect the interest of the United States, upon application by a veterans' small business concern which is the recipient of a loan guaranteed under this subchapter, the Secretary (subject to the provisions of this subsection) may undertake the veterans' small business concern's obligation to make payments under such loan or, if the loan was a direct loan made by the Secretary, may suspend such obligation. While such payments are being made by the Secretary pursuant to the undertaking of such obligation or while such obligation is suspended, no such payment with respect to the loan may be required from the concern.

(2) The Secretary may undertake or suspend a veterans' small business concern's obligation under this subsection only if—

(A) such undertaking or suspension of the obligation is, in the judgment of the Secretary, necessary to protect the interest of the United States;

(B) with the undertaking or suspension of the obligation, the small business concern would, in the judgment of the Secretary, become or remain a viable small business entity; and

(C) the small business concern executes an agreement in writing satisfactory to the Secretary as provided by paragraph (4) of this subsection.

(3) The period of time for which the Secretary undertakes or suspends the obligation on a loan under this subsection may not exceed five years. The Secretary may extend the maturity of any loan on which the Secretary undertakes or suspends the obligation under this subsection for a corresponding period of time.

(4)(A) Before the Secretary may undertake or suspend a veterans' small business concern's obligation under this subsection, the Secretary shall require the small business concern to execute an agreement to repay the aggregate amount of the payments which were required under the loan during the period for which the obligation was undertaken or suspended—

(i) by periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period,

(ii) pursuant to a repayment schedule agreed upon by the Secretary and the small business concern, or

(iii) by a combination of the method of payments described in clauses (i) and (ii) of this subparagraph.

(B) In addition to requiring the small business concern to execute the agreement described in subparagraph (A) of this paragraph, the Secretary shall, before the undertaking or suspension of the obligation, take such action and require the small business concern to take such action as the Secretary considers appropriate in the circumstances, including the provision of such security as the Secretary considers necessary or appropriate, to assure that the rights and interest of the United States and any lender will be safeguarded adequately during and after the period in which such obligation is so undertaken or suspended.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1055, Sec. 1842; amended Pub. L. 99–576, title VII, Sec. 702(10), Oct. 28, 1986, 100 Stat. 3302; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec.

3742 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404, 406.)

§ 3743. Liability on loans

Each individual who has an ownership interest in a veterans' small business concern that is provided a direct loan under this subchapter, or that obtains a loan guaranteed under this subchapter, shall execute a note or other document evidencing the direct or guaranteed business loan, and such individuals shall be jointly and severally liable to the United States for the amount of such direct loan or, in the case of a guaranteed loan, for any amount paid by the Secretary on account of such loan.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1057, Sec. 1843; amended Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3743, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3744. Approval of loans by the Secretary

(a) Except as provided in subsection (b) of this section, a loan may not be guaranteed under this subchapter unless, before the closing of the loan, it is submitted to the Secretary for approval and the Secretary grants approval.

(b) The Secretary may exempt any lender of a class of lenders listed in section 3702(d) of this title from the prior approval requirement in subsection (a) of this section if the Secretary determines that the experience of such lender or class of lenders warrants such exemption.

(c) The Secretary may at any time upon thirty days' notice require loans to be made by any lender or class of lenders under this subchapter to be submitted to the Secretary for prior approval. No guaranty shall exist with respect to any such loan unless evidence of the guaranty is issued by the Secretary.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1057, Sec. 1844; amended Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3744 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 3745. Interest on loans

(a) Loans guaranteed under this subchapter shall bear interest not in excess of such rate as the Secretary may from time to time find the loan market demands. In establishing the rate of interest that shall be applicable to such loans, the Secretary shall consult with the Administrator of the Small Business Administration.

(b) The rate of interest on any direct loan made by the Secretary under this subchapter may not exceed the maximum rate in effect under subsection (a) of this section at the time the direct loan is made.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1058, Sec. 1845; amended Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3745 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–446, title XII, Sec. 1201(a)(3), Nov. 2, 1994, 108 Stat. 4682.)

§ 3746. Maturity of loans

The maturity of a loan made or guaranteed under this subchapter that is used in whole or in part for the construction, con-

version, or expansion of facilities or for acquisition of real property may not exceed twenty years plus such additional reasonable time as the Secretary may determine, at the time the loan is made, is required to complete the construction, acquisition, or expansion of such facilities. The maturity of any other loan made or guaranteed under this subchapter may not exceed ten years.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1058, Sec. 1846; amended Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3746, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3747. Eligible financial institutions

The Secretary may not guarantee under this subchapter a loan made by an entity not subject to examination and supervision by an agency of the United States or of a State.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1058, Sec. 1847; amended Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3747, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3748. Preference for disabled veterans

In the extension of financial assistance under this subchapter, the Secretary shall give preference, first, to veterans' small business concerns in which disabled veterans who have successfully completed a vocational rehabilitation program for self-employment in a small business enterprise under chapter 31 of this title have a significant ownership interest, and, second, to veterans' small business concerns in which other disabled veterans have a significant ownership interest.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1058, Sec. 1848; amended Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3748, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3749. Revolving fund

(a) There is established in the Treasury a revolving fund to be known as the "Department of Veterans Affairs Small Business Loan Revolving Fund" (hereinafter in this section referred to as the "fund").

(b) Amounts in the fund shall be available to the Secretary without fiscal year limitation for all loan guaranty and direct loan operations under this subchapter other than administrative expenses and may not be used for any other purpose.

(c)(1) There is authorized to be appropriated to the fund a total of $25,000,000.

(2) There shall be deposited into the fund all amounts received by the Secretary derived from loan operations under this subchapter, including all collection of principal and interest and the proceeds from the use of property held or of property sold.

(d) The Secretary shall determine annually whether there has developed in the fund a surplus which, in the Secretary's judgment, is more than necessary to meet the needs of the fund. Any such surplus shall immediately be transferred into the general fund of the Treasury.

(e) Not later than two years after the termination of the authority of the Secretary to make new commitments for financial assistance under this subchapter, the Secretary shall transfer into

the general fund of the Treasury all amounts in the fund except those that the Secretary determines may be required for the liquidation of obligations under this subchapter. All amounts received thereafter derived from loan operations under this subchapter, except so much thereof as the Secretary may determine to be necessary for liquidating outstanding obligations under this subchapter, shall also be so deposited.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1058, Sec. 1849; amended Pub. L. 99–576, title VII, Sec. 702(11), Oct. 28, 1986, 100 Stat. 3302; Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3749 and amended Pub. L. 102–83, Sec. 4(a)(2)(B)(v), 5(a), Aug. 6, 1991, 105 Stat. 403, 406.)

§ 3750. Incorporation of other provisions by the Secretary

The Secretary may provide that the provisions of sections of other subchapters of this chapter that are not otherwise applicable to loans made or guaranteed under this subchapter shall be applicable to loans made or guaranteed under this subchapter. The Secretary shall exercise authority under the preceding sentence by regulations prescribed after publication in the Federal Register and a period of not less than thirty days for public comment.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1059, Sec. 1850; amended Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3750, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3751. Termination of program

The Secretary may not make commitments for financial assistance under this subchapter after September 30, 1986.

(Added Pub. L. 97–72, title III, Sec. 302(a), Nov. 3, 1981, 95 Stat. 1059, Sec. 1851; amended Pub. L. 101–237, title III, Sec. 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered Sec. 3751, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

SUBCHAPTER V—DIRECT HOUSING LOANS FOR NATIVE AMERICAN VETERANS

§ 3761. Direct housing loans to Native American veterans; program authority

(a) The Secretary shall make direct housing loans to Native American veterans. The purpose of such loans is to permit such veterans to purchase, construct, or improve dwellings on trust land. The Secretary shall make such loans in accordance with the provisions of this subchapter.

(b) The Secretary shall, to the extent practicable, make direct housing loans to Native American veterans who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances.

(Added Pub. L. 102–547, Sec. 8(a), Oct. 28, 1992, 106 Stat. 3636; amended Pub. L. 105–114, title II, Sec. 201(a), Nov. 21, 1997, 111 Stat. 2282; Pub. L. 107–103, title IV, Sec. 402(a), Dec. 27, 2001, 115 Stat. 993; Pub. L. 108–454, title IV, Sec. 407, Dec. 10, 2004, 118 Stat. 3617; Pub. L. 109–233, title I, Sec. 103(a), (f)(2), June 15, 2006, 120 Stat. 399, 400.)

§ 3762. Direct housing loans to Native American veterans; program administration

(a) The Secretary may make a direct housing loan to a Native American veteran under this subchapter if—

(1)(A) the Secretary has entered into a memorandum of understanding with respect to such loans with the tribal organization that has jurisdiction over the veteran; or

(B) the tribal organization that has jurisdiction over the veteran has entered into a memorandum of understanding with any department or agency of the United States with respect to direct housing loans to Native Americans that the Secretary determines substantially complies with the requirements of subsection (b); and

(2) the memorandum is in effect when the loan is made.

(b)(1) Subject to paragraph (2), the Secretary shall ensure that each memorandum of understanding that the Secretary enters into with a tribal organization shall provide for the following:

(A) That each Native American veteran who is under the jurisdiction of the tribal organization and to whom the Secretary makes a direct loan under this subchapter—

(i) holds, possesses, or purchases using the proceeds of the loan a meaningful interest in a lot or dwelling (or both) that is located on trust land; and

(ii) will purchase, construct, or improve (as the case may be) a dwelling on the lot using the proceeds of the loan.

(B) That each such Native American veteran will convey to the Secretary by an appropriate instrument the interest referred to in subparagraph (A) as security for a direct housing loan under this subchapter.

(C) That the tribal organization and each such Native American veteran will permit the Secretary to enter upon the trust land of that organization or veteran for the purposes of carrying out such actions as the Secretary determines are necessary—

(i) to evaluate the advisability of the loan; and

(ii) to monitor any purchase, construction, or improvements carried out using the proceeds of the loan.

(D) That the tribal organization has established standards and procedures that apply to the foreclosure of the interest conveyed by a Native American veteran pursuant to subparagraph (B), including—

(i) procedures for foreclosing the interest; and

(ii) procedures for the resale of the lot or the dwelling (or both) purchased, constructed, or improved using the proceeds of the loan.

(E) That the tribal organization agrees to such other terms and conditions with respect to the making of direct loans to Native American veterans under the jurisdiction of the tribal organization as the Secretary may require in order to ensure that loans under this subchapter are made in a responsible and prudent manner.

(2) The Secretary may not enter into a memorandum of understanding with a tribal organization under this subsection unless the Secretary determines that the memorandum provides for such standards and procedures as are necessary for the reasonable protection of the financial interests of the United States.

(c)(1)(A) Except as provided in subparagraph (B), the principal amount of any direct housing loan made to a Native American veteran under this section may not exceed $80,000.

(B)(i) Subject to clause (ii), the Secretary may make loans exceeding the amount specified in subparagraph (A) in a geographic area if the Secretary determines that housing costs in the area are significantly higher than average housing costs nationwide. The amount of such increase shall be the amount that the Secretary determines is necessary in order to make direct housing loans under this subchapter to Native American veterans who are located in a variety of geographic areas and in geographic areas experiencing a variety of economic conditions.

(ii) The amount of a loan made by the Secretary under this subchapter may not exceed the maximum loan amount authorized for loans guaranteed under section 3703(a)(1)(C) of this title.

(2) Loans made under this section shall bear interest at a rate determined by the Secretary, which rate may not exceed the appropriate rate authorized for guaranteed loans under section 3703(c)(1) or section 3712(f) of this title, and shall be subject to such requirements or limitations prescribed for loans guaranteed under this title as the Secretary may prescribe.

(3) Notwithstanding section 3704(a) of this title, the Secretary shall establish minimum requirements for planning, construction, improvement, and general acceptability relating to any direct loan made under this section.

(d)(1) The Secretary shall establish credit underwriting standards to be used in evaluating loans made under this subchapter. In establishing such standards, the Secretary shall take into account the purpose of this program to make available housing to Native American veterans living on trust lands.

(2) The Secretary shall determine the reasonable value of the interest in property that will serve as security for a loan made under this section and shall establish procedures for appraisals upon which the Secretary may base such determinations. The procedures shall incorporate generally the relevant requirements of section 3731 of this title, unless the Secretary determines that such requirements are impracticable to implement in a geographic area, on particular trust lands, or under circumstances specified by the Secretary.

(e) Loans made under this section shall be repaid in monthly installments.

(f) In connection with any loan under this section, the Secretary may make advances in cash to provide for repairs, alterations, and improvements and to meet incidental expenses of the loan transaction. The Secretary shall determine the amount of any expenses incident to the origination of loans made under this section, which expenses, or a reasonable flat allowance in lieu thereof, shall be paid by the veteran in addition to the loan closing costs.

(g) Without regard to any provision of this chapter (other than a provision of this section), the Secretary may—

(1) take any action that the Secretary determines to be necessary with respect to the custody, management, protection, and realization or sale of investments under this section;

(2) determine any necessary expenses and expenditures and the manner in which such expenses and expenditures shall be incurred, allowed, and paid;

(3) make such rules, regulations, and orders as the Secretary considers necessary for carrying out the Secretary's functions under this section; and

(4) in a manner consistent with the provisions of this chapter and with the Secretary's functions under this subchapter, employ, utilize, and compensate any persons, organizations, or departments or agencies (including departments and agencies of the United States) designated by the Secretary to carry out such functions.

(h)(1) The Secretary may make direct loans to Native American veterans in order to enable such veterans to refinance existing loans made under this section.

(2)(A) The Secretary may not make a loan under this subsection unless the loan meets the requirements set forth in subparagraphs (B), (C), and (E) of paragraph (1) of section 3710(e) of this title.

(B) The Secretary may not make a loan under this subsection unless the loan will bear an interest rate at least one percentage point less than the interest rate borne by the loan being refinanced.

(C) Paragraphs (2) and (3) of such section 3710(e) shall apply to any loan made under this subsection, except that for the purposes of this subsection the reference to subsection (a)(8) of section 3710 of this title in such paragraphs (2) and (3) shall be deemed to be a reference to this subsection.

(i)(1) The Secretary shall, in consultation with tribal organizations (including the National Congress of American Indians and the National American Indian Housing Council), carry out an outreach program to inform and educate Native American veterans of the availability of direct housing loans for Native American veterans who live on trust lands.

(2) Activities under the outreach program shall include the following:

(A) Attending conferences and conventions conducted by the National Congress of American Indians in order to work with the National Congress in providing information and training to tribal organizations and Native American veterans regarding the availability of housing benefits under this subchapter and in assisting such organizations and veterans with respect to such housing benefits.

(B) Attending conferences and conventions conducted by the National American Indian Housing Council in order to work with the Housing Council in providing information and training to tribal organizations and tribal housing entities regarding the availability of such benefits.

(C) Attending conferences and conventions conducted by the Department of Hawaiian Homelands in order to work with the Department of Hawaiian Homelands in providing information and training to tribal housing entities in Hawaii regarding the availability of such benefits.

(D) Producing and disseminating information to tribal governments, tribal veterans service organizations, and tribal organizations regarding the availability of such benefits.

(E) Assisting tribal organizations and Native American veterans with respect to such benefits.

(F) Outstationing loan guarantee specialists in tribal facilities on a part-time basis if requested by the tribal government.

(j) The Secretary shall include as part of the annual benefits report of the Veterans Benefits Administration information concerning the cost and number of loans provided under this subchapter for the fiscal year covered by the report.

(Added Pub. L. 102–547, Sec. 8(a), Oct. 28, 1992, 106 Stat. 3637; amended Pub. L. 104–275, title II, Sec. 202(a), Oct. 9, 1996, 110 Stat. 3330; Pub. L. 105–114, title II, Sec. 201(b), (c), Nov. 21, 1997, 111 Stat. 2282, 2283; Pub. L. 107–103, title IV, Sec. 402(b), (c), Dec. 27, 2001, 115 Stat. 993; Pub. L. 109–233, title I, Sec. 103(b), (c)(1), (d), (e), (f)(3), June 15, 2006, 120 Stat. 400, 401.)

§ 3763. Native American Veteran Housing Loan Program Account

(a) There is hereby established in the Treasury of the United States an account known as the "Native American Veteran Housing Loan Program Account" (hereinafter in this subchapter referred to as the "Account").

(b) The Account shall be available to the Secretary to carry out all operations relating to the making of direct housing loans to Native American veterans under this subchapter, including any administrative expenses relating to the making of such loans. Amounts in the Account shall be available without fiscal year limitation.

(Added Pub. L. 102–547, Sec. 8(a), Oct. 28, 1992, 106 Stat. 3639; amended Pub. L. 105–368, title VI, Sec. 602(e)(3)(B), Nov. 11, 1998, 112 Stat. 3347; Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

§ 3764. Qualified non-Native American veterans

(a) TREATMENT OF NON-NATIVE AMERICAN VETERANS.—Subject to the succeeding provisions of this section, for purposes of this subchapter—

(1) a qualified non-Native American veteran is deemed to be a Native American veteran; and

(2) for purposes of applicability to a non-Native American veteran, any reference in this subchapter to the jurisdiction of a tribal organization over a Native American veteran is deemed to be a reference to jurisdiction of a tribal organization over the Native American spouse of the qualified non-Native American veteran.

(b) USE OF LOAN.—In making direct loans under this subchapter to a qualified non-Native American veteran by reason of eligibility under subsection (a), the Secretary shall ensure that the tribal organization permits, and the qualified non-Native American veteran actually holds, possesses, or purchases, using the proceeds of the loan, jointly with the Native American spouse of the qualified non-Native American veteran, a meaningful interest in the lot, dwelling, or both, that is located on trust land.

(c) RESTRICTIONS IMPOSED BY TRIBAL ORGANIZATIONS.—Nothing in subsection (b) shall be construed as precluding a tribal orga-

nization from imposing reasonable restrictions on the right of the qualified non-Native American veteran to convey, assign, or otherwise dispose of such interest in the lot or dwelling, or both, if such restrictions are designed to ensure the continuation in trust status of the lot or dwelling, or both. Such requirements may include the termination of the interest of the qualified non-Native American veteran in the lot or dwelling, or both, upon the dissolution of the marriage of the qualified non-Native American veteran to the Native American spouse.

(Added Pub. L. 109–233, title I, Sec. 104(a)(2), June 15, 2006, 120 Stat. 401.)

§ 3765. Definitions

For the purposes of this subchapter—

(1) The term "trust land" means any land that—

(A) is held in trust by the United States for Native Americans;

(B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands);

(C) is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g), (j)); or

(D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

(2) The term "Native American veteran" means any veteran who is a Native American.

(3) The term "Native American" means—

(A) an Indian, as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d));

(B) a native Hawaiian, as that term is defined in section 201(a)(7) of the Hawaiian Homes Commission Act, 1920 (Public Law 67–34; 42 Stat. 108);

(C) an Alaska Native, within the meaning provided for the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and

(D) a Pacific Islander, within the meaning of the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.).

(4) The term "tribal organization" shall have the meaning given such term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)) and shall include the Department of Hawaiian Homelands, in the case of native Hawaiians, and such other organizations as the Secretary may prescribe.

(5) The term "qualified non-Native American veteran" means a veteran who—

(A) is the spouse of a Native American, but (B) is not a Native American.

(Added Pub. L. 102–547, Sec. 8(a), Oct. 28, 1992, 106 Stat. 3639, Sec. 3764; renumbered Sec. 3765 and amended Pub. L. 109–233, title I, Sec. 104(a)(1), (b), June 15, 2006, 120 Stat. 401, 402.)

SUBCHAPTER VI—TRANSFERRED

[§ 3771. Repealed. Pub. L. 107–95, Sec. 5(d)(3), Dec. 21, 2001, 115 Stat. 918]

[§§ 3772 to 3775. Renumbered 2051 to 2054]

CHAPTER 39 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 39—AUTOMOBILES AND ADAPTIVE EQUIPMENT FOR CERTAIN DISABLED VETERANS AND MEMBERS OF THE ARMED FORCES

Sec.
3901. Definitions.
3902. Assistance for providing automobile and adaptive equipment.
3903. Limitations on assistance; special training courses.
3904. Research and development.

§ 3901. Definitions

For purposes of this chapter—

(1) The term "eligible person" means—

(A) any veteran entitled to compensation under chapter 11 of this title for any of the disabilities described in subclause (i), (ii), or (iii) below, if the disability is the result of an injury incurred or disease contracted in or aggravated by active military, naval, or air service:

(i) The loss or permanent loss of use of one or both feet;

(ii) The loss or permanent loss of use of one or both hands;

(iii) The permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than twenty degrees in the better eye; or

(B) any member of the Armed Forces serving on active duty who is suffering from any disability described in subclause (i), (ii), or (iii) of clause (A) of this paragraph if such disability is the result of an injury incurred or disease contracted in or aggravated by active military, naval, or air service.

(2) The term "adaptive equipment" includes, but is not limited to, power steering, power brakes, power window lifts, power seats, and special equipment necessary to assist the eligible person into and out of the automobile or other conveyance. Such term also includes (A) air-conditioning equipment when such equipment is necessary to the health and safety of the veteran and to the safety of others, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and (B) any modification of the size of

the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

(Added Pub. L. 91–666, Sec. 2(a), Jan. 11, 1971, 84 Stat. 1998, Sec. 1901; amended Pub. L. 93–538, Sec. 2, Dec. 22, 1974, 88 Stat. 1736; Pub. L. 94–433, title III, Sec. 303, Sept. 30, 1976, 90 Stat. 1377; Pub. L. 95–116, Sec. 1(a), Oct. 3, 1977, 91 Stat. 1062; renumbered Sec. 3901, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 3902. Assistance for providing automobile and adaptive equipment

(a) The Secretary, under regulations which the Secretary shall prescribe, shall provide or assist in providing an automobile or other conveyance to each eligible person by paying the total purchase price of the automobile or other conveyance (including all State, local, and other taxes) or $11,000, whichever is the lesser, to the seller from whom the eligible person is purchasing under a sales agreement between the seller and the eligible person.

(b)(1) The Secretary, under regulations which the Secretary shall prescribe, shall provide each eligible person the adaptive equipment deemed necessary to insure that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person's own safety and the safety of others and so as to satisfy the applicable standards of licensure established by the State of such person's residency or other proper licensing authority.

(2) In the case of any veteran (other that a person eligible for assistance under paragraph (1) of this subsection) who is entitled to compensation for ankylosis of one or both knees, or one or both hips, the Secretary, under the terms and conditions set forth in subsections (a), (c), and (d) of section 3903 of this title and under regulations which the Secretary shall prescribe, shall provide such adaptive equipment to overcome the disability resulting from such ankylosis as (A) is necessary to meet the applicable standards of licensure established by the State of such veteran's residency or other proper licensing authority for the operation of such veteran's automobile or other conveyance by such veteran, and (B) is determined to be necessary by the Under Secretary for Health for the safe operation of such automobile or other conveyance by such veteran.

(c) In accordance with regulations which the Secretary shall prescribe, the Secretary shall (1) repair, replace, or reinstall adaptive equipment deemed necessary for the operation of an automobile or other conveyance acquired in accordance with the provisions of this chapter, and (2) provide, repair, replace, or reinstall such adaptive equipment for any automobile or other conveyance which an eligible person may previously or subsequently have acquired.

(d) If an eligible person cannot qualify to operate an automobile or other conveyance, the Secretary shall provide or assist in providing an automobile or other conveyance to such person, as provided in subsection (a) of this section, if the automobile or other conveyance is to be operated for the eligible person by another person.

(Added Pub. L. 91–666, Sec. 2(a), Jan. 11, 1971, 84 Stat. 1999, Sec. 1902; amended Pub. L. 93–538, Sec. 3, Dec. 22, 1974, 88 Stat. 1736; Pub. L. 95–479, title III, Sec.

304, Oct. 18, 1978, 92 Stat. 1565; Pub. L. 97–66, title III, Sec. 301–303, Oct. 17, 1981, 95 Stat. 1030; Pub. L. 98–543, title III, Sec. 305(a), Oct. 24, 1984, 98 Stat. 2748; Pub. L. 100–322, title III, Sec. 302, May 20, 1988, 102 Stat. 534; renumbered Sec. 3902 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 105–178, title VIII, Sec. 8205(a), June 9, 1998, 112 Stat. 494; Pub. L. 107–103, title V, Sec. 503, Dec. 27, 2001, 115 Stat. 995; Pub. L. 108–183, title IV, Sec. 402(b), Dec. 16, 2003, 117 Stat. 2664.)

§ 3903. Limitations on assistance; special training courses

(a) No eligible person shall be entitled to receive more than one automobile or other conveyance under the provisions of this chapter, and no payment shall be made under this chapter for the repair, maintenance, or replacement of an automobile or other conveyance.

(b) Except as provided in subsection (d) of section 3902 of this title, no eligible person shall be provided an automobile or other conveyance under this chapter until it is established to the satisfaction of the Secretary, in accordance with regulations the Secretary shall prescribe, that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person's own safety and the safety of others and will satisfy the applicable standards of licensure to operate the automobile or other conveyance established by the State of such person's residency or other proper licensing authority.

(c)(1) An eligible person shall not be entitled to adaptive equipment under this chapter for more than two automobiles or other conveyances at any one time or (except as provided in paragraph (2) of this subsection) during any four-year period.

(2) In a case in which the four-year limitation in paragraph (1) of this subsection precludes an eligible person from being entitled to adaptive equipment under this chapter, if the Secretary determines that, due to circumstances beyond the control of such person, one of the automobiles or other conveyances for which adaptive equipment was provided to such person during the applicable four-year period is no longer available for the use of such person, the Secretary may provide adaptive equipment to such person for an additional automobile or other conveyance during such period. Provision of adaptive equipment under this paragraph is within the discretion of the Secretary. Any action to provide adaptive equipment under this paragraph shall be made pursuant to regulations which the Secretary shall prescribe.

(d) Adaptive equipment shall not be provided under this chapter unless it conforms to minimum standards of safety and quality prescribed by the Secretary.

(e)(1) The Secretary shall provide, directly or by contract, for the conduct of special driver training courses at every hospital and, where appropriate, at regional offices and other medical facilities, of the Department to instruct such eligible person to operate the type of automobile or other conveyance such person wishes to obtain with assistance under this chapter, and may make such courses available to any veteran, eligible for care under chapter 17 of this title or member of the Armed Forces, who is determined by the Secretary to need the special training provided in such courses

even though such veteran or member is not eligible for the assistance provided under this chapter.

(2) The Secretary is authorized to obtain insurance on automobiles and other conveyances used in conducting the special driver training courses provided under this subsection and to obtain, at Government expense, personal liability and property damage insurance for all persons taking such courses without regard to whether such persons are taking the course on an in-patient or outpatient basis.

(3) Notwithstanding any other provision of law, the Secretary may obtain, by purchase, lease, gift, or otherwise, any automobile, motor vehicle, or other conveyance deemed necessary to carry out the purposes of this subsection, and may sell, assign, transfer, or convey any such automobile, vehicle, or conveyance to which the Department obtains title for such price and upon such terms as the Secretary deems appropriate; and any proceeds received from any such disposition shall be credited to the applicable Department appropriation.

(Added Pub. L. 91–666, Sec. 2(a), Jan. 11, 1971, 84 Stat. 2000, Sec. 1903; amended Pub. L. 93–538, Sec. 4(a), (b), Dec. 22, 1974, 88 Stat. 1736, 1737; Pub. L. 94–581, title I, Sec. 108, Oct. 21, 1976, 90 Stat. 2847; Pub. L. 97–66, title III, Sec. 303, Oct. 17, 1981, 95 Stat. 1030; Pub. L. 98–543, title III, Sec. 305(b), Oct. 24, 1984, 98 Stat. 2748; renumbered Sec. 3903 and amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 106–117, title VIII, Sec. 804, Nov. 30, 1999, 113 Stat. 1586.)

§ 3904. Research and development

(a) In carrying out medical and prosthetic research under section 7303 of this title, the Secretary, through the Under Secretary for Health, shall provide for special emphasis on the research and development of adaptive equipment and adapted conveyances (including vans) meeting standards of safety and quality prescribed under subsection (d) of section 3903, including support for the production and distribution of devices and conveyances so developed.

(b) In carrying out subsection (a) of this section, the Secretary, through the Under Secretary for Health, shall consult and cooperate with the Secretary of Health and Human Services and the Secretary of Education, in connection with programs carried out under section 204(b)(3) of the Rehabilitation Act of 1973 (relating to the establishment and support of Rehabilitation Engineering Research Centers).

(Added Pub. L. 93–538, Sec. 5(a), Dec. 22, 1974, 88 Stat. 1737, Sec. 1904; amended Pub. L. 94–581, title II, Sec. 205(b)(2), (3), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95–602, title I, Sec. 122(f), Nov. 6, 1978, 92 Stat. 2987; Pub. L. 97–295, Sec. 4(69), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 102–40, title IV, Sec. 403(b)(1), May 7, 1991, 105 Stat. 239; renumbered Sec. 3904 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 105–220, title IV, Sec. 414(c), Aug. 7, 1998, 112 Stat. 1242.)

CHAPTER 41 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 41—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICE FOR VETERANS

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§ 4100. Findings

The Congress makes the following findings:

(1) As long as unemployment and underemployment continue as serious problems among disabled veterans and Vietnam-era veterans, alleviating unemployment and underemployment among such veterans is a national responsibility.

(2) Because of the special nature of employment and training needs of such veterans and the national responsibility to meet those needs, policies and programs to increase opportunities for such veterans to obtain employment, job training, counseling, and job placement services and assistance in securing advancement in employment should be effectively and vigorously implemented by the Secretary of Labor and such implementation should be accomplished through the Assistant Secretary of Labor for Veterans' Employment and Training.

(Added Pub. L. 97–306, title III, Sec. 301(a), Oct. 14, 1982, 96 Stat. 1436, Sec. 2000; amended Pub. L. 100–323, Sec. 15(b)(1), May 20, 1988, 102 Stat. 574; renumbered Sec. 4100, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 4101. Definitions

For the purposes of this chapter—

(1) The term "special disabled veteran" has the same meaning provided in section 4211(1) of this title.

(2) The term "veteran of the Vietnam era" has the same meaning provided in section 4211(2) of this title.

(3) The term "disabled veteran" has the same meaning provided in section 4211(3) of this title.

(4) The term "eligible veteran" has the same meaning provided in section 4211(4) of this title.

(5) The term "eligible person" means—

(A) the spouse of any person who died of a service-connected disability,

(B) the spouse of any member of the Armed Forces serving on active duty who, at the time of application for assistance under this chapter, is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than ninety days: (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power, or

(C) the spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

(6) The term "State" means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and may include, to the extent determined necessary and feasible, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas Islands, and the Trust Territory of the Pacific Islands.

(7) The term "employment service delivery system" means a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.

(8) The term "Secretary" means the Secretary of Labor.

(9) The term "intensive services" means local employment and training services of the type described in section 134(d)(3) of the Workforce Investment Act of 1998.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1221, Sec. 2010; renumbered Sec. 2001, Pub. L. 87–675, Sec. 1(a), Sept. 19, 1962, 76 Stat. 558; amended Pub. L. 89–358, Sec. 6(c)(1), Mar. 3, 1966, 80 Stat. 27; Pub. L. 92–540, title V, Sec. 502(a), Oct. 24, 1972, 86 Stat. 1094; Pub. L. 93–508, title IV, Sec. 401(a), Dec. 3, 1974, 88 Stat. 1592; Pub. L. 96–466, title V, Sec. 503, title VIII, Sec. 801(h), Oct. 17, 1980, 94 Stat. 2203, 2216; Pub. L. 100–323, Sec. 3(b), 15(a)(1), May 20, 1988, 102 Stat. 562, 574; renumbered Sec. 4101 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–288, Sec. 5(a)(1)(A), (c)(1), Nov. 7, 2002, 116 Stat. 2044, 2045.)

§ 4102. Purpose

The Congress declares as its intent and purpose that there shall be an effective (1) job and job training intensive services program, (2) employment placement service program, and (3) job train-

ing placement service program for eligible veterans and eligible persons and that, to this end policies and regulations shall be promulgated and administered by an Assistant Secretary of Labor for Veterans' Employment and Training, established by section 4102A of this title, through a Veterans' Employment and Training Service within the Department of Labor, so as to provide such veterans and persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized through existing programs, coordination and merger of programs and implementation of new programs, including programs carried out by the Veterans' Employment and Training Service to implement all efforts to ease the transition of servicemembers to civilian careers that are consistent with, or an outgrowth of, the military experience of the servicemembers.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1217, Sec. 2011; renumbered Sec. 2002, Pub. L. 87–675, Sec. 1(a), Sept. 19, 1962, 76 Stat. 558; amended Pub. L. 89–358, Sec. 6(c), Mar. 3, 1966, 80 Stat. 27; Pub. L. 92–540, title V, Sec. 502(a), Oct. 24, 1972, 86 Stat. 1094; Pub. L. 93–508, title IV, Sec. 401(b), Dec. 3, 1974, 88 Stat. 1592; Pub. L. 94–502, title VI, Sec. 601(a), Oct. 15, 1976, 90 Stat. 2404; Pub. L. 96–466, title V, Sec. 504(a)(2), Oct. 17, 1980, 94 Stat. 2203; Pub. L. 97–306, title III, Sec. 302, Oct. 14, 1982, 96 Stat. 1437; Pub. L. 98–160, title VII, Sec. 702(15), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 100–323, Sec. 15(b)(1), (d), May 20, 1988, 102 Stat. 574; renumbered Sec. 4102 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–288, Sec. 5(a)(1)(B), (b)(1), Nov. 7, 2002, 116 Stat. 2044, 2045.)

§ 4102A. Assistant Secretary of Labor for Veterans' Employment and Training; program functions; Regional Administrators

(a) ESTABLISHMENT OF POSITION OF ASSISTANT SECRETARY OF LABOR FOR VETERANS' EMPLOYMENT AND TRAINING.—(1) There is established within the Department of Labor an Assistant Secretary of Labor for Veterans' Employment and Training, appointed by the President by and with the advice and consent of the Senate, who shall formulate and implement all departmental policies and procedures to carry out (A) the purposes of this chapter, chapter 42, and chapter 43 of this title, and (B) all other Department of Labor employment, unemployment, and training programs to the extent they affect veterans.

(2) The employees of the Department of Labor administering chapter 43 of this title shall be administratively and functionally responsible to the Assistant Secretary of Labor for Veterans' Employment and Training.

(3)(A) There shall be within the Department of Labor a Deputy Assistant Secretary of Labor for Veterans' Employment and Training. The Deputy Assistant Secretary shall perform such functions as the Assistant Secretary of Labor for Veterans' Employment and Training prescribes.

(B) No individual may be appointed as a Deputy Assistant Secretary of Labor for Veterans' Employment and Training unless the individual has at least five years of service in a management position as an employee of the Federal civil service or comparable service in a management position in the Armed Forces. For purposes of determining such service of an individual, there shall be ex-

cluded any service described in subparagraphs (A), (B), and (C) of section 308(d)(2) of this title.

(b) PROGRAM FUNCTIONS.—The Secretary shall carry out the following functions:

(1) Except as expressly provided otherwise, carry out all provisions of this chapter and chapter 43 of this title through the Assistant Secretary of Labor for Veterans' Employment and Training and administer through such Assistant Secretary all programs under the jurisdiction of the Secretary for the provision of employment and training services designed to meet the needs of all veterans and persons eligible for services furnished under this chapter.

(2) In order to make maximum use of available resources in meeting such needs, encourage all such programs, and all grantees and contractors under such programs to enter into cooperative arrangements with private industry and business concerns (including small business concerns owned by veterans or disabled veterans), educational institutions, trade associations, and labor unions.

(3) Ensure that maximum effectiveness and efficiency are achieved in providing services and assistance to eligible veterans under all such programs by coordinating and consulting with the Secretary of Veterans Affairs with respect to (A) programs conducted under other provisions of this title, with particular emphasis on coordination of such programs with readjustment counseling activities carried out under section 1712A of this title, apprenticeship or other on-the-job training programs carried out under section 3687 of this title, and rehabilitation and training activities carried out under chapter 31 of this title and (B) determinations covering veteran population in a State.

(4) Ensure that employment, training, and placement activities are carried out in coordination and cooperation with appropriate State public employment service officials.

(5) Subject to subsection (c), make available for use in each State by grant or contract such funds as may be necessary to support—

(A) disabled veterans' outreach program specialists appointed under section 4103A(a)(1) of this title,

(B) local veterans' employment representatives assigned under section 4104(b) of this title, and

(C) the reasonable expenses of such specialists and representatives described in subparagraphs (A) and (B), respectively, for training, travel, supplies, and other business expenses, including travel expenses and per diem for attendance at the National Veterans' Employment and Training Services Institute established under section 4109 of this title.

(6) Monitor and supervise on a continuing basis the distribution and use of funds provided for use in the States under paragraph (5).

(7) Establish, and update as appropriate, a comprehensive performance accountability system (as described in subsection (f)) and carry out annual performance reviews of veterans em-

ployment, training, and placement services provided through employment service delivery systems, including through disabled veterans' outreach program specialists and through local veterans' employment representatives in States receiving grants, contracts, or awards under this chapter.

(8) With advice and assistance from the Advisory Committee on Veterans Employment and Training, and Employer Outreach established under section 4110 of this title, furnish information to employers (through meetings in person with hiring executives of corporations and otherwise) with respect to the training and skills of veterans and disabled veterans, and the advantages afforded employers by hiring veterans with such training and skills, and to facilitate employment of veterans and disabled veterans through participation in labor exchanges (Internet-based and otherwise), and other means.

(c) CONDITIONS FOR RECEIPT OF FUNDS.—(1) The distribution and use of funds under subsection (b)(5) in order to carry out sections 4103A(a) and 4104(a) of this title shall be subject to the continuing supervision and monitoring of the Secretary and shall not be governed by the provisions of any other law, or any regulations prescribed thereunder, that are inconsistent with this section or section 4103A or 4104 of this title.

(2)(A) A State shall submit to the Secretary an application for a grant or contract under subsection (b)(5). The application shall contain the following information:

(i) A plan that describes the manner in which the State shall furnish employment, training, and placement services required under this chapter for the program year, including a description of—

(I) duties assigned by the State to disabled veterans' outreach program specialists and local veterans' employment representatives consistent with the requirements of sections 4103A and 4104 of this title;

(II) the manner in which such specialists and representatives are integrated in the employment service delivery systems in the State; and

(III) the program of performance incentive awards described in section 4112 of this title in the State for the program year.

(ii) The veteran population to be served.

(iii) For each employee of the State who is assigned to perform the duties of a disabled veterans' outreach program specialist or a local veterans' employment representative under this chapter—

(I) the date on which the employee is so assigned; and

(II) whether the employee has satisfactorily completed such training by the National Veterans' Employment and Training Services Institute as the Secretary requires for purposes of paragraph (8).

(iv) Such additional information as the Secretary may require to make a determination with respect to awarding a grant or contract to the State.

(B)(i) Subject to the succeeding provisions of this subparagraph, of the amount available under subsection (b)(5) for a fiscal

year, the Secretary shall make available to each State with an application approved by the Secretary an amount of funding in proportion to the number of veterans seeking employment using such criteria as the Secretary may establish in regulation, including civilian labor force and unemployment data, for the State on an annual basis. The proportion of funding shall reflect the ratio of—

(I) the total number of veterans residing in the State that are seeking employment; to

(II) the total number of veterans seeking employment in all States.

(ii) The Secretary shall phase in over the three fiscal-year period that begins on October 1, 2003, the manner in which amounts are made available to States under subsection (b)(5) and this subsection, as amended by the Jobs for Veterans Act.

(iii) In carrying out this paragraph, the Secretary may establish minimum funding levels and hold-harmless criteria for States.

(3)(A)(i) As a condition of a grant or contract under this section for a program year, in the case of a State that the Secretary determines has an entered-employment rate for veterans that is deficient for the preceding program year, the State shall develop a corrective action plan to improve that rate for veterans in the State.

(ii) The State shall submit the corrective action plan to the Secretary for approval, and if approved, shall expeditiously implement the plan.

(iii) If the Secretary does not approve a corrective action plan submitted by the State under clause (i), the Secretary shall take such steps as may be necessary to implement corrective actions in the State to improve the entered-employment rate for veterans in that State.

(B) To carry out subparagraph (A), the Secretary shall establish in regulations a uniform national threshold entered-employment rate for veterans for a program year by which determinations of deficiency may be made under subparagraph (A).

(C) In making a determination with respect to a deficiency under subparagraph (A), the Secretary shall take into account the applicable annual unemployment data for the State and consider other factors, such as prevailing economic conditions, that affect performance of individuals providing employment, training, and placement services in the State.

(4) In determining the terms and conditions of a grant or contract under which funds are made available to a State in order to carry out section 4103A or 4104 of this title, the Secretary shall take into account—

(A) the results of reviews, carried out pursuant to subsection (b)(7), of the performance of the employment, training, and placement service delivery system in the State, and

(B) the monitoring carried out under this section.

(5) Each grant or contract by which funds are made available to a State shall contain a provision requiring the recipient of the funds—

(A) to comply with the provisions of this chapter; and

(B) on an annual basis, to notify the Secretary of, and provide supporting rationale for, each nonveteran who is employed as a disabled veterans' outreach program specialist and local

veterans' employment representative for a period in excess of 6 months.

(6) Each State shall coordinate employment, training, and placement services furnished to veterans and eligible persons under this chapter with such services furnished with respect to such veterans and persons under the Workforce Investment Act of 1998 and the Wagner-Peyser Act.

(7) Of the amount of a grant or contract under which funds are made available to a State in order to carry out section 4103A or 4104 of this title for any program year, one percent shall be for the purposes of making cash awards under the program of performance incentive awards described in section 4112 of this title in the State.

(8)(A) As a condition of a grant or contract under which funds are made available to a State in order to carry out section 4103A or 4104 of this title, the Secretary shall require the State to require each employee hired by the State who is assigned to perform the duties of a disabled veterans' outreach program specialist or a local veterans' employment representative under this chapter to satisfactorily complete training provided by the National Veterans' Employment and Training Services Institute during the three-year period that begins on the date on which the employee is so assigned.

(B) For any employee described in subparagraph (A) who does not complete such training during such period, the Secretary may reduce by an appropriate amount the amount made available to the State employing that employee.

(C) The Secretary may establish such reasonable exceptions to the completion of training otherwise required under subparagraph (A) as the Secretary considers appropriate.

(d) PARTICIPATION IN OTHER FEDERALLY FUNDED JOB TRAINING PROGRAMS.—The Assistant Secretary of Labor for Veterans' Employment and Training shall promote and monitor participation of qualified veterans and eligible persons in employment and training opportunities under title I of the Workforce Investment Act of 1998 and other federally funded employment and training programs.

(e) REGIONAL ADMINISTRATORS.—(1) The Secretary shall assign to each region for which the Secretary operates a regional office a representative of the Veterans' Employment and Training Service to serve as the Regional Administrator for Veterans' Employment and Training in such region.

(2) Each such Regional Administrator shall carry out such duties as the Secretary may require to promote veterans employment and reemployment within the region that the Administrator serves.

(f) ESTABLISHMENT OF PERFORMANCE STANDARDS AND OUTCOMES MEASURES.—(1) The Assistant Secretary of Labor for Veterans' Employment and Training shall establish and implement a comprehensive performance accountability system to measure the performance of employment service delivery systems, including disabled veterans' outreach program specialists and local veterans' employment representatives providing employment, training, and placement services under this chapter in a State to provide accountability of that State to the Secretary for purposes of subsection (c).

(2) Such standards and measures shall—

(A) be consistent with State performance measures applicable under section 136(b) of the Workforce Investment Act of 1998; and

(B) be appropriately weighted to provide special consideration for placement of (i) veterans requiring intensive services (as defined in section 4101(9) of this title), such as special disabled veterans and disabled veterans, and (ii) veterans who enroll in readjustment counseling under section 1712A of this title.

(g) AUTHORITY TO PROVIDE TECHNICAL ASSISTANCE TO STATES.—The Secretary may provide such technical assistance as the Secretary determines appropriate to any State that the Secretary determines has, or may have, an entered-employment rate in the State that is deficient, as determined under subsection (c)(3) with respect to a program year, including assistance in the development of a corrective action plan under that subsection.

(Added Pub. L. 94–502, title VI, Sec. 601(b)(1), Oct. 15, 1976, 90 Stat. 2404, Sec. 2002A; amended Pub. L. 96–466, title V, Sec. 504(a)(3), (4), Oct. 17, 1980, 94 Stat. 2203; Pub. L. 97–306, title III, Sec. 303, Oct. 14, 1982, 96 Stat. 1437; Pub. L. 98–160, title VII, Sec. 702(15), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 100–323, Sec. 2(a), (e)(3)(A), 15(a)(2), (b)(1), May 20, 1988, 102 Stat. 556, 559, 574; Pub. L. 101–237, title IV, Sec. 423(b)(8)(A), Dec. 18, 1989, 103 Stat. 2093; renumbered Sec. 4102A and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–446, title VII, Sec. 701(a), title XII, Sec. 1201(a)(4), Nov. 2, 1994, 108 Stat. 4674, 4682; Pub. L. 104–275, title III, Sec. 301, Oct. 9, 1996, 110 Stat. 3332; Pub. L. 105–277, div. A, Sec. 101(f)[title VIII, Sec. 405(d)(29)(A), (f)(21)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–424, 2681–432; Pub. L. 105–368, title X, Sec. 1005(b)(13), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 107–288, Sec. 4(a)(1), Nov. 7, 2002, 116 Stat. 2038; Pub. L. 108–183, title VII, Sec. 708(b)(1)(A), (2), Dec. 16, 2003, 117 Stat. 2673; Pub. L. 109–233, title II, Sec. 201, title V, Sec. 503(11), June 15, 2006, 120 Stat. 402, 416; Pub. L. 109–461, title VI, Sec. 601(a), (b), Dec. 22, 2006, 120 Stat. 3436.)

§ 4103. Directors and Assistant Directors for Veterans' Employment and Training; additional Federal personnel

(a) DIRECTORS AND ASSISTANT DIRECTORS.—(1) The Secretary shall assign to each State a representative of the Veterans' Employment and Training Service to serve as the Director for Veterans' Employment and Training, and shall assign full-time Federal clerical or other support personnel to each such Director.

(2)(A) Each Director for Veterans' Employment and Training for a State shall, at the time of appointment, have been a bona fide resident of the State for at least two years.

(B) The Secretary may waive the requirement in subparagraph (A) with respect to a Director for Veterans' Employment and Training if the Secretary determines that the waiver is in the public interest. Any such waiver shall be made on a case-by-case basis.

(3) Full-time Federal clerical or other support personnel assigned to Directors for Veterans' Employment and Training shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(b) ADDITIONAL FEDERAL PERSONNEL.—The Secretary may also assign as supervisory personnel such representatives of the Veterans' Employment and Training Service as the Secretary deter-

mines appropriate to carry out the employment, training, and placement services required under this chapter, including Assistant Directors for Veterans' Employment and Training.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1218, Sec. 2012; renumbered Sec. 2003, Pub. L. 87–675, Sec. 1(a), Sept. 19, 1962, 76 Stat. 558; amended Pub. L. 89–358, Sec. 6(c)(1), Mar. 3, 1966, 80 Stat. 27; Pub. L. 92–540, title V, Sec. 502(a), Oct. 24, 1972, 86 Stat. 1094; Pub. L. 93–508, title IV, Sec. 401(c), Dec. 3, 1974, 88 Stat. 1592; Pub. L. 94–502, title VI, Sec. 602, 606(1), Oct. 15, 1976, 90 Stat. 2404, 2405; Pub. L. 96–466, title V, Sec. 505, title VIII, Sec. 801(i), Oct. 17, 1980, 94 Stat. 2204, 2216; Pub. L. 97–295, Sec. 4(70), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 97–306, title III, Sec. 304(a)(1), (b), (c), Oct. 14, 1982, 96 Stat. 1437, 1438; Pub. L. 100–323, Sec. 5, 7(a), 15(a)(2), (c)(1), (3)(A), May 20, 1988, 102 Stat. 563, 564, 574; Pub. L. 101–237, title IV, Sec. 423(b)(8)(B), Dec. 18, 1989, 103 Stat. 2093; renumbered Sec. 4103 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title XII, Sec. 1201(d)(14), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 104–275, title III, Sec. 302, Oct. 9, 1996, 110 Stat. 3332; Pub. L. 107–288, Sec. 4(a)(1), Nov. 7, 2002, 116 Stat. 2042; Pub. L. 110–389, title III, Sec. 316, Oct. 10, 2008, 122 Stat. 4167.)

§ 4103A. Disabled veterans' outreach program

(a) REQUIREMENT FOR EMPLOYMENT BY STATES OF A SUFFICIENT NUMBER OF SPECIALISTS.—(1) Subject to approval by the Secretary, a State shall employ such full-or part-time disabled veterans' outreach program specialists as the State determines appropriate and efficient to carry out intensive services under this chapter to meet the employment needs of eligible veterans with the following priority in the provision of services:

(A) Special disabled veterans.

(B) Other disabled veterans.

(C) Other eligible veterans in accordance with priorities determined by the Secretary taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title.

(2) In the provision of services in accordance with this subsection, maximum emphasis in meeting the employment needs of veterans shall be placed on assisting economically or educationally disadvantaged veterans.

(b) REQUIREMENT FOR QUALIFIED VETERANS.—A State shall, to the maximum extent practicable, employ qualified veterans to carry out the services referred to in subsection (a). Preference shall be given in the appointment of such specialists to qualified disabled veterans.

(c) PART-TIME EMPLOYEES.—A part-time disabled veterans' outreach program specialist shall perform the functions of a disabled veterans' outreach program specialist under this section on a half-time basis.

(Added Pub. L. 96–466, title V, Sec. 506(a), Oct. 17, 1980, 94 Stat. 2204, Sec. 2003A; amended Pub. L. 97–306, title III, Sec. 305, Oct. 14, 1982, 96 Stat. 1439; Pub. L. 100–323, Sec. 2(e)(1), 7(b), 15(c)(1), May 20, 1988, 102 Stat. 559, 565, 574; Pub. L. 101–237, title IV, Sec. 423(b)(8), Dec. 18, 1989, 103 Stat. 2093; renumbered Sec. 4103A and amended Pub. L. 102–83, Sec. 2(c)(4), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 402, 406; Pub. L. 102–568, title V, Sec. 501, 503, Oct. 29, 1992, 106 Stat. 4340; Pub. L. 103–446, title VII, Sec. 701(b), Nov. 2, 1994, 108 Stat. 4674; Pub. L. 105–277, div. A, title I, Sec. 101(f)[title VIII, Sec. 405(d)(29)(B),(f)(21)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–424, 2681–432; Pub. L. 105–368, title X, Sec. 1004(a), Nov. 11, 1998, 112 Stat. 3364; Pub. L. 107–95, Sec. 9(a), Dec. 21, 2001, 115 Stat. 920; Pub. L. 107–288, Sec. 4(b)(1), Nov. 7, 2002, 116 Stat. 2043; Pub. L. 109–461, title VI, Sec. 602(a), Dec. 22, 2006, 120 Stat. 3437.)

§ 4104. Local veterans' employment representatives

(a) REQUIREMENT FOR EMPLOYMENT BY STATES OF A SUFFICIENT NUMBER OF REPRESENTATIVES.—Subject to approval by the Secretary, a State shall employ such full-and part-time local veterans' employment representatives as the State determines appropriate and efficient to carry out employment, training, and placement services under this chapter.

(b) PRINCIPAL DUTIES.—As principal duties, local veterans' employment representatives shall—

(1) conduct outreach to employers in the area to assist veterans in gaining employment, including conducting seminars for employers and, in conjunction with employers, conducting job search workshops and establishing job search groups; and

(2) facilitate employment, training, and placement services furnished to veterans in a State under the applicable State employment service delivery systems.

(c) REQUIREMENT FOR QUALIFIED VETERANS AND ELIGIBLE PERSONS.—A State shall, to the maximum extent practicable, employ qualified veterans or eligible persons to carry out the services referred to in subsection (a). Preference shall be accorded in the following order:

(1) To qualified service-connected disabled veterans.

(2) If no veteran described in paragraph (1) is available, to qualified eligible veterans.

(3) If no veteran described in paragraph (1) or (2) is available, then to qualified eligible persons.

(d) PART-TIME EMPLOYEES.—A part-time local veterans' employment representative shall perform the functions of a local veterans' employment representative under this section on a half-time basis.

(e) REPORTING.—Each local veterans' employment representative shall be administratively responsible to the manager of the employment service delivery system and shall provide reports, not less frequently than quarterly, to the manager of such office and to the Director for Veterans' Employment and Training for the State regarding compliance with Federal law and regulations with respect to special services and priorities for eligible veterans and eligible persons.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1219, Sec. 2013; renumbered Sec. 2004, Pub. L. 87–675, Sec. 1(a), Sept. 19, 1962, 76 Stat. 558; amended Pub. L. 89–358, Sec. 6(c)(1), Mar. 3, 1966, 80 Stat. 27; Pub. L. 92–540, title V, Sec. 502(a), Oct. 24, 1972, 86 Stat. 1095; Pub. L. 94–502, title VI, Sec. 606(2), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 100–323, Sec. 3(a), May 20, 1988, 102 Stat. 560; Pub. L. 101–237, title IV, Sec. 423(b)(8)(B), Dec. 18, 1989, 103 Stat. 2093; Pub. L. 102–16, Sec. 10(a)(8), Mar. 22, 1991, 105 Stat. 56; renumbered Sec. 4104 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–14, Sec. 8(a)(10), June 5, 2001, 115 Stat. 35; Pub. L. 107–95, Sec. 9(b), Dec. 21, 2001, 115 Stat. 920; Pub. L. 107–288, Sec. 4(b)(2), Nov. 7, 2002, 116 Stat. 2043; Pub. L. 109–461, title VI, Sec. 602(b), Dec. 22, 2006, 120 Stat. 3437.)

[§ 4104A. Repealed. Pub. L. 107–288, Sec. 4(a)(3)(A)(i), Nov. 7, 2002, 116 Stat. 2042]

§ 4105. Cooperation of Federal agencies

(a) All Federal agencies shall furnish the Secretary such records, statistics, or information as the Secretary may deem nec-

essary or appropriate in administering the provisions of this chapter, and shall otherwise cooperate with the Secretary in providing continuous employment and training opportunities for eligible veterans and eligible persons.

(b) For the purpose of assisting the Secretary and the Secretary of Veterans Affairs in identifying employers with potential job training opportunities under the Veterans' Job Training Act (Public Law 98–77; 29 U.S.C. 1721 note) and otherwise in order to carry out this chapter, the Secretary of Defense shall, on the 15th day of each month, provide the Secretary and the Secretary of Veterans Affairs with updated information regarding any list maintained by the Secretary of Defense of employers participating in the National Committee for Employer Support of the Guard and Reserve.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1219, Sec. 2014; renumbered Sec. 2005 and amended Pub. L. 87–675, Sec. 1(a), (c), Sept. 19, 1962, 76 Stat. 558, 559; Pub. L. 92–540, title V, Sec. 502(a), Oct. 24, 1972, 86 Stat. 1095; Pub. L. 93–508, title IV, Sec. 401(d), Dec. 3, 1974, 88 Stat. 1592; Pub. L. 94–502, title VI, Sec. 606(3), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 100–323, Sec. 6(a), 15(a)(2), May 20, 1988, 102 Stat. 564, 574; Pub. L. 101–237, title IV, Sec. 423(b)(8)(A), Dec. 18, 1989, 103 Stat. 2093; renumbered Sec. 4105, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; amended Pub. L. 109–233, title V, Sec. 503(12), June 15, 2006, 120 Stat. 417.)

§ 4106. Estimate of funds for administration; authorization of appropriations

(a) The Secretary shall estimate the funds necessary for the proper and efficient administration of this chapter and chapters 42 and 43 of this title. Such estimated sums shall include the annual amounts necessary for salaries, rents, printing and binding, travel, and communications. Sums thus estimated shall be included as a special item in the annual budget for the Department of Labor. Estimated funds necessary for proper intensive services, placement, and training services to eligible veterans and eligible persons provided by the various State public employment service agencies shall each be separately identified in the budgets of those agencies as approved by the Department of Labor. Funds estimated pursuant to the first sentence of this subsection shall include amounts necessary in all of the States for the purposes specified in paragraph (5) of section 4102A(b) of this title and to fund the National Veterans' Employment and Training Services Institute under section 4109 of this title and shall be approved by the Secretary only if the level of funding proposed is in compliance with such sections. Each budget submission with respect to such funds shall include a separate listing of the amount for the National Veterans' Employment and Training Services Institute together with information demonstrating the compliance of such budget submission with the funding requirements specified in the preceding sentence.

(b) There are authorized to be appropriated such sums as may be necessary for the proper and efficient administration of this chapter.

(c) In the event that the regular appropriations Act making appropriations for administrative expenses for the Department of Labor with respect to any fiscal year does not specify an amount for the purposes specified in subsection (b) of this section for that fiscal year, then of the amounts appropriated in such Act there

shall be available only for the purposes specified in subsection (b) of this section such amount as was set forth in the budget estimate submitted pursuant to subsection (a) of this section.

(d) Any funds made available pursuant to subsections (b) and (c) of this section shall not be available for any purpose other than those specified in such subsections.

(Added Pub. L. 92–540, title V, Sec. 502(a), Oct. 24, 1972, 86 Stat. 1096, Sec. 2006; amended Pub. L. 93–508, title IV, Sec. 401(e), Dec. 3, 1974, 88 Stat. 1592; Pub. L. 94–502, title VI, Sec. 603, Oct. 15, 1976, 90 Stat. 2404; Pub. L. 97–306, title III, Sec. 306, Oct. 14, 1982, 96 Stat. 1440; Pub. L. 100–323, Sec. 2(b), (c), (e)(2), 15(a)(2), May 20, 1988, 102 Stat. 558, 559, 574; renumbered Sec. 4106 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–288, Secs. 4(d)(1), 5(a)(1)(C), Nov. 7, 2002, 116 Stat. 2044.)

§ 4107. Administrative controls; annual report

(a) The Secretary shall establish administrative controls for the following purposes:

(1) To insure that each eligible veteran, especially veterans of the Vietnam era and disabled veterans, and each eligible person who requests assistance under this chapter shall promptly be placed in a satisfactory job or job training opportunity or receive some other specific form of assistance designed to enhance such veteran's and eligible person's employment prospects substantially, such as individual job development or intensive services.

(2) To determine whether or not the employment service agencies in each State have committed the necessary staff to insure that the provisions of this chapter are carried out; and to arrange for necessary corrective action where staff resources have been determined by the Secretary to be inadequate.

(b) The Secretary shall apply performance standards established under section 4102A(f) of this title for determining compliance by the State public employment service agencies with the provisions of this chapter and chapter 42 of this title. Not later than February 1 of each year, the Secretary shall report to the Committees on Veterans' Affairs of the Senate and the House of Representatives on the performance of States and organizations and entities carrying out employment, training, and placement services under this chapter, as measured under subsection (b)(7) of section 4102A of this title. In the case of a State that the Secretary determines has not met the minimum standard of performance (established by the Secretary under subsection (f) of such section), the Secretary shall include an analysis of the extent and reasons for the State's failure to meet that minimum standard, together with the State's plan for corrective action during the succeeding year.

(c) Not later than February 1 of each year, the Secretary shall report to the Committees on Veterans' Affairs of the Senate and the House of Representatives on the success during the preceding program year of the Department of Labor and its affiliated State employment service agencies in carrying out the provisions of this chapter and programs for the provision of employment and training services to meet the needs of eligible veterans and eligible persons. The report shall include—

(1) specification, by State and by age group, of the numbers of eligible veterans, disabled veterans, special disabled

veterans, eligible persons, recently separated veterans (as defined in section 4211(6) of this title), and servicemembers transitioning to civilian careers who registered for assistance with, or who are identified as veterans by, the public employment service system and, for each of such categories, the numbers referred to and placed in permanent and other jobs, the numbers referred to and placed in jobs and job training programs supported by the Federal Government, the number who received intensive services, and the number who received some, and the number who received no, reportable service;

(2) a comparison of the rate of entered employment (as determined in a manner consistent with State performance measures applicable under section 136(b) of the Workforce Investment Act of 1998) for each of the categories of veterans and persons described in clause (1) of this subsection with such rate of entered employment (as so determined) for nonveterans of the same age groups registered for assistance with the public employment system in each State;

(3) any determination made by the Secretary during the preceding fiscal year under section 4106 of this title or subsection (a)(2) of this section and a statement of the reasons for such determination;

(4) a report on activities carried out during the preceding program year under section 4212(d) of this title;

(5) a report on the operation during the preceding program year of programs for the provision of employment and training services designed to meet the needs of eligible veterans and eligible persons, including an evaluation of the effectiveness of such programs during such program year in meeting the requirements of section 4102A(b) of this title, the efficiency with which services were provided through such programs during such year, and such recommendations for further legislative action relating to veterans' employment and training as the Secretary considers appropriate; and

(6) a report on the operation during the preceding program year of the program of performance incentive awards for quality employment services under section 4112 of this title.

(Added Pub. L. 92–540, title V, Sec. 502(a), Oct. 24, 1972, 86 Stat. 1096, Sec. 2007; amended Pub. L. 93–508, title IV, Sec. 401(f), Dec. 3, 1974, 88 Stat. 1592; Pub. L. 94–502, title VI, Sec. 604, Oct. 15, 1976, 90 Stat. 2404; Pub. L. 95–202, title III, Sec. 309(b), Nov. 23, 1977, 91 Stat. 1446; Pub. L. 96–466, title V, Sec. 507, Oct. 17, 1980, 94 Stat. 2205; Pub. L. 97–306, title III, Sec. 307, Oct. 14, 1982, 96 Stat. 1440; Pub. L. 100–323, Sec. 2(d), 15(a)(2), May 20, 1988, 102 Stat. 558, 574; renumbered Sec. 4107 and amended Pub. L. 102–83, Sec. 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–288, Secs. 4(a)(3)(B), (e)(1), 5(a)(1)(D), (E), (d)(1), Nov. 7, 2002, 116 Stat. 2042, 2044, 2045.)

§ 4108. Cooperation and coordination

(a) In carrying out the Secretary's responsibilities under this chapter, the Secretary shall from time to time consult with the Secretary of Veterans Affairs and keep the Secretary of Veterans Affairs fully advised of activities carried out and all data gathered pursuant to this chapter to insure maximum cooperation and coordination between the Department of Labor and the Department of Veterans Affairs.

(b) The Secretary of Veterans Affairs shall provide to appropriate employment service offices and Department of Labor offices, as designated by the Secretary, on a monthly or more frequent basis, the name and address of each employer located in the areas served by such offices that offer a program of job training which has been approved by the Secretary of Veterans Affairs under section 7 of the Veterans' Job Training Act (29 U.S.C. 1721 note).

(Added Pub. L. 92–540, title V, Sec. 502(a), Oct. 24, 1972, 86 Stat. 1097, Sec. 2008; amended Pub. L. 94–502, title VI, Sec. 606(4), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 100–323, Sec. 6(b)(1), (2)(A), 15(a)(2), May 20, 1988, 102 Stat. 564, 574; Pub. L. 101–237, title IV, Sec. 423(b)(8), Dec. 18, 1989, 103 Stat. 2093; renumbered Sec. 4108, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406.)

§ 4109. National Veterans' Employment and Training Services Institute

(a) In order to provide for such training as the Secretary considers necessary and appropriate for the efficient and effective provision of employment, job-training, intensive services, placement, job-search, and related services to veterans, the Secretary shall establish and make available such funds as may be necessary to operate a National Veterans' Employment and Training Services Institute for the training of disabled veterans' outreach program specialists, local veterans' employment representatives, Directors for Veterans' Employment and Training, and Assistant Directors for Veterans' Employment and Training, Regional Administrators for Veterans' Employment and Training, and such other personnel involved in the provision of employment, job-training, intensive services, placement, or related services to veterans as the Secretary considers appropriate, including travel expenses and per diem for attendance at the Institute.

(b) In implementing this section, the Secretary shall, as the Secretary considers appropriate, provide, out of program funds designated for the Institute, training for Veterans' Employment and Training Service personnel, including travel expenses and per diem to attend the Institute.

(c)(1) Nothing in this section shall be construed as preventing the Institute to enter into contracts or agreements with departments or agencies of the United States or of a State, or with other organizations, to carry out training of personnel of such departments, agencies, or organizations in the provision of services referred to in subsection (a).

(2) All proceeds collected by the Institute under a contract or agreement referred to in paragraph (1) shall be applied to the applicable appropriation.

(Added Pub. L. 97–306, title III, Sec. 308(a), Oct. 14, 1982, 96 Stat. 1440, Sec. 2009; amended Pub. L. 100–323, Sec. 8(a), May 20, 1988, 102 Stat. 566; renumbered Sec. 4109, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 107–288, Sec. 5(a)(1)(F), (e), Nov. 7, 2002, 116 Stat. 2044, 2046.)

§ 4110. Advisory Committee on Veterans Employment, Training, and Employer Outreach

(a)(1) There is hereby established within the Department of Labor an advisory committee to be known as the Advisory Committee on Veterans Employment, Training, and Employer Outreach.

(2) The advisory committee shall—

(A) assess the employment and training needs of veterans and their integration into the workforce;

(B) determine the extent to which the programs and activities of the Department of Labor are meeting such needs;

(C) assist the Assistant Secretary of Labor for Veterans' Employment and Training in carrying out outreach activities to employers with respect to the training and skills of veterans and the advantages afforded employers by hiring veterans;

(D) make recommendations to the Secretary, through the Assistant Secretary of Labor for Veterans' Employment and Training, with respect to outreach activities and the employment and training of veterans; and

(E) carry out such other activities that are necessary to make the reports and recommendations referred to in subsection (f) of this section.

(b) The Secretary of Labor shall, on a regular basis, consult with and seek the advice of the advisory committee with respect to the matters referred to in subsection (a)(2) of this section.

(c)(1) The Secretary of Labor shall appoint at least 12, but no more than 16, individuals to serve as members of the advisory committee as follows:

(A) Seven individuals, one each from among representatives nominated by each of the following organizations:

(i) The National Society of Human Resource Managers.

(ii) The Business Roundtable.

(iii) The National Association of State Workforce Agencies.

(iv) The United States Chamber of Commerce.

(v) The National Federation of Independent Business.

(vi) A nationally recognized labor union or organization.

(vii) The National Governors Association.

(B) Not more than five individuals from among representatives nominated by veterans service organizations that have a national employment program.

(C) Not more than five individuals who are recognized authorities in the fields of business, employment, training, rehabilitation, or labor and who are not employees of the Department of Labor.

(2) A vacancy in the advisory committee shall be filled in the manner in which the original appointment was made.

(d) The following, or their representatives, shall be ex officio, nonvoting members of the advisory committee:

(1) The Secretary of Veterans Affairs.

(2) The Secretary of Defense.

(3) The Director of the Office of Personnel Management.

(4) The Assistant Secretary of Labor for Veterans Employment and Training.

(5) The Assistant Secretary of Labor for Employment and Training.

(6) The Administrator of the Small Business Administration.

(e)(1) The advisory committee shall meet at least quarterly.

(2) The Secretary of Labor shall appoint the chairman of the advisory committee who shall serve in that position for no more than 2 consecutive years.

(3)(A) Members of the advisory committee shall serve without compensation.

(B) Members of the advisory committee shall be allowed reasonable and necessary travel expenses, including per diem in lieu of subsistence, at rates authorized for persons serving intermittently in the Government service in accordance with the provisions of subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of the responsibilities of the advisory committee.

(4) The Secretary of Labor shall provide staff and administrative support to the advisory committee through the Veterans Employment and Training Service.

(f)(1) Not later than December 31 of each year, the advisory committee shall submit to the Secretary and to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the employment and training needs of veterans, with special emphasis on disabled veterans, for the previous fiscal year. Each such report shall contain—

(A) an assessment of the employment and training needs of veterans and their integration into the workforce;

(B) an assessment of the outreach activities carried out by the Secretary of Labor to employers with respect to the training and skills of veterans and the advantages afforded employers by hiring veterans;

(C) an evaluation of the extent to which the programs and activities of the Department of Labor are meeting such needs;

(D) a description of the activities of the advisory committee during that fiscal year;

(E) a description of activities that the advisory committee proposes to undertake in the succeeding fiscal year; and

(F) any recommendations for legislation, administrative action, and other action that the advisory committee considers appropriate.

(2) In addition to the annual reports made under paragraph (1), the advisory committee may make recommendations to the Secretary of Labor with respect to the employment and training needs of veterans at such times and in such manner as the advisory committee determines appropriate.

(g) Within 60 days after receiving each annual report referred to in subsection (f)(1), the Secretary of Labor shall transmit to Congress a copy of the report together with any comments concerning the report that the Secretary considers appropriate.

(h) The advisory committee shall continue until terminated by law.

(Added Pub. L. 97–306, title III, Sec. 308(a), Oct. 14, 1982, 96 Stat. 1441, Sec. 2010; amended Pub. L. 100–323, Sec. 10, 15(a)(2), (3), (b)(1), May 20, 1988, 102 Stat. 566, 574; Pub. L. 101–237, title IV, Sec. 423(b)(8)(A), Dec. 18, 1989, 103 Stat. 2093; Pub. L. 102–16, Sec. 8(a), Mar. 22, 1991, 105 Stat. 52; renumbered Sec. 4110 and amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–568, title V, Sec. 504, Oct. 29, 1992, 106 Stat. 4340; Pub. L. 103–446, title XII, Sec. 1201(a)(5), (g)(3), (i)(7), Nov. 2, 1994, 108 Stat. 4682, 4687, 4688; Pub. L.

109–233, title II, Sec. 202(a)(1), (2), (b)–(d), June 15, 2006, 120 Stat. 403, 404; Pub. L. 109–461, title VI, Sec. 604(b), Dec. 22, 2006, 120 Stat. 3439; Pub. L. 110–387, title IX, Sec. 901(a)(4), Oct. 10, 2008, 122 Stat. 4142.)

§ 4110A. Special unemployment study

(a)(1) The Secretary, through the Bureau of Labor Statistics, shall conduct an annual study of unemployment among each of the following categories of veterans:

(A) Veterans who were called to active duty while members of the National Guard or a Reserve Component.

(B) Veterans who served in combat or in a war zone in the Post 9/11 Global Operations theaters.

(C) Veterans who served on active duty during the Post 9/11 Global Operations period who did not serve in the Post 9/11 Global Operations theaters.

(D) Veterans of the Vietnam era who served in the Vietnam theater of operations during the Vietnam era.

(E) Veterans who served on active duty during the Vietnam era who did not serve in the Vietnam theater of operations.

(F) Veterans discharged or released from active duty within four years of the applicable study.

(G) Special disabled veterans.

(2) Within each of the categories of veterans specified in paragraph (1), the Secretary shall include a separate category for women who are veterans.

(b) The Secretary shall promptly submit to Congress a report on the results of each study under subsection (a).

(c) In this section:

(1) The term "Post 9/11 Global Operations period" means the period of the Persian Gulf War beginning on September 11, 2001, and ending on the date thereafter prescribed by Presidential proclamation or law.

(2) The term "Post 9/11 Global Operations theaters" means Afghanistan, Iraq, or any other theater in which the Global War on Terrorism Expeditionary Medal is awarded for service.

(Added Pub. L. 100–323, Sec. 9(a), May 20, 1988, 102 Stat. 566, Sec. 2010A; renumbered Sec. 4110A, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; amended Pub. L. 103–446, title VII, Sec. 701(c), Nov. 2, 1994, 108 Stat. 4674; Pub. L. 105–368, title X, Sec. 1005(b)(14), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 110–389, title III, Sec. 317, Oct. 10, 2008, 122 Stat. 4167.)

§ 4110B. Coordination and nonduplication

In carrying out this chapter, the Secretary shall require that an appropriate administrative entity in each State enter into an agreement with the Secretary regarding the implementation of the Workforce Investment Act of 1998 that includes the description and information described in paragraphs (8) and (14) of section 112(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2822(b)).

(Added Pub. L. 105–220, title III, Sec. 322, Aug. 7, 1998, 112 Stat. 1087; amended Pub. L. 109–233, title V, Sec. 503(13), June 15, 2006, 120 Stat. 417.)

[§ 4111. Repealed. Pub. L. 107–95, Sec. 5(e)(3), Dec. 21, 2001, 115 Stat. 918]

§ 4112. Performance incentive awards for quality employment, training, and placement services

(a) CRITERIA FOR PERFORMANCE INCENTIVE AWARDS.—(1) For purposes of carrying out a program of performance incentive awards under section 4102A(c)(2)(A)(i)(III) of this title, the Secretary, acting through the Assistant Secretary of Labor for Veterans' Employment and Training, shall establish criteria for performance incentive awards programs to be administered by States to—

(A) encourage the improvement and modernization of employment, training, and placement services provided under this chapter; and

(B) recognize eligible employees and employment service offices for excellence in the provision of such services or for having made demonstrable improvements in the provision of such services.

(2) The Secretary shall establish such criteria in consultation with representatives of States, political subdivisions of States, and other providers of employment, training, and placement services under the Workforce Investment Act of 1998 consistent with the performance measures established under section 4102A(b)(7) of this title.

(b) FORM OF AWARDS.—Under the criteria established by the Secretary for performance incentive awards to be administered by States, an award under such criteria may be a cash award or such other nonfinancial awards as the Secretary may specify.

(c) ADMINISTRATION AND USE OF AWARDS.—Performance incentive cash awards under this section—

(1) shall be made from amounts allocated from the grant or contract amount for a State for a program year under section 4102A(c)(7) of this title;

(2) in the case of such an award made to an eligible employee, shall be in addition to the regular pay of the recipient; and

(3) in the case of such an award made to an employment service office, may be used by that employment service office for any purpose.

(d) ELIGIBLE EMPLOYEE DEFINED.—In this section, the term "eligible employee" means any of the following:

(1) A disabled veterans' outreach program specialist.

(2) A local veterans' employment representative.

(3) An individual providing employment, training, and placement services to veterans under the Workforce Investment Act of 1998 or through an employment service delivery system (as defined in section 4101(7) of this title).

(Added Pub. L. 107–288, Sec. 3(a), Nov. 7, 2002, 116 Stat. 2037; amended Pub. L. 109–461, title VI, Sec. 603, Dec. 22, 2006, 120 Stat. 3437.)

§ 4113. Outstationing of Transition Assistance Program personnel

(a) STATIONING OF TAP PERSONNEL AT OVERSEAS MILITARY INSTALLATIONS.—(1) The Secretary—

(A) shall station employees of the Veterans' Employment and Training Service, or contractors under subsection (c), at each veterans assistance office described in paragraph (2); and

(B) may station such employees or contractors at such other military installations outside the United States as the Secretary, after consultation with the Secretary of Defense, determines to be appropriate or desirable to carry out the purposes of this chapter.

(2) Veterans assistance offices referred to in paragraph (1)(A) are those offices that are established by the Secretary of Veterans Affairs on military installations pursuant to the second sentence of section 6304(a) of this title.

(b) FUNCTIONS.—Employees (or contractors) stationed at military installations pursuant to subsection (a) shall provide, in person, counseling, assistance in identifying employment and training opportunities, help in obtaining such employment and training, and other related information and services to members of the Armed Forces who are being separated from active duty, and the spouses of such members, under the Transition Assistance Program and Disabled Transition Assistance Program established in section 1144 of title 10.

(c) AUTHORITY TO CONTRACT WITH PRIVATE ENTITIES.—The Secretary, consistent with section 1144 of title 10, may enter into contracts with public or private entities to provide, in person, some or all of the counseling, assistance, information and services under the Transition Assistance Program required under subsection (a).

(Added Pub. L. 108–183, title III, Sec. 309(a)(1), Dec. 16, 2003, 117 Stat. 2663; amended Pub. L. 109–233, title IV, Sec. 402(e)(2), June 15, 2006, 120 Stat. 411.)

§ 4114. Credentialing and licensure of veterans: demonstration project

(a) DEMONSTRATION PROJECT AUTHORIZED.—The Assistant Secretary for Veterans' Employment and Training may carry out a demonstration project on credentialing in accordance with this section for the purpose of facilitating the seamless transition of members of the Armed Forces from service on active duty to civilian employment.

(b) IDENTIFICATION OF MILITARY OCCUPATIONAL SPECIALTIES AND ASSOCIATED CREDENTIALS AND LICENSES.—(1) The Assistant Secretary shall select not less than 10 military occupational specialties for purposes of the demonstration project. Each specialty so selected by the Assistant Secretary shall require a skill or set of skills that is required for civilian employment in an industry with high growth or high worker demand.

(2) The Assistant Secretary shall consult with appropriate Federal, State, and industry officials to identify requirements for credentials, certifications, and licenses that require a skill or set of skills required by a military occupational specialty selected under paragraph (1).

(3) The Assistant Secretary shall analyze the requirements identified under paragraph (2) to determine which requirements may be satisfied by the skills, training, or experience acquired by members of the Armed Forces with the military occupational specialties selected under paragraph (1).

(c) ELIMINATION OF BARRIERS TO CREDENTIALING AND LICENSURE.—The Assistant Secretary shall cooperate with appropriate Federal, State, and industry officials to reduce or eliminate any barriers to providing a credential, certification, or license to a veteran who acquired any skill, training, or experience while serving as a member of the Armed Forces with a military occupational specialty selected under subsection (b)(1) that satisfies the Federal and State requirements for the credential, certification, or license.

(d) TASK FORCE.—The Assistant Secretary may establish a task force of individuals with appropriate expertise to provide assistance to the Assistant Secretary in carrying out this section.

(e) CONSULTATION.—In carrying out this section, the Assistant Secretary shall consult with the Secretary of Defense, the Secretary of Veterans Affairs, appropriate Federal and State officials, private-sector employers, labor organizations, and industry trade associations.

(f) CONTRACT AUTHORITY.—For purposes of carrying out any part of the demonstration project under this section, the Assistant Secretary may enter into a contract with a public or private entity with appropriate expertise.

(g) PERIOD OF PROJECT.—The period during which the Assistant Secretary may carry out the demonstration project under this section shall be the period beginning on the date that is 60 days after the date of the enactment of the Veterans Benefits, Health Care, and Information Technology Act of 2006 and ending on September 30, 2009.

(h) FUNDING.—The Assistant Secretary may carry out the demonstration project under this section utilizing unobligated funds that are appropriated in accordance with the authorization set forth in section 4106 of this title.

(Added Pub. L. 109–461, title VI, Sec. 604(a)(1), Dec. 22, 2006, 120 Stat. 3437.)

Chapter 42 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 42—EMPLOYMENT AND TRAINING OF VETERANS

Sec.
4211. Definitions.
4212. Veterans' employment emphasis under Federal contracts.
4213. Eligibility requirements for veterans under Federal employment and training programs.
4214. Employment within the Federal Government.
4215. Priority of service for veterans in Department of Labor job training programs.

§ 4211. Definitions

As used in this chapter—

(1) The term "special disabled veteran" means—

(A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary for a disability (i) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined under section 3106 of this title to have a serious employment handicap; or

(B) a person who was discharged or released from active duty because of service-connected disability.

(2) The term "veteran of the Vietnam era" means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.

(3) The term "disabled veteran" means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary, or (B) a person who was discharged or released from active duty because of a service-connected disability.

(4) The term "eligible veteran" means a person who—

(A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;

(B) was discharged or released from active duty because of a service-connected disability;

(C) as a member of a reserve component under an order to active duty pursuant to section 12301(a), (d), or (g), 12302, or 12304 of title 10, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge; or

(D) was discharged or released from active duty by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10).

(5) The term "department or agency" means any agency of the Federal Government or the District of Columbia, including any Executive agency as defined in section 105 of title 5 and the United States Postal Service and the Postal Regulatory Commission, and the term "department, agency, or instrumentality in the executive branch" includes the United States Postal Service and the Postal Regulatory Commission.

(6) The term "recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.

(Added Pub. L. 92–540, title V, Sec. 503(a), Oct. 24, 1972, 86 Stat. 1097, Sec. 2011; amended Pub. L. 94–502, title VI, Sec. 607(1), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 96–466, title V, Sec. 508, Oct. 17, 1980, 94 Stat. 2206; Pub. L. 97–306, title III, Sec. 309, Oct. 14, 1982, 96 Stat. 1441; Pub. L. 98–223, title II, Sec. 206, Mar. 2, 1984, 98 Stat. 43; Pub. L. 101–237, title IV, Sec. 407(a)(2), Dec. 18, 1989, 103 Stat. 2082; Pub. L. 102–16, Sec. 1, Mar. 22, 1991, 105 Stat. 48; Pub. L. 102–54, Sec. 14(c)(9), June 13, 1991, 105 Stat. 285; renumbered Sec. 4211 and amended Pub. L. 102–83, Sec. 4(a)(1), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 102–127, Sec. 5, Oct. 10, 1991, 105 Stat. 622; Pub. L. 102–568, title V, Sec. 502, Oct. 29, 1992, 106 Stat. 4340; Pub. L. 104–106, div. A, title XV, Sec. 1501(e)(2)(D), Feb. 10, 1996, 110 Stat. 501; Pub. L. 106–419, title III, Sec. 322(c), Nov. 1, 2000, 114 Stat. 1855; Pub. L. 107–288, Sec. 2(b)(2)(D), Nov. 7, 2002, 116 Stat. 2036; Pub. L. 109–435, title VI, Sec. 604(f), Dec. 20, 2006, 120 Stat. 3242; Pub. L. 110–317, Sec. 6(b), Aug. 29, 2008, 122 Stat. 3528.)

§ 4212. Veterans' employment emphasis under Federal contracts

(a)(1) Any contract in the amount of $100,000 or more entered into by any department or agency of the United States for the procurement of personal property and nonpersonal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans. This section applies to any subcontract in the amount of $100,000 or more entered into by a prime contractor in carrying out any such contract.

(2) In addition to requiring affirmative action to employ such qualified covered veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the Secretary of Labor shall prescribe regulations requiring that—

(A) each such contractor for each such contract shall immediately list all of its employment openings with the appropriate employment service delivery system (as defined in section 4101(7) of this title), and may also list such openings with one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any additional or subsequent national electronic job bank established by the Department of Labor), except that the contractor may exclude openings for executive and senior management positions and positions which are to be filled from within the contractor's organization and positions lasting three days or less;

(B) each such employment service delivery system shall give such qualified covered veterans priority in referral to such employment openings; and

(C) each such employment service delivery system shall provide a list of such employment openings to States, political subdivisions of States, or any private entities or organizations under contract to carry out employment, training, and placement services under chapter 41 of this title.

(3) In this section:

(A) The term "covered veteran" means any of the following veterans:

(i) Disabled veterans.

(ii) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized.

(iii) Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order No. 12985 (61 Fed. Reg. 1209).

(iv) Recently separated veterans.

(B) The term "qualified", with respect to an employment position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

(b) If any special disabled veteran or veteran of the Vietnam era believes any contractor of the United States has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

(c) The Secretary of Labor shall include as part of the annual report required by section 4107(c) of this title the number of complaints filed pursuant to subsection (b) of this section, the actions taken thereon and the resolutions thereof. Such report shall also include the number of contractors listing employment openings, the nature, types, and number of positions listed and the number of veterans receiving priority pursuant to subsection (a)(2)(B).

(d)(1) Each contractor to whom subsection (a) applies shall, in accordance with regulations which the Secretary of Labor shall prescribe, report at least annually to the Secretary of Labor on—

(A) the number of employees in the workforce of such contractor, by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans;

(B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are qualified covered veterans; and

(C) the maximum number and the minimum number of employees of such contractor during the period covered by the report.

(2) The Secretary of Labor shall ensure that the administration of the reporting requirement under paragraph (1) is coordinated

with respect to any requirement for the contractor to make any other report to the Secretary of Labor.

(Added Pub. L. 92–540, title V, Sec. 503(a), Oct. 24, 1972, 86 Stat. 1097, Sec. 2012; amended Pub. L. 93–508, title IV, Sec. 402, Dec. 3, 1974, 88 Stat. 1593; Pub. L. 94–502, title VI, Sec. 605, 607(2), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95–520, Sec. 6(a), Oct. 26, 1978, 92 Stat. 1821; Pub. L. 96–466, title V, Sec. 509, title VIII, Sec. 801(j), Oct. 17, 1980, 94 Stat. 2206, 2217; Pub. L. 97–306, title III, Sec. 310(a), Oct. 14, 1982, 96 Stat. 1442; renumbered Sec. 4212 and amended Pub. L. 102–83, Sec. 4(b)(8), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 405, 406; Pub. L. 103–446, title VII, Sec. 702(a), Nov. 2, 1994, 108 Stat. 4674; Pub. L. 106–419, title III, Sec. 322(a), (b), Nov. 1, 2000, 114 Stat. 1855; Pub. L. 107–288, Sec. 2(b)(1), (2)(A)–(C), Nov. 7, 2002, 116 Stat. 2034, 2035.)

§ 4213. Eligibility requirements for veterans under Federal employment and training programs

(a) Amounts and periods of time specified in subsection (b) shall be disregarded in determining eligibility under any of the following:

(1) Any public service employment program.

(2) Any emergency employment program.

(3) Any job training program assisted under the Economic Opportunity Act of 1964.

(4) Any employment or training program carried out under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(5) Any other employment or training (or related) program financed in whole or in part with Federal funds.

(b) Subsection (a) applies with respect to the following amounts and periods of time:

(1) Any amount received as pay or allowances by any person while serving on active duty.

(2) Any period of time during which such person served on active duty.

(3) Any amount received under chapters 11, 13, 30, 31, 32, and 36 of this title by an eligible veteran.

(4) Any amount received by an eligible person under chapters 13 and 35 of this title.

(5) Any amount received by an eligible member under chapter 106 of title 10.

(Added Pub. L. 92–540, title V, Sec. 503(a), Oct. 24, 1972, 86 Stat. 1098, Sec. 2013; amended Pub. L. 96–466, title VIII, Sec. 801(k)(1), (2)(A), Oct. 17, 1980, 94 Stat. 2217; Pub. L. 102–54, Sec. 14(c)(10), June 13, 1991, 105 Stat. 285; renumbered Sec. 4213, Pub. L. 102–83, Sec. 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–446, title VII, Sec. 702(b), Nov. 2, 1994, 108 Stat. 4675; Pub. L. 105–277, div. A, Sec. 101(f) [title VIII, Sec. 405(d)(29)(C), (f)(21)(C)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–424, 2681–432; Pub. L. 106–419, title IV, Sec. 404(a)(9), Nov. 1, 2000, 114 Stat. 1865.)

§ 4214. Employment within the Federal Government

(a)(1) The United States has an obligation to assist veterans of the Armed Forces in readjusting to civilian life. The Federal Government is also continuously concerned with building an effective work force, and veterans constitute a uniquely qualified recruiting source. It is, therefore, the policy of the United States and the purpose of this section to promote the maximum of employment and job advancement opportunities within the Federal Government for

qualified covered veterans (as defined in paragraph (2)(B)) who are qualified for such employment and advancement.

(2) In this section:

(A) The term "agency" has the meaning given the term "department or agency" in section 4211(5) of this title.

(B) The term "qualified covered veteran" means a veteran described in section 4212(a)(3) of this title.

(b)(1) To further the policy stated in subsection (a) of this section, veterans referred to in paragraph (2) of this subsection shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe, for veterans recruitment appointments, and for subsequent career-conditional appointments, under the terms and conditions specified in Executive Order Numbered 11521 (March 26, 1970), except that—

(A) such an appointment may be made up to and including the level GS-11 or its equivalent;

(B) a veteran shall be eligible for such an appointment without regard to the number of years of education completed by such veteran;

(C) a veteran who is entitled to disability compensation under the laws administered by the Department of Veterans Affairs or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty shall be given a preference for such an appointment over other veterans;

(D) a veteran receiving such an appointment shall—

(i) in the case of a veteran with less than 15 years of education, receive training or education; and

(ii) upon successful completion of the prescribed probationary period, acquire a competitive status; and

(E) a veteran given an appointment under the authority of this subsection whose employment under the appointment is terminated within one year after the date of such appointment shall have the same right to appeal that termination to the Merit Systems Protection Board as a career or career-conditional employee has during the first year of employment.

(2) This subsection applies to qualified covered veterans.

(3) A qualified covered veteran may receive such an appointment at any time.

(c) Each agency shall include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals in such agency as required by section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)), a separate specification of plans (in accordance with regulations which the Office of Personnel Management shall prescribe in consultation with the Secretary, the Secretary of Labor, and the Secretary of Health and Human Services, consistent with the purposes, provisions, and priorities of such Act) to promote and carry out such affirmative action with respect to disabled veterans in order to achieve the purpose of this section.

(d) The Office of Personnel Management shall be responsible for the review and evaluation of the implementation of this section and the activities of each agency to carry out the purpose and provisions of this section. The Office shall periodically obtain (on at least an annual basis) information on the implementation of this

section by each agency and on the activities of each agency to carry out the purpose and provisions of this section. The information obtained shall include specification of the use and extent of appointments made by each agency under subsection (b) of this section and the results of the plans required under subsection (c) of this section.

(e)(1) The Office of Personnel Management shall submit to the Congress annually a report on activities carried out under this section. Each such report shall include the following information with respect to each agency:

(A) The number of appointments made under subsection (b) of this section since the last such report and the grade levels in which such appointments were made.

(B) The number of individuals receiving appointments under such subsection whose appointments were converted to career or career-conditional appointments, or whose employment under such an appointment has terminated, since the last such report, together with a complete listing of categories of causes of appointment terminations and the number of such individuals whose employment has terminated falling into each such category.

(C) The number of such terminations since the last such report that were initiated by the agency involved and the number of such terminations since the last such report that were initiated by the individual involved.

(D) A description of the education and training programs in which individuals appointed under such subsection are participating at the time of such report.

(2) Information shown for an agency under clauses (A) through (D) of paragraph (1) of this subsection—

(A) shall be shown for all veterans; and

(B) shall be shown separately (i) for veterans who are entitled to disability compensation under the laws administered by the Secretary or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty, and (ii) for other veterans.

(f) Notwithstanding section 4211 of this title, the terms "veteran" and "disabled veteran" as used in subsection (a) of this section shall have the meaning provided for under generally applicable civil service law and regulations.

(g) To further the policy stated in subsection (a) of this section, the Secretary may give preference to qualified covered veterans for employment in the Department as veterans' benefits counselors and veterans' claims examiners and in positions to provide the outreach services required under section 6303 of this title, to serve as veterans' representatives at certain educational institutions as provided in section 6305 of this title, or to provide readjustment counseling under section 1712A of this title.

(Added Pub. L. 93–508, title IV, Sec. 403(a), Dec. 3, 1974, 88 Stat. 1593, Sec. 2014; amended Pub. L. 95–202, title III, Sec. 308, Nov. 23, 1977, 91 Stat. 1445; Pub. L. 95–520, Sec. 6(b), Oct. 26, 1978, 92 Stat. 1821; Pub. L. 96–466, title V, Sec. 510, title VIII, Sec. 801(l), Oct. 17, 1980, 94 Stat. 2207, 2217; Pub. L. 97–72, title II, Sec. 202(a), Nov. 3, 1981, 95 Stat. 1054; Pub. L. 97–295, Sec. 4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98–543, title II, Sec. 211, Oct. 24, 1984, 98 Stat. 2743; Pub. L. 99–576, title III, Sec. 332, Oct. 28, 1986, 100 Stat. 3279; Pub. L. 101–237, title IV,

Sec. 407(a)(1), (b), Dec. 18, 1989, 103 Stat. 2082; Pub. L. 102–16, Sec. 9(a), (b), Mar. 22, 1991, 105 Stat. 54; renumbered Sec. 4214 and amended Pub. L. 102–83, Sec. 2(c)(5), 4(a)(1), (3), (4), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 402–406; Pub. L. 102–127, Sec. 4, Oct. 10, 1991, 105 Stat. 622; Pub. L. 102–568, title V, Sec. 505, Oct. 29, 1992, 106 Stat. 4340; Pub. L. 107–288, Sec. 2(c)(1)–(3), Nov. 7, 2002, 116 Stat. 2036; Pub. L. 109–233, title IV, Sec. 402(e)(3), June 15, 2006, 120 Stat. 411.)

§ 4215. Priority of service for veterans in Department of Labor job training programs

(a) DEFINITIONS.—In this section:

(1) The term "covered person" means any of the following individuals:

(A) A veteran.

(B) The spouse of any of the following individuals:

(i) Any veteran who died of a service-connected disability.

(ii) Any member of the Armed Forces serving on active duty who, at the time of application for assistance under this section, is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than 90 days: (I) missing in action, (II) captured in line of duty by a hostile force, or (III) forcibly detained or interned in line of duty by a foreign government or power.

(iii) Any veteran who has a total disability resulting from a service-connected disability.

(iv) Any veteran who died while a disability so evaluated was in existence.

(2) The term "qualified job training program" means any workforce preparation, development, or delivery program or service that is directly funded, in whole or in part, by the Department of Labor and includes the following:

(A) Any such program or service that uses technology to assist individuals to access workforce development programs (such as job and training opportunities, labor market information, career assessment tools, and related support services).

(B) Any such program or service under the public employment service system, one-stop career centers, the Workforce Investment Act of 1998, a demonstration or other temporary program, and those programs implemented by States or local service providers based on Federal block grants administered by the Department of Labor.

(C) Any such program or service that is a workforce development program targeted to specific groups.

(3) The term "priority of service" means, with respect to any qualified job training program, that a covered person shall be given priority over nonveterans for the receipt of employment, training, and placement services provided under that program, notwithstanding any other provision of law.

(b) ENTITLEMENT TO PRIORITY OF SERVICE.—(1) A covered person is entitled to priority of service under any qualified job training program if the person otherwise meets the eligibility requirements for participation in such program.

(2) The Secretary of Labor may establish priorities among covered persons for purposes of this section to take into account the needs of disabled veterans and special disabled veterans, and such other factors as the Secretary determines appropriate.

(c) ADMINISTRATION OF PROGRAMS AT STATE AND LOCAL LEVELS.—An entity of a State or a political subdivision of the State that administers or delivers services under a qualified job training program shall—

(1) provide information and priority of service to covered persons regarding benefits and services that may be obtained through other entities or service providers; and

(2) ensure that each covered person who applies to or who is assisted by such a program is informed of the employment-related rights and benefits to which the person is entitled under this section.

(d) ADDITION TO ANNUAL REPORT.—In the annual report required under section 4107(c) of this title for the program year beginning in 2003 and each subsequent program year, the Secretary of Labor shall evaluate whether covered persons are receiving priority of service and are being fully served by qualified job training programs, and whether the representation of veterans in such programs is in proportion to the incidence of representation of veterans in the labor market, including within groups that the Secretary may designate for priority under such programs, if any.

(Added Pub. L. 107–288, Sec. 2(a)(1), Nov. 7, 2002, 116 Stat. 2033.)

Chapter 43 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART III—READJUSTMENT AND RELATED BENEFITS]

CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

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SUBCHAPTER I—GENERAL

§ 4301. Purposes; sense of Congress

(a) The purposes of this chapter are—

(1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(3) to prohibit discrimination against persons because of their service in the uniformed services.

(b) It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3150; amended Pub. L. 104–275, title III, Sec. 311(1), Oct. 9, 1996, 110 Stat. 3333.)

§ 4302. Relation to other law and plans or agreements

(a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

(b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3150.)

§ 4303. Definitions

For the purposes of this chapter—

(1) The term "Attorney General" means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under this chapter.

(2) The term "benefit", "benefit of employment", or "rights and benefits" means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(3) The term "employee" means any person employed by an employer. Such term includes any person who is a citizen, national, or permanent resident alien of the United States employed in a workplace in a foreign country by an employer that is an entity incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States, within the meaning of section 4319(c) of this title.

(4)(A) Except as provided in subparagraphs (B) and (C), the term "employer" means any person, institution, organization, or other entity that pays salary or wages for work per-

formed or that has control over employment opportunities, including—

(i) a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

(ii) the Federal Government;

(iii) a State;

(iv) any successor in interest to a person, institution, organization, or other entity referred to in this subparagraph; and

(v) a person, institution, organization, or other entity that has denied initial employment in violation of section 4311.

(B) In the case of a National Guard technician employed under section 709 of title 32, the term "employer" means the adjutant general of the State in which the technician is employed.

(C) Except as an actual employer of employees, an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) shall be deemed to be an employer only with respect to the obligation to provide benefits described in section 4318.

(5) The term "Federal executive agency" includes the United States Postal Service, the Postal Regulatory Commission, any nonappropriated fund instrumentality of the United States, any Executive agency (as that term is defined in section 105 of title 5) other than an agency referred to in section 2302(a)(2)(C)(ii) of title 5, and any military department (as that term is defined in section 102 of title 5) with respect to the civilian employees of that department.

(6) The term "Federal Government" includes any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States.

(7) The term "health plan" means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(8) The term "notice" means (with respect to subchapter II) any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

(9) The term "qualified", with respect to an employment position, means having the ability to perform the essential tasks of the position.

(10) The term "reasonable efforts", in the case of actions required of an employer under this chapter, means actions, including training provided by an employer, that do not place an undue hardship on the employer.

(11) Notwithstanding section 101, the term "Secretary" means the Secretary of Labor or any person designated by such Secretary to carry out an activity under this chapter.

(12) The term "seniority" means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

(13) The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(14) The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof).

(15) The term "undue hardship", in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of—

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(16) The term "uniformed services" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3150; amended Pub. L. 104–275, title III, Sec. 311(2), Oct. 9, 1996, 110 Stat. 3334; Pub. L. 105–368, title II, Sec. 212(a), Nov. 11, 1998, 112 Stat. 3331; Pub. L. 106–419, title III, Sec. 323(a), Nov. 1, 2000, 114 Stat. 1855; Pub. L. 107–14, Sec. 8(a)(11), (b)(2), June 5, 2001, 115 Stat. 35, 36; Pub. L. 109–435, title VI, Sec. 604(f), Dec. 20, 2006, 120 Stat. 3242.)

§ 4304. Character of service

A person's entitlement to the benefits of this chapter by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.

(2) A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned.

(3) A dismissal of such person permitted under section 1161(a) of title 10.

(4) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3152.)

SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

§ 4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

(a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

(c) An employer shall be considered to have engaged in actions prohibited—

(1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(2) under subsection (b), if the person's (A) action to enforce a protection afforded any person under this chapter, (B) testimony or making of a statement in or in connection with any proceeding under this chapter, (C) assistance or other participation in an investigation under this chapter, or (D) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the employer can prove

that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right.

(d) The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C) of this title.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3153; amended Pub. L. 104–275, title III, Sec. 311(3), Oct. 9, 1996, 110 Stat. 3334.)

§ 4312. Reemployment rights of persons who serve in the uniformed services

(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if—

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service—

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is—

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services; or

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10.

(d)(1) An employer is not required to reemploy a person under this chapter if—

(A) the employer's circumstances have so changed as to make such reemployment impossible or unreasonable;

(B) in the case of a person entitled to reemployment under subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313, such employment would impose an undue hardship on the employer; or

(C) the employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

(2) In any proceeding involving an issue of whether—

(A) any reemployment referred to in paragraph (1) is impossible or unreasonable because of a change in an employer's circumstances,

(B) any accommodation, training, or effort referred to in subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 would impose an undue hardship on the employer, or

(C) the employment referred to in paragraph (1)(C) is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period,

the employer shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.

(e)(1) Subject to paragraph (2), a person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the employer referred to in such subsection of the person's intent to return to a position of employment with such employer as follows:

(A) In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the employer—

(i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the

expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or

(ii) as soon as possible after the expiration of the eight-hour period referred to in clause (i), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.

(B) In the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (A).

(C) In the case of a person whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes possible.

(D) In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 90 days after the completion of the period of service.

(2)(A) A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's employer (in the case of a person described in subparagraph (A) or (B) of paragraph (1)) or submit an application for reemployment with such employer (in the case of a person described in subparagraph (C) or (D) of such paragraph). Except as provided in subparagraph (B), such period of recovery may not exceed two years.

(B) Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (A) impossible or unreasonable.

(3) A person who fails to report or apply for employment or reemployment within the appropriate period specified in this subsection shall not automatically forfeit such person's entitlement to the rights and benefits referred to in subsection (a) but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

(f)(1) A person who submits an application for reemployment in accordance with subparagraph (C) or (D) of subsection (e)(1) or subsection (e)(2) shall provide to the person's employer (upon the request of such employer) documentation to establish that—

(A) the person's application is timely;

(B) the person has not exceeded the service limitations set forth in subsection (a)(2) (except as permitted under subsection (c)); and

(C) the person's entitlement to the benefits under this chapter has not been terminated pursuant to section 4304.

(2) Documentation of any matter referred to in paragraph (1) that satisfies regulations prescribed by the Secretary shall satisfy the documentation requirements in such paragraph.

(3)(A) Except as provided in subparagraph (B), the failure of a person to provide documentation that satisfies regulations prescribed pursuant to paragraph (2) shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements referred to in subparagraphs (A), (B), and (C) of paragraph (1), the employer of such person may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

(B) An employer who reemploys a person absent from a position of employment for more than 90 days may require that the person provide the employer with the documentation referred to in subparagraph (A) before beginning to treat the person as not having incurred a break in service for pension purposes under section 4318(a)(2)(A).

(4) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

(g) The right of a person to reemployment under this section shall not entitle such person to retention, preference, or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

(h) In any determination of a person's entitlement to protection under this chapter, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, shall not be a basis for denying protection of this chapter if the service does not exceed the limitations set forth in subsection (c) and the notice requirements established in subsection (a)(1) and the notification requirements established in subsection (e) are met.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3153; amended Pub. L. 104–275, title III, Sec. 311(4), Oct. 9, 1996, 110 Stat. 3334.)

§ 4313. Reemployment positions

(a) Subject to subsection (b) (in the case of any employee) and sections 4314 and 4315 (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312, upon completion of a period of service in the uniformed services, shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(1) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for less than 91 days—

(A) in the position of employment in which the person would have been employed if the continuous employment

of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, only if the person is not qualified to perform the duties of the position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

(2) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for more than 90 days—

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

(3) In the case of a person who has a disability incurred in, or aggravated during, such service, and who (after reasonable efforts by the employer to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service—

(A) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or

(B) if not employed under subparagraph (A), in a position which is the nearest approximation to a position referred to in subparagraph (A) in terms of seniority, status, and pay consistent with circumstances of such person's case.

(4) In the case of a person who (A) is not qualified to be employed in (i) the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or (ii) in the position of employment in which such person was employed on the date of the commencement of the service in the uniformed services for any reason (other than disability incurred in, or aggravated during, service in the uniformed services), and (B) cannot become qualified with reasonable efforts by the employer, in any other position which is the nearest approximation to a position referred to first in

clause (A)(i) and then in clause (A)(ii) which such person is qualified to perform, with full seniority.

(b)(1) If two or more persons are entitled to reemployment under section 4312 in the same position of employment and more than one of them has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position.

(2) Any person entitled to reemployment under section 4312 who is not reemployed in a position of employment by reason of paragraph (1) shall be entitled to be reemployed as follows:

(A) Except as provided in subparagraph (B), in any other position of employment referred to in subsection (a)(1) or (a)(2), as the case may be (in the order of priority set out in the applicable subsection), that provides a similar status and pay to a position of employment referred to in paragraph (1) of this subsection, consistent with the circumstances of such person's case, with full seniority.

(B) In the case of a person who has a disability incurred in, or aggravated during, a period of service in the uniformed services that requires reasonable efforts by the employer for the person to be able to perform the duties of the position of employment, in any other position referred to in subsection (a)(3) (in the order of priority set out in that subsection) that provides a similar status and pay to a position referred to in paragraph (1) of this subsection, consistent with circumstances of such person's case, with full seniority.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3157; amended Pub. L. 104–275, title III, Sec. 311(5), Oct. 9, 1996, 110 Stat. 3335.)

§ 4314. Reemployment by the Federal Government

(a) Except as provided in subsections (b), (c), and (d), if a person is entitled to reemployment by the Federal Government under section 4312, such person shall be reemployed in a position of employment as described in section 4313.

(b)(1) If the Director of the Office of Personnel Management makes a determination described in paragraph (2) with respect to a person who was employed by a Federal executive agency at the time the person entered the service from which the person seeks reemployment under this section, the Director shall—

(A) identify a position of like seniority, status, and pay at another Federal executive agency that satisfies the requirements of section 4313 and for which the person is qualified; and

(B) ensure that the person is offered such position.

(2) The Director shall carry out the duties referred to in subparagraphs (A) and (B) of paragraph (1) if the Director determines that—

(A) the Federal executive agency that employed the person referred to in such paragraph no longer exists and the functions of such agency have not been transferred to another Federal executive agency; or

(B) it is impossible or unreasonable for the agency to reemploy the person.

(c) If the employer of a person described in subsection (a) was, at the time such person entered the service from which such person seeks reemployment under this section, a part of the judicial branch or the legislative branch of the Federal Government, and such employer determines that it is impossible or unreasonable for such employer to reemploy such person, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

(d) If the adjutant general of a State determines that it is impossible or unreasonable to reemploy a person who was a National Guard technician employed under section 709 of title 32, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3158.)

§ 4315. Reemployment by certain Federal agencies

(a) The head of each agency referred to in section 2302(a)(2)(C)(ii) of title 5 shall prescribe procedures for ensuring that the rights under this chapter apply to the employees of such agency.

(b) In prescribing procedures under subsection (a), the head of an agency referred to in that subsection shall ensure, to the maximum extent practicable, that the procedures of the agency for reemploying persons who serve in the uniformed services provide for the reemployment of such persons in the agency in a manner similar to the manner of reemployment described in section 4313.

(c)(1) The procedures prescribed under subsection (a) shall designate an official at the agency who shall determine whether or not the reemployment of a person referred to in subsection (b) by the agency is impossible or unreasonable.

(2) Upon making a determination that the reemployment by the agency of a person referred to in subsection (b) is impossible or unreasonable, the official referred to in paragraph (1) shall notify the person and the Director of the Office of Personnel Management of such determination.

(3) A determination pursuant to this subsection shall not be subject to judicial review.

(4) The head of each agency referred to in subsection (a) shall submit to the Select Committee on Intelligence and the Committee on Veterans' Affairs of the Senate and the Permanent Select Committee on Intelligence and the Committee on Veterans' Affairs of the House of Representatives on an annual basis a report on the number of persons whose reemployment with the agency was determined under this subsection to be impossible or unreasonable during the year preceding the report, including the reason for each such determination.

(d)(1) Except as provided in this section, nothing in this section, section 4313, or section 4325 shall be construed to exempt any agency referred to in subsection (a) from compliance with any other substantive provision of this chapter.

(2) This section may not be construed—

(A) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter, alternative employment in the Federal Government under this chapter, or information relating to the rights and obligations of employee and Federal agencies under this chapter; or

(B) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

(e) The Director of the Office of Personnel Management shall ensure the offer of employment to a person in a position in a Federal executive agency on the basis described in subsection (b) if—

(1) the person was an employee of an agency referred to in section 2302(a)(2)(C)(ii) of title 5 at the time the person entered the service from which the person seeks reemployment under this section;

(2) the appropriate officer of the agency determines under subsection (c) that reemployment of the person by the agency is impossible or unreasonable; and

(3) the person submits an application to the Director for an offer of employment under this subsection.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3159.)

§ 4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service

(a) A person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

(b)(1) Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be—

(A) deemed to be on furlough or leave of absence while performing such service; and

(B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

(2)(A) Subject to subparagraph (B), a person who—

(i) is absent from a position of employment by reason of service in the uniformed services, and

(ii) knowingly provides written notice of intent not to return to a position of employment after service in the uniformed service,

is not entitled to rights and benefits under paragraph (1)(B).

(B) For the purposes of subparagraph (A), the employer shall have the burden of proving that a person knowingly provided clear written notice of intent not to return to a position of employment after service in the uniformed service and, in doing so, was aware of the specific rights and benefits to be lost under subparagraph (A).

(3) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

(4) Such person may be required to pay the employee cost, if any, of any funded benefit continued pursuant to paragraph (1) to the extent other employees on furlough or leave of absence are so required.

(5) The entitlement of a person to coverage under a health plan is provided for under section 4317.

(6) The entitlement of a person to a right or benefit under an employee pension benefit plan is provided for under section 4318.

(c) A person who is reemployed by an employer under this chapter shall not be discharged from such employment, except for cause—

(1) within one year after the date of such reemployment, if the person's period of service before the reemployment was more than 180 days; or

(2) within 180 days after the date of such reemployment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.

(d) Any person whose employment with an employer is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service any vacation, annual, or similar leave with pay accrued by the person before the commencement of such service. No employer may require any such person to use vacation, annual, or similar leave during such period of service.

(e)(1) An employer shall grant an employee who is a member of a reserve component an authorized leave of absence from a position of employment to allow that employee to perform funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(2) For purposes of section 4312(e)(1) of this title, an employee who takes an authorized leave of absence under paragraph (1) is deemed to have notified the employer of the employee's intent to return to such position of employment.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3160; amended Pub. L. 104–275, title III, Sec. 311(6), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 106–419, title III, Sec. 323(b), Nov. 1, 2000, 114 Stat. 1855.)

§ 4317. Health plans

(a)(1) In any case in which a person (or the person's dependents) has coverage under a health plan in connection with the person's position of employment, including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), and such person is absent from such position of em-

ployment by reason of service in the uniformed services, or such person becomes eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, the plan shall provide that the person may elect to continue such coverage as provided in this subsection. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of—

(A) the 24-month period beginning on the date on which the person's absence begins; or

(B) the day after the date on which the person fails to apply for or return to a position of employment, as determined under section 4312(e).

(2) A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium under the plan (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986) associated with such coverage for the employer's other employees, except that in the case of a person who performs service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage.

(3) In the case of a health plan that is a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability under the plan for employer contributions and benefits arising under this paragraph shall be allocated—

(A) by the plan in such manner as the plan sponsor shall provide; or

(B) if the sponsor does not provide—

(i) to the last employer employing the person before the period served by the person in the uniformed services, or

(ii) if such last employer is no longer functional, to the plan.

(b)(1) Except as provided in paragraph (2), in the case of a person whose coverage under a health plan was terminated by reason of service in the uniformed services, or by reason of the person's having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment under this chapter if an exclusion or waiting period would not have been imposed under a health plan had coverage of such person by such plan not been terminated as a result of such service or eligibility. This paragraph applies to the person who is reemployed and to any individual who is covered by such plan by reason of the reinstatement of the coverage of such person.

(2) Paragraph (1) shall not apply to the coverage of any illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

(3) In the case of a person whose coverage under a health plan is terminated by reason of the person having become eligible for medical and dental care under chapter 55 of title 10 by reason of

subsection (d) of section 1074 of that title but who subsequently does not commence a period of active duty under the order to active duty that established such eligibility because the order is canceled before such active duty commences, the provisions of paragraph (1) relating to any exclusion or waiting period in connection with the reinstatement of coverage under a health plan shall apply to such person's continued employment, upon the termination of such eligibility for medical and dental care under chapter 55 of title 10 that is incident to the cancellation of such order, in the same manner as if the person had become reemployed upon such termination of eligibility.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3161; amended Pub. L. 104–275, title III, Sec. 311(7), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 108–454, title II, Sec. 201(a), Dec. 10, 2004, 118 Stat. 3605; Pub. L. 109–233, title III, Sec. 303, June 15, 2006, 120 Stat. 406.)

§ 4318. Employee pension benefit plans

(a)(1)(A) Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan (including those described in sections 3(2) and 3(33) of the Employee Retirement Income Security Act of 1974) or a right provided under any Federal or State law governing pension benefits for governmental employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

(B) In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of title 5. The first sentence of this subparagraph shall not be construed to affect any other right or benefit under this chapter.

(2)(A) A person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.

(B) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the employer or employers maintaining the plan for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

(b)(1) An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a)(2)(B), be liable to an employee pension benefit plan for funding any obligation of the plan to provide the benefits described in subsection (a)(2) and shall allocate the amount of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be serv-

ice with the employer shall be deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability of the plan described in this paragraph shall be allocated—

(A) by the plan in such manner as the sponsor maintaining the plan shall provide; or

(B) if the sponsor does not provide—

(i) to the last employer employing the person before the period served by the person in the uniformed services, or

(ii) if such last employer is no longer functional, to the plan.

(2) A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the uniformed services, such payment period not to exceed five years.

(3) For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the employee's compensation during the period of service described in subsection (a)(2)(B) shall be computed—

(A) at the rate the employee would have received but for the period of service described in subsection (a)(2)(B), or

(B) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

(c) Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the administrator of such plan.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3162; amended Pub. L. 104–275, title III, Sec. 311(8), Oct. 9, 1996, 110 Stat. 3335.)

§ 4319. Employment and reemployment rights in foreign countries

(a) LIABILITY OF CONTROLLING UNITED STATES EMPLOYER OF FOREIGN ENTITY.—If an employer controls an entity that is incor-

porated or otherwise organized in a foreign country, any denial of employment, reemployment, or benefit by such entity shall be presumed to be by such employer.

(b) INAPPLICABILITY TO FOREIGN EMPLOYER.—This subchapter does not apply to foreign operations of an employer that is a foreign person not controlled by an United States employer.

(c) DETERMINATION OF CONTROLLING EMPLOYER.—For the purpose of this section, the determination of whether an employer controls an entity shall be based upon the interrelations of operations, common management, centralized control of labor relations, and common ownership or financial control of the employer and the entity.

(d) EXEMPTION.—Notwithstanding any other provision of this subchapter, an employer, or an entity controlled by an employer, shall be exempt from compliance with any of sections 4311 through 4318 of this title with respect to an employee in a workplace in a foreign country, if compliance with that section would cause such employer, or such entity controlled by an employer, to violate the law of the foreign country in which the workplace is located.

(Added Pub. L. 105–368, title II, Sec. 212(b)(1), Nov. 11, 1998, 112 Stat. 3331.)

SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION

§ 4321. Assistance in obtaining reemployment or other employment rights or benefits

The Secretary (through the Veterans' Employment and Training Service) shall provide assistance to any person with respect to the employment and reemployment rights and benefits to which such person is entitled under this chapter. In providing such assistance, the Secretary may request the assistance of existing Federal and State agencies engaged in similar or related activities and utilize the assistance of volunteers.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3164.)

§ 4322. Enforcement of employment or reemployment rights

(a) A person who claims that—

(1) such person is entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer; and

(2)(A) such employer has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter; or

(B) in the case that the employer is a Federal executive agency, such employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter,

may file a complaint with the Secretary in accordance with subsection (b), and the Secretary shall investigate such complaint.

(b) Such complaint shall be in writing, be in such form as the Secretary may prescribe, include the name and address of the employer against whom the complaint is filed, and contain a summary of the allegations that form the basis for the complaint.

(c)(1) Not later than five days after the Secretary receives a complaint submitted by a person under subsection (a), the Sec-

retary shall notify such person in writing of his or her rights with respect to such complaint under this section and section 4323 or 4324, as the case may be.

(2) The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and when appropriate, to such claimant's employer.

(d) The Secretary shall investigate each complaint submitted pursuant to subsection (a). If the Secretary determines as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.

(e) If the efforts of the Secretary with respect to any complaint filed under subsection (a) do not resolve the complaint, the Secretary shall notify the person who submitted the complaint in writing of—

(1) the results of the Secretary's investigation; and

(2) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4323 (in the case of a person submitting a complaint against a State or private employer) or section 4324 (in the case of a person submitting a complaint against a Federal executive agency or the Office of Personnel Management).

(f) Any action required by subsections (d) and (e) with respect to a complaint submitted by a person to the Secretary under subsection (a) shall be completed by the Secretary not later than 90 days after receipt of such complaint.

(g) This subchapter does not apply to any action relating to benefits to be provided under the Thrift Savings Plan under title 5.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3164; amended Pub. L. 104–275, title III, Sec. 311(9), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 110–389, title III, Sec. 311(a)–(c), Oct. 10, 2008, 122 Stat. 4162.)

§ 4323. Enforcement of rights with respect to a State or private employer

(a) ACTION FOR RELIEF.—(1) A person who receives from the Secretary a notification pursuant to section 4322(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. Not later than 60 days after the Secretary receives such a request with respect to a complaint, the Secretary shall refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for relief under this chapter for such person. In the case of such an action against a State (as an employer), the action shall be brought in the name of the United States as the plaintiff in the action.

(2) Not later than 60 days after the date the Attorney General receives a referral under paragraph (1), the Attorney General shall—

(A) make a decision whether to appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted; and

(B) notify such person in writing of such decision.

(3) A person may commence an action for relief with respect to a complaint against a State (as an employer) or a private employer if the person—

(A) has chosen not to apply to the Secretary for assistance under section 4322(a) of this title;

(B) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or

(C) has been refused representation by the Attorney General with respect to the complaint under such paragraph.

(b) JURISDICTION.—(1) In the case of an action against a State (as an employer) or a private employer commenced by the United States, the district courts of the United States shall have jurisdiction over the action.

(2) In the case of an action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction in accordance with the laws of the State.

(3) In the case of an action against a private employer by a person, the district courts of the United States shall have jurisdiction of the action.

(c) VENUE.—(1) In the case of an action by the United States against a State (as an employer), the action may proceed in the United States district court for any district in which the State exercises any authority or carries out any function.

(2) In the case of an action against a private employer, the action may proceed in the United States district court for any district in which the private employer of the person maintains a place of business.

(d) REMEDIES.—(1) In any action under this section, the court may award relief as follows:

(A) The court may require the employer to comply with the provisions of this chapter.

(B) The court may require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter.

(C) The court may require the employer to pay the person an amount equal to the amount referred to in subparagraph (B) as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.

(2)(A) Any compensation awarded under subparagraph (B) or (C) of paragraph (1) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for under this chapter.

(B) In the case of an action commenced in the name of the United States for which the relief includes compensation awarded under subparagraph (B) or (C) of paragraph (1), such compensation

shall be held in a special deposit account and shall be paid, on order of the Attorney General, directly to the person. If the compensation is not paid to the person because of inability to do so within a period of 3 years, the compensation shall be covered into the Treasury of the United States as miscellaneous receipts.

(3) A State shall be subject to the same remedies, including prejudgment interest, as may be imposed upon any private employer under this section.

(e) EQUITY POWERS.—The court shall use, in any case in which the court determines it is appropriate, its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter.

(f) STANDING.—An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter under subsection (a) or by the United States under subsection (a)(1).

(g) RESPONDENT.—In any action under this chapter, only an employer or a potential employer, as the case may be, shall be a necessary party respondent.

(h) FEES, COURT COSTS.—(1) No fees or court costs may be charged or taxed against any person claiming rights under this chapter.

(2) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

(i) DEFINITION.—In this section, the term "private employer" includes a political subdivision of a State.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3165; amended Pub. L. 104–275, title III, Sec. 311(10), Oct. 9, 1996, 110 Stat. 3335; Pub. L. 105–368, title II, Sec. 211(a), Nov. 11, 1998, 112 Stat. 3329; Pub. L. 110–389, title III, Secs. 311(d)(1), (e)(1), (f)(3), 315, Oct. 10, 2008, 122 Stat. 4162–4164, 4167.)

§ 4324. Enforcement of rights with respect to Federal executive agencies

(a)(1) A person who receives from the Secretary a notification pursuant to section 4322(e) may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. Not later than 60 days after the date the Secretary receives such a request, the Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.

(2)(A) If the Special Counsel is reasonably satisfied that the person on whose behalf a complaint is referred under paragraph (1) is entitled to the rights or benefits sought, the Special Counsel (upon the request of the person submitting the complaint) may appear on behalf of, and act as attorney for, the person and initiate an action regarding such complaint before the Merit Systems Protection Board.

(B) Not later than 60 days after the date the Special Counsel receives a referral under paragraph (1), the Special Counsel shall—

(i) make a decision whether to represent a person before the Merit Systems Protection Board under subparagraph (A); and

(ii) notify such person in writing of such decision.

(b) A person may submit a complaint against a Federal executive agency or the Office of Personnel Management under this subchapter directly to the Merit Systems Protection Board if that person—

(1) has chosen not to apply to the Secretary for assistance under section 4322(a);

(2) has received a notification from the Secretary under section 4322(e);

(3) has chosen not to be represented before the Board by the Special Counsel pursuant to subsection (a)(2)(A); or

(4) has received a notification of a decision from the Special Counsel under subsection (a)(2)(B).

(c)(1) The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b), without regard as to whether the complaint accrued before, on, or after October 13, 1994. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

(2) If the Board determines that a Federal executive agency or the Office of Personnel Management has not complied with the provisions of this chapter relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or Office to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.

(3) Any compensation received by a person pursuant to an order under paragraph (2) shall be in addition to any other right or benefit provided for by this chapter and shall not diminish any such right or benefit.

(4) If the Board determines as a result of a hearing or adjudication conducted pursuant to a complaint submitted by a person directly to the Board pursuant to subsection (b) that such person is entitled to an order referred to in paragraph (2), the Board may, in its discretion, award such person reasonable attorney fees, expert witness fees, and other litigation expenses.

(d)(1) A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.

(2) Such person may be represented in the Federal Circuit proceeding by the Special Counsel unless the person was not represented by the Special Counsel before the Merit Systems Protection Board regarding such order or decision.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3166; amended Pub. L. 104–275, title III, Sec. 311(11), Oct. 9, 1996, 110 Stat. 3336; Pub. L. 105–368, title II, Sec. 213(a), Nov. 11, 1998, 112 Stat. 3331; Pub. L. 110–389, title III, Sec. 311(d)(2), (e)(2), Oct. 10, 2008, 122 Stat. 4163.)

§ 4325. Enforcement of rights with respect to certain Federal agencies

(a) This section applies to any person who alleges that—

(1) the reemployment of such person by an agency referred to in subsection (a) of section 4315 was not in accordance with procedures for the reemployment of such person under subsection (b) of such section; or

(2) the failure of such agency to reemploy the person under such section was otherwise wrongful.

(b) Any person referred to in subsection (a) may submit a claim relating to an allegation referred to in that subsection to the inspector general of the agency which is the subject of the allegation. The inspector general shall investigate and resolve the allegation pursuant to procedures prescribed by the head of the agency.

(c) In prescribing procedures for the investigation and resolution of allegations under subsection (b), the head of an agency shall ensure, to the maximum extent practicable, that the procedures are similar to the procedures for investigating and resolving complaints utilized by the Secretary under section 4322(d).

(d) This section may not be construed—

(1) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter or information relating to the rights and obligations of employees and Federal agencies under this chapter; or

(2) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3167; amended Pub. L. 104–275, title III, Sec. 311(12), Oct. 9, 1996, 110 Stat. 3336.)

§ 4326. Conduct of investigation; subpoenas

(a) In carrying out any investigation under this chapter, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to and the right to interview persons with information relevant to the investigation and shall have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or employer that the Secretary considers relevant to the investigation.

(b) In carrying out any investigation under this chapter, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(c) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or employer to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful in-

vestigation under this chapter and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

(d) Subsections (b) and (c) shall not apply to the legislative branch or the judicial branch of the United States.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3167; amended Pub. L. 104–275, title III, Sec. 311(13), Oct. 9, 1996, 110 Stat. 3336.)

§ 4327. Noncompliance of Federal officials with deadlines; inapplicability of statutes of limitations

(a) EFFECT OF NONCOMPLIANCE OF FEDERAL OFFICIALS WITH DEADLINES.—(1) The inability of the Secretary, the Attorney General, or the Special Counsel to comply with a deadline applicable to such official under section 4322, 4323, or 4324 of this title—

(A) shall not affect the authority of the Attorney General or the Special Counsel to represent and file an action or submit a complaint on behalf of a person under section 4323 or 4324 of this title;

(B) shall not affect the right of a person—

(i) to commence an action under section 4323 of this title;

(ii) to submit a complaint under section 4324 of this title; or

(iii) to obtain any type of assistance or relief authorized by this chapter;

(C) shall not deprive a Federal court, the Merit Systems Protection Board, or a State court of jurisdiction over an action or complaint filed by the Attorney General, the Special Counsel, or a person under section 4323 or 4324 of this title; and

(D) shall not constitute a defense, including a statute of limitations period, that any employer (including a State, a private employer, or a Federal executive agency) or the Office of Personnel Management may raise in an action filed by the Attorney General, the Special Counsel, or a person under section 4323 or 4324 of this title.

(2) If the Secretary, the Attorney General, or the Special Counsel is unable to meet a deadline applicable to such official in section 4322(f), 4323(a)(1), 4323(a)(2), 4324(a)(1), or 4324(a)(2)(B) of this title, and the person agrees to an extension of time, the Secretary, the Attorney General, or the Special Counsel, as the case may be, shall complete the required action within the additional period of time agreed to by the person.

(b) INAPPLICABILITY OF STATUTES OF LIMITATIONS.—If any person seeks to file a complaint or claim with the Secretary, the Merit Systems Protection Board, or a Federal or State court under this chapter alleging a violation of this chapter, there shall be no limit on the period for filing the complaint or claim.

(Added Pub. L. 110–389, title III, Sec. 311(f)(1), Oct. 10, 2008, 122 Stat. 4163.)

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 4331. Regulations

(a) The Secretary (in consultation with the Secretary of Defense) may prescribe regulations implementing the provisions of

this chapter with regard to the application of this chapter to States, local governments, and private employers.

(b)(1) The Director of the Office of Personnel Management (in consultation with the Secretary and the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with regard to the application of this chapter to Federal executive agencies (other than the agencies referred to in paragraph (2)) as employers. Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers, except that employees of the Federal Government may be given greater or additional rights.

(2) The following entities may prescribe regulations to carry out the activities of such entities under this chapter:

(A) The Merit Systems Protection Board.

(B) The Office of Special Counsel.

(C) The agencies referred to in section 2302(a)(2)(C)(ii) of title 5.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3168; amended Pub. L. 109–233, title V, Sec. 503(14), June 15, 2006, 120 Stat. 417.)

§ 4332. Reports

(a) ANNUAL REPORT BY SECRETARY.—The Secretary shall, after consultation with the Attorney General and the Special Counsel referred to in section 4324(a)(1), transmit to Congress not later than July 1 each year a report on matters for the fiscal year ending in the year before the year in which such report is transmitted as follows:

(1) The number of cases reviewed by the Department of Labor under this chapter during the fiscal year for which the report is made.

(2) The number of cases reviewed by the Secretary of Defense under the National Committee for Employer Support of the Guard and Reserve of the Department of Defense during the fiscal year for which the report is made.

(3) The number of cases referred to the Attorney General or the Special Counsel pursuant to section 4323 or 4324, respectively, during such fiscal year and the number of actions initiated by the Office of Special Counsel before the Merit Systems Protection Board pursuant to section 4324 during such fiscal year.

(4) The number of complaints filed by the Attorney General pursuant to section 4323 during such fiscal year.

(5) The number of cases reviewed by the Secretary and the Secretary of Defense through the National Committee for Employer Support of the Guard and Reserve of the Department of Defense that involve the same person.

(6) With respect to the cases reported on pursuant to paragraphs (1), (2), (3), (4), and (5)—

(A) the number of such cases that involve a disability-related issue; and

(B) the number of such cases that involve a person who has a service-connected disability.

(7) The nature and status of each case reported on pursuant to paragraph (1), (2), (3), (4), or (5).

(8) With respect to the cases reported on pursuant to paragraphs (1), (2), (3), (4), and (5) the number of such cases that involve persons with different occupations or persons seeking different occupations, as designated by the Standard Occupational Classification System.

(9) An indication of whether there are any apparent patterns of violation of the provisions of this chapter, together with an explanation thereof.

(10) Recommendations for administrative or legislative action that the Secretary, the Attorney General, or the Special Counsel considers necessary for the effective implementation of this chapter, including any action that could be taken to encourage mediation, before claims are filed under this chapter, between employers and persons seeking employment or reemployment.

(b) QUARTERLY REPORTS.—

(1) QUARTERLY REPORT BY SECRETARY.—Not later than 30 days after the end of each fiscal quarter, the Secretary shall submit to Congress, the Secretary of Defense, the Attorney General, and the Special Counsel a report setting forth, for the previous full quarter, the following:

(A) The number of cases for which the Secretary did not meet the requirements of section 4322(f) of this title.

(B) The number of cases for which the Secretary received a request for a referral under paragraph (1) of section 4323(a) of this title but did not make such referral within the time period required by such paragraph.

(2) QUARTERLY REPORT BY ATTORNEY GENERAL.—Not later than 30 days after the end of each fiscal quarter, the Attorney General shall submit to Congress, the Secretary, the Secretary of Defense, and the Special Counsel a report setting forth, for the previous full quarter, the number of cases for which the Attorney General received a referral under paragraph (1) of section 4323(a) of this title but did not meet the requirements of paragraph (2) of section 4323(a) of this title for such referral.

(3) QUARTERLY REPORT BY SPECIAL COUNSEL.—Not later than 30 days after the end of each fiscal quarter, the Special Counsel shall submit to Congress, the Secretary, the Secretary of Defense, and the Attorney General a report setting forth, for the previous full quarter, the number of cases for which the Special Counsel received a referral under paragraph (1) of section 4324(a) of this title but did not meet the requirements of paragraph (2)(B) of section 4324(a) of this title for such referral.

(c) UNIFORM CATEGORIZATION OF DATA.—The Secretary shall coordinate with the Secretary of Defense, the Attorney General, and the Special Counsel to ensure that—

(1) the information in the reports required by this section is categorized in a uniform way; and

(2) the Secretary, the Secretary of Defense, the Attorney General, and the Special Counsel each have electronic access to the case files reviewed under this chapter by the Secretary, the Secretary of Defense, the Attorney General, and the Spe-

cial Counsel with due regard for the provisions of section 552a of title 5.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3168; amended Pub. L. 108–454, title II, Sec. 202, Dec. 10, 2004, 118 Stat. 3606; Pub. L. 110–181, div. A, title V, Sec. 595, Jan. 28, 2008, 122 Stat. 139; Pub. L. 110–389, title III, Sec. 312(a)–(d), Oct. 10, 2008, 122 Stat. 4164, 4165.)

§ 4333. Outreach

The Secretary, the Secretary of Defense, and the Secretary of Veterans Affairs shall take such actions as such Secretaries determine are appropriate to inform persons entitled to rights and benefits under this chapter and employers of the rights, benefits, and obligations of such persons and such employers under this chapter.

(Added Pub. L. 103–353, Sec. 2(a), Oct. 13, 1994, 108 Stat. 3169.)

§ 4334. Notice of rights and duties

(a) REQUIREMENT TO PROVIDE NOTICE.—Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees.

(b) CONTENT OF NOTICE.—The Secretary shall provide to employers the text of the notice to be provided under this section.

(Added Pub. L. 108–454, title II, Sec. 203(a), Dec. 10, 2004, 118 Stat. 3606.)

§ 4335. Training for Federal executive agency human resources personnel on employment and reemployment rights and limitations

(a) TRAINING REQUIRED.—The head of each Federal executive agency shall provide training for the human resources personnel of such agency on the following:

(1) The rights, benefits, and obligations of members of the uniformed services under this chapter.

(2) The application and administration of the requirements of this chapter by such agency with respect to such members.

(b) CONSULTATION.—The training provided under subsection (a) shall be developed and provided in consultation with the Director of the Office of Personnel Management.

(c) FREQUENCY.—The training under subsection (a) shall be provided with such frequency as the Director of the Office of Personnel Management shall specify in order to ensure that the human resources personnel of Federal executive agencies are kept fully and currently informed of the matters covered by the training.

(d) HUMAN RESOURCES PERSONNEL DEFINED.—In this section, the term "human resources personnel", in the case of a Federal executive agency, means any personnel of the agency who are authorized to recommend, take, or approve any personnel action that is subject to the requirements of this chapter with respect to employees of the agency.

(Added Pub. L. 110–389, title III, Sec. 313(a), Oct. 10, 2008, 122 Stat. 4166.)

Chapter 51 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

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CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

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SUBCHAPTER I—CLAIMS

§ 5100. Definition of "claimant"

For purposes of this chapter, the term "claimant" means any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary.

(Added Pub. L. 106–475, Sec. 2, Nov. 9, 2000, 114 Stat. 2096.)

§ 5101. Claims and forms

(a) A specific claim in the form prescribed by the Secretary (or jointly with the Commissioner of Social Security, as prescribed by section 5105 of this title) must be filed in order for benefits to be paid or furnished to any individual under the laws administered by the Secretary.

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation shall also be considered to be a claim for death pension and accrued benefits, and a

claim by a surviving spouse or child for death pension shall be considered to be a claim for death compensation (or dependency and indemnity compensation) and accrued benefits.

(2) A claim by a parent for compensation or dependency and indemnity compensation shall also be considered to be a claim for accrued benefits.

(c)(1) Any person who applies for or is in receipt of any compensation or pension benefit under laws administered by the Secretary shall, if requested by the Secretary, furnish the Secretary with the social security number of such person and the social security number of any dependent or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of such benefit. A person is not required to furnish the Secretary with a social security number for any person to whom a social security number has not been assigned.

(2) The Secretary shall deny the application of or terminate the payment of compensation or pension to a person who fails to furnish the Secretary with a social security number required to be furnished pursuant to paragraph (1) of this subsection. The Secretary may thereafter reconsider the application or reinstate payment of compensation or pension, as the case may be, if such person furnishes the Secretary with such social security number.

(3) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1225, Sec. 3001; Pub. L. 97–295, Sec. 4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 99–576, title VII, Sec. 701(61), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 101–508, title VIII, Sec. 8053(a), Nov. 5, 1990, 104 Stat. 1388–352; renumbered Sec. 5101 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 108–183, title VII, Sec. 708(c)(2), Dec. 16, 2003, 117 Stat. 2674.)

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

(a) FURNISHING FORMS.—Upon request made by any person claiming or applying for, or expressing an intent to claim or apply for, a benefit under the laws administered by the Secretary, the Secretary shall furnish such person, free of all expense, all instructions and forms necessary to apply for that benefit.

(b) INCOMPLETE APPLICATIONS.—If a claimant's application for a benefit under the laws administered by the Secretary is incomplete, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application.

(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 such notice is sent, 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.

(Added Pub. L. 106–475, Sec. 3(a), Nov. 9, 2000, 114 Stat. 2096; amended Pub. L. 108–183, title VII, Sec. 701(a), Dec. 16, 2003, 117 Stat. 2670.)

§ 5103. Notice to claimants of required information and evidence

(a) REQUIRED INFORMATION AND EVIDENCE.—(1) 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.

(2)(A) The Secretary shall prescribe in regulations requirements relating to the contents of notice to be provided under this subsection.

(B) The regulations required by this paragraph—

(i) shall specify different contents for notice based on whether the claim concerned is an original claim, a claim for reopening a prior decision on a claim, or a claim for an increase in benefits;

(ii) shall provide that the contents for such notice be appropriate to the type of benefits or services sought under the claim;

(iii) shall specify for each type of claim for benefits the general information and evidence required to substantiate the basic elements of such type of claim; and

(iv) shall specify the time period limitations required pursuant to subsection (b).

(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, such information or evidence must be received by the Secretary within one year from the date such notice is sent.

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

(3) Nothing in paragraph (1) shall be construed to prohibit the Secretary from making a decision on a claim before the expiration of the period referred to in that subsection.

(Added Pub. L. 106–475, Sec. 3(a), Nov. 9, 2000, 114 Stat. 2096; amended Pub. L. 107–14, Sec. 8(a)(12), June 5, 2001, 115 Stat. 35; Pub. L. 108–183, title VII, Sec. 701(b), Dec. 16, 2003, 117 Stat. 2670; Pub. L. 110–389, title I, Sec. 101(a), Oct. 10, 2008, 122 Stat. 4147.)

§ 5103A. Duty to assist claimants

(a) DUTY TO ASSIST.—(1) The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary.

(2) The Secretary is not required to provide assistance to a claimant under this section if no reasonable possibility exists that such assistance would aid in substantiating the claim.

(3) The Secretary may defer providing assistance under this section pending the submission by the claimant of essential information missing from the claimant's application.

(b) ASSISTANCE IN OBTAINING RECORDS.—(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant records (including private records) that the claimant adequately identifies to the Secretary and authorizes the Secretary to obtain.

(2) Whenever the Secretary, after making such reasonable efforts, is unable to obtain all of the relevant records sought, the Secretary shall notify the claimant that the Secretary is unable to obtain records with respect to the claim. Such a notification shall—

(A) identify the records the Secretary is unable to obtain;

(B) briefly explain the efforts that the Secretary made to obtain those records; and

(C) describe any further action to be taken by the Secretary with respect to the claim.

(3) Whenever the Secretary attempts to obtain records from a Federal department or agency under this subsection or subsection (c), the efforts to obtain those records shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

(c) OBTAINING RECORDS FOR COMPENSATION CLAIMS.—In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (b) shall include obtaining the following records if relevant to the claim:

(1) The claimant's service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant's active military, naval, or air service that are held or maintained by a governmental entity.

(2) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

(3) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.

(d) MEDICAL EXAMINATIONS FOR COMPENSATION CLAIMS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim.

(2) The Secretary shall treat an examination or opinion as being necessary to make a decision on a claim for purposes of paragraph (1) if the evidence of record before the Secretary, taking into consideration all information and lay or medical evidence (including statements of the claimant)—

(A) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and

(B) indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but

(C) does not contain sufficient medical evidence for the Secretary to make a decision on the claim.

(e) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.

(f) RULE WITH RESPECT TO DISALLOWED CLAIMS.—Nothing in this section shall be construed to require the Secretary to reopen a claim that has been disallowed except when new and material evidence is presented or secured, as described in section 5108 of this title.

(g) OTHER ASSISTANCE NOT PRECLUDED.—Nothing in this section shall be construed as precluding the Secretary from providing such other assistance under subsection (a) to a claimant in substantiating a claim as the Secretary considers appropriate.

(Added Pub. L. 106–475, Sec. 3(a), Nov. 9, 2000, 114 Stat. 2097.)

§ 5104. Decisions and notices of decisions

(a) In the case of a decision by the Secretary under section 511 of this title affecting the provision of benefits to a claimant, the Secretary shall, on a timely basis, provide to the claimant (and to the claimant's representative) notice of such decision. The notice shall include an explanation of the procedure for obtaining review of the decision.

(b) In any case where the Secretary denies a benefit sought, the notice required by subsection (a) shall also include (1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary.

(Added Pub. L. 101–237, title I, Sec. 115(a)(1), Dec. 18, 1989, 103 Stat. 2065, Sec. 3004; renumbered Sec. 5104, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–54, Sec. 14(d)(1), June 13, 1991, 105 Stat. 285; Pub. L. 103–446, title XII, Sec. 1201(d)(15), Nov. 2, 1994, 108 Stat. 4684.)

§ 5105. Joint applications for social security and dependency and indemnity compensation

(a) The Secretary and the Commissioner of Social Security shall jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing application for benefits under chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). Each such form shall request information sufficient to constitute an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.).

(b) When an application on such a form is filed with either the Secretary or the Commissioner of Social Security, it shall be deemed to be an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). A copy of each such application filed with either the Secretary or the Commissioner, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary or the Commissioner with such application, and which may be needed by the other official in connection therewith, shall be transmitted by the Secretary or the Commissioner receiving the application to the other official. The preceding sentence shall not prevent the Secretary and the Commissioner of Social Security from requesting the applicant, or any

other individual, to furnish such additional information as may be necessary for purposes of chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.), respectively.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1226, Sec. 3005; Pub. L. 97–295, Sec. 4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98–160, title VII, Sec. 702(16), Nov. 21, 1983, 97 Stat. 1010; renumbered Sec. 5105, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(9), Aug. 6, 1991, 105 Stat. 405; Pub. L. 103–296, title I, Sec. 108(k), Aug. 15, 1994, 108 Stat. 1488.)

§ 5106. Furnishing of information by other agencies

The head of any Federal department or agency shall provide such information to the Secretary as the Secretary may request for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto. The cost of providing information to the Secretary under this section shall be borne by the department or agency providing the information.

(Added Pub. L. 94–432, title IV, Sec. 403(2), Sept. 30, 1976, 90 Stat. 1372, Sec. 3006; amended Pub. L. 99–576, title VII, Sec. 701(62), Oct. 28, 1986, 100 Stat. 3296; renumbered Sec. 5106, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 106–475, Sec. 5, Nov. 9, 2000, 114 Stat. 2099.)

§ 5107. Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY.—Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT.—The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

(Added Pub. L. 100–687, div. A, title I, Sec. 103(a)(1), Nov. 18, 1988, 102 Stat. 4106, Sec. 3007; renumbered Sec. 5107 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 106–398, Sec. 1 ((div. A), title XVI, Sec. 1611(a)), Oct. 30, 2000, 114 Stat. 1654, 1654A-359; Pub. L. 106–419, title I, Sec. 104(c)(2), Nov. 1, 2000, 114 Stat. 1828; Pub. L. 106–475, Sec. 4, Nov. 9, 2000, 114 Stat. 2098.)

§ 5108. Reopening disallowed claims

If new and material evidence is presented or secured with respect to a claim which has been disallowed, the Secretary shall reopen the claim and review the former disposition of the claim.

(Added Pub. L. 100–687, div. A, title I, Sec. 103(a)(1), Nov. 18, 1988, 102 Stat. 4107, Sec. 3008; renumbered Sec. 5108, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 5109. Independent medical opinions

(a) When, in the judgment of the Secretary, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in a case being considered by the Department, the Secretary may secure

an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Secretary shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Secretary.

(Added Pub. L. 100–687, div. A, title I, Sec. 103(a)(1), Nov. 18, 1988, 102 Stat. 4107, Sec. 3009; renumbered Sec. 5109, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

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

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

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

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

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

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

(Added Pub. L. 105–111, Sec. 1(a)(1), Nov. 21, 1997, 111 Stat. 2271.)

§ 5109B. Expedited treatment of remanded claims

The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the appropriate regional office of the Veterans Benefits Administration of any claim that is remanded to a regional office of the Veterans Benefits Administration by the Board of Veterans' Appeals.

(Added Pub. L. 108–183, title VII, Sec. 707(a)(1), Dec. 16, 2003, 117 Stat. 2672.)

SUBCHAPTER II—EFFECTIVE DATES

§ 5110. Effective dates of awards

(a) Unless specifically provided otherwise in this chapter, the effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, dependency and indemnity compensation, or pension,

shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.

(b)(1) The effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran's discharge or release if application therefor is received within one year from such date of discharge or release.

(2) The effective date of an award of increased compensation shall be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received within one year from such date.

(3)(A) The effective date of an award of disability pension to a veteran described in subparagraph (B) of this paragraph shall be the date of application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date, whichever is to the advantage of the veteran.

(B) A veteran referred to in subparagraph (A) of this paragraph is a veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension for a period of at least 30 days beginning on the date on which the veteran became permanently and totally disabled.

(c) The effective date of an award of disability compensation by reason of section 1151 of this title shall be the date such injury or aggravation was suffered if an application therefor is received within one year from such date.

(d) The effective date of an award of death compensation, dependency and indemnity compensation, or death pension for which application is received within one year from the date of death shall be the first day of the month in which the death occurred.

(e)(1) Except as provided in paragraph (2) of this subsection, the effective date of an award of dependency and indemnity compensation to a child shall be the first day of the month in which the child's entitlement arose if application therefor is received within one year from such date.

(2) In the case of a child who is eighteen years of age or over and who immediately before becoming eighteen years of age was counted under section 1311(b) of this title in determining the amount of the dependency and indemnity compensation of a surviving spouse, the effective date of an award of dependency and indemnity compensation to such child shall be the date the child attains the age of eighteen years if application therefor is received within one year from such date.

(f) An award of additional compensation on account of dependents based on the establishment of a disability rating in the percentage evaluation specified by law for the purpose shall be payable from the effective date of such rating; but only if proof of dependents is received within one year from the date of notification of such rating action.

(g) Subject to the provisions of section 5101 of this title, where compensation, dependency and indemnity compensation, or pension is awarded or increased pursuant to any Act or administrative issue, the effective date of such award or increase shall be fixed in accordance with the facts found but shall not be earlier than the effective date of the Act or administrative issue. In no event shall

such award or increase be retroactive for more than one year from the date of application therefor or the date of administrative determination of entitlement, whichever is earlier.

(h) Where an award of pension has been deferred or pension has been awarded at a rate based on anticipated income for a year and the claimant later establishes that income for that year was at a rate warranting entitlement or increased entitlement, the effective date of such entitlement or increase shall be fixed in accordance with the facts found if satisfactory evidence is received before the expiration of the next calendar year.

(i) Whenever any disallowed claim is reopened and thereafter allowed on the basis of new and material evidence resulting from the correction of the military records of the proper service department under section 1552 of title 10, or the change, correction, or modification of a discharge or dismissal under section 1553 of title 10, or from other corrective action by competent authority, the effective date of commencement of the benefits so awarded shall be the date on which an application was filed for correction of the military record or for the change, modification, or correction of a discharge or dismissal, as the case may be, or the date such disallowed claim was filed, whichever date is the later, but in no event shall such award of benefits be retroactive for more than one year from the date of reopening of such disallowed claim. This subsection shall not apply to any application or claim for Government life insurance benefits.

(j) Where a report or a finding of death of any person in the active military, naval, or air service has been made by the Secretary concerned, the effective date of an award of death compensation, dependency and indemnity compensation, or death pension, as applicable, shall be the first day of the month fixed by that Secretary as the month of death in such report or finding, if application therefor is received within one year from the date such report or finding has been made; however, such benefits shall not be payable to any person for any period for which such person has received, or was entitled to receive, an allowance, allotment, or service pay of the deceased.

(k) The effective date of the award of benefits to a surviving spouse or of an award or increase of benefits based on recognition of a child, upon annulment of a marriage shall be the date the judicial decree of annulment becomes final if a claim therefor is filed within one year from the date the judicial decree of annulment becomes final; in all other cases the effective date shall be the date the claim is filed.

(l) The effective date of an award of benefits to a surviving spouse based upon a termination of a remarriage by death or divorce, or of an award or increase of benefits based on recognition of a child upon termination of the child's marriage by death or divorce, shall be the date of death or the date the judicial decree or divorce becomes final, if an application therefor is received within one year from such termination.

(n) The effective date of the award of any benefit or any increase therein by reason of marriage or the birth or adoption of a child shall be the date of such event if proof of such event is re-

ceived by the Secretary within one year from the date of the marriage, birth, or adoption.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1226, Sec. 3010; Pub. L. 87–674, Sec. 3, Sept. 19, 1962, 76 Stat. 558; Pub. L. 87–825, Sec. 1, Oct. 15, 1962, 76 Stat. 948; Pub. L. 91–376, Sec. 7, Aug. 12, 1970, 84 Stat. 790; Pub. L. 91–584, Sec. 13, Dec. 24, 1970, 84 Stat. 1578; Pub. L. 93–177, Sec. 6(a), Dec. 6, 1973, 87 Stat. 696; Pub. L. 93–527, Sec. 9(b), Dec. 21, 1974, 88 Stat. 1705; Pub. L. 94–71, title I, Sec. 104, Aug. 5, 1975, 89 Stat. 396; Pub. L. 97–66, title II, Sec. 204(b), Oct. 17, 1981, 95 Stat. 1029; Pub. L. 98–160, title VII, Sec. 703(1), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98–223, title II, Sec. 213(3), Mar. 2, 1984, 98 Stat. 46; Pub. L. 98–369, div. B, title V, Sec. 2501(a), July 18, 1984, 98 Stat. 1116; Pub. L. 99–576, title VII, Sec. 701(63), Oct. 28, 1986, 100 Stat. 3296; renumbered Sec. 5110 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(2)(A)(vi), (b)(4)(B), 5(c)(1), Aug. 6, 1991, 105 Stat. 403, 405, 406; Pub. L. 103–446, title XII, Sec. 1201(i)(8), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 108–454, title III, Sec. 305, Dec. 10, 2004, 118 Stat. 3611.)

§ 5111. Commencement of period of payment

(a) Notwithstanding section 5110 of this title or any other provision of law and except as provided in subsection (c) of this section, payment of monetary benefits based on an award or an increased award of compensation, dependency and indemnity compensation, or pension may not be made to an individual for any period before the first day of the calendar month following the month in which the award or increased award became effective as provided under section 5110 of this title or such other provision of law.

(b)(1) Except as provided in paragraph (2) of this subsection, during the period between the effective date of an award or increased award as provided under section 5110 of this title or other provision of law and the commencement of the period of payment based on such award as provided under subsection (a) of this section, an individual entitled to receive monetary benefits shall be deemed to be in receipt of such benefits for the purpose of all laws administered by the Secretary.

(2) If any person who is in receipt of retired or retirement pay would also be eligible to receive compensation or pension upon the filing of a waiver of such pay in accordance with section 5305 of this title, such waiver shall not become effective until the first day of the month following the month in which such waiver is filed, and nothing in this section shall prohibit the receipt of retired or retirement pay for any period before such effective date.

(c)(1) This section shall apply to payments made pursuant to section 5310 of this title only if the monthly amount of dependency and indemnity compensation or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received, but for such veteran's death, for the month in which such veteran's death occurred.

(2) In the case of a temporary increase in compensation for hospitalization or treatment where such hospitalization or treatment commences and terminates within the same calendar month, the period of payment shall commence on the first day of such month.

(d) For the purposes of this section, the term "award or increased award" means—

(1) an original or reopened award; or

(2) an award that is increased because of an added dependent, increase in disability or disability rating, or reduction in income.

(Added Pub. L. 97–253, title IV, Sec. 401(a)(1), Sept. 8, 1982, 96 Stat. 801, Sec. 3011; amended Pub. L. 98–223, title I, Sec. 113, Mar. 2, 1984, 98 Stat. 40; renumbered Sec. 5111 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

§ 5112. Effective dates of reductions and discontinuances

(a) Except as otherwise specified in this section, the effective date of reduction or discontinuance of compensation, dependency and indemnity compensation, or pension shall be fixed in accordance with the facts found.

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

(1) by reason of marriage or remarriage, or death of a payee shall be the last day of the month before such marriage, remarriage, or death occurs;

(2) by reason of marriage, annulment, divorce, or death of a dependent of a payee shall be the last day of the month in which such marriage, annulment, divorce, or death occurs;

(3) by reason of receipt of active service pay or retirement pay shall be the day before the date such pay began;

(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

(B) change in corpus of estate shall be the last day of the calendar year in which the change occurred;

(5) by reason of a change in disability or employability of a veteran in receipt of pension shall be the last day of the month in which discontinuance of the award is approved;

(6) by reason of change in law or administrative issue, change in interpretation of a law or administrative issue, or, for compensation purposes, a change in service-connected or employability status or change in physical condition shall be the last day of the month following sixty days from the date of notice to the payee (at the payee's last address of record) of the reduction or discontinuance;

(7) by reason of the discontinuance of school attendance of a payee or a dependent of a payee shall be the last day of the month in which such discontinuance occurred;

(8) by reason of termination of a temporary increase in compensation for hospitalization or treatment shall be the last day of the month in which the hospital discharge or termination of treatment occurred, whichever is earlier;

(9) by reason of an erroneous award based on an act of commission or omission by the beneficiary, or with the beneficiary's knowledge, shall be the effective date of the award; and

(10) by reason of an erroneous award based solely on administrative error or error in judgment shall be the date of last payment.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1227, Sec. 3012; Pub. L. 87–825, Sec. 2, Oct. 15, 1962, 76 Stat. 949; Pub. L. 89–730, Sec. 3, Nov. 2, 1966, 80 Stat. 1159; Pub. L. 90–275, Sec. 5, Mar. 28, 1968, 82 Stat. 68; Pub. L. 92–198, Sec. 3, Dec. 15, 1971, 85 Stat. 664; Pub. L. 94–433, title IV, Sec. 402, Sept. 30, 1976, 90 Stat. 1378; Pub. L. 95–588, title III, Sec. 303, Nov. 4, 1978, 92 Stat. 2506; Pub. L. 97–253, title IV, Sec. 402(a), Sept. 8, 1982, 96 Stat. 802; Pub. L. 99–576, title V, Sec. 503, title VII, Sec. 701(64), Oct. 28, 1986, 100 Stat. 3286, 3296; renumbered Sec. 5112 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 107–103, title II, Sec. 204(b)(2), Dec. 27, 2001, 115 Stat. 990.)

§ 5113. Effective dates of educational benefits

(a) Except as provided in subsections (b) and (c), effective dates relating to awards under chapters 30, 31, 32, 34, and 35 of this title or chapter 106 of title 10 shall, to the extent feasible, correspond to effective dates relating to awards of disability compensation.

(b)(1) When determining the effective date of an award under chapter 35 of this title for an individual described in paragraph (2) based on an original claim, the Secretary may consider the individual's application as having been filed on the eligibility date of the individual if that eligibility date is more than one year before the date of the initial rating decision.

(2) An individual referred to in paragraph (1) is an eligible person who—

(A) submits to the Secretary an original application for educational assistance under chapter 35 of this title within one year of the date that the Secretary makes the rating decision;

(B) claims such educational assistance for pursuit of an approved program of education during a period preceding the one-year period ending on the date on which the application was received by the Secretary; and

(C) would have been entitled to such educational assistance for such course pursuit if the individual had submitted such an application on the individual's eligibility date.

(3) In this subsection:

(A) The term "eligibility date" means the date on which an individual becomes an eligible person.

(B) The term "eligible person" has the meaning given that term under subparagraphs (A), (B), (D), and (E) of section 3501(a)(1) of this title.

(C) The term "initial rating decision" means with respect to an eligible person a decision made by the Secretary that establishes (i) service connection for the death of the person from whom such eligibility is derived or (ii) the existence of the service-connected total disability permanent in nature (or, in the case of a person made eligible under section 3501(a)(1)(E), the total disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service) of the person from whom such eligibility is derived, as the case may be.

(c) The effective date of an adjustment of benefits under any chapter referred to in subsection (a) of this section, if made on the basis of a certification made by the veteran or person and accepted by the Secretary under section 3680(g) of this title, shall be the date of the change.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1227, Sec. 3013; Pub. L. 89–358, Sec. 4(p), Mar. 3, 1966, 80 Stat. 25; Pub. L. 99–576, title III, Sec. 321(10), Oct. 28, 1986, 100 Stat. 3278; Pub. L. 100–322, title III, Sec. 323, May 20, 1988, 102 Stat. 536; Pub. L. 101–237, title IV, Sec. 419, Dec. 18, 1989, 103 Stat. 2087; Pub. L. 102–16, Sec. 10(a)(9), Mar. 22, 1991, 105 Stat. 56; renumbered Sec. 5113, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 106–419, title I, Sec. 113(a), Nov. 1, 2000, 114 Stat. 1832; Pub. L. 109–444, Sec. 3(c)(2), Dec. 21, 2006, 120 Stat. 3307; Pub. L. 109–461, title III, Sec. 301(c)(2), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3427, 3468.)

SUBCHAPTER III—PAYMENT OF BENEFITS

§ 5120. Payment of benefits; delivery

(a) Monetary benefits under laws administered by the Secretary shall be paid by checks drawn, pursuant to certification by the Secretary, in such form as to protect the United States against loss, and payable by the Treasurer of the United States. Such checks shall be payable without separate vouchers or receipts except in any case in which the Secretary may consider a voucher necessary for the protection of the Government. Such checks shall be transmitted by mail to the payee thereof at the payee's last known address and, if the payee has moved and filed a regular change of address notice with the United States Postal Service, shall be forwarded to the payee. The envelope or cover of each such checks shall bear on the face thereof the following notice: "POSTMASTER: PLEASE FORWARD if addressee has moved and filed a regular change-of-address notice. If addressee is deceased, return the letter with date of death, if known."

(b) Postmasters, delivery clerks, letter carriers, and all other postal employees are prohibited from delivering any mail addressed by the United States and containing any such check to any person whomsoever if such person has died or in the case of a surviving spouse, if the postal employee believes that the surviving spouse has remarried (unless the mail is addressed to the surviving spouse in the name the surviving spouse has acquired by the remarriage). The preceding sentence shall apply in the case of checks in payment of benefits other than pension, compensation, dependency and indemnity compensation, and insurance, only insofar as the Secretary deems it necessary to protect the United States against loss.

(c) Whenever mail is not delivered because of the prohibition of subsection (b), such mail shall be returned forthwith by the postmaster with a statement of the reason for so doing, and if because of death or remarriage, the date thereof, if known. Checks returned under this subsection because of death or remarriage shall be canceled.

(d) Notwithstanding subsection (a) of this section, pursuant to an agreement with the Department of the Treasury under which the Secretary certifies such benefits for payment, monetary benefits under laws administered by the Secretary may be paid other than by check upon the written request of the person to whom such benefits are to be paid, if such noncheck payment is determined by the Secretary to be in the best interest of such payees and the management of monetary benefits programs by the Department.

(e) Whenever the first day of any calendar month falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103 of title 5), the Secretary shall, to the maximum extent prac-

ticable, certify benefit payments for such month in such a way that such payments will be delivered by mail, or transmitted for credit to the payee's account pursuant to subsection (d) of this section, on the Friday immediately preceding such Saturday or Sunday, or in the case of a legal holiday, the weekday (other than Saturday) immediately preceding such legal public holiday, notwithstanding that such delivery or transmission of such payments is made in the same calendar month for which such payments are issued.

(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Secretary shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

(2) The Secretary shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Secretary in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1227, Sec. 3020; Pub. L. 95–117, title IV, Sec. 402(a), (b)(1), Oct. 3, 1977, 91 Stat. 1065, 1066; Pub. L. 97–295, Sec. 4(73), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99–570, title XI, Sec. 11007(a)(2), Oct. 27, 1986, 100 Stat. 3207–170; Pub. L. 99–576, title VII, Sec. 701(65), Oct. 28, 1986, 100 Stat. 3296; renumbered Sec. 5120, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

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

(a) Except as provided in sections 3329 and 3330 of title 31, periodic monetary benefits (other than insurance and servicemen's indemnity) under laws administered by the Secretary to which an individual was entitled at death under existing ratings or decisions or those based on evidence in the file at date of death (hereinafter in this section and section 5122 of this title referred to as "accrued benefits") and due and unpaid, shall, upon the death of such individual be paid as follows:

(1) Upon the death of a person receiving an apportioned share of benefits payable to a veteran, all or any part of such benefits to the veteran or to any other dependent or dependents of the veteran, as may be determined by the Secretary.

(2) Upon the death of a veteran, to the living person first listed below:

(A) The veteran's spouse.

(B) The veteran's children (in equal shares).

(C) The veteran's dependent parents (in equal shares).

(3) Upon the death of a surviving spouse or remarried surviving spouse, to the children of the deceased veteran.

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

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

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

(b) No part of any accrued benefits shall be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of any beneficiary.

(c) Applications for accrued benefits must be filed within one year after the date of death. If a claimant's application is incomplete at the time it is originally submitted, the Secretary shall notify the claimant of the evidence necessary to complete the application. If such evidence is not received within one year from the date of such notification, no accrued benefits may be paid.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1228, Sec. 3021; Pub. L. 92–328, title I, Sec. 105(b), June 30, 1972, 86 Stat. 395; Pub. L. 97–258, Sec. 3(k)(4), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 98–160, title VII, Sec. 703(1), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 99–576, title VII, Sec. 701(66), Oct. 28, 1986, 100 Stat. 3296; renumbered Sec. 5121 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 104–275, title V, Sec. 507, Oct. 9, 1996, 110 Stat. 3343; Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35; Pub. L. 108–183, title I, Sec. 104(a)–(c), Dec. 16, 2003, 117 Stat. 2656.)

§ 5121A. Substitution in case of death of claimant

(a) SUBSTITUTION.—(1) If a claimant dies while a claim for any benefit under a law administered by the Secretary, or an appeal of a decision with respect to such a claim, is pending, a living person who would be eligible to receive accrued benefits due to the claimant under section 5121(a) of this title may, not later than one year after the date of the death of such claimant, file a request to be substituted as the claimant for the purposes of processing the claim to completion.

(2) Any person seeking to be substituted for the claimant shall present evidence of the right to claim such status within such time as prescribed by the Secretary in regulations.

(3) Substitution under this subsection shall be in accordance with such regulations as the Secretary may prescribe.

(b) LIMITATION.—Those who are eligible to make a claim under this section shall be determined in accordance with section 5121 of this title.

(Added Pub. L. 110–389, title II, Sec. 212(a), Oct. 10, 2008, 122 Stat. 4151.)

§ 5122. Cancellation of checks mailed to deceased payees

A check received by a payee in payment of accrued benefits shall, if the payee died on or after the last day of the period covered by the check, be returned to the issuing office and canceled, unless negotiated by the payee or the duly appointed representative of the payee's estate. The amount represented by such check, or any amount recovered by reason of improper negotiation of any such check, shall be payable in the manner provided in section 5121 of this title, without regard to section 5121(c) of this title. Any amount not paid in the manner provided in section 5121 of this title shall be paid to the estate of the deceased payee unless the estate will escheat.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1229, Sec. 3022; Pub. L. 99–576, title VII, Sec. 701(67), Oct. 28, 1986, 100 Stat. 3296; renumbered Sec. 5122 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 104–316, title II, Sec. 202(t), Oct. 19, 1996, 110 Stat. 3845.)

§ 5123. Rounding down of pension rates

The monthly or other periodic rate of pension payable to an individual under section 1521, 1541, or 1542 of this title or under section 306(a) of the Veterans' and Survivors' Pension Improvement Act of 1978 (Public Law 95–588), if not a multiple of $1, shall be rounded down to the nearest dollar.

(Added Pub. L. 97–253, title IV, Sec. 403(a)(1), Sept. 8, 1982, 96 Stat. 802, Sec. 3023; renumbered Sec. 5123, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 5(c)(1), Aug. 6, 1991, 105 Stat. 406.)

§ 5124. Acceptance of claimant's statement as proof of relationship

(a) For purposes of benefits under laws administered by the Secretary, the Secretary may accept the written statement of a claimant as proof of the existence of any relationship specified in subsection (b) for the purpose of acting on such individual's claim for benefits.

(b) Subsection (a) applies to proof of the existence of any of the following relationships between a claimant and another person:

(1) Marriage.

(2) Dissolution of a marriage.

(3) Birth of a child.

(4) Death of any family member.

(c) The Secretary may require the submission of documentation in support of the claimant's statement if—

(1) the claimant does not reside within a State;

(2) the statement on its face raises a question as to its validity;

(3) there is conflicting information of record; or

(4) there is reasonable indication, in the statement or otherwise, of fraud or misrepresentation.

(Added Pub. L. 103–446, title III, Sec. 301(a), Nov. 2, 1994, 108 Stat. 4657.)

§ 5125. Acceptance of reports of private physician examinations

For purposes of establishing any claim for benefits under chapter 11 or 15 of this title, a report of a medical examination administered by a private physician that is provided by a claimant in support of a claim for benefits under that chapter may be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Administration if the report is sufficiently complete to be adequate for the purpose of adjudicating such claim.

(Added Pub. L. 103–446, title III, Sec. 301(b), Nov. 2, 1994, 108 Stat. 4658.)

§ 5126. Benefits not to be denied based on lack of mailing address

Benefits under laws administered by the Secretary may not be denied a claimant on the basis that the claimant does not have a mailing address.

(Added Pub. L. 106–475, Sec. 3(b), Nov. 9, 2000, 114 Stat. 2098.)

Chapter 53 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART IV—GENERAL ADMINISTRATIVE PROVISIONS]

CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

Sec.
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§ 5301. Nonassignability and exempt status of benefits

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

otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

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

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

(B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer pursuant to the Electronic Funds Transfers Act (15 U.S.C. 1693 et seq.).

(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.

(b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Secretary and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

(c)(1) Notwithstanding any other provision of this section, the Secretary may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws adminis-

tered by the Secretary the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in chapter 73 of title 10.

(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by that Secretary to the veteran or that the veteran is not receiving any payment from that Secretary, that Secretary may request the Secretary to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

(i) the term "records of the agency" shall be considered to refer to the records of the department of the Secretary concerned; and

(ii) the term "agency" in clauses (3) and (4) shall be considered to refer to such department.

(4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10 or to the Retired Pay Account of the Coast Guard, as appropriate.

(d) Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Secretary shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.).

(e) In the case of a person who—

(1) has been determined to be eligible to receive pension or compensation under laws administered by the Secretary but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

(2) files a waiver of such pay in accordance with section 5305 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Secretary of such person's eligibility for such pension or compensation,

the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1229, Sec. 3101; Pub. L. 94–502, title VII, Sec. 701, Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95–479, title III, Sec. 301, Oct. 18, 1978, 92 Stat. 1564; Pub. L. 97–295, Sec. 4(74), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99–576, title V, Sec. 504, title VII, Sec. 701(68), Oct. 28, 1986, 100 Stat. 3286,

3296; Pub. L. 101–189, div. A, title XIV, Sec. 1404(b)(2), Nov. 29, 1989, 103 Stat. 1586; Pub. L. 102–25, title VII, Sec. 705(c)(2), Apr. 6, 1991, 105 Stat. 120; renumbered Sec. 5301 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(d)(2), June 13, 1991, 105 Stat. 285; Pub. L. 102–83, Sec. 4(a)(1), (2)(A)(vii), (b)(1), (2)(E), (4)(C), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 102–86, title V, Sec. 505(a), Aug. 14, 1991, 105 Stat. 426; Pub. L. 108–183, title VII, Sec. 702, Dec. 16, 2003, 117 Stat. 2671.)

§ 5302. Waiver of recovery of claims by the United States

(a) There shall be no recovery of payments or overpayments (or any interest thereon) of any benefits under any of the laws administered by the Secretary whenever the Secretary determines that recovery would be against equity and good conscience, if an application for relief is made within 180 days from the date of notification of the indebtedness by the Secretary to the payee, or within such longer period as the Secretary determines is reasonable in a case in which the payee demonstrates to the satisfaction of the Secretary that such notification was not actually received by such payee within a reasonable period after such date. The Secretary shall include in the notification to the payee a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(b) With respect to any loan guaranteed, insured, or made under chapter 37 of this title, the Secretary shall, except as provided in subsection (c) of this section, waive payment of an indebtedness to the Department by the veteran (as defined in sections 101, 3701, and 3702(a)(2)(C)(ii) of this title), or the veteran's spouse, following default and loss of the property, where the Secretary determines that collection of such indebtedness would be against equity and good conscience. An application for relief under this subsection must be made within one year after the date on which the veteran receives notice by certified mail with return receipt requested from the Secretary of the indebtedness. The Secretary shall include in the notification a statement of the right of the veteran to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(c) The recovery of any payment or the collection of any indebtedness (or any interest thereon) may not be waived under this section if, in the Secretary's opinion, there exists in connection with the claim for such waiver an indication of fraud, misrepresentation or bad faith on the part of the person or persons having an interest in obtaining a waiver of such recovery or the collection of such indebtedness (or any interest thereon).

(d) No certifying or disbursing officer shall be liable for any amount paid to any person where the recovery of such amount is waived under subsection (a) or (b).

(e) Where the recovery of a payment or overpayment made from the National Service Life Insurance Fund or United States Government Life Insurance Fund is waived under this section, the fund from which the payment was made shall be reimbursed from the National Service Life Insurance appropriation or the military and naval insurance appropriation, as applicable.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1230, Sec. 3102; Pub. L. 92–328, title II, Sec. 202(a), June 30, 1972, 86 Stat. 396; Pub. L. 96–466, title VI, Sec. 605(c)(3), Oct. 17, 1980, 94 Stat. 2211; Pub. L. 97–306, title IV, Sec. 407(a), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 99–576, title VII, Sec. 701(69), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 101–237, title III, Sec. 311, Dec. 18, 1989, 103 Stat. 2075; renumbered Sec. 5302, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 5, June 13, 1991, 105 Stat. 268; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 102–547, Sec. 12, Oct. 28, 1992, 106 Stat. 3645; Pub. L. 105–33, title VIII, Sec. 8033(b), Aug. 5, 1997, 111 Stat. 669.)

§ 5302A. Collection of indebtedness: certain debts of members of the Armed Forces and veterans who die of injury incurred or aggravated in the line of duty in a combat zone

(a) LIMITATION ON AUTHORITY.—The Secretary may not collect all or any part of an amount owed to the United States by a member of the Armed Forces or veteran described in subsection (b) under any program under the laws administered by the Secretary, other than a program referred to in subsection (c), if the Secretary determines that termination of collection is in the best interest of the United States.

(b) COVERED INDIVIDUALS.—A member of the Armed Forces or veteran described in this subsection is any member or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) in a war or in combat against a hostile force during a period of hostilities (as that term is defined in section 1712A(a)(2)(B) of this title) after September 11, 2001.

(c) INAPPLICABILITY TO HOUSING AND SMALL BUSINESS BENEFIT PROGRAMS.—The limitation on authority in subsection (a) shall not apply to any amounts owed the United States under any program carried out under chapter 37 of this title.

(Added Pub. L. 110–252, title I, Sec. 1303(a)(1), June 30, 2008, 122 Stat. 2327.)

§ 5303. Certain bars to benefits

(a) The discharge or dismissal by reason of the sentence of a general court-martial of any person from the Armed Forces, or the discharge of any such person on the ground that such person was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, or as a deserter, or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Secretary that there are compelling circumstances to warrant such prolonged unauthorized absence, or of an officer by the acceptance of such officer's resignation for the good of the service, or (except as provided in subsection (c)) the discharge of any individual during a period of hostilities as an alien, shall bar all rights of such person under laws administered by the Secretary based upon the period of service from which discharged or dismissed, notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of title 10.

(b) Notwithstanding subsection (a), if it is established to the satisfaction of the Secretary that, at the time of the commission of an offense leading to a person's court-martial, discharge, or resignation, that person was insane, such person shall not be precluded from benefits under laws administered by the Secretary based upon the period of service from which such person was separated.

(c) Subsection (a) shall not apply to any alien whose service was honest and faithful, and who was not discharged on the individual's own application or solicitation as an alien. No individual shall be considered as having been discharged on the individual's own application or solicitation as an alien in the absence of affirmative evidence establishing that the individual was so discharged.

(d) This section shall not apply to any war-risk insurance, Government (converted) or National Service Life Insurance policy.

(e)(1) Notwithstanding any other provision of law, (A) no benefits under laws administered by the Secretary shall be provided, as a result of a change in or new issuance of a discharge under section 1553 of title 10, except upon a case-by-case review by the board of review concerned, subject to review by the Secretary concerned, under such section, of all the evidence and factors in each case under published uniform standards (which shall be historically consistent with criteria for determining honorable service and shall not include any criterion for automatically granting or denying such change or issuance) and procedures generally applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions; and (B) any such person shall be afforded an opportunity to apply for such review under such section 1553 for a period of time terminating not less than one year after the date on which such uniform standards and procedures are promulgated and published.

(2) Notwithstanding any other provision of law—

(A) no person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President's directive of January 19, 1977, initiating further action with respect to the President's Proclamation 4313 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense's special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions, shall be entitled to benefits under laws administered by the Secretary except upon a determination, based on a case-by-case review, under standards (meeting the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharge under such standards; and

(B) such determination shall be made by such board (i) on an expedited basis after notification by the Department to the Secretary concerned that such person has received, is in receipt

of, or has applied for such benefits or after a written request is made by such person or such determination, (ii) on its own initiative before October 9, 1978, in any case where a general or honorable discharge has been awarded before October 9, 1977, under revised standards referred to in clause (A)(i), (ii), or (iii) of this paragraph, or (iii) on its own initiative at the time a general or honorable discharge is so awarded in any case where a general or honorable discharge is awarded after October 8, 1977.

If such board makes a preliminary determination that such person would not have been awarded an upgraded discharge under standards meeting the requirements of paragraph (1) of this subsection, such person shall be entitled to an appearance before the board, as provided for in section 1553(c) of title 10, prior to a final determination on such question and shall be given written notice by the board of such preliminary determination and of the right to such appearance. The Secretary shall, as soon as administratively feasible, notify the appropriate board of review of the receipt of benefits under laws administered by the Secretary, or of the application for such benefits, by any person awarded an upgraded discharge under revised standards referred to in clause (A)(i), (ii), or (iii) of this paragraph with respect to whom a favorable determination has not been made under this paragraph.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1230, Sec. 3103; Pub. L. 86–113, July 28, 1959, 73 Stat. 262; Pub. L. 95–126, Sec. 1(a), Oct. 8, 1977, 91 Stat. 1106; Pub. L. 97–295, Sec. 4(75), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99–576, title VII, Sec. 701(70), Oct. 28, 1986, 100 Stat. 3296; renumbered Sec. 5303, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

§ 5303A. Minimum active-duty service requirement

(a) Notwithstanding any other provision of law, any requirements for eligibility for or entitlement to any benefit under this title or any other law administered by the Secretary that are based on the length of active duty served by a person who initially enters such service after September 7, 1980, shall be exclusively as prescribed in this title.

(b)(1) Except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty,

is not eligible by reason of such period of active duty for any benefit under this title or any other law administered by the Secretary.

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty after October 16, 1981, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

(A) to a person who is discharged or released from active duty under section 1171 or 1173 of title 10;

(B) to a person who is discharged or released from active duty for a disability incurred or aggravated in line of duty;

(C) to a person who has a disability that the Secretary has determined to be compensable under chapter 11 of this title;

(D) to the provision of a benefit for or in connection with a service-connected disability, condition, or death;

(E) to benefits under chapter 19 of this title;

(F) to benefits under chapter 30 or chapter 37 of this title by reason of—

(i) a discharge or release from active duty for the convenience of the Government, as described in sections 3011(a)(1)(A)(ii)(II) and 3012(b)(1)(A)(iv) of this title;

(ii) a discharge or release from active duty for a medical condition which preexisted service on active duty and which the Secretary determines is not service connected, as described in clauses (A)(ii)(I) and (B)(ii)(I) of section 3011(a)(1) of this title and in section 3012(b)(1)(A)(ii) of this title;

(iii) an involuntary discharge or release from active duty for the convenience of the Government as a result of a reduction in force, as described in clauses (A)(ii)(III) and (B)(ii)(III) of section 3011(a)(1) of this title and in section 3012(b)(1)(A)(v) of this title; or

(iv) a discharge or release from active duty 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 described in section 3011(a)(1)(A)(ii)(I) of this title; or

(G) to benefits under chapter 43 of this title.

(c)(1) Except as provided in paragraph (2) of this subsection, no dependent or survivor of a person as to whom subsection (b) of this section requires the denial of benefits shall, by reason of such person's period of active duty, be provided with any benefit under this title or any other law administered by the Secretary.

(2) Paragraph (1) of this subsection does not apply to benefits under chapters 19 and 37 of this title.

(d)(1) Notwithstanding any other provision of law and except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty,

is not eligible by reason of such period of active duty for any benefit under Federal law (other than this title or any other law administered by the Secretary), and no dependent or survivor of such person shall be eligible for any such benefit by reason of such period of active duty of such person.

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty after October 13, 1982, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

(A) to any person described in clause (A), (B), or (C) of subsection (b)(3) of this section; or

(B) with respect to a benefit under (i) the Social Security Act other than additional wages deemed to have been paid, under section 229(a) of the Social Security Act (42 U.S.C. 429(a)), for any calendar quarter beginning after October 13, 1982, or (ii) title 5 other than a benefit based on meeting the definition of preference eligible in section 2108(3) of such title.

(e) For the purposes of this section, the term "benefit" includes a right or privilege, but does not include a refund of a participant's contributions to the educational benefits program provided by chapter 32 of this title.

(f) Nothing in this section shall be construed to deprive any person of any procedural rights, including any rights to assistance in applying for or claiming a benefit.

(Added Pub. L. 97–66, title VI, Sec. 604(a)(1), Oct. 17, 1981, 95 Stat. 1035, Sec. 3103A; amended Pub. L. 97–306, title IV, Sec. 408(a), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 99–576, title III, Sec. 321(11), Oct. 28, 1986, 100 Stat. 3278; Pub. L. 100–689, title I, Sec. 102(b)(3), Nov. 18, 1988, 102 Stat. 4163; Pub. L. 101–510, div. A, title V, Sec. 562(a)(4), Nov. 5, 1990, 104 Stat. 1574; renumbered Sec. 5303A, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 103–353, Sec. 3, Oct. 13, 1994, 108 Stat. 3169; Pub. L. 103–446, title IX, Sec. 908, Nov. 2, 1994, 108 Stat. 4678; Pub. L. 105–368, title X, Sec. 1005(b)(15), Nov. 11, 1998, 112 Stat. 3365.)

§ 5304. Prohibition against duplication of benefits

(a)(1) Except as provided in section 1414 of title 10 or to the extent that retirement pay is waived under other provisions of law, not more than one award of pension, compensation, emergency officers', regular, or reserve retirement pay, or initial award of naval pension granted after July 13, 1943, shall be made concurrently to any person based on such person's own service or concurrently to any person based on the service of any other person.

(2) Notwithstanding the provisions of paragraph (1) of this subsection and of section 5305 of this title, pension under section 1521 or 1541 of this title may be paid to a person entitled to receive retired or retirement pay described in section 5305 of this title concurrently with such person's receipt of such retired or retirement pay if the annual amount of such retired or retirement pay is counted as annual income for the purposes of chapter 15 of this title.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection and in section 1521(i) of this title, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse, child, or parent on account of the death of any person, or receipt by any person of pension or compensation on account of such person's own service, shall not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other person.

(2) Benefits other than insurance under laws administered by the Secretary may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line; however, the child may elect one or more times to receive benefits by reason of the death of any one of such parents.

(3) Benefits other than insurance under laws administered by the Secretary may not be paid to any person by reason of the death of more than one person to whom such person was married; however, the person may elect one or more times to receive benefits by reason of the death of any one spouse.

(c) Pension, compensation, or retirement pay on account of any person's own service shall not be paid to such person for any period for which such person receives active service pay.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1230, Sec. 3104; Pub. L. 86–495, Sec. 1, June 8, 1960, 74 Stat. 163; Pub. L. 88–664, Sec. 9, Oct. 13, 1964, 78 Stat. 1096; Pub. L. 91–376, Sec. 6, Aug. 12, 1970, 84 Stat. 790; Pub. L. 95–588, title III, Sec. 304, Nov. 4, 1978, 92 Stat. 2507; Pub. L. 96–385, title V, Sec. 503(a), Oct. 7, 1980, 94 Stat. 1534; Pub. L. 99–576, title VII, Sec. 701(71), Oct. 28, 1986, 100 Stat. 3297; renumbered Sec. 5304 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), 5(c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 108–454, title III, Sec. 308(a), Dec. 10, 2004, 118 Stat. 3614.)

§ 5305. Waiver of retired pay

Except as provided in section 1414 of title 10, any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Secretary if such person were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of such person's retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Secretary of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1231, Sec. 3105; Pub. L. 91–621, Sec. 6(a)(3), Dec. 31, 1970, 84 Stat. 1864; Pub. L. 99–576, title VII, Sec. 701(72), Oct. 28, 1986, 100 Stat. 3297; renumbered Sec. 5305, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), (2)(A)(viii), Aug. 6, 1991, 105 Stat. 403; Pub. L. 108–454, title III, Sec. 308(b), Dec. 10, 2004, 118 Stat. 3614.)

§ 5306. Renouncement of right to benefits

(a) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the Secretary may renounce the right thereto. The application renouncing the right shall be in writing over the person's signature. Upon the filing of such an application, payment of such benefits and the right thereto shall be terminated, and such person shall be denied any and all rights thereto from such filing.

(b) Renouncement of rights shall not preclude any person from filing a new application for pension, compensation, or dependency and indemnity compensation at a later date, but such new applica-

tion shall be treated as an original application, and no payments shall be made for any period before the date such new application is filed.

(c) Notwithstanding subsection (b), if a new application for pension under chapter 15 of this title or for dependency and indemnity compensation for parents under section 1315 of this title is filed within one year after renouncement of that benefit, such application shall not be treated as an original application and benefits will be payable as if the renouncement had not occurred.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1231, Sec. 3106; Pub. L. 99–576, title VII, Sec. 701(73), Oct. 28, 1986, 100 Stat. 3297; renumbered Sec. 5306, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 103–446, title V, Sec. 503, Nov. 2, 1994, 108 Stat. 4663.)

§ 5307. Apportionment of benefits

(a) All or any part of the compensation, pension, or emergency officers' retirement pay payable on account of any veteran may—

(1) if the veteran is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof, be apportioned on behalf of the veteran's spouse, children, or dependent parents; and

(2) if the veteran is not living with the veteran's spouse, or if the veteran's children are not in the custody of the veteran, be apportioned as may be prescribed by the Secretary.

(b) Where any of the children of a deceased veteran are not in the custody of the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned as prescribed by the Secretary.

(c) If a veteran is not living with the veteran's spouse, or if any of the veteran's children are not in the custody of the veteran, any subsistence allowance payable to the veteran under chapter 31 of this title or that portion of the educational assistance allowance payable on account of dependents under chapter 34 of this title may be apportioned as may be prescribed by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1231, Sec. 3107; Pub. L. 92–540, title V, Sec. 505, Oct. 24, 1972, 86 Stat. 1099; Pub. L. 98–160, title VII, Sec. 703(2), Nov. 21, 1983, 97 Stat. 1010; renumbered Sec. 5307, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 5308. Withholding benefits of persons in territory of the enemy

(a) When any alien entitled to gratuitous benefits under laws administered by the Secretary is located in territory of, or under military control of, an enemy of the United States or of any of its allies, any award of such benefits in favor of such alien shall be terminated forthwith.

(b) Any alien whose award is terminated under subsection (a) shall not thereafter be entitled to any such gratuitous benefits except upon the filing of a new claim, accompanied by evidence satisfactory to the Secretary showing that such alien was not guilty of mutiny, treason, sabotage, or rendering assistance to such enemy. Except as provided in section 5309 of this title, such gratuitous

benefits shall not be paid for any period before the date the new claim is filed.

(c) While such alien is located in territory of, or under military control of, an enemy of the United States or of any of its allies, the Secretary, in the Secretary's discretion, may apportion and pay any part of such benefits to the dependents of such alien. No dependent of such alien shall receive benefits by reason of this subsection in excess of the amount to which the dependent would be entitled if such alien were dead.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1231, Sec. 3108; Pub. L. 99–576, title VII, Sec. 701(74), Oct. 28, 1986, 100 Stat. 3297; renumbered Sec. 5308 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

§ 5309. Payment of certain withheld benefits

(a) Any person who, but for section 5308 of this title, was entitled to benefits under any of the laws administered by the Secretary, whose award of benefits was terminated under such section, or whose benefits were not paid pursuant to sections 3329 and 3330 of title 31, and who was not guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies, shall be paid the full amount of any benefits not paid because of such section 5308, or withheld (including the amount of any checks covered on such person's account into the Treasury as miscellaneous receipts together with any amount to such person's credit in the special-deposit account) pursuant to sections 3329 and 3330 of title 31. The Secretary shall certify to the Secretary of the Treasury the amounts of payments which, but for this section, would have been made from the special deposit account, and the Secretary of the Treasury, as directed by the Secretary, shall reimburse the appropriations of the Department from such special deposit account, or cover into the Treasury as miscellaneous receipts the amounts so certified.

(b) No payments shall be made for any period before the date claim therefor is filed under this section to any person whose award was terminated, or whose benefits were not paid, before July 1, 1954, because such person was a citizen or subject of Germany or Japan residing in Germany or Japan.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1232, Sec. 3109; Pub. L. 97–258, Sec. 3(k)(4), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 99–576, title VII, Sec. 701(75), Oct. 28, 1986, 100 Stat. 3297; renumbered Sec. 5309 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

§ 5310. Payment of benefits for month of death

(a) If, in accordance with the provisions of section 5110(d) of this title, a surviving spouse is entitled to death benefits under chapter 11, 13, or 15 of this title for the month in which a veteran's death occurs, the amount of such death benefits for that month shall be not less than the amount of benefits the veteran would have received under chapter 11 or 15 of this title for that month but for the death of the veteran.

(b)(1) If the surviving spouse of a veteran who was in receipt of compensation or pension at the time of death is not entitled to death benefits under chapter 11, 13, or 15 of this title for the

month in which the veteran's death occurs, that surviving spouse shall be entitled to a benefit for that month in the amount of benefits the veteran would have received under chapter 11 or 15 of this title for that month but for the death of the veteran.

(2) If (notwithstanding section 5112(b)(1) of this title) a check or other payment is issued to, and in the name of, the deceased veteran as a benefit payment under chapter 11 or 15 of this title for the month in which death occurs, that check or other payment (A) shall be treated for all purposes as being payable to the surviving spouse, and (B) if that check or other payment is negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (1). However, if such check or other payment is in an amount less than the amount of the benefit under paragraph (1), the unpaid amount shall be treated in the same manner as an accrued benefit under section 5121 of this title.

(Added Pub. L. 87–825, Sec. 4(a), Oct. 15, 1962, 76 Stat. 950, Sec. 3110; amended Pub. L. 98–160, title VII, Sec. 703(3), Nov. 21, 1983, 97 Stat. 1010; renumbered Sec. 5310 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 104–275, title V, Sec. 506(a), Oct. 9, 1996, 110 Stat. 3343; Pub. L. 105–114, title IV, Sec. 401(f), Nov. 21, 1997, 111 Stat. 2294.)

§ 5311. Prohibition of certain benefit payments

There shall be no payment of dependency and indemnity compensation, death compensation, or death pension which, because of a widow's relationship with another man before enactment of Public Law 87–674, would not have been payable by the Veterans' Administration under the standard for determining remarriage applied by that agency before said enactment.

(Added Pub. L. 91–376, Sec. 8(b), Aug. 12, 1970, 84 Stat. 790, Sec. 3111; renumbered Sec. 5311, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

§ 5312. Annual adjustment of certain benefit rates

(a) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase each maximum annual rate of pension under sections 1521, 1541, and 1542 of this title, the rate of increased pension paid under such sections 1521 and 1541 on account of children, and each rate of monthly allowance paid under section 1805 of this title, as such rates were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(b)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the maximum monthly rates of dependency and indemnity compensation for parents payable under subsections (b), (c), and (d), and the monthly rate provided in subsection (g), of section 1315 of this title and the annual

income limitations prescribed in subsections (b)(3), (c)(3), and (d)(3) of such section, and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title, as such rates and limitations were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(2)(A) Whenever there is an increase under paragraph (1) of this subsection in such rates and annual income limitations, the Secretary shall, effective on the date of such increase in such rates and limitations, adjust (as provided in subparagraph (B) of this paragraph) the rates of dependency and indemnity compensation payable under subsection (b)(1) or (c)(1) of section 1315 of this title to any parent whose annual income is more than $800 but not more than the annual income limitation in effect under subsection (b)(3) or (c)(3) of such section, as appropriate, and adjust the rates of such compensation payable under subsection (d)(1) of such section to any parent whose annual income is more than $1,000 but not more than the annual income limitation in effect under subsection (d)(3) of such section.

(B) The adjustment in rates of dependency and indemnity compensation referred to in subparagraph (A) of this paragraph shall be made by the Secretary in accordance with regulations which the Secretary shall prescribe.

(c)(1) Whenever there is an increase under subsection (a) in benefit rates payable under sections 1521, 1541, 1542, and 1805 of this title and an increase under subsection (b) in benefit rates and annual income limitations under section 1315 of this title, the Secretary shall publish such rates and limitations (including those rates adjusted by the Secretary under subsection (b)(2) of this section), as increased pursuant to such subsections, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) is published by reason of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(2) Whenever such rates and income limitations are so increased, the Secretary may round such rates and income limitations in such manner as the Secretary considers equitable and appropriate for ease of administration.

(Added Pub. L. 95–588, title III, Sec. 305(a), Nov. 4, 1978, 92 Stat. 2507, Sec. 3112; amended Pub. L. 97–295, Sec. 4(76), Oct. 12, 1982, 96 Stat. 1311; renumbered Sec. 5312, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 104–204, title IV, Sec. 421(c), Sept. 26, 1996, 110 Stat. 2926; Pub. L. 108–454, title V, Sec. 506, Dec. 10, 2004, 118 Stat. 3622.)

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

(a)(1) To the extent provided in subsection (d) of this section, any person who is entitled to compensation or to dependency and indemnity compensation and who is incarcerated in a Federal, State, local, or other penal institution or correctional facility for a period in excess of sixty days for conviction of a felony shall not be paid such compensation or dependency and indemnity compensa-

tion, for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends, in an amount that exceeds—

(A) in the case of a veteran with a service-connected disability rated at 20 percent or more, the rate of compensation payable under section 1114(a) of this title; or

(B) in the case of a veteran with a service-connected disability not rated at 20 percent or more or in the case of a surviving spouse, parent, or child, one-half of the rate of compensation payable under section 1114(a) of this title.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any period during which a person is participating in a work-release program or is residing in a halfway house.

(b)(1) All or any part of the compensation not paid to a veteran by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned under the same terms and conditions as are provided under section 5307 of this title.

(2) All or any part of the dependency and indemnity compensation not paid to a surviving spouse or child by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned as follows:

(A) In the case of dependency and indemnity compensation not paid to a surviving spouse, any apportionment shall be to the surviving child or children.

(B) In the case of dependency and indemnity compensation not paid to a surviving child, any apportionment shall be to the surviving spouse or other surviving children, as applicable.

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

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

(d) The provisions of subsection (a) of this section shall apply (1) with respect to any period of incarceration of a person for conviction of a felony committed after October 7, 1980, and (2) with respect to any period of incarceration on or after October 1, 1980, for conviction of a felony of a person who on October 1, 1980, is incarcerated for conviction of such felony and with respect to whom the action granting an award of compensation or dependency and indemnity compensation is taken on or after such date.

(e) For purposes of this section—

(1) The term "compensation" includes disability compensation payable under section 1151 of this title.

(2) The term "dependency and indemnity compensation" means death compensation payable under section 1121 or 1141 of this title, death compensation and dependency and indemnity compensation payable under section 1151 of this title, and any benefit payable under chapter 13 of this title.

(Added Pub. L. 96–385, title V, Sec. 504(a), Oct. 7, 1980, 94 Stat. 1534, Sec. 3113; amended Pub. L. 98–160, title VII, Sec. 702(17), Nov. 21, 1983, 97 Stat. 1010; renumbered Sec. 5313 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 105–368, title X, Sec. 1005(b)(16), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 109–461, title X, Sec. 1002(f), Dec. 22, 2006, 120 Stat. 3465.)

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

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

(Added Pub. L. 104–275, title V, Sec. 502(a), Oct. 9, 1996, 110 Stat. 3341; amended Pub. L. 109–461, title X, Sec. 1002(g), Dec. 22, 2006, 120 Stat. 3465.)

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

(a) A veteran who is otherwise eligible for a benefit specified in subsection (c) may not be paid or otherwise provided such benefit for any period during which such veteran is a fugitive felon. A dependent of a veteran who is otherwise eligible for a benefit specified in subsection (c) may not be paid or otherwise provided such benefit for any period during which such veteran or such dependent is a fugitive felon.

(b) For purposes of this section:

(1) The term "fugitive felon" means a person 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 person flees; or

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

(2) 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.

(3) The term "dependent" means a spouse, surviving spouse, child, or dependent parent of a veteran.

(c) A benefit specified in this subsection is a benefit under any of 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) Chapter 30, 31, 32, 34, or 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 person who is eligible for a benefit specified in subsection (c) if such official—

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

(B) identifies the person as being a fugitive felon; and

(C) certifies to the Secretary that apprehending such person 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).

(Added Pub. L. 107–103, title V, Sec. 505(a)(1), Dec. 27, 2001, 115 Stat. 995.)

§ 5314. Indebtedness offsets

(a) Subject to subsections (b) and (d) of this section and section 3485(e) of this title, the Secretary shall (unless the Secretary waives recovery under section 5302 of this title) deduct the amount of the indebtedness of any person who has been determined to be indebted to the United States by virtue of such person's participation in a benefits program administered by the Secretary from future payments made to such person under any law administered by the Secretary.

(b) Deductions may not be made under subsection (a) of this section with respect to the indebtedness of a person described in such subsection unless the Secretary—

(1) has made reasonable efforts to notify such person of such person's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and of such person's right to request a waiver of such indebtedness under section 5302 of this title;

(2) has made a determination with respect to any such dispute or request or has determined that the time required to make such a determination before making deductions would jeopardize the Secretary's ability to recover the full amount of such indebtedness through deductions from such payments; and

(3) has made reasonable efforts to notify such person about the proposed deductions from such payments.

(c) Notwithstanding any other provision of this title or of any other law, the authority of the Secretary to make deductions under this section or to take other administrative action authorized by law for the purpose of collecting an indebtedness described in subsection (a) of this section, or for the purpose of determining the creditworthiness of a person who owes such an indebtedness, shall not be subject to any limitation with respect to the time for bringing civil actions or for commencing administrative proceedings.

(d) The Secretary shall prescribe regulations for the administration of this section.

(Added Pub. L. 96–466, title VI, Sec. 605(a)(1), Oct. 17, 1980, 94 Stat. 2209, Sec. 3114; amended Pub. L. 102–16, Sec. 6(b)(3), Mar. 22, 1991, 105 Stat. 51; renum-

bered Sec. 5314 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403–406.)

§ 5315. Interest and administrative cost charges on delinquent payments of certain amounts due the United States

(a) Notwithstanding any other provision of this title or of any other law and subject to sections 3485(e) and 5302 of this title, interest and administrative costs (as described in subsections (b) and (c) of this section) shall be charged, under regulations which the Secretary shall prescribe, on any amount owed to the United States—

(1) for an indebtedness resulting from a person's participation in a benefits program administered by the Secretary other than a loan, loan-guaranty, or loan-insurance program;

(2) for an indebtedness resulting from the provision of care or services under chapter 17 of this title; or

(3) to the extent not precluded by the terms of the loan instruments concerned, for an indebtedness resulting from a person's participation in a program of loans, loan guaranties, or loan insurance administered by the Secretary under this title.

(b)(1) Interest on the amount of any indebtedness described in subsection (a) of this section shall accrue from the day on which the initial notification of the amount due is mailed to the person who owes such amount (using the most current address of such person that is available to the Secretary), but interest under this section shall not be charged (A) for any period before October 17, 1980, or (B) if the amount due is paid within a reasonable period of time. The Secretary shall, in the regulations prescribed pursuant to subsection (a) of this section, prescribe what constitutes a reasonable period of time for payment of an indebtedness after the initial notification of indebtedness has been mailed.

(2) The rate of interest to be charged under this section shall be based on the rate of interest paid by the United States for its borrowing and shall be determined by the Secretary under such regulations.

(c) The administrative costs to be charged under this section with respect to an amount owed to the United States shall be so much of the costs incurred by the United States in collecting such amount as the Secretary determines, under such regulations, to be reasonable and appropriate.

(Added Pub. L. 96–466, title VI, Sec. 605(a)(1), Oct. 17, 1980, 94 Stat. 2210, Sec. 3115; amended Pub. L. 102–16, Sec. 6(b)(4), Mar. 22, 1991, 105 Stat. 51; renumbered Sec. 5315 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), 5(C)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 105–368, title X, Sec. 1005(b)(17), Nov. 11, 1998, 112 Stat. 3365.)

§ 5316. Authority to sue to collect certain debts

(a)(1) The Secretary shall take appropriate steps to authorize attorneys employed by the Department to exercise, subject to paragraphs (2) and (3) of this subsection, the right of the United States to bring suit in any court of competent jurisdiction to recover any indebtedness owed to the United States by a person by virtue of

such person's participation in a benefits program administered by the Secretary.

(2) No suit may be filed under this section to recover any indebtedness owed by any person to the United States unless the Secretary has determined, under regulations which the Secretary shall prescribe, that such person has failed to respond appropriately to reasonable administrative efforts to collect such indebtedness.

(3) The activities of attorneys employed by the Department in bringing suit under this section shall be subject to the direction and supervision of the Attorney General of the United States and to such terms and conditions as the Attorney General may prescribe.

(b) Nothing in this section shall derogate from the authority of the Attorney General of the United States under sections 516 and 519 of title 28 to direct and supervise all litigation to which the United States or an agency or officer of the United States is a party.

(Added Pub. L. 96–466, title VI, Sec. 605(a)(1), Oct. 17, 1980, 94 Stat. 2211, Sec. 3116; renumbered Sec. 5316, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–54, Sec. 14(d)(3), June 13, 1991, 105 Stat. 285; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

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

(a) The Secretary shall notify each applicant for a benefit or service described in subsection (c) of this section that income information furnished by the applicant to the Secretary may be compared with information obtained by the Secretary from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986. The Secretary shall periodically transmit to recipients of such benefits and services additional notifications of such matters.

(b) The Secretary may not, by reason of information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986, terminate, deny, suspend, or reduce any benefit or service described in subsection (c) of this section until the Secretary takes appropriate steps to verify independently information relating to the following:

(1) The amount of the asset or income involved.

(2) Whether such individual actually has (or had) access to such asset or income for the individual's own use.

(3) The period or periods when the individual actually had such asset or income.

(c) The benefits and services described in this subsection are the following:

(1) Needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Secretary.

(2) Parents' dependency and indemnity compensation provided under section 1315 of this title.

(3) Health-care services furnished under subsections (a)(2)(G), (a)(3), and (b) of section 1710 of this title.

(4) Compensation paid under chapter 11 of this title at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

(d) In the case of compensation described in subsection (c)(4) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment information referred to in subsection (b) of this section only if the Secretary finds that the amount and duration of the earnings reported in that information clearly indicate that the individual may no longer be qualified for a rating of total disability.

(e) The Secretary shall inform the individual of the findings made by the Secretary on the basis of verified information under subsection (b) of this section, and shall give the individual an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility for the benefit or service involved.

(f) The Secretary shall pay the expenses of carrying out this section from amounts available to the Department for the payment of compensation and pension.

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

(Added Pub. L. 101–508, title VIII, Sec. 8051(b)(1), Nov. 5, 1990, 104 Stat. 1388–350, Sec. 3117; renumbered Sec. 5317, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–568, title VI, Sec. 602(a), Oct. 29, 1992, 106 Stat. 4342; Pub. L. 103–66, title XII, Sec. 12004, Aug. 10, 1993, 107 Stat. 414; Pub. L. 104–262, title I, Sec. 101(e)(3), Oct. 9, 1996, 110 Stat. 3181; Pub. L. 105–33, title VIII, Sec. 8014, Aug. 5, 1997, 111 Stat. 664; Pub. L. 106–419, title IV, Sec. 402(d), Nov. 1, 2000, 114 Stat. 1863; Pub. L. 108–183, title VII, Sec. 708(c)(3), Dec. 16, 2003, 117 Stat. 2674; Pub. L. 110–389, title VIII, Sec. 802, Oct. 10, 2008, 122 Stat. 4185.)

§ 5317A. Use of income information from other agencies: independent verification required before termination or reduction of certain benefits and services

(a) INDEPENDENT VERIFICATION REQUIRED.—The Secretary may terminate, deny, suspend, or reduce any benefit or service specified in section 5317(c), with respect to an individual under age 65 who is an applicant for or recipient of such a benefit or service, by reason of information obtained from the Secretary of Health and Human Services under section 453(j)(11) of the Social Security Act, only if the Secretary takes appropriate steps to verify independently information relating to the individual's employment and income from employment.

(b) OPPORTUNITY TO CONTEST FINDINGS.—The Secretary shall inform each individual for whom the Secretary terminates, denies, suspends, or reduces any benefit or service under subsection (a) of the findings made by the Secretary under such subsection on the basis of verified information and shall provide to the individual an opportunity to contest such findings in the same manner as applies to other information and findings relating to eligibility for the benefit or service involved.

(c) SOURCE OF FUNDS FOR REIMBURSEMENT TO SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary shall pay the expense of reimbursing the Secretary of Health and Human Services in accordance with section 453(j)(11)(E) of the Social Security Act, for the cost incurred by the Secretary of Health and Human Services in furnishing information requested by the Secretary under section 453(j)(11) of such Act, from amounts available to the Department for the payment of compensation and pensions.

(d) EXPIRATION OF AUTHORITY.—The authority under this section shall expire on September 30, 2011.

(Added Pub. L. 110–157, title III, Sec. 301(b)(1), Dec. 26, 2007, 121 Stat. 1835)

§ 5318. Review of Social Security Administration death information

(a) The Secretary shall periodically compare Department of Veterans Affairs information regarding persons to or for whom compensation or pension is being paid with information in the records of the Social Security Administration relating to persons who have died for the purposes of—

(1) determining whether any such persons to whom compensation and pension is being paid are deceased;

(2) ensuring that such payments to or for any such persons who are deceased are terminated in a timely manner; and

(3) ensuring that collection of overpayments of such benefits resulting from payments after the death of such persons is initiated in a timely manner.

(b) The Social Security Administration death information referred to in subsection (a) of this section is death information available to the Secretary from or through the Commissioner of Social Security, including death information available to the Commissioner from a State, pursuant to a memorandum of understanding entered into by the Secretary and the Commissioner. Any such memorandum of understanding shall include safeguards to assure that information made available under it is not used for unauthorized purposes or improperly disclosed.

(Added Pub. L. 101–508, title VIII, Sec. 8053(b)(1), Nov. 5, 1990, 104 Stat. 1388–352, Sec. 3118; renumbered Sec. 5318, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 108–183, title VII, Sec. 708(c)(4)(A), (B)(i), Dec. 16, 2003, 117 Stat. 2674.)

§ 5319. Limitations on access to financial records

(a) The Secretary may make a request referred to in section 1113(p) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(p)) only if the Secretary determines that the requested information—

(1) is necessary in order for the Secretary to administer the provisions of law referred to in that section; and

(2) cannot be secured by a reasonable search of records and information of the Department.

(b) The Secretary shall include a certification of the determinations referred to in subsection (a) in each request presented to a financial institution.

(c) Information disclosed pursuant to a request referred to in subsection (a) may be used solely for the purpose of the administra-

tion of benefits programs under laws administered by the Secretary if, except for the exemption in subsection (a), the disclosure of that information would otherwise be prohibited by any provision of the Right to Financial Privacy Act of 1978.

(Added Pub. L. 102–568, title VI, Sec. 603(b)(1), Oct. 29, 1992, 106 Stat. 4342.)

Chapter 55 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART IV—GENERAL ADMINISTRATIVE PROVISIONS]

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

Sec.
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§ 5501. Commitment actions

The Secretary may incur necessary court costs and other expenses incident to proceedings for the commitment of mentally incompetent veterans to a Department hospital or domiciliary when necessary for treatment or domiciliary purposes.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1232, Sec. 3201; renumbered Sec. 5501, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 5502. Payments to and supervision of fiduciaries

(a)(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

(2) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary during such year.

A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

(b) Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

(c) Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

(d) All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's fiduciary, or, in the event of the bene-

ficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

(e) Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1232, Sec. 3202; Pub. L. 86–146, Sec. 1(a), Aug. 7, 1959, 73 Stat. 297; Pub. L. 92–328, title I, Sec. 105(a), June 30, 1972, 86 Stat. 395; Pub. L. 93–295, title III, Sec. 301, May 31, 1974, 88 Stat. 183; Pub. L. 97–295, Sec. 4(77), Oct. 12, 1982, 96 Stat. 1311; Pub. L. 98–223, title II, Sec. 207(a), (b)(1), Mar. 2, 1984, 98 Stat. 43; Pub. L. 99–576, title V, Sec. 505, title VII, Sec. 701(76), Oct. 28, 1986, 100 Stat. 3287, 3297; renumbered Sec. 5502 and amended Pub. L. 102–40, title III, Sec. 305(a), title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 210, 238; Pub. L. 102–83, Sec. 4(a)(1), (2)(A)(ix), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 108–454, title V, Sec. 501(b), Dec. 10, 2004, 118 Stat. 3617.)

§ 5503. Hospitalized veterans and estates of incompetent institutionalized veterans

(a)(1)(A) Where any veteran having neither spouse nor child is being furnished domiciliary care by the Department, no pension in excess of $90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(B) Except as provided in subparagraph (D) of this paragraph, where any veteran having neither spouse nor child is being fur-

nished nursing home care by the Department, no pension in excess of $90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. Any amount in excess of $90 per month to which the veteran would be entitled but for the application of the preceding sentence shall be deposited in a revolving fund at the Department medical facility which furnished the veteran nursing care, and such amount shall be available for obligation without fiscal year limitation to help defray operating expenses of that facility.

(C) No pension in excess of $90 per month shall be paid to or for a veteran having neither spouse nor child for any period after the month in which such veteran is readmitted for care described in subparagraph (A) or (B) of this paragraph and furnished by the Department if such veteran is readmitted within six months of a period of care in connection with which pension was reduced pursuant to subparagraph (A) or (B) of this paragraph.

(D) In the case of a veteran being furnished nursing home care by the Department and with respect to whom subparagraph (B) of this paragraph requires a reduction in pension, such reduction shall not be made for a period of up to three additional calendar months after the last day of the third month referred to in such subparagraph if the Secretary determines that the primary purpose for the furnishing of such care during such additional period is for the Department to provide such veteran with a prescribed program of rehabilitation services, under chapter 17 of this title, designed to restore such veteran's ability to function within such veteran's family and community. If the Secretary determines that it is necessary, after such period, for the veteran to continue such program of rehabilitation services in order to achieve the purposes of such program and that the primary purpose of furnishing nursing home care to the veteran continues to be the provision of such program to the veteran, the reduction in pension required by subparagraph (B) of this paragraph shall not be made for the number of calendar months that the Secretary determines is necessary for the veteran to achieve the purposes of such program.

(2) The provisions of paragraph (1) shall also apply to a veteran being furnished such care who has a spouse but whose pension is payable under section 1521(b) of this title. In such a case, the Secretary may apportion and pay to the spouse, upon an affirmative showing of hardship, all or any part of the amounts in excess of the amount payable to the veteran while being furnished such care which would be payable to the veteran if pension were payable under section 1521(c) of this title.

(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.

(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.

(d)(1) For the purposes of this subsection—

(A) the term "Medicaid plan" means a State plan for medical assistance referred to in section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)); and

(B) the term "nursing facility" means a nursing facility described in section 1919 of such Act (42 U.S.C. 1396r), other than a facility that is a State home with respect to which the Secretary makes per diem payments for nursing home care pursuant to section 1741(a) of this title.

(2) If a veteran having neither spouse nor child is covered by a Medicaid plan for services furnished such veteran by a nursing facility, no pension in excess of $90 per month shall be paid to or for the veteran for any period after the month of admission to such nursing facility.

(3) Notwithstanding any provision of title XIX of the Social Security Act, the amount of the payment paid a nursing facility pursuant to a Medicaid plan for services furnished a veteran may not be reduced by any amount of pension permitted to be paid such veteran under paragraph (2) of this subsection.

(4) A veteran is not liable to the United States for any payment of pension in excess of the amount permitted under this subsection that is paid to or for the veteran by reason of the inability or failure of the Secretary to reduce the veteran's pension under this subsection unless such inability or failure is the result of a willful concealment by the veteran of information necessary to make a reduction in pension under this subsection.

(5) The provisions of this subsection shall apply with respect to a surviving spouse having no child in the same manner as they apply to a veteran having neither spouse nor child.

(6) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

(7) This subsection expires on September 30, 2011.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1234, Sec. 3203; Pub. L. 86–146, Sec. 1(b), 2, Aug. 7, 1959, 73 Stat. 298; Pub. L. 86–211, Sec. 6, Aug. 29, 1959, 73 Stat. 435; Pub. L. 87–544, Sec. 1, July 25, 1962, 76 Stat. 208; Pub. L. 87–556, Sec. 1, July 27, 1962, 76 Stat. 245; Pub. L. 87–645, Sec. 2(b), Sept. 7, 1962, 76 Stat. 441; Pub. L. 88–450, Sec. 5(a), Aug. 19, 1964, 78 Stat. 504; Pub. L. 89–362, Sec. 1, 2, Mar. 7, 1966, 80 Stat. 30; Pub. L. 91–24, Sec. 10, June 11, 1969, 83 Stat. 34; Pub. L. 92–328, title I, Sec. 104, June 30, 1972, 86 Stat. 394; Pub. L. 93–177, Sec. 5, Dec.

6, 1973, 87 Stat. 696; Pub. L. 95–588, title III, Sec. 307, Nov. 4, 1978, 92 Stat. 2510; Pub. L. 96–385, title V, Sec. 503(b), Oct. 7, 1980, 94 Stat. 1534; Pub. L. 97–66, title VI, Sec. 602, Oct. 17, 1981, 95 Stat. 1034; Pub. L. 98–160, title VII, Sec. 703(4), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98–543, title IV, Sec. 402(a), Oct. 24, 1984, 98 Stat. 2749; Pub. L. 99–576, title VII, Sec. 701(77), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 101–237, title I, Sec. 111(a), Dec. 18, 1989, 103 Stat. 2064; Pub. L. 101–508, title VIII, Sec. 8003(a), Nov. 5, 1990, 104 Stat. 1388–342; renumbered Sec. 5503 and amended Pub. L. 102–40, title III, Sec. 304(a), title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 209, 238; Pub. L. 102–83, Sec. 4(a)(2)(A)(x), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 102–86, title I, Sec. 101(a), Aug. 14, 1991, 105 Stat. 414; Pub. L. 102–568, title VI, Sec. 601(a)–(c), Oct. 29, 1992, 106 Stat. 4341; Pub. L. 103–66, title XII, Sec. 12005, Aug. 10, 1993, 107 Stat. 414; Pub. L. 105–33, title VIII, Sec. 8015, Aug. 5, 1997, 111 Stat. 664; Pub. L. 105–368, title IX, Sec. 904(a), Nov. 11, 1998, 112 Stat. 3361; Pub. L. 106–419, title III, Sec. 304, title IV, Sec. 402(e), Nov. 1, 2000, 114 Stat. 1853, 1863; Pub. L. 107–103, title II, Sec. 204(a), title V, Sec. 504, Dec. 27, 2001, 115 Stat. 990, 995.)

§ 5504. Administration of trust funds

All cash balances in the personal funds of patients and the funds due incompetent beneficiaries trust funds administered by the Secretary, and all moneys received which are properly for deposit into these funds, may be deposited, respectively, into deposit fund accounts with the United States Treasury and such balances and deposits shall thereupon be available for disbursement for properly authorized purposes. When any balances have been on deposit with the Treasurer of the United States for more than one year and represent moneys belonging to individuals whose whereabouts are unknown, they shall be transferred and disposed of as directed in section 1322(a) of title 31.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1235, Sec. 3204; Pub. L. 97–258, Sec. 3(k)(5), Sept. 13, 1982, 96 Stat. 1065; renumbered Sec. 5504, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

[§ 5505. Repealed. Pub. L. 103–446, title XII, Sec. 1201(g)(4)(A), Nov. 2, 1994, 108 Stat. 4687]

§ 5506. Definition of "fiduciary"

For purposes of this chapter and chapter 61 of this title, the term "fiduciary" means—

(1) a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant's estate) or of a beneficiary (or a beneficiary's estate); or

(2) any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary.

(Added Pub. L. 108–454, title V, Sec. 501(a)(1), Dec. 10, 2004, 118 Stat. 3617.)

§ 5507. Inquiry, investigations, and qualification of fiduciaries

(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

(A) to be conducted in advance of such certification;

(B) to the extent practicable, to include a face-to-face interview with such person; and

(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

(3) the furnishing of any bond that may be required by the Secretary.

(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

(B) the spouse or parent of an incompetent beneficiary;

(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed $3,600, as adjusted pursuant to section 5312 of this title.

(d) TEMPORARY FIDUCIARIES.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.

(Added Pub. L. 108–454, title V, Sec. 502(a), Dec. 10, 2004, 118 Stat. 3618.)

§ 5508. Periodic onsite reviews of institutional fiduciaries

In addition to such other reviews of fiduciaries as the Secretary may otherwise conduct, the Secretary shall provide for the

periodic onsite review of any person or agency located in the United States that receives the benefits payable under laws administered by the Secretary to another individual pursuant to the appointment of such person or agency as a fiduciary under section 5502(a)(1) of this title in any case in which the fiduciary is serving in that capacity with respect to more than 20 beneficiaries and the total annual amount of such benefits exceeds $50,000, as adjusted pursuant to section 5312 of this title.

(Added Pub. L. 108–454, title V, Sec. 504(a)(1), Dec. 10, 2004, 118 Stat. 3620.)

§ 5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting

(a) REQUIRED REPORTS AND ACCOUNTINGS.—The Secretary may require a fiduciary to file a report or accounting pursuant to regulations prescribed by the Secretary.

(b) ACTIONS UPON FAILURE TO FILE.—In any case in which a fiduciary fails to submit a report or accounting required by the Secretary under subsection (a), the Secretary may, after furnishing notice to such fiduciary and the beneficiary entitled to such payment of benefits, require that such fiduciary appear in person at a regional office of the Department serving the area in which the beneficiary resides in order to receive such payments.

(Added Pub. L. 108–454, title V, Sec. 504(a)(1), Dec. 10, 2004, 118 Stat. 3621.)

§ 5510. Annual report

The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary's Annual Performance and Accountability Report information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following: —[1]

(1) The number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, or parent).

(2) The types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of this title).

(3) The total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit.

(4) The number of fiduciaries who are the spouse, parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian in fact, and supervised direct payees.

(5) The number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused.

(6) How such cases of misuse of benefits were addressed by the Secretary.

(7) The final disposition of such cases of misuse of benefits, including the number and dollar amount of any benefits reissued to beneficiaries.

[1] So in original.

(8) The number of fiduciary cases referred to the Office of the Inspector General and the nature of the actions taken by the Inspector General.

(9) The total amount of money recovered by the government[2] in cases arising from the misuse of benefits by a fiduciary.

(10) Such other information as the Secretary considers appropriate.

(Added Pub. L. 108–454, title V, Sec. 505(a), Dec. 10, 2004, 118 Stat. 3621.)

[2] So in original. Probably should be capitalized.

Chapter 57 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART IV—GENERAL ADMINISTRATIVE PROVISIONS]

CHAPTER 57—RECORDS AND INVESTIGATIONS

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SUBCHAPTER I—RECORDS

§ 5701. Confidential nature of claims

(a) All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of the Department shall be confidential and privileged, and no disclosure thereof shall be made except as provided in this section.

(b) The Secretary shall make disclosure of such files, records, reports, and other papers and documents as are described in subsection (a) of this section as follows:

(1) To a claimant or duly authorized agent or representative of a claimant as to matters concerning the claimant alone when, in the judgment of the Secretary, such disclosure would not be injurious to the physical or mental health of the claimant and to an independent medical expert or experts for an advisory opinion pursuant to section 5109 or 7109 of this title.

(2) When required by process of a United States court to be produced in any suit or proceeding therein pending.

(3) When required by any department or other agency of the United States Government.

(4) In all proceedings in the nature of an inquest into the mental competency of a claimant.

(5) In any suit or other judicial proceeding when in the judgment of the Secretary such disclosure is deemed necessary and proper.

(6) In connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by the Secretary when in the judgment of the Secretary such disclosure is deemed necessary and proper.

(c)(1) The amount of any payment made by the Secretary to any person receiving benefits under a program administered by the Secretary shall be made known to any person who applies for such information.

(2) Any appraisal report or certificate of reasonable value submitted to or prepared by the Secretary in connection with any loan guaranteed, insured, or made under chapter 37 of this title shall be made available to any person who applies for such report or certificate.

(3) Subject to the approval of the President, the Secretary may publish at any time and in any manner any or all information of record pertaining to any claim filed with the Secretary if the Secretary determines that the public interest warrants or requires such publication.

(d) The Secretary as a matter of discretion may authorize an inspection of Department records by duly authorized representatives of recognized organizations.

(e) Except as otherwise specifically provided in this section with respect to certain information, the Secretary may release information, statistics, or reports to individuals or organizations when in the Secretary's judgment such release would serve a useful purpose.

(f) The Secretary may, pursuant to regulations the Secretary shall prescribe, release the name or address, or both, of any present or former member of the Armed Forces, or a dependent of a present or former member of the Armed Forces, (1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title, or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such name or address be provided for a purpose authorized by law. Any organization or member thereof or other person who, knowing that the use of any name or address released by the Secretary pursuant to the preceding sentence is limited to the purpose specified in such sentence, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.

(g)(1) Subject to the provisions of this subsection, and under regulations which the Secretary shall prescribe, the Secretary may release the name or address, or both, of any person who is a present or former member of the Armed Forces, or who is a de-

pendent of a present or former member of the Armed Forces, to a consumer reporting agency if the release of such information is necessary for a purpose described in paragraph (2) of this subsection.

(2) A release of information under paragraph (1) of this subsection concerning a person described in such paragraph may be made for the purpose of—

(A) locating such a person—

(i) who has been administratively determined to be indebted to the United States by virtue of the person's participation in a benefits program administered by the Secretary; or

(ii) if the Secretary has determined under such regulations that (I) it is necessary to locate such person in order to conduct a study pursuant to section 527 of this title or a study required by any other provision of law, and (II) all reasonable steps have been taken to assure that the release of such information to such reporting agency will not have an adverse effect on such person; or

(B) Obtaining a consumer report in order to assess the ability of a person described in subparagraph (A)(i) of this paragraph to repay the indebtedness of such person to the United States, but the Secretary may release the name or address of such person for the purpose stated in this clause only if the Secretary determines under such regulations that such person has failed to respond appropriately to administrative efforts to collect such indebtedness.

(3) The Secretary may also release to a consumer reporting agency, for the purposes specified in subparagraph (A) or (B) of paragraph (2) of this subsection, such other information as the Secretary determines under such regulations is reasonably necessary to identify a person described in such paragraph, except that the Secretary may not release to a consumer reporting agency any information which indicates any indebtedness on the part of such person to the United States or any information which reflects adversely on such person. Before releasing any information under this paragraph, the Secretary shall, under such regulations, take reasonable steps to provide for the protection of the personal privacy of persons about whom information is proposed to be released under this paragraph.

(4)(A) If the Secretary determines, under regulations which the Secretary shall prescribe, that a person described in paragraph (1) of this subsection has failed to respond appropriately to reasonable administrative efforts to collect an indebtedness of such person described in paragraph (2)(A)(i) of this subsection, the Secretary may release information concerning the indebtedness, including the name and address of such person, to a consumer reporting agency for the purpose of making such information available for inclusion in consumer reports regarding such person and, if necessary, for the purpose of locating such person, if—

(i) the Secretary has (I) made reasonable efforts to notify such person of such person's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and of such person's right to request a waiver of such indebtedness under section 5302 of this title, (II) af-

forded such person a reasonable opportunity to exercise such rights, and (III) made a determination with respect to any such dispute or request; and

(ii) thirty calendar days have elapsed after the day on which the Secretary has made a determination that reasonable efforts have been made to notify such person (I) that the Secretary intends to release such information for such purpose or purposes, and (II) that, upon the request of such person, the Secretary shall inform such person of whether such information has been so released and of the name and address of each consumer reporting agency to which such information was released by the Secretary and of the specific information so released.

(B) After release of any information under subparagraph (A) of this paragraph concerning the indebtedness of any person, the Secretary shall promptly notify—

(i) each consumer reporting agency to which such information has been released by the Secretary; and

(ii) each consumer reporting agency described in subsection (i)(3)(B)(i) of this section to which such information has been transmitted by the Secretary through a consumer reporting agency described in subsection (i)(3)(B)(ii)(I) of this section, of any substantial change in the status or amount of such indebtedness and, upon the request of any such consumer reporting agency for verification of any or all information so released, promptly verify or correct, as appropriate, such information. The Secretary shall also, after the release of such information, inform such person, upon the request of such person, of the name and address of each consumer reporting agency described in clause (i) or (ii) of this subparagraph to which such information was released or transmitted by the Secretary and of the specific information so released or transmitted.

(h)(1) Under regulations which the Secretary shall prescribe, the Secretary may release the name or address, or both, of any person who is a present or former member of the Armed Forces, or who is a dependent of a present or former member of the Armed Forces (and other information relating to the identity of such person), to any person in a category of persons described in such regulations and specified in such regulations as a category of persons to whom such information may be released, if the release of such information is necessary for a purpose described in paragraph (2) of this subsection.

(2) A release of information under paragraph (1) of this subsection may be made for the purpose of—

(A) determining the creditworthiness, credit capacity, income, or financial resources of a person who has (i) applied for any benefit under chapter 37 of this title, or (ii) submitted an offer to the Secretary for the purchase of property acquired by the Secretary under section 3720(a)(5) of this title;

(B) verifying, either before or after the Secretary has approved a person's application for assistance in the form of a loan guaranty or loan insurance under chapter 37 of this title, information submitted by a lender to the Secretary regarding

the creditworthiness, credit capacity, income, or financial resources of such person;

(C) offering for sale or other disposition by the Secretary, pursuant to section 3720 of this title, any loan or installment sale contract owned or held by the Secretary; or

(D) providing assistance to any applicant for benefits under chapter 37 of this title or administering such benefits if the Secretary promptly records the fact of such release in appropriate records pertaining to the person concerning whom such release was made.

(i)(1) No contract entered into for any of the purposes of subsection (g) or (h) of this section, and no action taken pursuant to any such contract or either such subsection, shall result in the application of section 552a of title 5 to any consumer reporting agency or any employee of a consumer reporting agency.

(2) The Secretary shall take reasonable steps to provide for the protection of the personal privacy of persons about whom information is disclosed under subsection (g) or (h) of this section.

(3) For the purposes of this subsection and of subsection (g) of this section—

(A) The term "consumer report" has the meaning provided such term in subsection (d) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)).

(B) The term "consumer reporting agency" means—

(i) a consumer reporting agency as such term is defined in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), or

(ii) any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit or other information on consumers for the purpose of furnishing such information to consumer reporting agencies (as defined in clause (i) of this paragraph), or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such reporting agencies.

(j) Except as provided in subsection (i)(1) of this section, any disclosure made pursuant to this section shall be made in accordance with the provisions of section 552a of title 5.

(k)(1)(A) Under regulations that the Secretary shall prescribe, the Secretary may disclose the name and address of any individual described in subparagraph (C) to an entity described in subparagraph (B) in order to facilitate the determination by such entity whether the individual is, or after death will be, a suitable organ, tissue, or eye donor if—

(i) the individual is near death (as determined by the Secretary) or is deceased; and

(ii) the disclosure is permitted under regulations promulgated pursuant to section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note).

(B) An entity described in this subparagraph is—

(i) an organ procurement organization, including eye and tissue banks; or

(ii) an entity that the Secretary has determined—

(I) is substantially similar in function, professionalism, and reliability to an organ procurement organization; and

(II) should be treated for purposes of this subsection in the same manner as an organ procurement organization.

(C) An individual described in this subparagraph is—

(i) a veteran; or

(ii) a dependent of veteran.

(2) In this subsection, the term "organ procurement organization" has the meaning given the term "qualified organ procurement organization" in section 371(b) of the Public Health Service Act (42 U.S.C. 273(b)).

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1236, Sec. 3301; Pub. L. 87–671, Sec. 2, Sept. 19, 1962, 76 Stat. 557; Pub. L. 91–24, Sec. 11, June 11, 1969, 83 Stat. 34; Pub. L. 92–540, title IV, Sec. 412, Oct. 24, 1972, 86 Stat. 1093; Pub. L. 94–321, Sec. 1(a), June 29, 1976, 90 Stat. 713; Pub. L. 94–581, title II, Sec. 210(b), Oct. 21, 1976, 90 Stat. 2863; Pub. L. 96–466, title VI, Sec. 606, Oct. 17, 1980, 94 Stat. 2212; Pub. L. 101–94, title III, Sec. 302(a), Aug. 16, 1989, 103 Stat. 628; renumbered Sec. 5701 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 2(c)(6), 4(a)(1), (2)(A)(xi), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 402–406; Pub. L. 107–14, Sec. 8(a)(13), June 5, 2001, 115 Stat. 35; Pub. L. 109–461, title II, Sec. 204(a), Dec. 22, 2006, 120 Stat. 3411.)

§ 5702. Furnishing of records

(a) Any person desiring a copy of any record, paper, and so forth, in the custody of the Secretary that may be disclosed under section 5701 of this title must submit to the Secretary an application in writing for such copy. The application shall state specifically—

(1) the particular record, paper, and so forth, a copy of which is desired and whether certified or uncertified; and

(2) the purpose for which such copy is desired to be used.

(b) The Secretary may establish a schedule of fees for copies and certification of such records.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1236, Sec. 3302; renumbered Sec. 5702 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(2)(A)(xii), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 103–446, title XII, Sec. 1201(e)(16), Nov. 2, 1994, 108 Stat. 4686.)

§ 5703. Certification of records of District of Columbia

When a copy of any public record of the District of Columbia is required by the Secretary to be used in determining the eligibility of any person for benefits under laws administered by the Secretary, the official custodian of such public record shall without charge provide the applicant for such benefits or any person (including any veterans' organization) acting on the veteran's behalf or the authorized representative of the Secretary with a certified copy of such record.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1237, Sec. 3303; Pub. L. 99–576, title VII, Sec. 701(78), Oct. 28, 1986, 100 Stat. 3298; renumbered Sec. 5703, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), (2)(A)(xiii), Aug. 6, 1991, 105 Stat. 403.)

§ 5704. Transcript of trial records

The Secretary may purchase transcripts of the record, including all evidence, of trial of litigated cases.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1237, Sec. 3304; renumbered Sec. 5704, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 5705. Confidentiality of medical quality-assurance records

(a) Records and documents created by the Department as part of a medical quality-assurance program (other than reports submitted pursuant to section 7311(g) of this title) are confidential and privileged and may not be disclosed to any person or entity except as provided in subsection (b) of this section.

(b)(1) Subject to paragraph (2) of this subsection, a record or document described in subsection (a) of this section shall, upon request, be disclosed as follows:

(A) To a Federal agency or private organization, if such record or document is needed by such agency or organization to perform licensing or accreditation functions related to Department health-care facilities or to perform monitoring, required by statute, of Department health-care facilities.

(B) To a Federal executive agency or provider of health-care services, if such record or document is required by such agency or provider for participation by the Department in a health-care program with such agency or provider.

(C) To a criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or document be provided for a purpose authorized by law.

(D) To health-care personnel, to the extent necessary to meet a medical emergency affecting the health or safety of any individual.

(2) The name of and other identifying information regarding any individual patient or employee of the Department, or any other individual associated with the Department for purposes of a medical quality-assurance program, contained in a record or document described in subsection (a) of this section shall be deleted from any record or document before any disclosure made under this subsection if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy.

(3) No person or entity to whom a record or document has been disclosed under this subsection shall make further disclosure of such record or document except for a purpose provided in this subsection.

(4) Nothing in this section shall be construed as authority to withhold any record or document from a committee of either House of Congress or any joint committee of Congress, if such record or document pertains to any matter within the jurisdiction of such committee or joint committee.

(5) Nothing in this section shall be construed as limiting the use of records and documents described in subsection (a) of this section within the Department (including contractors and consultants of the Department).

(6) Nothing in this section shall be construed as authorizing or requiring withholding from any person or entity the disclosure of statistical information regarding Department health-care programs (including such information as aggregate morbidity and mortality rates associated with specific activities at individual Department health-care facilities) that does not implicitly or explicitly identify individual patients or employees of the Department, or individuals who participated in the conduct of a medical quality-assurance review.

(c) For the purpose of this section, the term "medical quality-assurance program" means—

(1) with respect to any activity carried out before October 7, 1980, a Department systematic health-care review activity carried out by or for the Department for the purpose of improving the quality of medical care or improving the utilization of health-care resources in Department health-care facilities; and

(2) with respect to any activity carried out on or after October 7, 1980, a Department systematic health-care review activity designated by the Secretary to be carried out by or for the Department for either such purpose.

(d)(1) The Secretary shall prescribe regulations to carry out this section. In prescribing such regulations, the Secretary shall specify those activities carried out before October 7, 1980, which the Secretary determines meet the definition of medical quality-assurance program in subsection (c)(1) of this section and those activities which the Secretary has designated under subsection (c)(2) of this section. The Secretary shall, to the extent appropriate, incorporate into such regulations the provisions of the administrative guidelines and procedures governing such programs in existence on October 7, 1980.

(2) An activity may not be considered as having been designated as a medical quality-assurance program for the purposes of subsection (c)(2) of this section unless the designation has been specified in such regulations.

(e) Any person who, knowing that a document or record is a document or record described in subsection (a) of this section, willfully discloses such record or document except as provided for in subsection (b) of this section shall be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

(Added Pub. L. 96–385, title V, Sec. 505(a), Oct. 7, 1980, 94 Stat. 1535, Sec. 3305; amended Pub. L. 99–166, title II, Sec. 201, Dec. 3, 1985, 99 Stat. 949; renumbered Sec. 5705 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), 403(b)(2), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(d)(4), June 13, 1991, 105 Stat. 285; Pub. L. 102–83, Sec. 4(a)(2)(F), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

SUBCHAPTER II—INVESTIGATIONS

§ 5711. Authority to issue subpoenas

(a) For the purposes of the laws administered by the Secretary, the Secretary, and those employees to whom the Secretary may delegate such authority, to the extent of the authority so delegated, shall have the power to—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles from the place of hearing;

(2) require the production of books, papers, documents, and other evidence;

(3) take affidavits and administer oaths and affirmations;

(4) aid claimants in the preparation and presentation of claims; and

(5) make investigations and examine witnesses upon any matter within the jurisdiction of the Department.

(b) Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1237, Sec. 3311; renumbered Sec. 5711, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(d)(5)(A), June 13, 1991, 105 Stat. 286.)

§ 5712. Validity of affidavits

Any such oath, affirmation, affidavit, or examination, when certified under the hand of any such employee by whom it was administered or taken and authenticated by the seal of the Department, may be offered or used in any court of the United States and without further proof of the identity or authority of such employee shall have like force and effect as if administered or taken before a clerk of such court.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1237, Sec. 3312; renumbered Sec. 5712, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

§ 5713. Disobedience to subpoena

In case of disobedience to any such subpoena, the aid of any district court of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which the inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any officer, agent, or employee of any corporation or to any other person, issue an order requiring such corporation or other person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1237, Sec. 3313; renumbered Sec. 5713, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(d)(6)(A), (B), June 13, 1991, 105 Stat. 286.)

SUBCHAPTER III—INFORMATION SECURITY

§ 5721. Purpose

The purpose of the Information Security Program is to establish a program to provide security for Department information and information systems commensurate to the risk of harm, and to communicate the responsibilities of the Secretary, Under Secretaries, Assistant Secretaries, other key officials, Assistant Secretary for Information and Technology, Associate Deputy Assistant Secretary for Cyber and Information Security, and Inspector General of the Department of Veterans Affairs as outlined in the provisions of subchapter III of chapter 35 of title 44 (also known as the

"Federal Information Security Management Act of 2002", which was enacted as part of the E-Government Act of 2002 (Public Law 107–347)).

(Added Pub. L. 109–461, title IX, Sec. 902(a), Dec. 22, 2006, 120 Stat. 3450.)

§ 5722. Policy

(a) IN GENERAL.—The security of Department information and information systems is vital to the success of the mission of the Department. To that end, the Secretary shall establish and maintain a comprehensive Department-wide information security program to provide for the development and maintenance of cost-effective security controls needed to protect Department information, in any media or format, and Department information systems.

(b) ELEMENTS.—The Secretary shall ensure that the Department information security program includes the following elements:

(1) Periodic assessments of the risk and magnitude of harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the Department.

(2) Policies and procedures that—

(A) are based on risk assessments;

(B) cost-effectively reduce security risks to an acceptable level; and

(C) ensure that information security is addressed throughout the life cycle of each Department information system.

(3) Selection and effective implementation of minimum, mandatory technical, operational, and management security controls, or other compensating countermeasures, to protect the confidentiality, integrity, and availability of each Department system and its information.

(4) Subordinate plans for providing adequate security for networks, facilities, systems, or groups of information systems, as appropriate.

(5) Annual security awareness training for all Department employees, contractors, and all other users of VA sensitive data and Department information systems that identifies the information security risks associated with the activities of such employees, contractors, and users and the responsibilities of such employees, contractors, and users to comply with Department policies and procedures designed to reduce such risks.

(6) Periodic testing and evaluation of the effectiveness of security controls based on risk, including triennial certification testing of all management, operational, and technical controls, and annual testing of a subset of those controls for each Department system.

(7) A process for planning, developing, implementing, evaluating, and documenting remedial actions to address deficiencies in information security policies, procedures, and practices.

(8) Procedures for detecting, immediately reporting, and responding to security incidents, including mitigating risks before substantial damage is done as well as notifying and con-

sulting with the US-Computer Emergency Readiness Team of the Department of Homeland Security, law enforcement agencies, the Inspector General of the Department, and other offices as appropriate.

(9) Plans and procedures to ensure continuity of operations for Department systems.

(c) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The Secretary shall comply with the provisions of subchapter III of chapter 35 of title 44 and other related information security requirements promulgated by the National Institute of Standards and Technology and the Office of Management and Budget that define Department information system mandates.

(Added Pub. L. 109–461, title IX, Sec. 902(a), Dec. 22, 2006, 120 Stat. 3450.)

§ 5723. Responsibilities

(a) SECRETARY OF VETERANS AFFAIRS.—In accordance with the provisions of subchapter III of chapter 35 of title 44, the Secretary is responsible for the following:

(1) Ensuring that the Department adopts a Department-wide information security program and otherwise complies with the provisions of subchapter III of chapter 35 of title 44 and other related information security requirements.

(2) Ensuring that information security protections are commensurate with the risk and magnitude of the potential harm to Department information and information systems resulting from unauthorized access, use, disclosure, disruption, modification, or destruction.

(3) Ensuring that information security management processes are integrated with Department strategic and operational planning processes.

(4) Ensuring that the Under Secretaries, Assistant Secretaries, and other key officials of the Department provide adequate security for the information and information systems under their control.

(5) Ensuring enforcement and compliance with the requirements imposed on the Department under the provisions of subchapter III of chapter 35 of title 44.

(6) Ensuring that the Department has trained program and staff office personnel sufficient to assist in complying with all the provisions of subchapter III of chapter 35 of title 44 and other related information security requirements.

(7) Ensuring that the Assistant Secretary for Information and Technology, in coordination with the Under Secretaries, Assistant Secretaries, and other key officials of the Department report to Congress, the Office of Management and Budget, and other entities as required by law and Executive Branch direction on the effectiveness of the Department information security program, including remedial actions.

(8) Notifying officials other than officials of the Department of data breaches when required under this subchapter.

(9) Ensuring that the Assistant Secretary for Information and Technology has the authority and control necessary to develop, approve, implement, integrate, and oversee the policies, procedures, processes, activities, and systems of the Depart-

ment relating to subchapter III of chapter 35 of title 44, including the management of all related mission applications, information resources, personnel, and infrastructure.

(10) Submitting to the Committees on Veterans' Affairs of the Senate and House of Representatives, the Committee on Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate, not later than March 1 each year, a report on the compliance of the Department with subchapter III of chapter 35 of title 44, with the information in such report displayed in the aggregate and separately for each Administration, office, and facility of the Department.

(11) Taking appropriate action to ensure that the budget for any fiscal year, as submitted by the President to Congress under section 1105 of title 31, sets forth separately the amounts required in the budget for such fiscal year for compliance by the Department with Federal law and regulations governing information security, including this subchapter and subchapter III of chapter 35 of title 44.

(12) Providing notice to the Director of the Office of Management and Budget, the Inspector General of the Department, and such other Federal agencies as the Secretary considers appropriate of a presumptive data breach of which notice is provided the Secretary under subsection (b)(16) if, in the opinion of the Assistant Secretary for Information and Technology, the breach involves the information of twenty or more individuals.

(b) ASSISTANT SECRETARY FOR INFORMATION AND TECHNOLOGY.—The Assistant Secretary for Information and Technology, as the Chief Information Officer of the Department, is responsible for the following:

(1) Establishing, maintaining, and monitoring Department-wide information security policies, procedures, control techniques, training, and inspection requirements as elements of the Department information security program.

(2) Issuing policies and handbooks to provide direction for implementing the elements of the information security program to all Department organizations.

(3) Approving all policies and procedures that are related to information security for those areas of responsibility that are currently under the management and the oversight of other Department organizations.

(4) Ordering and enforcing Department-wide compliance with and execution of any information security policy.

(5) Establishing minimum mandatory technical, operational, and management information security control requirements for each Department system, consistent with risk, the processes identified in standards of the National Institute of Standards and Technology, and the responsibilities of the Assistant Secretary to operate and maintain all Department systems currently creating, processing, collecting, or disseminating data on behalf of Department information owners.

(6) Establishing standards for access to Department information systems by organizations and individual employees, and to deny access as appropriate.

(7) Directing that any incidents of failure to comply with established information security policies be immediately reported to the Assistant Secretary.

(8) Reporting any compliance failure or policy violation directly to the appropriate Under Secretary, Assistant Secretary, or other key official of the Department for appropriate administrative or disciplinary action.

(9) Reporting any compliance failure or policy violation directly to the appropriate Under Secretary, Assistant Secretary, or other key official of the Department along with taking action to correct the failure or violation.

(10) Requiring any key official of the Department who is so notified to report to the Assistant Secretary with respect to an action to be taken in response to any compliance failure or policy violation reported by the Assistant Secretary.

(11) Ensuring that the Chief Information Officers and Information Security Officers of the Department comply with all cyber security directives and mandates, and ensuring that these staff members have all necessary authority and means to direct full compliance with such directives and mandates relating to the acquisition, operation, maintenance, or use of information technology resources from all facility staff.

(12) Establishing the VA National Rules of Behavior for appropriate use and protection of the information which is used to support Department missions and functions.

(13) Establishing and providing supervision over an effective incident reporting system.

(14) Submitting to the Secretary, at least once every quarter, a report on any deficiency in the compliance with subchapter III of chapter 35 of title 44 of the Department or any Administration, office, or facility of the Department.

(15) Reporting immediately to the Secretary on any significant deficiency in the compliance described by paragraph (14).

(16) Providing immediate notice to the Secretary of any presumptive data breach.

(c) ASSOCIATE DEPUTY ASSISTANT SECRETARY FOR CYBER AND INFORMATION SECURITY.—In accordance with the provisions of subchapter III of chapter 35 of title 44, the Associate Deputy Assistant Secretary for Cyber and Information Security, as the Senior Information Security Officer of the Department, is responsible for carrying out the responsibilities of the Assistant Secretary for Information and Technology under the provisions of subchapter III of chapter 35 of title 44, as set forth in subsection (b).

(d) DEPARTMENT INFORMATION OWNERS.—In accordance with the criteria of the Centralized IT Management System, Department information owners are responsible for the following:

(1) Providing assistance to the Assistant Secretary for Information and Technology regarding the security requirements and appropriate level of security controls for the information system or systems where sensitive personal information is currently created, collected, processed, disseminated, or subject to disposal.

(2) Determining who has access to the system or systems containing sensitive personal information, including types of privileges and access rights.

(3) Ensuring the VA National Rules of Behavior is signed on an annual basis and enforced by all system users to ensure appropriate use and protection of the information which is used to support Department missions and functions.

(4) Assisting the Assistant Secretary for Information and Technology in the identification and assessment of the common security controls for systems where their information resides.

(5) Providing assistance to Administration and staff office personnel involved in the development of new systems regarding the appropriate level of security controls for their information.

(e) OTHER KEY OFFICIALS.—In accordance with the provisions of subchapter III of chapter 35 of title 44, the Under Secretaries, Assistant Secretaries, and other key officials of the Department are responsible for the following:

(1) Implementing the policies, procedures, practices, and other countermeasures identified in the Department information security program that comprise activities that are under their day-to-day operational control or supervision.

(2) Periodically testing and evaluating information security controls that comprise activities that are under their day-to-day operational control or supervision to ensure effective implementation.

(3) Providing a plan of action and milestones to the Assistant Secretary for Information and Technology on at least a quarterly basis detailing the status of actions being taken to correct any security compliance failure or policy violation.

(4) Complying with the provisions of subchapter III of chapter 35 of title 44 and other related information security laws and requirements in accordance with orders of the Assistant Secretary for Information and Technology to execute the appropriate security controls commensurate to responding to a security bulletin of the Security Operations Center of the Department, with such orders to supersede and take priority over all operational tasks and assignments and be complied with immediately.

(5) Ensuring that—

(A) all employees within their organizations take immediate action to comply with orders from the Assistant Secretary for Information and Technology to—

(i) mitigate the impact of any potential security vulnerability;

(ii) respond to a security incident; or

(iii) implement the provisions of a bulletin or alert of the Security Operations Center; and

(B) organizational managers have all necessary authority and means to direct full compliance with such orders from the Assistant Secretary.

(6) Ensuring the VA National Rules of Behavior is signed and enforced by all system users to ensure appropriate use and

protection of the information which is used to support Department missions and functions on an annual basis.

(f) USERS OF DEPARTMENT INFORMATION AND INFORMATION SYSTEMS.—Users of Department information and information systems are responsible for the following:

(1) Complying with all Department information security program policies, procedures, and practices.

(2) Attending security awareness training on at least an annual basis.

(3) Reporting all security incidents immediately to the Information Security Officer of the system or facility and to their immediate supervisor.

(4) Complying with orders from the Assistant Secretary for Information and Technology directing specific activities when a security incident occurs.

(5) Signing an acknowledgment that they have read, understand, and agree to abide by the VA National Rules of Behavior on an annual basis.

(g) INSPECTOR GENERAL OF DEPARTMENT OF VETERANS AFFAIRS.—In accordance with the provisions of subchapter III of chapter 35 of title 44, the Inspector General of the Department is responsible for the following:

(1) Conducting an annual audit of the Department information security program.

(2) Submitting an independent annual report to the Office of Management and Budget on the status of Department information security program, based on the results of the annual audit.

(3) Conducting investigations of complaints and referrals of violations as considered appropriate by the Inspector General.

(Added Pub. L. 109–461, title IX, Sec. 902(a), Dec. 22, 2006, 120 Stat. 3451.)

§ 5724. Provision of credit protection and other services

(a) INDEPENDENT RISK ANALYSIS.—(1) In the event of a data breach with respect to sensitive personal information that is processed or maintained by the Secretary, the Secretary shall ensure that, as soon as possible after the data breach, a non-Department entity or the Office of Inspector General of the Department conducts an independent risk analysis of the data breach to determine the level of risk associated with the data breach for the potential misuse of any sensitive personal information involved in the data breach.

(2) If the Secretary determines, based on the findings of a risk analysis conducted under paragraph (1), that a reasonable risk exists for the potential misuse of sensitive personal information involved in a data breach, the Secretary shall provide credit protection services in accordance with the regulations prescribed by the Secretary under this section.

(b) REGULATIONS.—Not later than 180 days after the date of the enactment of the Veterans Benefits, Health Care, and Information Technology Act of 2006, the Secretary shall prescribe interim regulations for the provision of the following in accordance with subsection (a)(2):

(1) Notification.
(2) Data mining.
(3) Fraud alerts.
(4) Data breach analysis.
(5) Credit monitoring.
(6) Identity theft insurance.
(7) Credit protection services.

(c) REPORT.—(1) For each data breach with respect to sensitive personal information processed or maintained by the Secretary, the Secretary shall promptly submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing the findings of any independent risk analysis conducted under subsection (a)(1), any determination of the Secretary under subsection (a)(2), and a description of any services provided pursuant to subsection (b).

(2) In the event of a data breach with respect to sensitive personal information processed or maintained by the Secretary that is the sensitive personal information of a member of the Army, Navy, Air Force, or Marine Corps or a civilian officer or employee of the Department of Defense, the Secretary shall submit the report required under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in addition to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(Added Pub. L. 109–461, title IX, Sec. 902(a), Dec. 22, 2006, 120 Stat. 3455.)

§ 5725. Contracts for data processing or maintenance

(a) CONTRACT REQUIREMENTS.—If the Secretary enters into a contract for the performance of any Department function that requires access to sensitive personal information, the Secretary shall require as a condition of the contract that—

(1) the contractor shall not, directly or through an affiliate of the contractor, disclose such information to any other person unless the disclosure is lawful and is expressly permitted under the contract;

(2) the contractor, or any subcontractor for a subcontract of the contract, shall promptly notify the Secretary of any data breach that occurs with respect to such information.

(b) LIQUIDATED DAMAGES.—Each contract subject to the requirements of subsection (a) shall provide for liquidated damages to be paid by the contractor to the Secretary in the event of a data breach with respect to any sensitive personal information processed or maintained by the contractor or any subcontractor under that contract.

(c) PROVISION OF CREDIT PROTECTION SERVICES.—Any amount collected by the Secretary under subsection (b) shall be deposited in or credited to the Department account from which the contractor was paid and shall remain available for obligation without fiscal year limitation exclusively for the purpose of providing credit protection services pursuant to section 5724(b) of this title.

(Added Pub. L. 109–461, title IX, Sec. 902(a), Dec. 22, 2006, 120 Stat. 3456.)

§ 5726. Reports and notice to congress on data breaches

(a) QUARTERLY REPORTS.—(1) Not later than 30 days after the last day of a fiscal quarter, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on any data breach with respect to sensitive personal information processed or maintained by the Department that occurred during that quarter.

(2) Each report submitted under paragraph (1) shall identify, for each data breach covered by the report—

(A) the Administration and facility of the Department responsible for processing or maintaining the sensitive personal information involved in the data breach; and

(B) the status of any remedial or corrective action with respect to the data breach.

(b) NOTIFICATION OF SIGNIFICANT DATA BREACHES.—(1) In the event of a data breach with respect to sensitive personal information processed or maintained by the Secretary that the Secretary determines is significant, the Secretary shall provide notice of such breach to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(2) In the event of a data breach with respect to sensitive personal information processed or maintained by the Secretary that is the sensitive personal information of a member of the Army, Navy, Air Force, or Marine Corps or a civilian officer or employee of the Department of Defense that the Secretary determines is significant under paragraph (1), the Secretary shall provide the notice required under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in addition to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(3) Notice under paragraphs (1) and (2) shall be provided promptly following the discovery of such a data breach and the implementation of any measures necessary to determine the scope of the breach, prevent any further breach or unauthorized disclosures, and reasonably restore the integrity of the data system.

(Added Pub. L. 109–461, title IX, Sec. 902(a), Dec. 22, 2006, 120 Stat. 3457.)

§ 5727. Definitions

In this subchapter:

(1) AVAILABILITY.—The term "availability" means ensuring timely and reliable access to and use of information.

(2) CONFIDENTIALITY.—The term "confidentiality" means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information.

(3) CONTROL TECHNIQUES.—The term "control techniques" means methods for guiding and controlling the operations of information systems to ensure adherence to the provisions of subchapter III of chapter 35 of title 44 and other related information security requirements.

(4) DATA BREACH.—The term "data breach" means the loss, theft, or other unauthorized access, other than those incidental to the scope of employment, to data containing sensitive per-

sonal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data.

(5) DATA BREACH ANALYSIS.—The term "data breach analysis" means the process used to determine if a data breach has resulted in the misuse of sensitive personal information.

(6) FRAUD RESOLUTION SYSTEMS.—The term "fraud resolution services" means services to assist an individual in the process of recovering and rehabilitating the credit of the individual after the individual experiences identity theft.

(7) IDENTITY THEFT.—The term "identity theft" has the meaning given such term under section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a).

(8) IDENTITY THEFT INSURANCE.—The term "identity theft insurance" means any insurance policy that pays benefits for costs, including travel costs, notary fees, and postage costs, lost wages, and legal fees and expenses associated with efforts to correct and ameliorate the effects and results of identity theft of the insured individual.

(9) INFORMATION OWNER.—The term "information owner" means an agency official with statutory or operational authority for specified information and responsibility for establishing the criteria for its creation, collection, processing, dissemination, or disposal, which responsibilities may extend to interconnected systems or groups of interconnected systems.

(10) INFORMATION RESOURCES.—The term "information resources" means information in any medium or form and its related resources, such as personnel, equipment, funds, and information technology.

(11) INFORMATION SECURITY.—The term "information security" means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability.

(12) INFORMATION SECURITY REQUIREMENTS.—The term "information security requirements" means information security requirements promulgated in accordance with law, or directed by the Secretary of Commerce, the National Institute of Standards and Technology, and the Office of Management and Budget, and, as to national security systems, the President.

(13) INFORMATION SYSTEM.—The term "information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information, whether automated or manual.

(14) INTEGRITY.—The term "integrity" means guarding against improper information modification or destruction, and includes ensuring information non-repudiation and authenticity.

(15) NATIONAL SECURITY SYSTEM.—The term "national security system" means an information system that is protected at all times by policies and procedures established for the processing, maintenance, use, sharing, dissemination or disposition of information that has been specifically authorized under cri-

teria established by statute or Executive Order to be kept classified in the interest of national defense or foreign policy.

(16) PLAN OF ACTION AND MILESTONES.—The term "plan of action and milestones", means a plan used as a basis for the quarterly reporting requirements of the Office of Management and Budget that includes the following information:

(A) A description of the security weakness.

(B) The identity of the office or organization responsible for resolving the weakness.

(C) An estimate of resources required to resolve the weakness by fiscal year.

(D) The scheduled completion date.

(E) Key milestones with estimated completion dates.

(F) Any changes to the original key milestone date.

(G) The source that identified the weakness.

(H) The status of efforts to correct the weakness.

(17) PRINCIPAL CREDIT REPORTING AGENCY.—The term "principal credit reporting agency" means a consumer reporting agency as described in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(18) SECURITY INCIDENT.—The term "security incident" means an event that has, or could have, resulted in loss or damage to Department assets, or sensitive information, or an action that breaches Department security procedures.

(19) SENSITIVE PERSONAL INFORMATION.—The term "sensitive personal information", with respect to an individual, means any information about the individual maintained by an agency, including the following:

(A) Education, financial transactions, medical history, and criminal or employment history.

(B) Information that can be used to distinguish or trace the individual's identity, including name, social security number, date and place of birth, mother's maiden name, or biometric records.

(20) SUBORDINATE PLAN.—The term "subordinate plan", also referred to as a "system security plan", means a subordinate plan defines the security controls that are either planned or implemented for networks, facilities, systems, or groups of systems, as appropriate, within a specific accreditation boundary.

(21) TRAINING.—The term "training" means a learning experience in which an individual is taught to execute a specific information security procedure or understand the information security common body of knowledge.

(22) VA NATIONAL RULES OF BEHAVIOR.—The term "VA National Rules of Behavior" means a set of Department rules that describes the responsibilities and expected behavior of personnel with regard to information system usage.

(23) VA SENSITIVE DATA.—The term "VA sensitive data" means all Department data, on any storage media or in any form or format, which requires protection due to the risk of harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the information and includes information whose improper use or disclosure could adversely

affect the ability of an agency to accomplish its mission, proprietary information, and records about individuals requiring protection under applicable confidentiality provisions.

(Added Pub. L. 109–461, title IX, Sec. 902(a), Dec. 22, 2006, 120 Stat. 3457.)

§ 5728. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for each fiscal year.

(Added Pub. L. 109–461, title IX, Sec. 902(a), Dec. 22, 2006, 120 Stat. 3460.)

Chapter 59 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART IV—GENERAL ADMINISTRATIVE PROVISIONS]

CHAPTER 59—AGENTS AND ATTORNEYS

Sec.
5901. Prohibition against acting as claims agent or attorney.
5902. Recognition of representatives of organizations.
5903. Recognition with respect to particular claims.
5904. Recognition of agents and attorneys generally.
5905. Penalty for certain acts.

§ 5901. Prohibition against acting as claims agent or attorney

Except as provided by section 500 of title 5, no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary unless such individual has been recognized for such purposes by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1238, Sec. 3401; Pub. L. 91–24, Sec. 12(a), June 11, 1969, 83 Stat. 34; Pub. L. 99–576, title VII, Sec. 701(79), Oct. 28, 1986, 100 Stat. 3298; renumbered Sec. 5901, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

§ 5902. Recognition of representatives of organizations

(a)(1) The Secretary may recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, and such other organizations as the Secretary may approve, in the preparation, presentation, and prosecution of claims under laws administered by the Secretary.

(2) The Secretary may, in the discretion of the Secretary, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized.

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

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

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

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

(c)(1) Unless a claimant specifically indicates in a power of attorney filed with the Department a desire to appoint only a recognized representative of an organization listed in or approved under

subsection (a), the Secretary may, for any purpose, treat the power of attorney naming such an organization, a specific office of such an organization, or a recognized representative of such an organization as the claimant's representative as an appointment of the entire organization as the claimant's representative.

(2) Whenever the Secretary is required or permitted to notify a claimant's representative, and the claimant has named in a power of attorney an organization listed in or approved under subsection (a), a specific office of such an organization, or a recognized representative of such an organization without specifically indicating a desire to appoint only a recognized representative of the organization, the Secretary shall notify the organization at the address designated by the organization for the purpose of receiving the notification concerned.

(d) Service rendered in connection with any such claim, while not on active duty, by any retired officer, warrant officer, or enlisted member of the Armed Forces recognized under this section shall not be a violation of sections 203, 205, 206, or 207 of title 18.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1238, Sec. 3402; Pub. L. 91–24, Sec. 12(b), June 11, 1969, 83 Stat. 34; Pub. L. 98–160, title VII, Sec. 703(5), Nov. 21, 1983, 97 Stat. 1010; renumbered Sec. 5902, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 104–275, title V, Sec. 508(a), Oct. 9, 1996, 110 Stat. 3343; Pub. L. 109–461, title I, Sec. 101(a)(2), Dec. 22, 2006, 120 Stat. 3406.)

§ 5903. Recognition with respect to particular claims

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

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

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

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

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1238, Sec. 3403; renumbered Sec. 5903, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 109–461, title I, Sec. 101(a)(3), Dec. 22, 2006, 120 Stat. 3407.)

§ 5904. Recognition of agents and attorneys generally

(a) RECOGNITION.—(1) Except as provided in paragraph (4), the Secretary may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary.

(2) The Secretary shall prescribe in regulations (consistent with the Model Rules of Professional Conduct of the American Bar Association) qualifications and standards of conduct for individuals recognized under this section, including a requirement that, as a condition of being so recognized, an individual must—

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

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

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

(3) The Secretary shall prescribe in regulations requirements that each agent or attorney recognized under this section provide annually to the Secretary information about any court, bar, or Federal or State agency to which such agent or attorney is admitted to practice or otherwise authorized to appear, any relevant identification number or numbers, and a certification by such agent or attorney that such agent or attorney is in good standing in every jurisdiction where the agent or attorney is admitted to practice or otherwise authorized to appear.

(4) The Secretary may not recognize an individual as an agent or attorney under paragraph (1) if such individual has been suspended or disbarred by any court, bar, or Federal or State agency to which the individual was previously admitted to practice and has not been subsequently reinstated.

(5) The Secretary may prescribe in regulations reasonable restrictions on the amount of fees that an agent or attorney may charge a claimant for services rendered in the preparation, presentation, and prosecution of a claim before the Department. A fee that does not exceed 20 percent of the past due amount of benefits awarded on a claim shall be presumed to be reasonable.

(6)(A) The Secretary may charge and collect an assessment from an individual recognized as an agent or attorney under this section in any case in which the Secretary pays to the agent or attorney, from past-due benefits owed to a claimant represented by the agent or attorney, an amount as a fee in accordance with a fee arrangement between the claimant and the agent or attorney.

(B) The amount of an assessment under subparagraph (A) shall be equal to five percent of the amount of the fee required to be paid to the agent or attorney, except that the amount of such an assessment may not exceed $100.

(C) The Secretary may collect an assessment under subparagraph (A) by offsetting the amount of the fee otherwise required to be paid to the agent or attorney from the past-due benefits owed to the claimant represented by the agent or attorney.

(D) An agent or attorney who is charged an assessment under subparagraph (A) may not, directly or indirectly, request, receive, or obtain reimbursement for such assessment from the claimant represented by the agent or attorney.

(E) Amounts collected under this paragraph shall be deposited in the account available for administrative expenses for veterans' benefits programs. Amounts so deposited shall be merged with amounts in such account and shall be available for the same purpose, and subject to the same conditions and limitations, as amounts otherwise in such account.

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

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

(2) has been guilty of disreputable conduct;

(3) is incompetent;

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

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

(6) has presented to the Secretary a frivolous claim, issue, or argument, involving conduct inconsistent with ethical standards for the practice of law;

(7) has been suspended or disbarred by any court or bar to which such agent or attorney was previously admitted to practice, or has been disqualified from participating in or appearing before any Federal agency, and has not been subsequently reinstated;

(8) has charged excessive or unreasonable fees, as determined by the Secretary in accordance with subsection (c)(3)(A); or

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

(c)(1) Except as provided in paragraph (4), in connection with a proceeding before the Department with respect to benefits under laws administered by the Secretary, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which a notice of disagreement is filed with respect to the case. The limitation in the preceding sentence does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court.

(2) A person who, acting as agent or attorney in a case referred to in paragraph (1) of this subsection, represents a person before the Department or the Board of Veterans' Appeals after a notice of disagreement is filed with respect to the case shall file a copy of any fee agreement between them with the Secretary pursuant to regulations prescribed by the Secretary.

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

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

(C) If the Secretary under subsection (b) suspends or excludes from further practice before the Department any agent or attorney who collects or receives a fee in excess of the amount authorized under this section, the suspension shall continue until the agent or

attorney makes full restitution to each claimant from whom the agent or attorney collected or received an excessive fee. If the agent or attorney makes such restitution, the Secretary may reinstate such agent or attorney under such rules as the Secretary may prescribe.

(4) A reasonable fee may be charged or paid in connection with any proceeding before the Department in a case arising out of a loan made, guaranteed, or insured under chapter 37 of this title. A person who charges a fee under this paragraph shall enter into a written agreement with the person represented and shall file a copy of the fee agreement with the Secretary at such time, and in such manner, as may be specified by the Secretary.

(d) PAYMENT OF FEES OUT OF PAST-DUE BENEFITS.—(1) When a claimant and an agent or attorney have entered into a fee agreement described in paragraph (2), the total fee payable to the agent or attorney may not exceed 20 percent of the total amount of any past-due benefits awarded on the basis of the claim.

(2)(A) A fee agreement referred to in paragraph (1) is one under which the total amount of the fee payable to the agent or attorney—

(i) is to be paid to the agent or attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim; and

(ii) is contingent on whether or not the matter is resolved in a manner favorable to the claimant.

(B) For purposes of subparagraph (A), a claim shall be considered to have been resolved in a manner favorable to the claimant if all or any part of the relief sought is granted.

(3) To the extent that past-due benefits are awarded in any proceeding before the Secretary, the Board of Veterans' Appeals, or the United States Court of Appeals for Veterans Claims, the Secretary may direct that payment of any fee to an agent or attorney under a fee arrangement described in paragraph (1) be made out of such past-due benefits. In no event may the Secretary withhold for the purpose of such payment any portion of benefits payable for a period after the date of the final decision of the Secretary, the Board of Veterans' Appeals, or Court of Appeals for Veterans Claims making (or ordering the making of) the award.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1238, Sec. 3404; Pub. L. 99–576, title VII, Sec. 701(80), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100–687, div. A, title I, Sec. 104(a), Nov. 18, 1988, 102 Stat. 4108; renumbered Sec. 5904 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 102–405, title III, Sec. 303(a), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–446, title V, Sec. 504(a), Nov. 2, 1994, 108 Stat. 4663; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 109–461, title I, Sec. 101(a)(1), (b), (c)(1), (d)–(f), Dec. 22, 2006, 120 Stat. 3405, 3407, 3408.)

§ 5905. Penalty for certain acts

Whoever wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1239, Sec. 3405; Pub. L. 99–576, title VII, Sec. 701(81), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100–687, div. A, title I, Sec.

104(b), Nov. 18, 1988, 102 Stat. 4109; renumbered Sec. 5905 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 109–461, title I, Sec. 101(g), Dec. 22, 2006, 120 Stat. 3408.)

Chapter 61 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART IV—GENERAL ADMINISTRATIVE PROVISIONS]

CHAPTER 61—PENAL AND FORFEITURE PROVISIONS

Sec.
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6102. Fraudulent acceptance of payments.
6103. Forfeiture for fraud.
6104. Forfeiture for treason.
6105. Forfeiture for subversive activities.
6106. Misuse of benefits by fiduciaries.
6107. Reissuance of benefits.
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§ 6101. Misappropriation by fiduciaries

(a) Whoever, being a fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary, shall lend, borrow, pledge, hypothecate, use, or exchange for other funds or property, except as authorized by law, or embezzle or in any manner misappropriate any such money or property derived therefrom in whole or in part and coming into such fiduciary's control in any manner whatever in the execution of such fiduciary's trust, or under color of such fiduciary's office or service as such fiduciary, shall be fined in accordance with title 18, or imprisoned not more than five years, or both.

(b) Any willful neglect or refusal to make and file proper accountings or reports concerning such money or property as required by law shall be taken to be sufficient evidence prima facie of such embezzlement or misappropriation.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1239, Sec. 3501; Pub. L. 99–576, title VII, Sec. 701(82), Oct. 28, 1986, 100 Stat. 3298; renumbered Sec. 6101, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(d)(7), June 13, 1991, 105 Stat. 286; Pub. L. 102–83, Sec. 4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 103–446, title XII, Sec. 1201(e)(17), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 108–454, title V, Sec. 501(c), Dec. 10, 2004, 118 Stat. 3618.)

§ 6102. Fraudulent acceptance of payments

(a) Any person entitled to monetary benefits under any of the laws administered by the Secretary whose right to payment thereof ceases upon the happening of any contingency, who thereafter fraudulently accepts any such payment, shall be fined in accordance with title 18, or imprisoned not more than one year, or both.

(b) Whoever obtains or receives any money or check under any of the laws administered by the Secretary without being entitled to it, and with intent to defraud the United States or any beneficiary of the United States, shall be fined in accordance with title 18, or imprisoned not more than one year, or both.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1239, Sec. 3502; renumbered Sec. 6102, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(d)(7), June 13, 1991, 105 Stat. 286; Pub. L. 102–83, Sec. 4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

§ 6103. Forfeiture for fraud

(a) Whoever knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning any claim for benefits under any of the laws administered by the Secretary (except laws pertaining to insurance benefits) shall forfeit all rights, claims, and benefits under all laws administered by the Secretary (except laws pertaining to insurance benefits).

(b) Whenever a veteran entitled to disability compensation has forfeited the right to such compensation under this section, the compensation payable but for the forfeiture shall thereafter be paid to the veteran's spouse, children, and parents. Payments made to a spouse, children, and parents under the preceding sentence shall not exceed the amounts payable to each if the veteran had died from service-connected disability. No spouse, child, or parent who participated in the fraud for which forfeiture was imposed shall receive any payment by reason of this subsection. An apportionment award under this subsection may not be made in any case after September 1, 1959.

(c) Forfeiture of benefits by a veteran shall not prohibit payment of the burial allowance, death compensation, dependency and indemnity compensation, or death pension in the event of the veteran's death.

(d)(1) After September 1, 1959, no forfeiture of benefits may be imposed under this section or section 6104 of this title upon any individual who was a resident of, or domiciled in, a State at the time the act or acts occurred on account of which benefits would, but not for this subsection, be forfeited unless such individual ceases to be a resident of, or domiciled in, a State before the expiration of the period during which criminal prosecution could be instituted. This subsection shall not apply with respect to (A) any forfeiture occurring before September 1, 1959, or (B) an act or acts which occurred in the Philippine Islands before July 4, 1946.

(2) The Secretary is hereby authorized and directed to review all cases in which, because of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, a forfeiture of gratuitous benefits under laws administered by the Secretary was imposed, pursuant to this section or prior provisions of law, on or before September 1, 1959. In any such case in which the Secretary determines that the forfeiture would not have been imposed under the provisions of this section in effect after September 1, 1959, the Secretary shall remit the forfeiture, effective June 30, 1972. Benefits to which the individual concerned becomes eligible by virtue of any such remission may be awarded, upon application therefor, and the effective date of any award of compensation, dependency and indemnity compensation, or pension made in such a case shall be fixed in accordance with the provisions of section 5110(g) of this title.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1240, Sec. 3503; Pub. L. 86–222, Sec. 1, Sept. 1, 1959, 73 Stat. 452; Pub. L. 91–24, Sec. 13(a), June 11, 1969, 83 Stat. 34; Pub. L. 92–328, title II, Sec. 206, June 30, 1972, 86 Stat. 397; Pub. L. 98–160, title VII, Sec. 703(6), Nov. 21, 1983, 97 Stat. 1011; Pub. L. 99–576, title VII, Sec. 701(83), Oct. 28, 1986, 100 Stat. 3298; renumbered Sec. 6103 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(d)(8), June 13, 1991, 105 Stat. 286; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 103–446, title XII, Sec. 1201(e)(18), (f)(5), Nov. 2, 1994, 108 Stat. 4686, 4687.)

§ 6104. Forfeiture for treason

(a) Any person shown by evidence satisfactory to the Secretary to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies shall forfeit all accrued or future gratuitous benefits under laws administered by the Secretary.

(b) The Secretary, in the Secretary's discretion, may apportion and pay any part of benefits forfeited under subsection (a) to the dependents of the person forfeiting such benefits. No dependent of any person shall receive benefits by reason of this subsection in excess of the amount to which the dependent would be entitled if such person were dead.

(c) In the case of any forfeiture under this section there shall be no authority after September 1, 1959 (1) to make an apportionment award pursuant to subsection (b) or (2) to make an award to any person of gratuitous benefits based on any period of military, naval, or air service commencing before the date of commission of the offense.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1240, Sec. 3504; Pub. L. 86–222, Sec. 2, Sept. 1, 1959, 73 Stat. 452; Pub. L. 91–24, Sec. 13(b), June 11, 1969, 83 Stat. 34; Pub. L. 97–295, Sec. 4(78), Oct. 12, 1982, 96 Stat. 1311; Pub. L. 99–576, title VII, Sec. 701(84), Oct. 28, 1986, 100 Stat. 3298; renumbered Sec. 6104, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

§ 6105. Forfeiture for subversive activities

(a) Any individual who is convicted after September 1, 1959, of any offense listed in subsection (b) of this section shall, from and after the date of commission of such offense, have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Secretary based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be entitled to such benefits on account of such individual. After receipt of notice of the return of an indictment for such an offense the Secretary shall suspend payment of such gratuitous benefits pending disposition of the criminal proceedings. If any individual whose right to benefits has been terminated pursuant to this section is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon.

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

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

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

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

(4) section 4 of the Internal Security Act of 1950 (50 U.S.C. 783).

(c) The Secretary of Defense or the Secretary of Homeland Security, as appropriate, shall notify the Secretary in each case in which an individual is convicted of an offense listed in paragraph (1) of subsection (b). The Attorney General shall notify the Secretary in each case in which an individual is indicted or convicted of an offense listed in paragraph (2), (3), or (4) of subsection (b).

(Added Pub. L. 86–222, Sec. 3(a), Sept. 1, 1959, 73 Stat. 453, Sec. 3505; amended Pub. L. 92–128, Sec. 2(c), Sept. 25, 1971, 85 Stat. 348; Pub. L. 93–43, Sec. 8, June 18, 1973, 87 Stat. 88; Pub. L. 97–295, Sec. 4(79), Oct. 12, 1982, 96 Stat. 1311; renumbered Sec. 6105, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(d)(9), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(a)(1), (2)(A)(xiv), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 103–446, title XII, Sec. 1201(e)(19), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 107–296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 108–183, title VII, Sec. 705(a), Dec. 16, 2003, 117 Stat. 2672.)

§ 6106. Misuse of benefits by fiduciaries

(a) FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY FIDUCIARIES.—A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual's benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual's benefit.

(b) MISUSE OF BENEFITS DEFINED.—For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any of laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary's dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney's fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

(c) REGULATIONS.—The Secretary may prescribe by regulation the meaning of the term "use and benefit" for purposes of this section.

(Added Pub. L. 108–454, title V, Sec. 503(a)(1), Dec. 10, 2004, 118 Stat. 3619.)

§ 6107. Reissuance of benefits

(a) NEGLIGENT FAILURE BY SECRETARY.—(1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of benefits that were so misused.

(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

(A) A case in which the Secretary failed to review a fiduciary's accounting within 60 days of the date on which that accounting is scheduled for review.

(B) A case in which the Secretary was notified of allegations of misuse, but failed to act within 60 days of the date of such notification to terminate the fiduciary.

(C) In any other case in which actual negligence is shown.

(b) REISSUANCE OF MISUSED BENEFITS IN OTHER CASES.—(1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual's benefit paid to such fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of such benefit so misused.

(2) Paragraph (1) applies to a fiduciary that—

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

(3) In any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary's successor fiduciary as the case may be.

(c) LIMITATION ON TOTAL AMOUNT PAID.—The total of the amounts paid to a beneficiary (or a beneficiary's successor fiduciary) under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

(d) RECOUPMENT OF AMOUNTS REISSUED.—In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.

(Added Pub. L. 108–454, title V, Sec. 503(a)(1), Dec. 10, 2004, 118 Stat. 3619.)

§ 6108. Authority for judicial orders of restitution

(a) Any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under this title, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

(b) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under subsection (a). In so applying those sections, the Department shall be considered the victim.

(c) If the court does not order restitution, or orders only partial restitution, under subsection (a), the court shall state on the record the reasons therefor.

(d) Amounts received in connection with misuse by a fiduciary of funds paid as benefits under laws administered by the Secretary shall be paid to the individual whose benefits were misused. If the Secretary has previously reissued the misused benefits, the amounts shall be treated in the same manner as overpayments re-

couped by the Secretary and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

(Added Pub. L. 108–454, title V, Sec. 504(b)(1), Dec. 10, 2004, 118 Stat. 3621.)

CHAPTER 63 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART IV—GENERAL ADMINISTRATIVE PROVISIONS]

CHAPTER 63—OUTREACH ACTIVITIES

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6301. Purpose; definitions.
6302. Biennial plan.
6303. Outreach services.
6304. Veterans assistance offices.
6305. Outstationing of counseling and outreach personnel.
6306. Use of other agencies.
6307. Outreach for eligible dependents.
6308. Biennial report to Congress.

§ 6301. Purpose; definitions

(a) PURPOSE.—The Congress declares that—

(1) the outreach services program authorized by this chapter is for the purpose of ensuring that all veterans (especially those who have been recently discharged or released from active military, naval, or air service, or from a reserve component, and those who are eligible for readjustment or other benefits and services under laws administered by the Department) are provided timely and appropriate assistance to aid and encourage them in applying for and obtaining such benefits and services in order that they may achieve a rapid social and economic readjustment to civilian life and obtain a higher standard of living for themselves and their dependents; and

(2) the outreach services program authorized by this chapter is for the purpose of charging the Department with the affirmative duty of seeking out eligible veterans and eligible dependents and providing them with such services.

(b) DEFINITIONS.—For the purposes of this chapter—

(1) the term "outreach" means the act or process of reaching out in a systematic manner to proactively provide information, services, and benefits counseling to veterans, and to the spouses, children, and parents of veterans who may be eligible to receive benefits under the laws administered by the Secretary, to ensure that such individuals are fully informed about, and receive assistance in applying for, such benefits;

(2) the term "other governmental programs" includes all programs under State or local laws as well as all programs under Federal law other than those authorized by this title; and

(3) the term "eligible dependent" means a spouse, surviving spouse, child, or dependent parent of a person who served in the active military, naval, or air service.

(Added Pub. L. 109–233, title IV, Sec. 402(a), June 15, 2006, 120 Stat. 407; amended Pub. L. 110–181, div. A, title XVII, Sec. 1710, Jan. 28, 2008, 122 Stat. 494.)

§ 6302. Biennial plan

(a) BIENNIAL PLAN REQUIRED.—The Secretary shall, during the first nine months of every odd-numbered year, prepare a biennial plan for the outreach activities of the Department for the two-fiscal-year period beginning on October 1 of that year.

(b) ELEMENTS.—Each biennial plan under subsection (a) shall include the following:

(1) Plans for efforts to identify eligible veterans and eligible dependents who are not enrolled or registered with the Department for benefits or services under the programs administered by the Secretary.

(2) Plans for informing eligible veterans and eligible dependents of modifications of the benefits and services under the programs administered by the Secretary, including eligibility for medical and nursing care and services.

(c) COORDINATION IN DEVELOPMENT.—In developing the biennial plan under subsection (a), the Secretary shall consult with the following:

(1) Directors or other appropriate officials of organizations approved by the Secretary under section 5902 of this title.

(2) Directors or other appropriate officials of State and local education and training programs.

(3) Representatives of nongovernmental organizations that carry out veterans outreach programs.

(4) Representatives of State and local veterans employment organizations.

(5) Other individuals and organizations that the Secretary considers appropriate.

(Added Pub. L. 109–233, title IV, Sec. 402(a), June 15, 2006, 120 Stat. 408.)

§ 6303. Outreach services

(a) REQUIREMENT TO PROVIDE SERVICES.—In carrying out the purposes of this chapter, the Secretary shall provide the outreach services specified in subsections (b) through (d). In areas where a significant number of eligible veterans and eligible dependents speak a language other than English as their principal language, such services shall, to the maximum feasible extent, be provided in the principal language of such persons.

(b) INDIVIDUAL NOTICE TO NEW VETERANS.—The Secretary shall by letter advise each veteran at the time of the veteran's discharge or release from active military, naval, or air service (or as soon as possible after such discharge or release) of all benefits and services under laws administered by the Department for which the veteran may be eligible. In carrying out this subsection, the Secretary shall ensure, through the use of veteran-student services under section 3485 of this title, that contact, in person or by telephone, is made with those veterans who, on the basis of their military service records, do not have a high school education or equivalent at the time of discharge or release.

(c) DISTRIBUTION OF INFORMATION.—(1) The Secretary—

(A) shall distribute full information to eligible veterans and eligible dependents regarding all benefits and services to which they may be entitled under laws administered by the Secretary; and

(B) may, to the extent feasible, distribute information on other governmental programs (including manpower and training programs) which the Secretary determines would be beneficial to veterans.

(2) Whenever a veteran or dependent first applies for any benefit under laws administered by the Secretary (including a request for burial or related benefits or an application for life insurance proceeds), the Secretary shall provide to the veteran or dependent information concerning benefits and health care services under programs administered by the Secretary. Such information shall be provided not later than three months after the date of such application.

(d) PROVISION OF AID AND ASSISTANCE.—The Secretary shall provide, to the maximum extent possible, aid and assistance (including personal interviews) to members of the Armed Forces, veterans, and eligible dependents with respect to subsections (b) and (c) and in the preparation and presentation of claims under laws administered by the Department.

(e) ASSIGNMENT OF EMPLOYEES.—In carrying out this section, the Secretary shall assign such employees as the Secretary considers appropriate to conduct outreach programs and provide outreach services for homeless veterans. Such outreach services may include site visits through which homeless veterans can be identified and provided assistance in obtaining benefits and services that may be available to them.

(Added Pub. L. 109–233, title IV, Sec. 402(a), June 15, 2006, 120 Stat. 408.)

§ 6304. Veterans assistance offices

(a) IN GENERAL.—The Secretary shall establish and maintain veterans assistance offices at such places throughout the United States and its territories and possessions, and in the Commonwealth of Puerto Rico, as the Secretary determines to be necessary to carry out the purposes of this chapter. The Secretary may maintain such offices on such military installations located elsewhere as the Secretary, after consultation with the Secretary of Defense and taking into account recommendations, if any, of the Secretary of Labor, determines to be necessary to carry out such purposes.

(b) LOCATION OF OFFICES.—In establishing and maintaining such offices, the Secretary shall give due regard to—

(1) the geographical distribution of veterans recently discharged or released from active military, naval, or air service;

(2) the special needs of educationally disadvantaged veterans (including their need for accessibility of outreach services); and

(3) the necessity of providing appropriate outreach services in less populated areas.

(Added Pub. L. 109–233, title IV, Sec. 402(a), June 15, 2006, 120 Stat. 409.)

§ 6305. Outstationing of counseling and outreach personnel

The Secretary may station employees of the Department at locations other than Department offices, including educational institutions, to provide—

(1) counseling and other assistance regarding benefits under this title to veterans and other persons eligible for benefits under this title; and

(2) outreach services under this chapter.

(Added Pub. L. 109–233, title IV, Sec. 402(a), June 15, 2006, 120 Stat. 409.)

§ 6306. Use of other agencies

(a) In carrying out this chapter, the Secretary shall arrange with the Secretary of Labor for the State employment service to match the particular qualifications of an eligible veteran or eligible dependent with an appropriate job or job training opportunity, including, where possible, arrangements for outstationing the State employment personnel who provide such assistance at appropriate facilities of the Department.

(b) In carrying out this chapter, the Secretary shall, in consultation with the Secretary of Labor, actively seek to promote the development and establishment of employment opportunities, training opportunities, and other opportunities for veterans, with particular emphasis on the needs of veterans with service-connected disabilities and other eligible veterans, taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title.

(c) In carrying out this chapter, the Secretary shall cooperate with and use the services of any Federal department or agency or any State or local governmental agency or recognized national or other organization.

(d) In carrying out this chapter, the Secretary shall, where appropriate, make referrals to any Federal department or agency or State or local governmental unit or recognized national or other organization.

(e) In carrying out this chapter, the Secretary may furnish available space and office facilities for the use of authorized representatives of such governmental unit or other organization providing services.

(f) In carrying out this chapter, the Secretary shall conduct and provide for studies, in consultation with appropriate Federal departments and agencies, to determine the most effective program design to carry out the purposes of this chapter.

(Added Pub. L. 109–233, title IV, Sec. 402(a), June 15, 2006, 120 Stat. 409.)

§ 6307. Outreach for eligible dependents

(a) NEEDS OF DEPENDENTS.—In carrying out this chapter, the Secretary shall ensure that the needs of eligible dependents are fully addressed.

(b) INFORMATION AS TO AVAILABILITY OF OUTREACH SERVICES FOR DEPENDENTS.—The Secretary shall ensure that the availability of outreach services and assistance for eligible dependents under this chapter is made known through a variety of means, including

the Internet, announcements in veterans publications, and announcements to the media.

(Added Pub. L. 109–233, title IV, Sec. 402(a), June 15, 2006, 120 Stat. 410.)

§ 6308. Biennial report to Congress

(a) REPORT REQUIRED.—The Secretary shall, not later than December 1 of every even-numbered year (beginning in 2008), submit to Congress a report on the outreach activities carried out by the Department.

(b) CONTENT.—Each report under this section shall include the following:

(1) A description of the implementation during the preceding fiscal year of the current biennial plan under section 6302 of this title.

(2) Recommendations for the improvement or more effective administration of the outreach activities of the Department.

(Added Pub. L. 109–233, title IV, Sec. 402(a), June 15, 2006, 120 Stat. 410.)

Chapter 71 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

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CHAPTER 71—BOARD OF VETERANS' APPEALS

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7112. Expedited treatment of remanded claims.

§ 7101. Composition of Board of Veterans' Appeals

(a) There is in the Department a Board of Veterans' Appeals (hereinafter in this chapter referred to as the "Board"). The Board is under the administrative control and supervision of a chairman directly responsible to the Secretary. The Board shall consist of a Chairman, a Vice Chairman, and such number of members as may be found necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals properly before the Board. The Board shall have sufficient personnel under the preceding sentence to enable the Board to conduct hearings and consider and dispose of appeals properly before the Board in a timely manner.

(b)(1) The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, for a term of six years. The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in political activities as apply to judges of the United States Court of Appeals for Veterans Claims.

(2) The Chairman may be removed by the President for misconduct, inefficiency, neglect of duty, or engaging in the practice of law or for physical or mental disability which, in the opinion of the President, prevents the proper execution of the Chairman's duties. The Chairman may not be removed from office by the President on any other grounds. Any such removal may only be made after notice and opportunity for hearing.

(3) The Chairman may be appointed under this subsection to more than one term. If, upon the expiration of the term of office for which the Chairman was appointed, the position of Chairman would become vacant, the individual serving as Chairman may, with the approval of the Secretary, continue to serve as Chairman until either appointed to another term or a successor is appointed,

but not beyond the end of the Congress during which the term of office expired.

(4) The Secretary shall designate one member of the Board as Vice Chairman. The Vice Chairman shall perform such functions as the Chairman may specify. Such member shall serve as Vice Chairman at the pleasure of the Secretary.

(c)(1)(A) The Chairman may from time to time designate one or more employees of the Department to serve as acting members of the Board. Except as provided in subparagraph (B), any such designation shall be for a period not to exceed 90 days, as determined by the Chairman.

(B) An individual designated as an acting member of the Board may continue to serve as an acting member of the Board in the making of any determination on a proceeding for which the individual was designated as an acting member of the Board, notwithstanding the termination of the period of designation of the individual as an acting member of the Board under subparagraph (A) or (C).

(C) An individual may not serve as an acting member of the Board for more than 270 days during any one-year period.

(D) At no time may the number of acting members exceed 20 percent of the total of the number of Board members and acting Board members combined.

(2) In each annual report to the Congress under section 529 of this title, the Secretary shall provide detailed descriptions of the activities undertaken and plans made in the fiscal year for which the report is made with respect to the authority provided by paragraph (1) of this subsection. In each such report, the Secretary shall indicate, in terms of full-time employee equivalents, the number of acting members of the Board designated under such paragraph (1) during the year for which the report is made.

(d)(1) After the end of each fiscal year, the Chairman shall prepare a report on the activities of the Board during that fiscal year and the projected activities of the Board for the fiscal year during which the report is prepared and the next fiscal year. Such report shall be included in the documents providing detailed information on the budget for the Department that the Secretary submits to the Congress in conjunction with the President's budget submission for any fiscal year pursuant to section 1105 of title 31.

(2) Each such report shall include, with respect to the preceding fiscal year, information specifying—

(A) the number of cases appealed to the Board during that year;

(B) the number of cases pending before the Board at the beginning and at the end of that year;

(C) the number of such cases which were filed during each of the 36 months preceding the current fiscal year;

(D) the average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the preceding fiscal year;

(E) the number of members of the Board at the end of the year and the number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of the preceding fiscal year; and

(F) the number of employees of the Department designated under subsection (c)(1) to serve as acting members of the Board during that year and the number of cases in which each such member participated during that year.

(3) The projections in each such report for the current fiscal year and for the next fiscal year shall include (for each such year)—

(A) an estimate of the number of cases to be appealed to the Board; and

(B) an evaluation of the ability of the Board (based on existing and projected personnel levels) to ensure timely disposition of such appeals as required by section 7101(a) of this title.

(e) A performance incentive that is authorized by law for officers and employees of the Federal Government may be awarded to a member of the Board (including an acting member) by reason of that member's service on the Board only if the Chairman of the Board determines that such member should be awarded that incentive. A determination by the Chairman for such purpose shall be made taking into consideration the quality of performance of the Board member.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1240, Sec. 4001; Pub. L. 98–223, title II, Sec. 208(a)–(c), Mar. 2, 1984, 98 Stat. 43, 44; Pub. L. 100–687, div. A, title II, Sec. 201(a), 202(b), 208, 209, Nov. 18, 1988, 102 Stat. 4109, 4110, 4112; renumbered Sec. 7101 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(e)(2), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 2(c)(3), 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 402, 404, 405; Pub. L. 103–271, Sec. 2–5, July 1, 1994, 108 Stat. 740, 741; Pub. L. 103–446, title II, Sec. 201(d), 203, Nov. 2, 1994, 108 Stat. 4657; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

§ 7101A. Members of Board: appointment; pay; performance review

(a)(1) The members of the Board of Veterans' Appeals other than the Chairman (and including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman.

(2) Each member of the Board shall be a member in good standing of the bar of a State.

(b) Members of the Board (other than the Chairman and any member of the Board who is a member of the Senior Executive Service) shall, in accordance with regulations prescribed by the Secretary, be paid basic pay at rates equivalent to the rates payable under section 5372 of title 5.

(c)(1)(A) The Chairman shall establish a panel to review the performance of members of the Board. The panel shall be comprised of the Chairman and two other members of the Board (other than the Vice Chairman). The Chairman shall periodically rotate membership on the panel so as to ensure that each member of the Board (other than the Vice Chairman) serves as a member of the panel for and within a reasonable period.

(B) Not less than one year after the job performance standards under subsection (f) are initially established, and not less often than once every three years thereafter, the performance review panel shall determine, with respect to each member of the Board

(other than the Chairman or a member who is a member of the Senior Executive Service), whether that member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f). Each such determination shall be in writing.

(2) If the determination of the performance review panel in any case is that the member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f), the Chairman shall recertify the member's appointment as a member of the Board.

(3) If the determination of the performance review panel in any case is that the member's job performance does not meet the performance standards for a member of the Board established under subsection (f), the Chairman shall, based upon the individual circumstances, either—

(A) grant the member a conditional recertification; or

(B) recommend to the Secretary that the member be noncertified.

(4) In the case of a member of the Board who is granted a conditional recertification under paragraph (3)(A) or (5)(A), the performance review panel shall review the member's job performance record and make a further determination under paragraph (1) concerning that member not later than one year after the date of the conditional recertification. If the determination of the performance review panel at that time is that the member's job performance as a member of the Board still does not meet the performance standards for a member of the Board established under subsection (f), the Chairman shall recommend to the Secretary that the member be noncertified.

(5) In a case in which the Chairman recommends to the Secretary under paragraph (3) or (4) that a member be noncertified, the Secretary, after considering the recommendation of the Chairman, may either—

(A) grant the member a conditional recertification; or

(B) determine that the member should be noncertified.

(d)(1) If the Secretary, based upon the recommendation of the Chairman, determines that a member of the Board should be noncertified, that member's appointment as a member of the Board shall be terminated and that member shall be removed from the Board.

(2)(A) Upon removal from the Board under paragraph (1) of a member of the Board who before appointment to the Board served as an attorney in the civil service, the Secretary shall appoint that member to an attorney position at the Board, if the removed member so requests. If the removed member served in an attorney position at the Board immediately before appointment to the Board, appointment to an attorney position under this paragraph shall be in the grade and step held by the removed member immediately before such appointment to the Board.

(B) The Secretary is not required to make an appointment to an attorney position under this paragraph if the Secretary determines that the member of the Board removed under paragraph (1) is not qualified for the position.

(e)(1) A member of the Board (other than the Chairman or a member of the Senior Executive Service) may be removed as a member of the Board by reason of job performance only as provided in subsections (c) and (d). Such a member may be removed by the Secretary, upon the recommendation of the Chairman, for any other reason as determined by the Secretary.

(2) In the case of a removal of a member under this section for a reason other than job performance that would be covered by section 7521 of title 5 in the case of an administrative law judge, the removal of the member of the Board shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subsection. In such a removal action, a member shall have the rights set out in section 7513(b) of that title.

(f) The Chairman, subject to the approval of the Secretary, shall establish standards for the performance of the job of a member of the Board (other than the Chairman or a member of the Senior Executive Service). Those standards shall establish objective and fair criteria for evaluation of the job performance of a member of the Board.

(g) The Secretary shall prescribe procedures for the administration of this section, including deadlines and time schedules for different actions under this section.

(Added Pub. L. 103–446, title II, Sec. 201(a)(1), Nov. 2, 1994, 108 Stat. 4655; amended Pub. L. 105–368, title X, Sec. 1002, Nov. 11, 1998, 112 Stat. 3363.)

§ 7102. Assignment of members of Board

(a) A proceeding instituted before the Board may be assigned to an individual member of the Board or to a panel of not less than three members of the Board. A member or panel assigned a proceeding shall make a determination thereon, including any motion filed in connection therewith. The member or panel, as the case may be, shall make a report under section 7104(d) of this title on any such determination, which report shall constitute the final disposition of the proceeding by the member or panel.

(b) A proceeding may not be assigned to the Chairman as an individual member. The Chairman may participate in a proceeding assigned to a panel or in a reconsideration assigned to a panel of members.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1241, Sec. 4002; Pub. L. 98–223, title II, Sec. 208(c), (d), Mar. 2, 1984, 98 Stat. 44; renumbered Sec. 7102 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 103–271, Sec. 6(a), July 1, 1994, 108 Stat. 741.)

§ 7103. Reconsideration; correction of obvious errors

(a) The decision of the Board determining a matter under section 7102 of this title is final unless the Chairman orders reconsideration of the decision in accordance with subsection (b). Such an order may be made on the Chairman's initiative or upon motion of the claimant.

(b)(1) Upon the order of the Chairman for reconsideration of the decision in a case, the case shall be referred—

(A) in the case of a matter originally heard by a single member of the Board, to a panel of not less than three members of the Board; or

(B) in the case of a matter originally heard by a panel of members of the Board, to an enlarged panel of the Board.

(2) A panel referred to in paragraph (1) may not include the member, or any member of the panel, that made the decision subject to reconsideration.

(3) A panel reconsidering a case under this subsection shall render its decision after reviewing the entire record before the Board. The decision of the panel shall be made by a majority vote of the members of the panel. The decision of the panel shall constitute the final decision of the Board.

(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1241, Sec. 4003; Pub. L. 100–687, div. A, title II, Sec. 202(a), Nov. 18, 1988, 102 Stat. 4110; renumbered Sec. 7103, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 103–271, Sec. 6(a), July 1, 1994, 108 Stat. 741.)

§ 7104. Jurisdiction of the Board

(a) All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

(b) Except as provided in section 5108 of this title, when a claim is disallowed by the Board, the claim may not thereafter be reopened and allowed and a claim based upon the same factual basis may not be considered.

(c) The Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.

(d) Each decision of the Board shall include—

(1) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record; and

(2) an order granting appropriate relief or denying relief.

(e)(1) After reaching a decision on a case, the Board shall promptly mail a copy of its written decision to the claimant at the last known address of the claimant.

(2) If the claimant has an authorized representative, the Board shall—

(A) mail a copy of its written decision to the authorized representative at the last known address of the authorized representative; or

(B) send a copy of its written decision to the authorized representative by any means reasonably likely to provide the authorized representative with a copy of the decision within

the same time a copy would be expected to reach the authorized representative if sent by first-class mail.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1241, Sec. 4004; Pub. L. 87–97, Sec. 1, July 20, 1961, 75 Stat. 215; Pub. L. 100–687, div. A, title I, Sec. 101(b), title II, Sec. 203(a), 204, 205, Nov. 18, 1988, 102 Stat. 4106, 4110, 4111; renumbered Sec. 7104 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(g)(2), June 13, 1991, 105 Stat. 288; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), (c), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–271, Sec. 7(b)(1), 8, July 1, 1994, 108 Stat. 743; Pub. L. 104–275, title V, Sec. 509, Oct. 9, 1996, 110 Stat. 3344.)

§ 7105. Filing of notice of disagreement and appeal

(a) Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section. Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the Secretary.

(b)(1) Except in the case of simultaneously contested claims, notice of disagreement shall be filed within one year from the date of mailing of notice of the result of initial review or determination. Such notice, and appeals, must be in writing and be filed with the activity which entered the determination with which disagreement is expressed (hereinafter referred to as the "agency of original jurisdiction"). A notice of disagreement postmarked before the expiration of the one-year period will be accepted as timely filed.

(2) Notices of disagreement, and appeals, must be in writing and may be filed by the claimant, the claimant's legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian. Not more than one recognized organization, attorney, or agent will be recognized at any one time in the prosecution of a claim.

(c) If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or determination shall become final and the claim will not thereafter be reopened or allowed, except as may otherwise be provided by regulations not inconsistent with this title.

(d)(1) Where the claimant, or the claimant's representative, within the time specified in this chapter, files a notice of disagreement with the decision of the agency of original jurisdiction, such agency will take such development or review action as it deems proper under the provisions of regulations not inconsistent with this title. If such action does not resolve the disagreement either by granting the benefit sought or through withdrawal of the notice of disagreement, such agency shall prepare a statement of the case. A statement of the case shall include the following:

(A) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed.

(B) A citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision.

(C) The decision on each issue and a summary of the reasons for such decision.

(2) A statement of the case, as required by this subsection, will not disclose matters that would be contrary to section 5701 of this title or otherwise contrary to the public interest. Such matters may

be disclosed to a designated representative unless the relationship between the claimant and the representative is such that disclosure to the representative would be as harmful as if made to the claimant.

(3) Copies of the "statement of the case" prescribed in paragraph (1) of this subsection will be submitted to the claimant and to the claimant's representative, if there is one. The claimant will be afforded a period of sixty days from the date the statement of the case is mailed to file the formal appeal. This may be extended for a reasonable period on request for good cause shown. The appeal should set out specific allegations of error of fact or law, such allegations related to specific items in the statement of the case. The benefits sought on appeal must be clearly identified. The agency of original jurisdiction may close the case for failure to respond after receipt of the statement of the case, but questions as to timeliness or adequacy of response shall be determined by the Board of Veterans' Appeals.

(4) The claimant in any case may not be presumed to agree with any statement of fact contained in the statement of the case to which the claimant does not specifically express agreement.

(5) The Board of Veterans' Appeals may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed.

(Added Pub. L. 87–666, Sec. 1, Sept. 19, 1962, 76 Stat. 553, Sec. 4005; amended Pub. L. 99–576, title VII, Sec. 701(85), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100–687, div. A, title II, Sec. 203(b), 206, Nov. 18, 1988, 102 Stat. 4111; renumbered Sec. 7105 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

§ 7105A. Simultaneously contested claims

(a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of a notice of disagreement shall be sixty days from the date notice of the adverse action is mailed. In such cases the agency of original jurisdiction shall promptly notify all parties in interest at the last known address of the action taken, expressly inviting attention to the fact that notice of disagreement will not be entertained unless filed within the sixty-day period prescribed by this subsection.

(b) Upon the filing of a notice of disagreement, all parties in interest will be furnished with a statement of the case in the same manner as is prescribed in section 7105. The party in interest who filed a notice of disagreement will be allowed thirty days from the date of mailing of such statement of the case in which to file a formal appeal. Extension of time may be granted for good cause shown but with consideration to the interests of the other parties involved. The substance of the appeal will be communicated to the other party or parties in interest and a period of thirty days will be allowed for filing a brief or argument in answer thereto. Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.

(Added Pub. L. 87–666, Sec. 1, Sept. 19, 1962, 76 Stat. 554, Sec. 4005A; renumbered Sec. 7105A and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

§ 7106. Administrative appeals

Application for review on appeal may be made within the one-year period prescribed in section 7105 of this title by such officials of the Department as may be designated by the Secretary. An application entered under this paragraph shall not operate to deprive the claimant of the right of review on appeal as provided in this chapter.

(Added Pub. L. 87–666, Sec. 1, Sept. 19, 1962, 76 Stat. 554, Sec. 4006; renumbered Sec. 7106 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 7107. Appeals: dockets; hearings

(a)(1) Except as provided in paragraphs (2) and (3) and in subsection (f), each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket.

(2) A case referred to in paragraph (1) may, for cause shown, be advanced on motion for earlier consideration and determination. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only—

(A) if the case involves interpretation of law of general application affecting other claims;

(B) if the appellant is seriously ill or is under severe financial hardship; or

(C) for other sufficient cause shown.

(3) A case referred to in paragraph (1) may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(b) The Board shall decide any appeal only after affording the appellant an opportunity for a hearing.

(c) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members of the Board as the Chairman may designate. Such member or members designated by the Chairman to conduct the hearing shall, except in the case of a reconsideration of a decision under section 7103 of this title, participate in making the final determination of the claim.

(d)(1) An appellant may request that a hearing before the Board be held at its principal location or at a facility of the Department located within the area served by a regional office of the Department.

(2) A hearing to be held within an area served by a regional office of the Department shall (except as provided in paragraph (3)) be scheduled to be held in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area.

(3) A hearing to be held within an area served by a regional office of the Department may, for cause shown, be advanced on motion for an earlier hearing. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only—

(A) if the case involves interpretation of law of general application affecting other claims;

(B) if the appellant is seriously ill or is under severe financial hardship; or

(C) for other sufficient cause shown.

(e)(1) At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location.

(2) When such facilities and equipment are available, the Chairman may afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or panel as provided in subsection (d). Any such hearing shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing. If the appellant declines to participate in a hearing through the use of such facilities and equipment, the opportunity of the appellant to a hearing as provided in such subsection (d) shall not be affected.

(f) Nothing in this section shall preclude the screening of cases for purposes of—

(1) determining the adequacy of the record for decisional purposes; or

(2) the development, or attempted development, of a record found to be inadequate for decisional purposes.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1242, Sec. 4006; renumbered Sec. 4007, Pub. L. 87–666, Sec. 1, Sept. 19, 1962, 76 Stat. 553; renumbered Sec. 7107, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 103–271, Sec. 7(a)(1), July 1, 1994, 108 Stat. 742; Pub. L. 103–446, title III, Sec. 303, Nov. 2, 1994, 108 Stat. 4658; Pub. L. 105–368, title X, Sec. 1003, Nov. 11, 1998, 112 Stat. 3363.)

§ 7108. Rejection of applications

An application for review on appeal shall not be entertained unless it is in conformity with this chapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1243, Sec. 4008; renumbered Sec. 7108, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

§ 7109. Independent medical opinions

(a) When, in the judgment of the Board, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in an appeal case, the Board may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions at the request of the Chairman of the Board. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Board shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with

respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Board.

(Added Pub. L. 87–671, Sec. 1, Sept. 19, 1962, 76 Stat. 557, Sec. 4009; amended Pub. L. 100–687, div. A, title I, Sec. 103(b), Nov. 18, 1988, 102 Stat. 4107; renumbered Sec. 7109, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

[§ 7110. Repealed. Pub. L. 103–271, Sec. 7(b)(2), July 1, 1994, 108 Stat. 743]

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

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

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

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

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

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

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

(Added Pub. L. 105–111, Sec. 1(b)(1), Nov. 21, 1997, 111 Stat. 2271.)

§ 7112. Expedited treatment of remanded claims

The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the Board of any claim that is remanded to the Secretary by the Court of Appeals for Veterans Claims.

(Added Pub. L. 108–183, title VII, Sec. 707(b)(1), Dec. 16, 2003, 117 Stat. 2673.)

CHAPTER 72 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART V—BOARDS, ADMINISTRATIONS, AND SERVICES]

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SUBCHAPTER I—ORGANIZATION AND JURISDICTION

§ 7251. Status

There is hereby established, under Article I of the Constitution of the United States, a court of record to be known as the United States Court of Appeals for Veterans Claims.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4113, Sec. 4051; renumbered Sec. 7251, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 105–368, title V, Sec. 511(b), Nov. 11, 1998, 112 Stat. 3341.)

§ 7252. Jurisdiction; finality of decisions

(a) The Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Secretary may not seek review of any such decision. The Court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.

(b) Review in the Court shall be on the record of proceedings before the Secretary and the Board. The extent of the review shall be limited to the scope provided in section 7261 of this title. The Court may not review the schedule of ratings for disabilities adopted under section 1155 of this title or any action of the Secretary in adopting or revising that schedule.

(c) Decisions by the Court are subject to review as provided in section 7292 of this title.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4113, Sec. 4052; renumbered Sec. 7252 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(e)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

§ 7253. Composition

(a) COMPOSITION.—The Court of Appeals for Veterans Claims is composed of at least three and not more than seven judges, one of whom shall serve as chief judge in accordance with subsection (d).

(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.

(d) CHIEF JUDGE.—(1) The chief judge of the Court is the head of the Court. The chief judge of the Court shall be the judge of the Court in regular active service who is senior in commission among the judges of the Court who—

(A) have served for one or more years as judges of the Court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the Court in regular active service who has served as a judge of the Court for at

least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the Court shall serve as the chief judge under paragraph (1) for a term of five years or until the judge becomes age 70, whichever occurs first. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, that judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of the term prescribed by paragraph (3) if—

(i) the chief judge leaves regular active service as a judge of the Court;

(ii) the chief judge notifies the other judges of the Court in writing that such judge desires to be relieved of the duties of chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform the duties of chief judge, those duties shall be performed by the judge of the Court in active service who is present, able and qualified to act, and is next in precedence.

(6) Judges who have the same seniority in commission shall be eligible for service as chief judge in accordance with their relative precedence.

(e) SALARY.—Each judge of the Court shall receive a salary at the same rate as is received by judges of the United States district courts.

(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.

(2) Before a judge may be removed from office under this subsection, the judge shall be provided with a full specification of the reasons for the removal and an opportunity to be heard.

(g) RULES.—(1) The Court shall prescribe rules, consistent with the provisions of chapter 16 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 chapter.

(2) The provisions of sections 354(b) through 360 of title 28, regarding referral or certification to, and petition for review in, the Judicial Conference of the United States and action thereon, shall apply to the exercise by the Court of the powers of a judicial council under paragraph (1) of this subsection. The grounds for removal from office specified in subsection (f)(1) shall provide a basis for a determination pursuant to section 354(b) or 355 of title 28, and certification and transmittal by the Conference shall be made to the President for consideration under subsection (f).

(3)(A) In conducting hearings pursuant to paragraph (1), the Court may exercise the authority provided under section 1821 of title 28 to pay the fees and allowances described in that section.

(B) The Court shall have the power provided under section 361 of title 28 to award reimbursement for the reasonable expenses described in that section. Reimbursements under this subparagraph shall be made from funds appropriated to the Court.

(h) TEMPORARY EXPANSION OF COURT.—(1) During the period from January 1, 2002, through August 15, 2005, the authorized number of judges of the Court specified in subsection (a) is increased by two.

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

(i) only one may be appointed pursuant to a nomination made in 2002; and

(ii) only one may be appointed pursuant to a nomination made in 2003.

(B) If a judge is not appointed under this subsection pursuant to a nomination made in 2002, a judge may be appointed under this subsection pursuant to a nomination made in 2004. If a judge is not appointed under this subsection pursuant to a nomination made in 2003, a judge may be appointed under this subsection pursuant to a nomination made in 2004. In either case, such an appointment may be made only pursuant to a nomination made before October 1, 2004.

(3) The term of office and the eligibility for retirement of a judge appointed under this subsection, other than a judge described in paragraph (4), are 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 December 27, 2001, who was appointed to the Court before January 1, 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. The term of office of an incumbent judge who receives an appointment as described in the preceding sentence shall be 15 years, which includes any period remaining in the unexpired term of the judge. Any service following an appointment under this subsection shall be treated as though served as part of the original term of office of that judge on the Court.

(5) Notwithstanding paragraph (1), an appointment may not be made to the Court if the appointment would result in there being more than seven judges on the Court who were appointed after January 1, 1997. For the purposes of this paragraph, a judge serving in recall status under section 7257 of this title shall be disregarded in counting the number of judges appointed to the Court after such date.

(i) ADDITIONAL TEMPORARY EXPANSION OF COURT.—(1) Subject to paragraph (2), effective as of December 31, 2009, the authorized number of judges of the Court specified in subsection (a) is increased by two.

(2) Effective as of January 1, 2013, an appointment may not be made to the Court if the appointment would result in there being more judges of the Court than the authorized number of judges of the Court specified in subsection (a).

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4114, Sec. 4053; amended Pub. L. 101–94, title I, Sec. 102(c), Aug. 16, 1989, 103 Stat. 626; renumbered Sec. 7253, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–82, Sec. 3, Aug. 6, 1991, 105 Stat. 375; Pub. L. 102–585, title VIII, Sec. 801, Nov. 4, 1992, 106 Stat. 4980; Pub. L. 105–368, title V, Secs. 501, 512(a)(1), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106–117, title X, Secs. 1031, 1032(a), 1033, Nov. 30, 1999, 113 Stat. 1594, 1595; Pub. L. 107–103, title VI, Sec. 601, Dec. 27, 2001, 115 Stat. 998; Pub. L. 107–273, div. C, title I, Sec. 11043(f), Nov. 2, 2002, 116 Stat. 1856; Pub. L. 108–454, title VIII, Sec. 802, Dec. 10, 2004, 118 Stat. 3625; Pub. L. 109–233, title V, Sec. 503(15), June 15, 2006, 120 Stat. 417; Pub. L. 110–389, title VI, Sec. 601, Oct. 10, 2008, 122 Stat. 4176.)

§ 7254. Organization

(a) The Court of Appeals for Veterans Claims shall have a seal which shall be judicially noticed.

(b) The Court may hear cases by judges sitting alone or in panels, as determined pursuant to procedures established by the Court. Any such panel shall have not less than three judges. The Court shall establish procedures for the assignment of the judges of the Court to such panels and for the designation of the chief of each such panel.

(c)(1) A majority of the judges of the Court shall constitute a quorum for the transaction of the business of the Court. A vacancy in the Court shall not impair the powers or affect the duties of the Court or of the remaining judges of the Court.

(2) A majority of the judges of a panel of the Court shall constitute a quorum for the transaction of the business of the panel. A vacancy in a panel of the Court shall not impair the powers or affect the duties of the panel or of the remaining judges of the panel.

(d) PRECEDENCE OF JUDGES.—The chief judge of the Court shall have precedence and preside at any session that the chief judge attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(e) Judges of the Court shall have the authority to administer oaths.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4114, Sec. 4054; amended Pub. L. 101–94, title IV, Sec. 402, Aug. 16, 1989, 103 Stat. 628; Pub. L. 101–237, title VI, Sec. 602(b), Dec. 18, 1989, 103 Stat. 2095; renumbered Sec. 7254, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(e)(4), June 13, 1991, 105 Stat. 287; Pub. L. 102–82, Sec. 8(3), Aug. 6, 1991, 105 Stat. 377; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106–117, title X, Sec. 1034, Nov. 30, 1999, 113 Stat. 1595.)

§ 7255. Offices

The principal office of the Court of Appeals for Veterans Claims shall be in the Washington, D.C., metropolitan area, but the Court may sit at any place within the United States.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4114, Sec. 4055; renumbered Sec. 7255, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7,

1991, 105 Stat. 238; amended Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 108–454, title VIII, Sec. 801, Dec. 10, 2004, 118 Stat. 3625.)

§ 7256. Times and places of sessions

The times and places of sessions of the Court of Appeals for Veterans Claims shall be prescribed by the chief judge.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4115, Sec. 4056; renumbered Sec. 7256, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

§ 7257. Recall of retired judges

(a)(1) A retired judge of the Court may be recalled for further service on the Court in accordance with this section. To be eligible to be recalled for such service, a retired judge must at the time of the judge's retirement provide to the chief judge of the Court (or, in the case of the chief judge, to the clerk of the Court) notice in writing that the retired judge is available for further service on the Court in accordance with this section and is willing to be recalled under this section. Such a notice provided by a retired judge to whom section 7296(c)(1)(B) of this title applies is irrevocable.

(2) For the purposes of this section—

(A) a retired judge is a judge of the Court of Appeals for Veterans Claims who retires from the Court under section 7296 of this title or under chapter 83 or 84 of title 5; and

(B) a recall-eligible retired judge is a retired judge who has provided a notice under paragraph (1).

(b)(1) The chief judge may recall for further service on the Court a recall-eligible retired judge in accordance with this section. Such a recall shall be made upon written certification by the chief judge that substantial service is expected to be performed by the retired judge for such period, not to exceed 90 days (or the equivalent), as determined by the chief judge to be necessary to meet the needs of the Court.

(2) A recall-eligible retired judge may not be recalled for more than 90 days (or the equivalent) during any calendar year without the judge's consent.

(3) If a recall-eligible retired judge is recalled by the chief judge in accordance with this section and (other than in the case of a judge who has previously during that calendar year served at least 90 days (or the equivalent) of recalled service on the court) declines (other than by reason of disability) to perform the service to which recalled, the chief judge shall remove that retired judge from the status of a recall-eligible judge. This paragraph shall not apply to a judge to whom section 7296(c)(1)(A) or 7296(c)(1)(B) of this title applies and who has, in the aggregate, served at least five years of recalled service on the Court under this section.

(4) A recall-eligible retired judge who becomes permanently disabled and as a result of that disability is unable to perform further service on the Court shall be removed from the status of a recall-eligible judge. Determination of such a disability shall be made pursuant to section 7253(g) or 7296(g) of this title.

(c) A retired judge who is recalled under this section may exercise all of the judicial powers and duties of the office of a judge in active service.

(d)(1) The pay of a recall-eligible retired judge to whom section 7296(c)(1)(B) of this title applies is the pay specified in that section.

(2) A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 or to whom section 7296(c)(1)(A) of this title applies shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge's annuity under the applicable provisions of chapter 83 or 84 of title 5 or the judge's annuity under section 7296(c)(1)(A) of this title, whichever is applicable.

(e)(1) Except as provided in subsection (d), a judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be considered to be a reemployed annuitant under that chapter.

(2) Nothing in this section affects the right of a judge who retired under chapter 83 or 84 of title 5 to serve as a reemployed annuitant in accordance with the provisions of title 5.

(Added Pub. L. 106–117, title X, Sec. 1021(a), Nov. 30, 1999, 113 Stat. 1590; amended Pub. L. 110–389, title VI, Secs. 603(a), (b)(3), (4), (c), Oct. 10, 2008, 122 Stat. 4177, 4178.)

SUBCHAPTER II—PROCEDURE

§ 7261. Scope of review

(a) In any action brought under this chapter, the Court of Appeals for Veterans Claims, to the extent necessary to its decision and when presented, shall—

(1) decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the Secretary;

(2) compel action of the Secretary unlawfully withheld or unreasonably delayed;

(3) hold unlawful and set aside decisions, findings (other than those described in clause (4) of this subsection), conclusions, rules, and regulations issued or adopted by the Secretary, the Board of Veterans' Appeals, or the Chairman of the Board found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law; and

(4) in the case of a finding of material fact adverse to the claimant made in reaching a decision in a case before the Department with respect to benefits under laws administered by the Secretary, hold unlawful and set aside or reverse such finding if the finding is clearly erroneous.

(b) In making the determinations under subsection (a), the Court shall review the record of proceedings before the Secretary

and the Board of Veterans' Appeals pursuant to section 7252(b) of this title and shall—

(1) take due account of the Secretary's application of section 5107(b) of this title; and

(2) take due account of the rule of prejudicial error.

(c) In no event shall findings of fact made by the Secretary or the Board of Veterans' Appeals be subject to trial de novo by the Court.

(d) When a final decision of the Board of Veterans' Appeals is adverse to a party and the sole stated basis for such decision is the failure of the party to comply with any applicable regulation prescribed by the Secretary, the Court shall review only questions raised as to compliance with and the validity of the regulation.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4115, Sec. 4061; amended Pub. L. 101–237, title VI, Sec. 602(c), Dec. 18, 1989, 103 Stat. 2095; renumbered Sec. 7261, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(e)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107–330, title IV, Sec. 401(a), (b), Dec. 6, 2002, 116 Stat. 2832.)

§ 7262. Fee for filing appeals

(a) The Court of Appeals for Veterans Claims may impose a fee of not more than $50 for the filing of any appeal with the Court. The Court shall establish procedures under which such a fee may be waived in the case of an appeal filed by or on behalf of a person who demonstrates that the requirement that such fee be paid will impose a hardship on that person. A decision as to such a waiver is final and may not be reviewed in any other court.

(b) The Court may from time to time adjust the maximum amount permitted for a fee imposed under subsection (a) of this section based upon inflation and similar fees charged by other courts established under Article I of the Constitution.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4115, Sec. 4062; renumbered Sec. 7262, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

§ 7263. Representation of parties; fee agreements

(a) The Secretary shall be represented before the Court of Appeals for Veterans Claims by the General Counsel of the Department.

(b) Representation of appellants shall be in accordance with the rules of practice prescribed by the Court under section 7264 of this title. In addition to members of the bar admitted to practice before the Court in accordance with such rules of practice, the Court may allow other persons to practice before the Court who meet standards of proficiency prescribed in such rules of practice.

(c) A person who represents an appellant before the Court shall file a copy of any fee agreement between the appellant and that person with the Court at the time the appeal is filed. The Court, on its own motion or the motion of any party, may review such a fee agreement.

(d) In reviewing a fee agreement under subsection (c) of this section or under section 5904(c)(2) of this title, the Court may af-

firm the finding or order of the Board and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable. An order of the Court under this subsection is final and may not be reviewed in any other court.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4116, Sec. 4063; renumbered Sec. 7263 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

§ 7264. Rules of practice and procedure

(a) The proceedings of the Court of Appeals for Veterans Claims shall be conducted in accordance with such rules of practice and procedure as the Court prescribes.

(b) The mailing of a pleading, decision, order, notice, or process in respect of proceedings before the Court shall be held sufficient service of such pleading, decision, order, notice, or process if it is properly addressed to the address furnished by the appellant on the notice of appeal filed under section 7266 of this title.

(c) Section 455 of title 28 shall apply to judges and proceedings of the Court.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4116, Sec. 4064; renumbered Sec. 7264 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–82, Sec. 4, Aug. 6, 1991, 105 Stat. 376; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

§ 7265. Contempt authority; assistance to the Court

(a) The Court shall have power to punish by fine or imprisonment such contempt of its authority as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(b) The Court shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for a district in which the Court is sitting shall, if requested by the chief judge of the Court, attend any session of the Court in that district.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4116, Sec. 4065; renumbered Sec. 7265, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

§ 7266. Notice of appeal

(a) In order to obtain review by the Court of Veterans Appeals of a final decision of the Board of Veterans' Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.

(b) An appellant shall file a notice of appeal under this section by delivering or mailing the notice to the Court.

(c) A notice of appeal shall be deemed to be received by the Court as follows:

(1) On the date of receipt by the Court, if the notice is delivered.

(2) On the date of the United States Postal Service postmark stamped on the cover in which the notice is posted, if the notice is properly addressed to the Court and is mailed.

(d) For a notice of appeal mailed to the Court to be deemed to be received under subsection (c)(2) on a particular date, the United States Postal Service postmark on the cover in which the notice is posted must be legible. The Court shall determine the legibility of any such postmark and the Court's determination as to legibility shall be final and not subject to review by any other Court.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4116, Sec. 4066; renumbered Sec. 7266 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–446, title V, Sec. 511(a), Nov. 2, 1994, 108 Stat. 4670; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107–103, title V, Sec. 507, Dec. 27, 2001, 115 Stat. 997.)

§ 7267. Decisions

(a) A decision upon a proceeding before the Court of Appeals for Veterans Claims shall be made as quickly as practicable. In a case heard by a panel of the Court, the decision shall be made by a majority vote of the panel in accordance with the rules of the Court. The decision of the judge or panel hearing the case so made shall be the decision of the Court.

(b) A judge or panel shall make a determination upon any proceeding before the Court, and any motion in connection with such a proceeding, that is assigned to the judge or panel. The judge or panel shall make a report of any such determination which constitutes the judge or panel's final disposition of the proceeding.

(c) The Court shall designate in its decision in any case those specific records of the Government on which it relied (if any) in making its decision. The Secretary shall preserve records so designated for not less than the period of time designated by the Archivist of the United States.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4117, Sec. 4067; renumbered Sec. 7267, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–82, Sec. 1, 8(1), Aug. 6, 1991, 105 Stat. 375, 377; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

§ 7268. Availability of proceedings

(a) Except as provided in subsection (b) of this section, all decisions of the Court of Appeals for Veterans Claims and all briefs, motions, documents, and exhibits received by the Court (including a transcript of the stenographic report of the hearings) shall be public records open to the inspection of the public.

(b)(1) The Court may make any provision which is necessary to prevent the disclosure of confidential information, including a provision that any such document or information be placed under seal to be opened only as directed by the Court.

(2) After the decision of the Court in a proceeding becomes final, the Court may, upon motion of the appellant or the Sec-

retary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, submitted to the Court or the Court may, on its own motion, make such other disposition thereof as it considers advisable.

(c)(1) The Court shall prescribe rules, in accordance with section 7264(a) of this title, to protect privacy and security concerns relating to all filing of documents and the public availability under this subsection of documents retained by the Court or filed electronically with the Court.

(2) The rules prescribed under paragraph (1) shall be consistent to the extent practicable with rules addressing privacy and security issues throughout the Federal courts.

(3) The rules prescribed under paragraph (1) shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4117, Sec. 4068; renumbered Sec. 7268, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–82, Sec. 8(2), Aug. 6, 1991, 105 Stat. 377; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 110–389, title VI, Sec. 602, Oct. 10, 2008, 122 Stat. 4177.)

§ 7269. Publication of decisions

(a) The Court of Appeals for Veterans Claims shall provide for the publication of decisions of the Court in such form and manner as may be best adapted for public information and use. The Court may make such exceptions, or may authorize the chief judge to make such exceptions, to the requirement for publication in the preceding sentence as may be appropriate.

(b) Such authorized publication shall be competent evidence of the decisions of the Court of Appeals for Veterans Claims therein contained in all courts of the United States and of the several States without any further proof or authentication thereof.

(c) Such publications shall be subject to sale in the same manner and upon the same terms as other public documents.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4118, Sec. 4069; renumbered Sec. 7269, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 7281. Employees

(a) The Court of Appeals for Veterans Claims may appoint a clerk without regard to the provisions of title 5 governing appointments in the competitive service. The clerk shall serve at the pleasure of the Court.

(b) The judges of the Court may appoint law clerks and secretaries, in such numbers as the Court may approve, without regard to the provisions of title 5 governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

(c) The clerk, with the approval of the Court, may appoint necessary deputies and employees without regard to the provisions of title 5 governing appointments in the competitive service.

(d) The Court may fix and adjust the rates of basic pay for the clerk and other employees of the Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5. To the maximum extent feasible, the Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

(e) In making appointments under subsections (a) through (c) of this section, preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(f) The Court may procure the services of experts and consultants under section 3109 of title 5.

(g) The chief judge of the Court may exercise the authority of the Court under this section whenever there are not at least two other judges of the Court.

(h) The Court shall not be considered to be an agency within the meaning of section 3132(a)(1) of title 5.

(i) The Court may accept and utilize voluntary services and uncompensated (gratuitous) services, including services as authorized by section 3102(b) of title 5 and may accept, hold, administer, and utilize gifts and bequests of personal property for the purposes of aiding or facilitating the work of the Court. Gifts or bequests of money to the Court shall be covered into the Treasury.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4118, Sec. 4081; amended Pub. L. 101–94, title II, Sec. 204(a), Aug. 16, 1989, 103 Stat. 627; renumbered Sec. 7281, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–82, Sec. 7, Aug. 6, 1991, 105 Stat. 377; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106–117, title X, Sec. 1035(1), Nov. 30, 1999, 113 Stat. 1595.)

§ 7282. Budget and expenditures

(a) The budget of the Court of Appeals for Veterans Claims as submitted by the Court for inclusion in the budget of the President for any fiscal year shall be included in that budget without review within the executive branch.

(b) The Court may make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals) as may be necessary to execute efficiently the functions vested in the Court.

(c) All expenditures of the Court shall be allowed and paid upon presentation of itemized vouchers signed by the certifying officer designated by the chief judge. Except as provided in section 7285 of this title, all such expenditures shall be paid out of moneys appropriated for purposes of the Court.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4118, Sec. 4082; renumbered Sec. 7282 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

§ 7283. Disposition of fees

Except for amounts received pursuant to section 7285 of this title, all fees received by the Court of Appeals for Veterans Claims shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4118, Sec. 4083; renumbered Sec. 7283 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

§ 7284. Fee for transcript of record

The Court of Appeals for Veterans Claims may fix a fee, not in excess of the fee authorized by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record of any proceeding before the Court, or for copying any record, entry, or other paper and the comparison and certification thereof.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4118, Sec. 4084; renumbered Sec. 7284, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

§ 7285. Practice and registration fees

(a) The Court of Appeals for Veterans Claims may impose a reasonable periodic registration fee on persons admitted to practice before the Court. The frequency and amount of such fee shall be determined by the Court. The Court may also impose a reasonable registration fee on persons (other than judges of the Court) participating at judicial conferences convened pursuant to section 7286 of this title or in any other court-sponsored activity.

(b) Amounts received by the Court under subsection (a) of this section shall be available to the Court for the following purposes:

(1) Conducting investigations and proceedings, including employing independent counsel, to pursue disciplinary matters.

(2) Defraying the expenses of—

(A) judicial conferences convened pursuant to section 7286 of this title; and

(B) other activities and programs of the Court that are intended to support and foster communication 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.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4119, Sec. 4085; renumbered Sec. 7285, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107–103, title VI, Sec. 604(a)–(c)(1), Dec. 27, 2001, 115 Stat. 999; Pub. L. 110–389, title VI, Sec. 605, Oct. 10, 2008, 122 Stat. 4179.)

§ 7286. Judicial Conference of the Court

The Chief Judge of the Court of Appeals for Veterans Claims may summon the judges of the Court to an annual judicial conference, at a time and place that the Chief Judge designates, for the purpose of considering the business of the Court and recommending means of improving the administration of justice within the Court's jurisdiction. The Court shall provide by its rules for

representation and active participation at such conference by persons admitted to practice before the Court and by other persons active in the legal profession.

(Added Pub. L. 102–82, Sec. 2(a), Aug. 6, 1991, 105 Stat. 375; amended Pub. L. 105–368, title V, Sec. 512(a)(1), (2)(A), Nov. 11, 1998, 112 Stat. 3341.)

§ 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.

(Added Pub. L. 107–103, title VI, Sec. 605(a), Dec. 27, 2001, 115 Stat. 1000.)

§ 7288. Annual report

(a) IN GENERAL.—The chief judge of the Court shall submit to the appropriate committees of Congress each year a report summarizing the workload of the Court for the fiscal year ending during the preceding year.

(b) ELEMENTS.—Each report under subsection (a) shall include, with respect to the fiscal year covered by such report, the following information:

(1) The number of appeals filed with the Court.

(2) The number of petitions filed with the Court.

(3) The number of applications filed with the Court under section 2412 of title 28.

(4) The total number of dispositions by each of the following:

(A) The Court as a whole.

(B) The Clerk of the Court.

(C) A single judge of the Court.

(D) A multi-judge panel of the Court.

(E) The full Court.

(5) The number of each type of disposition by the Court, including settlement, affirmation, remand, vacation, dismissal, reversal, grant, and denial.

(6) The median time from filing an appeal to disposition by each of the following:

(A) The Court as a whole.

(B) The Clerk of the Court.

(C) A single judge of the Court.

(D) Multiple judges of the Court (including a multi-judge panel of the Court or the full Court).

(7) The median time from filing a petition to disposition by the Court.

(8) The median time from filing an application under section 2412 of title 28 to disposition by the Court.

(9) The median time from the completion of briefing requirements by the parties to disposition by the Court.

(10) The number of oral arguments before the Court.

(11) The number of cases appealed to the United States Court of Appeals for the Federal Circuit.

(12) The number and status of appeals and petitions pending with the Court and of applications described in paragraph (3) as of the end of such fiscal year.

(13) The number of cases pending with the Court more than 18 months as of the end of such fiscal year.

(14) A summary of any service performed for the Court by a recalled retired judge of the Court.

(15) An assessment of the workload of each judge of the Court, including consideration of the following:

(A) The time required of each judge for disposition of each type of case.

(B) The number of cases reviewed by the Court.

(C) The average workload of other Federal judges.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Committee on Veterans' Affairs of the Senate; and

(2) the Committee on Veterans' Affairs of the House of Representatives.

(Added Pub. L. 110–389, title VI, Sec. 604(a), Oct. 10, 2008, 122 Stat. 4178.)

SUBCHAPTER IV—DECISIONS AND REVIEW

§ 7291. Date when Court decision becomes final

(a) A decision of the United States Court of Appeals for Veterans Claims shall become final upon the expiration of the time allowed for filing, under section 7292 of this title, a notice of appeal from such decision, if no such notice is duly filed within such time. If such a notice is filed within such time, such a decision shall become final—

(1) upon the expiration of the time allowed for filing a petition for certiorari with the Supreme Court of the United States, if the decision of the Court of Appeals for Veterans Claims is affirmed or the appeal is dismissed by the United States Court of Appeals for the Federal Circuit and no petition for certiorari is duly filed;

(2) upon the denial of a petition for certiorari, if the decision of the Court of Appeals for Veterans Claims is affirmed or the appeal is dismissed by the United States Court of Appeals for the Federal Circuit; or

(3) upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if that Court directs that the decision of the Court of Appeals for Veterans Claims be affirmed or the appeal dismissed.

(b)(1) If the Supreme Court directs that the decision of the Court of Appeals for Veterans Claims be modified or reversed, the decision of the Court of Appeals for Veterans Claims rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Court of Appeals for Veterans Claims shall become final when so corrected.

(2) If the decision of the Court of Appeals for Veterans Claims is modified or reversed by the United States Court of Appeals for the Federal Circuit and if—

(A) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court,

then the decision of the Court of Appeals for Veterans Claims rendered in accordance with the mandate of the United States Court of Appeals for the Federal Circuit shall become final upon the expiration of 30 days from the time such decision of the Court of Appeals for Veterans Claims was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Court of Appeals for Veterans Claims shall become final when so corrected.

(c) If the Supreme Court orders a rehearing, or if the case is remanded by the United States Court of Appeals for the Federal Circuit to the Court of Appeals for Veterans Claims for a rehearing, and if—

(1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(2) the petition for certiorari has been denied, or

(3) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court,

then the decision of the Court of Appeals for Veterans Claims rendered upon such rehearing shall become final in the same manner as though no prior decision of the Court of Appeals for Veterans Claims had been rendered.

(d) As used in this section, the term "mandate", in case a mandate has been recalled before the expiration of 30 days from the date of issuance thereof, means the final mandate.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4119, Sec. 4091; renumbered Sec. 7291 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105–368, title V, Sec. 512(a)(1), (2)(B), Nov. 11, 1998, 112 Stat. 3341.)

§ 7292. Review by United States Court of Appeals for the Federal Circuit

(a) After a decision of the United States Court of Appeals for Veterans Claims is entered in a case, any party to the case may obtain a review of the decision with respect to the validity of a decision of the Court on a rule of law or of any statute or regulation (other than a refusal to review the schedule of ratings for disabilities adopted under section 1155 of this title) or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the Court in making the decision. Such a review shall be obtained by filing a notice of appeal with the Court of Appeals for Veterans Claims within the time and in the manner prescribed for appeal to United States courts of appeals from United States district courts.

(b)(1) When a judge or panel of the Court of Appeals for Veterans Claims, in making an order not otherwise appealable under this section, determines that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that there is in fact a disagreement between the appellant and the Secretary with respect to that question of law and that the ultimate termination of the case may be materially advanced by the immediate consideration of that question, the judge or panel shall notify the chief judge of that determination. Upon receiving such a notification, the chief judge shall certify that such a question is presented, and any party to the case may then petition the Court of Appeals for the Federal Circuit to decide the question. That court may permit an interlocutory appeal to be taken on that question if such a petition is filed with it within 10 days after the certification by the chief judge of the Court of Appeals for Veterans Claims. Neither the application for, nor the granting of, an appeal under this paragraph shall stay proceedings in the Court of Veterans Appeals, unless a stay is ordered by a judge of the Court of Appeals for Veterans Claims or by the Court of Appeals for the Federal Circuit.

(2) For purposes of subsections (d) and (e) of this section, an order described in this paragraph shall be treated as a decision of the Court of Appeals for Veterans Claims.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under this section, and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision. The judgment of such court shall be final subject to review by the Supreme Court upon certiorari, in the manner provided in section 1254 of title 28.

(d)(1) The Court of Appeals for the Federal Circuit shall decide all relevant questions of law, including interpreting constitutional and statutory provisions. The court shall hold unlawful and set aside any regulation or any interpretation thereof (other than a determination as to a factual matter) that was relied upon in the decision of the Court of Appeals for Veterans Claims that the Court of Appeals for the Federal Circuit finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law.

(2) Except to the extent that an appeal under this chapter presents a constitutional issue, the Court of Appeals may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.

(e)(1) Upon such review, the Court of Appeals for the Federal Circuit shall have power to affirm or, if the decision of the Court of Appeals for Veterans Claims is not in accordance with law, to modify or reverse the decision of the Court of Appeals for Veterans Claims or to remand the matter, as appropriate.

(2) Rules for review of decisions of the Court of Appeals for Veterans Claims shall be those prescribed by the Supreme Court under section 2072 of title 28.

(Added Pub. L. 100–687, div. A, title III, Sec. 301(a), Nov. 18, 1988, 102 Stat. 4120, Sec. 4092; amended Pub. L. 101–94, title III, Sec. 302(b), Aug. 16, 1989, 103 Stat. 628; renumbered Sec. 7292, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(e)(5), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107–330, title IV, Sec. 402(a), Dec. 6, 2002, 116 Stat. 2832.)

SUBCHAPTER V—RETIREMENT AND SURVIVORS ANNUITIES

§ 7296. Retirement of judges

(a) For purposes of this section:

(1) The term "Court" means the United States Court of Appeals for Veterans Claims.

(2) The term "judge" means a judge of the Court.

(b)(1) A judge who meets the age and service requirements set forth in the following table may retire:

The judge has attained age:	And the years of service as a judge are at least
65	15
66	14
67	13
68	12
69	11
70	10

(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.

(3) A judge who becomes permanently disabled and as a result of that disability is unable to perform the duties of the office shall retire.

(c)(1)(A) A judge who is appointed on or after the date of the enactment of the Veterans' Benefits Improvement Act of 2008 and who retires under subsection (b) and elects under subsection (d) to receive retired pay under this subsection shall (except as provided in paragraph (2)) receive retired pay as follows:

(i) In the case of a judge who is a recall-eligible retired judge under section 7257 of this title, the retired pay of the judge shall (subject to section 7257(d)(2) of this title) be the rate of pay applicable to that judge at the time of retirement, as adjusted from time to time under subsection (f)(3).

(ii) In the case of a judge other than a recall-eligible retired judge, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.

(B) A judge who retired before the date of the enactment of the Veterans' Benefits Improvement Act of 2008 and elected under subsection (d) to receive retired pay under this subsection, or a judge who retires under subsection (b) and elects under subsection (d) to

receive retired pay under this subsection, shall (except as provided in paragraph (2)) receive retired pay as follows:

(i) In the case of a judge who is a recall-eligible retired judge under section 7257 of this title or who was a recall-eligible retired judge under that section and was removed from recall status under subsection (b)(4) of that section by reason of disability, the retired pay of the judge shall be the pay of a judge of the court.

(ii) In the case of a judge who at the time of retirement did not provide notice under section 7257 of this title of availability for service in a recalled status, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.

(iii) In the case of a judge who was a recall-eligible retired judge under section 7257 of this title and was removed from recall status under subsection (b)(3) of that section, the retired pay of the judge shall be the pay of the judge at the time of the removal from recall status.

(2) An individual who serves as a judge for less than 10 years and who retires under subsection (b)(3) of this section and elects under subsection (d) of this section to receive retired pay under this subsection shall receive retired pay at a rate equal to one-half of the rate of pay in effect at the time of retirement.

(3) Retired pay under this subsection shall begin to accrue on the day following the day on which the individual's salary as judge ceases to accrue and shall continue to accrue during the remainder of the individual's life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge.

(d)(1) A judge may elect to receive retired pay under subsection (c) of this section. Such an election—

(A) may be made only while an individual is a judge (except that, in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, the election may be made at any time before the date after the day on which the individual's successor takes office); and

(B) may not be revoked after the retired pay begins to accrue.

(2) In the case of a judge other than the chief judge, such an election shall be made by filing notice of the election in writing with the chief judge. In the case of the chief judge, such an election shall be made by filing notice of the election in writing with the Director of the Office of Personnel Management.

(3) The chief judge shall transmit to the Director of the Office of Personnel Management a copy of each notice filed with the chief judge under this subsection.

(e) If an individual for whom an election to receive retired pay under subsection (c) is in effect accepts compensation for employment with the United States, the individual shall, to the extent of the amount of that compensation, forfeit all rights to retired pay under subsection (c) of this section for the period for which the compensation is received.

(f)(1) Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic

pay, salary, and compensation) shall apply with respect to service as a judge as if this section had not been enacted.

(2) In the case of any individual who has filed an election to receive retired pay under subsection (c) of this section—

(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as judge or otherwise) except as authorized by section 8440d of title 5;

(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to that individual under subsection (c) of this section or from any other salary, pay, or compensation payable to that individual, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331(8) or 8401(a) of title 5, whichever applies, upon making application therefor with the Office of Personnel Management.

(3)(A) A cost-of-living adjustment provided by law in annuities payable under civil service retirement laws shall apply to retired pay under this section only in the case of retired pay computed under paragraph (1)(A)(i) or (2) of subsection (c).

(B) If such a cost-of-living adjustment would (but for this subparagraph) result in the retired pay of a retired judge being in excess of the annual rate of pay in effect for judges of the Court as provided in section 7253(e) of this title, such adjustment may be made only in such amount as results in the retired pay of the retired judge being equal to that annual rate of pay (as in effect on the effective date of such adjustment).

(g)(1) A judge who becomes permanently disabled and as a result of that disability is unable to perform the duties of the office shall certify to the President in writing that such permanent disability exists. If the chief judge retires for such a disability, the retirement of the chief judge shall not take effect until concurred in by the President. If any other judge retires for such a disability, the chief judge shall furnish to the President a certificate of disability signed by the chief judge.

(2) Whenever the President finds that a judge has become permanently disabled and as a result of that disability is unable to perform the duties of the office, the President shall declare that judge to be retired. Before a judge may be retired under this paragraph, the judge shall be provided with a full specification of the reasons for the retirement and an opportunity to be heard.

(h)(1) An individual who has filed an election to receive retired pay under subsection (c) of this section may revoke such election at any time before the first day on which retired pay would (but for such revocation) begin to accrue with respect to such individual.

(2) Any revocation under this subsection shall be made by filing a notice of the election in writing with the Director of the Office of Personnel Management. The Office of Personnel Management shall transmit to the chief judge a copy of each notice filed under this subsection.

(3) In the case of a revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (c) of this section;

(B) for purposes of section 7297 of this title—

(i) the individual shall be treated as not having filed an election under section 7297(b) of this title, and

(ii) section 7297(e) of this title shall not apply and the amount credited to such individual's account (together with interest at 3 percent per year, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to the individual;

(C) no credit shall be allowed for any service as a judge of the Court unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest;

(D) the Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (d); and

(E) if subparagraphs (C) and (D) of this paragraph are complied with, service on the Court shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(i)(1) Beginning with the next pay period after the Director of the Office of Personnel Management receives a notice under subsection (d) of this section that a judge has elected to receive retired pay under this section, the Director shall deduct and withhold 1 percent of the salary of such judge. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Court of Appeals for Veterans Claims Judges Retirement Fund. Deductions under this subsection from the salary of a judge shall terminate upon the retirement of the judge or upon the completion of 15 years of service for which either deductions under this subsection or a deposit under subsection (j) of this section has been made, whichever occurs first.

(2) Each judge who makes an election under subsection (d) of this section shall be considered to agree to the deductions from salary which are made under paragraph (1) of this subsection.

(j) A judge who makes an election under subsection (d) of this section shall deposit, for service on the Court performed before the election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for the first years, not exceeding 15 years, of that service. Retired pay may not be allowed until a deposit required by this subsection has been made.

(k) The amounts deducted and withheld under subsection (i) of this section, and the amounts deposited under subsection (j) of this section, shall be deposited in the Court of Appeals for Veterans Claims Retirement Fund for credit to individual accounts in the name of each judge from whom such amounts are received.

(Added Pub. L. 101–94, title I, Sec. 101(a), Aug. 16, 1989, 103 Stat. 617, Sec. 4096; renumbered Sec. 7296 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–82, Sec. 5(c)(1), Aug. 6, 1991, 105 Stat. 376; Pub. L. 102–198, Sec. 7(c)(4)(D), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 105–368, title V, Sec. 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106–117, title X, Secs. 1022, 1035(2), Nov. 30, 1999, 113 Stat. 1592, 1595; Pub. L. 107–103, title VI, Sec. 602, Dec. 27, 2001, 115 Stat. 999; Pub. L. 110–389, title VI, Sec. 603(b)(1), (2), Oct. 10, 2008, 122 Stat. 4177, 4178.)

§ 7297. Survivor annuities

(a) For purposes of this section:

(1) The term "Court" means the United States Court of Appeals for Veterans Claims.

(2) The term "judge" means a judge of the Court who is in active service or who has retired under section 7296 of this title.

(3) The term "pay" means salary received under section 7253(e) of this title and retired pay received under section 7296 of this title.

(4) The term "retirement fund" means the Court of Appeals for Veterans Claims Retirement Fund established under section 7298 of this title.

(5) The term "surviving spouse" means a surviving spouse of an individual who (A) was married to such individual for at least one year immediately preceding the individual's death, or (B) is a parent of issue by the marriage.

(6) The term "dependent child" has the meaning given the term "child" in section 376(a)(5) of title 28.

(7) The term "Member of Congress" means a Representative, a Senator, a Delegate to Congress, or the Resident Commissioner of Puerto Rico.

(8) The term "assassination" as applied to a judge shall have the meaning provided that term in section 376(a)(7) of title 28 as applied to a judicial official.

(b) A judge may become a participant in the annuity program under this section by filing a written election under this subsection while in office or within six months after the date on which the judge marries if the judge has retired under section 7296 of this title. Any such election shall be made in such manner as may be prescribed by the Court.

(c) There shall be deducted and withheld each pay period from the pay of a judge who has made an election under subsection (b) of this section a sum equal to that percentage of the judge's pay that is the same as provided for the deduction from the salary or retirement salary of a judge of the United States Court of Federal Claims for the purpose of a survivor annuity under section 376(b)(1)(B) of title 28. Amounts so deducted and withheld shall be deposited in the retirement fund. A judge who makes an election under subsection (b) of this section shall be considered by that election to agree to the deductions from the judge's pay required by this subsection.

(d)(1) A judge who makes an election under subsection (b) of this section shall deposit, with interest at 3 percent per year compounded on December 31 of each year, to the credit of the retirement fund, an amount equal to 3.5 percent of the judge's pay and

of the judge's basic salary, pay, or compensation for service as a Member of Congress, and for any other civilian service within the purview of section 8332 of title 5. Each such judge may elect to make such deposits in installments during the judge's period of service in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annual annuity of the surviving spouse of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge, unless the surviving spouse elects to eliminate such service entirely from credit under subsection (k) of this section. However, a deposit shall not be required from a judge for any year with respect to which deductions from the judge's pay, or a deposit, were actually made (and not withdrawn) under the civil service retirement laws.

(2) The interest required under the first sentence of paragraph (1) shall not be required for any period—

(A) during which a judge was separated from any service described in section 376(d)(2) of title 28; and

(B) during which the judge was not receiving retired pay based on service as a judge or receiving any retirement salary as described in section 376(d)(1) of title 28.

(e) If the service of a judge who makes an election under subsection (b) of this section terminates other than pursuant to the provisions of section 7296 of this title, or if any judge ceases to be married after making the election under subsection (b) of this section and revokes (in a writing filed as provided in subsection (b) of this section) such election, the amount credited to the judge's individual account (together with interest at 3 percent per year compounded on December 31 of each year to the date of the judge's relinquishment of office) shall be returned to the judge. For the purpose of this section, the service of a judge making an election under subsection (b) of this section shall be considered to have terminated pursuant to section 7296 of this title if—

(1) the judge is not reappointed following expiration of the term for which appointed; and

(2) at or before the time of the expiration of that term, the judge is eligible for and elects to receive retired pay under section 7296 of this title.

(f)(1) If a judge who makes an election under subsection (b) of this section dies after having rendered at least 18 months of civilian service (computed as prescribed in subsection (l) of this section), for the last 18 months of which the salary deductions provided for by subsection (c) of this section or the deposits required by subsection (d) of this section have actually been made (and not withdrawn) or the salary deductions required by the civil service retirement laws have actually been made (and not withdrawn)—

(A) if the judge is survived by a surviving spouse but not by a dependent child, there shall be paid to the surviving spouse an annuity beginning with the day of the death of the judge, in an amount computed as provided in subsection (k) of this section; or

(B) if the judge is survived by a surviving spouse and a dependent child or children, there shall be paid to the surviving spouse an immediate annuity in an amount computed as provided in subsection (k) of this section and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(i) 10 percent of the average annual pay of such judge (determined in accordance with subsection (k) of this section), or

(ii) 20 percent of such average annual pay, divided by the number of such children; or

(C) if the judge is not survived by a surviving spouse but is survived by a dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(i) 20 percent of the average annual pay of such judge (determined in accordance with subsection (k) of this section), or

(ii) 40 percent of such average annual pay, divided by the number of such children.

(2) The annuity payable to a surviving spouse under this subsection shall be terminated—

(A) upon the surviving spouse's death; or

(B) upon the remarriage of the surviving spouse before age 55.

(3) The annuity payable to a child under this subsection shall be terminated upon the child's death.

(4) In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving the spouse, the annuity of such child or children under paragraph (1)(B) of this subsection shall be recomputed and paid as provided in paragraph (1)(C) of this subsection. In any case in which the annuity of a dependent child is terminated, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived the judge.

(5) If a judge dies as a result of an assassination and leaves a survivor or survivors who are otherwise entitled to receive annuity payments under this section, the 18-month requirement in the matter in paragraph (1) preceding subparagraph (A) shall not apply.

(g) Questions of family relationships, dependency, and disability arising under this section shall be determined in the same manner as such questions arising under chapter 84 of title 5 are determined.

(h)(1) If—

(A) a judge making an election under subsection (b) of this section dies while in office (i) before having rendered 5 years of civilian service computed as prescribed in subsection (l) of this section, or (ii) after having rendered 5 years of such civilian service but without a survivor entitled to annuity benefits provided by subsection (f) of this section; or

(B) the right of all persons entitled to an annuity under subsection (f) of this section based on the service of such judge

terminates before a claim for such benefits has been established,

the total amount credited to the individual account of such judge (with interest at 3 percent per year, compounded on December 31 of each year, to the date of the death of such judge) shall be paid in the manner specified in paragraph (2) of this subsection.

(2) An amount payable under paragraph (1) of this subsection shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

(A) To the beneficiary or beneficiaries whom the judge designated in writing filed before death with the chief judge (except that in the case of the chief judge such designation shall be filed before death as prescribed by the Court).

(B) To the surviving spouse of the judge.

(C) To the child or children of the judge (and the descendants of any deceased children by representation).

(D) To the parents of the judge or the survivor of them.

(E) To the executor or administrator of the estate of the judge.

(F) To such other next of kin of the judge as may be determined by the chief judge to be entitled under the laws of the domicile of the judge at the time of the judge's death.

(3) Determination as to the surviving spouse, child, or parent of a judge for the purposes of paragraph (2) of this subsection shall be made without regard to the definitions in subsection (a) of this section.

(4) Payment under this subsection in the manner provided in this subsection shall be a bar to recovery by any other person.

(5) In a case in which the annuities of all persons entitled to annuity based upon the service of a judge terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge (with interest at 3 percent per year, compounded on December 31 of each year to the date of the death of the judge), the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (2) of this subsection.

(6) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any individual based upon the service of a judge shall be paid to that individual. Any accrued annuity remaining unpaid upon the death of an individual receiving an annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) To the executor or administrator of the estate of that person.

(B) After 30 days after the date of the death of such individual, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled thereto.

Such payment shall be a bar to recovery by any other individual.

(i) When a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, the payment may be made to the person who is constituted guardian or

other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or the claimant's estate. If no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or the claimant's estate.

(j) Annuities under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity has accrued. An annuity under this section is not assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(k)(1) The annuity of the surviving spouse of a judge making an election under subsection (b) of this section shall be an amount equal to the sum of the following:

(A) The product of—

(i) 1.5 percent of the judge's average annual pay; and

(ii) the sum of the judge's years of judicial service, the judge's years of prior allowable service as a Member of Congress, the judge's years of prior allowable service performed as a member of the Armed Forces, and the judge's years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 2107 of title 5).

(B) Three-fourths of 1 percent of the judge's average annual pay multiplied by the judge's years of allowable service not counted under subparagraph (A) of this paragraph.

(2) An annuity computed under this subsection may not exceed 50 percent of the judge's average annual pay and may not be less than 25 percent of such average annual pay. Such annuity shall be further reduced in accordance with subsection (d) of this section (if applicable).

(3) For purposes of this subsection, the term "average annual pay", with respect to a judge, means the average annual pay received by the judge for judicial service (including periods in which the judge received retired pay under section 7296(d) of this title) or for any other prior allowable service during the period of three consecutive years in which the judge received the largest such average annual pay.

(l) Subject to subsection (d) of this section, the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of the judge's surviving spouse shall include the judge's years of service as a judge of the Court, the judge's years of service as a Member of Congress, the judge's years of active service as a member of the Armed Forces not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and the judge's years of any other civilian service within the purview of section 8332 of title 5.

(m) Nothing contained in this section shall be construed to prevent a surviving spouse eligible therefor from simultaneously receiving an annuity under this section and any annuity to which such spouse would otherwise be entitled under any other law with-

out regard to this section, but in computing such other annuity service used in the computation of such spouse's annuity under this section shall not be credited.

(n) A judge making an election under subsection (b) of this section shall, at the time of such election, waive all benefits under the civil service retirement laws except section 8440d of title 5. Such a waiver shall be made in the same manner and shall have the same force and effect as an election filed under section 7296(d) of this title.

(o) Each survivor annuity payable from the retirement fund shall be increased at the same time as, and by the same percentage by which, annuities payable from the Judicial Survivors' Annuities Fund are increased pursuant to section 376(m) of title 28.

(Added Pub. L. 101–94, title I, Sec. 101(a), Aug. 16, 1989, 103 Stat. 620, Sec. 4097; renumbered Sec. 7297 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(e)(6), June 13, 1991, 105 Stat. 287; Pub. L. 102–82, Sec. 5(c)(2), Aug. 6, 1991, 105 Stat. 376; Pub. L. 102–198, Sec. 7(c)(4)(E), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 105–368, title V, Sec. 503, 512(a)(1), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106–117, title X, Sec. 1023, 1035(2), Nov. 30, 1999, 113 Stat. 1592, 1595.)

§ 7298. Retirement Fund

(a) There is established in the Treasury a fund known as the Court of Appeals for Veterans Claims Retirement Fund.

(b) Amounts in the fund are available for the payment of judges' retired pay under section 7296 of this title and of annuities, refunds, and allowances under section 7297 of this title.

(c) Amounts deposited by, or deducted and withheld from the salary and retired pay of, a judge under section 7296 or 7297 of this title shall be deposited in the fund and credited to an individual account of the judge.

(d) The chief judge of the Court of Appeals for Veterans Claims shall submit to the President an annual estimate of the expenditures and appropriations necessary for the maintenance and operation of the fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law.

(e)(1) The chief judge may cause periodic examinations of the retirement fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose.

(2)(A) Subject to the availability of appropriations, there shall be deposited in the Treasury to the credit of the retirement fund, not later than the close of each fiscal year, such amounts as may be required to reduce to zero the unfunded liability (if any) of the fund. Such deposits shall be taken from sums available for that fiscal year for the payment of the expenses of the Court.

(B) For purposes of subparagraph (A) of this paragraph, the term "unfunded liability", with respect to any fiscal year, means the amount estimated by the chief judge to be equal to the excess (as of the close of that fiscal year) of—

(i) the present value of all benefits payable from the fund (determined on an annual basis in accordance with section 9503 of title 31), over

(ii) the sum of—

(I) the present values of future deductions under sections 7296(i) and 7297(c) of this title and future deposits under sections 7296(j) and 7296(d) of this title, and

(II) the balance in the fund as of the close of the fiscal year.

(C) For purposes of subparagraph (B), the term "present value" includes a value determined by an actuary with respect to a payment that may be made under subsection (b) from the retirement fund within the contemplation of law.

(D) Amounts deposited in the retirement fund under this paragraph shall not be credited to the account of any individual.

(f) The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States, such portions of the retirement fund as in such Secretary's judgment may not be immediately required for payments from the fund. The income derived from such investments shall constitute a part of the fund.

(g) For purpose of section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)), the retirement fund shall be treated in the same manner as the Claims Judges' Retirement Fund.

(Added Pub. L. 101–94, title I, Sec. 101(a), Aug. 16, 1989, 103 Stat. 625, Sec. 4098; renumbered Sec. 7298 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 105–368, title V, Sec. 502, 512(a)(1), (2)(C), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106–117, title X, Sec. 1011(j), Nov. 30, 1999, 113 Stat. 1589.)

§ 7299. Limitation on activities of retired judges

(a) A retired judge of the Court who is recall-eligible under section 7257 of this title and who in the practice of law represents (or supervises or directs the representation of) a client in making any claim relating to veterans' benefits against the United States or any agency thereof shall, pursuant to such section, be considered to have declined recall service and be removed from the status of a recall-eligible judge. The pay of such a judge, pursuant to section 7296 of this title, shall be the pay of the judge at the time of the removal from recall status.

(b) A recall-eligible judge shall be considered to be an officer or employee of the United States, but only during periods when the judge is serving in recall status. Any prohibition, limitation, or restriction that would otherwise apply to the activities of a recall-eligible judge shall apply only during periods when the judge is serving in recall status.

(Added Pub. L. 106–117, title X, Sec. 1024(a), Nov. 30, 1999, 113 Stat. 1593.)

CHAPTER 73 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART V—BOARDS, ADMINISTRATIONS, AND SERVICES]

CHAPTER 73—VETERANS HEALTH ADMINISTRATION-ORGANIZATION AND FUNCTIONS

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SUBCHAPTER I—ORGANIZATION

§ 7301. Functions of Veterans Health Administration: in general

(a) There is in the Department of Veterans Affairs a Veterans Health Administration. The Under Secretary for Health is the head of the Administration. The Under Secretary for Health may be referred to as the Chief Medical Director.

(b) The primary function of the Administration is to provide a complete medical and hospital service for the medical care and treatment of veterans, as provided in this title and in regulations prescribed by the Secretary pursuant to this title.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 211; amended Pub. L. 102–405, title III, Sec. 302(c)(1), (2), Oct. 9, 1992, 106 Stat. 1984.)

§ 7302. Functions of Veterans Health Administration: health-care personnel education and training programs

(a) In order to carry out more effectively the primary function of the Veterans Health Administration and in order to assist in providing an adequate supply of health personnel to the Nation, the Secretary—

(1) to the extent feasible without interfering with the medical care and treatment of veterans, shall develop and carry out a program of education and training of health personnel; and

(2) shall carry out a major program for the recruitment, training, and employment of veterans with medical military occupation specialties as—

(A) physician assistants;

(B) expanded-function dental auxiliaries; and

(C) other medical technicians.

(b) In carrying out subsection (a)(1), the Secretary shall include in the program of education and training under that subsection the developing and evaluating of new health careers, interdisciplinary approaches, and career advancement opportunities.

(c) In carrying out subsection (a)(2), the Secretary shall include in the program of recruitment, training, and employment under that subsection measures to advise all qualified veterans with military occupation specialties referred to in that subsection, and all members of the armed forces about to be discharged or released from active duty who have such military occupation specialties, of employment opportunities with the Administration.

(d) The Secretary shall carry out subsection (a) in cooperation with the following institutions and organizations:

(1) Schools of medicine, osteopathy, dentistry, nursing, pharmacy, optometry, podiatry, public health, or allied health professions.

(2) Other institutions of higher learning.

(3) Medical centers.

(4) Academic health centers.

(5) Hospitals.

(6) Such other public or nonprofit agencies, institutions, or organizations as the Secretary considers appropriate.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 211.)

§ 7303. Functions of Veterans Health Administration: research programs

(a)(1) In order to carry out more effectively the primary function of the Administration and in order to contribute to the Nation's knowledge about disease and disability, the Secretary shall carry out a program of medical research in connection with the provision of medical care and treatment to veterans. Funds appropriated to carry out this section shall remain available until expended.

(2) Such program of medical research shall include biomedical research, mental illness research, prosthetic and other rehabilitative research, and health-care-services research.

(3) Such program shall stress—

(A) research into spinal-cord injuries and other diseases that lead to paralysis of the lower extremities; and

(B) research into injuries and illnesses particularly related to service.

(4) In carrying out such research program, the Secretary shall act in cooperation with the entities described in section 7302(d) of this title.

(b) Prosthetic research shall include research and testing in the field of prosthetic, orthotic, and orthopedic appliances and sensory devices. In order that the unique investigative material and research data in the possession of the Government may result in the improvement of such appliances and devices for all disabled persons, the Secretary (through the Under Secretary for Health) shall make the results of such research available to any person, and shall consult and cooperate with the Secretary of Health and Human Services and the Secretary of Education, in connection with programs carried out under section 204(b)(3) of the Rehabilitation Act of 1973 (relating to the establishment and support of Rehabilitation Engineering Research Centers).

(c)(1) In conducting or supporting clinical research, the Secretary shall ensure that, whenever possible and appropriate—

(A) women who are veterans are included as subjects in each project of such research; and

(B) members of minority groups who are veterans are included as subjects of such research.

(2) In the case of a project of clinical research in which women or members of minority groups will under paragraph (1) be included as subjects of the research, the Secretary shall ensure that the project is designed and carried out so as to provide for a valid analysis of whether the variables being tested in the research affect women or members of minority groups, as the case may be, differently than other persons who are subjects of the research.

(d)(1) The Secretary, in carrying out the Secretary's responsibilities under this section, shall foster and encourage the initiation and expansion of research relating to the health of veterans who are women.

(2) In carrying out this subsection, the Secretary shall consult with the following to assist the Secretary in setting research priorities:

(A) Officials of the Department assigned responsibility for women's health programs and sexual trauma services.

(B) The members of the Advisory Committee on Women Veterans.

(C) Members of appropriate task forces and working groups within the Department (including the Women Veterans Working Group and the Task Force on Treatment of Women Who Suffer Sexual Abuse).

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 211; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–452, title I, Sec. 102(a), (b)(1), Nov. 2, 1994, 108 Stat. 4785, 4786; Pub. L. 105–220, title IV, Sec. 414(c), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 107–135, title II, Sec. 205(a), Jan. 23, 2002, 115 Stat. 2460; Pub. L. 108–170, title IV, Sec. 401(b), Dec. 6, 2003, 117 Stat. 2061.)

§ 7304. Regulations

(a) Unless specifically otherwise provided, the Under Secretary for Health shall prescribe all regulations necessary to the administration of the Veterans Health Administration, including regulations relating to—

(1) travel, transportation of household goods and effects, and deductions from pay for quarters and subsistence; and

(2) the custody, use, and preservation of the records, papers, and property of the Administration.

(b) Regulations prescribed by the Under Secretary for Health are subject to the approval of the Secretary.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 212; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7305. Divisions of Veterans Health Administration

The Veterans Health Administration shall include the following:

(1) The Office of the Under Secretary for Health.

(2) A Medical Service.

(3) A Dental Service.

(4) A Podiatric Service.

(5) An Optometric Service.

(6) A Nursing Service.

(7) Such other professional and auxiliary services as the Secretary may find to be necessary to carry out the functions of the Administration.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 212; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7306. Office of the Under Secretary for Health

(a) The Office of the Under Secretary for Health shall consist of the following:

(1) The Deputy Under Secretary for Health, who shall be the principal assistant of the Under Secretary for Health and who shall be a qualified doctor of medicine.

(2) The Associate Deputy Under Secretary for Health, who shall be an assistant to the Under Secretary for Health and

the Deputy Under Secretary for Health and who shall be a qualified doctor of medicine.

(3) Not to exceed eight Assistant Under Secretaries for Health.

(4) Such Medical Directors as may be appointed to suit the needs of the Department, who shall be either a qualified doctor of medicine or a qualified doctor of dental surgery or dental medicine.

(5) A Director of Nursing Service, who shall be a qualified registered nurse and who shall be responsible to, and report directly to, the Under Secretary for Health for the operation of the Nursing Service.

(6) A Director of Pharmacy Service, a Director of Dietetic Service, a Director of Podiatric Service, and a Director of Optometric Service, who shall be responsible to the Under Secretary for Health for the operation of their respective Services.

(7) Such directors of such other professional or auxiliary services as may be appointed to suit the needs of the Department, who shall be responsible to the Under Secretary for Health for the operation of their respective services.

(8) The Director of the National Center for Preventive Health, who shall be responsible to the Under Secretary for Health for the operation of the Center.

(9) The Advisor on Physician Assistants, who shall be a physician assistant with appropriate experience and who shall advise the Under Secretary for Health on all matters relating to the utilization and employment of physician assistants in the Administration.

(10) Such other personnel as may be authorized by this chapter.

(b) Of the Assistant Under Secretaries for Health appointed under subsection (a)(3)—

(1) not more than two may be persons qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicines;

(2) one shall be a qualified doctor of dental surgery or dental medicine who shall be directly responsible to the Under Secretary for Health for the operation of the Dental Service; and

(3) one shall be a qualified physician trained in, or having suitable extensive experience in, geriatrics who shall be responsible to the Under Secretary for Health for evaluating all research, educational, and clinical health-care programs carried out in the Administration in the field of geriatrics and who shall serve as the principal advisor to the Under Secretary for Health with respect to such programs.

(c) Appointments under subsection (a) shall be made by the Secretary. In the case of appointments under paragraphs (1), (2), (3), (4), and (8) of that subsection, such appointments shall be made upon the recommendation of the Under Secretary for Health.

(d) Except as provided in subsection (e)—

(1) any appointment under this section shall be for a period of four years, with reappointment permissible for successive like periods,

(2) any such appointment or reappointment may be extended by the Secretary for a period not in excess of three years, and

(3) any person so appointed or reappointed or whose appointment or reappointment is extended shall be subject to removal by the Secretary for cause.

(e)(1) The Secretary may designate a member of the Chaplain Service of the Department as Director, Chaplain Service, for a period of two years, subject to removal by the Secretary for cause. Redesignation under this subsection may be made for successive like periods or for any period not exceeding two years.

(2) A person designated as Director, Chaplain Service, shall at the end of such person's period of service as Director revert to the position, grade, and status which such person held immediately before being designated Director, Chaplain Service, and all service as Director, Chaplain Service, shall be creditable as service in the former position.

(f) In organizing the Office and appointing persons to positions in the Office, the Under Secretary shall ensure that—

(1) the Office is staffed so as to provide the Under Secretary, through a designated clinician in the appropriate discipline in each instance, with expertise and direct policy guidance on—

(A) unique programs operated by the Administration to provide for the specialized treatment and rehabilitation of disabled veterans (including blind rehabilitation, care of spinal cord dysfunction, mental illness, and long-term care); and

(B) the programs established under section 1712A of this title; and

(2) with respect to the programs established under section 1712A of this title, a clinician with appropriate expertise in those programs is responsible to the Under Secretary for the management of those programs.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 212; amended Pub. L. 102–405, title II, Sec. 205, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 102–585, title V, Sec. 511(b), Nov. 4, 1992, 106 Stat. 4956; Pub. L. 103–446, title XII, Sec. 1201(c)(3), Nov. 2, 1994, 108 Stat. 4683; Pub. L. 104–262, title III, Sec. 344, Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106–419, title II, Sec. 206, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 107–135, title I, Sec. 131, Jan. 23, 2002, 115 Stat. 2454.)

§ 7307. Office of Research Oversight

(a) REQUIREMENT FOR OFFICE.—(1) There is in the Veterans Health Administration an Office of Research Oversight (hereinafter in this section referred to as the "Office"). The Office shall advise the Under Secretary for Health on matters of compliance and assurance in human subjects protections, research safety, and research impropriety and misconduct. The Office shall function independently of entities within the Veterans Health Administration with responsibility for the conduct of medical research programs.

(2) The Office shall—

(A) monitor, review, and investigate matters of medical research compliance and assurance in the Department with respect to human subjects protections; and

(B) monitor, review, and investigate matters relating to the protection and safety of human subjects and Department employees participating in medical research in Department programs.

(b) DIRECTOR.—(1) The head of the Office shall be a Director, who shall report directly to the Under Secretary for Health (without delegation).

(2) Any person appointed as Director shall be—

(A) an established expert in the field of medical research, administration of medical research programs, or similar fields; and

(B) qualified to carry out the duties of the Office based on demonstrated experience and expertise.

(c) FUNCTIONS.—(1) The Director shall report to the Under Secretary for Health on matters relating to protections of human subjects in medical research projects of the Department under any applicable Federal law and regulation, the safety of employees involved in Department medical research programs, and suspected misconduct and impropriety in such programs. In carrying out the preceding sentence, the Director shall consult with employees of the Veterans Health Administration who are responsible for the management and conduct of Department medical research programs.

(2) The matters to be reported by the Director to the Under Secretary under paragraph (1) shall include allegations of research impropriety and misconduct by employees engaged in medical research programs of the Department.

(3)(A) When the Director determines that such a recommendation is warranted, the Director may recommend to the Under Secretary that a Department research activity be terminated, suspended, or restricted, in whole or in part.

(B) In a case in which the Director reasonably believes that activities of a medical research project of the Department place human subjects' lives or health at imminent risk, the Director shall direct that activities under that project be immediately suspended or, as appropriate and specified by the Director, be limited.

(d) GENERAL FUNCTIONS.—(1) The Director shall conduct periodic inspections and reviews, as the Director determines appropriate, of medical research programs of the Department. Such inspections and reviews shall include review of required documented assurances.

(2) The Director shall observe external accreditation activities conducted for accreditation of medical research programs conducted in facilities of the Department.

(3) The Director shall investigate allegations of research impropriety and misconduct in medical research projects of the Department.

(4) The Director shall submit to the Under Secretary for Health, the Secretary, and the Committees on Veterans' Affairs of the Senate and House of Representatives a report on any suspected lapse, from whatever cause or causes, in protecting safety of human subjects and others, including employees, in medical research programs of the Department.

(5) The Director shall carry out such other duties as the Under Secretary for Health may require.

(e) SOURCE OF FUNDS.—Amounts for the activities of the Office, including its regional offices, shall be derived from amounts appropriated for the Veterans Health Administration for Medical Care.

(f) ANNUAL REPORT.—Not later than March 15 each year, the Director shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the activities of the Office during the preceding calendar year. Each such report shall include, with respect to that year, the following:

(1) A summary of reviews of individual medical research programs of the Department completed by the Office.

(2) Directives and other communications issued by the Office to field activities of the Department.

(3) Results of any investigations undertaken by the Office during the reporting period consonant with the purposes of this section.

(4) Other information that would be of interest to those committees in oversight of the Department medical research program.

(g) MEDICAL RESEARCH.—For purposes of this section, the term "medical research" means medical research described in section 7303(a)(2) of this title.

(Added Pub. L. 108–170, title IV, Sec. 401(a)(1), Dec. 6, 2003, 117 Stat. 2060.)

§ 7308. Office of Rural Health

(a) ESTABLISHMENT.—There is established in the Department within the Office of the Under Secretary for Health an office to be known as the "Office of Rural Health" (in this section referred to as the "Office").

(b) HEAD.—The Director of the Office of Rural Health shall be the head of the Office. The Director of the Office of Rural Health shall be appointed by the Under Secretary of Health from among individuals qualified to perform the duties of the position.

(c) FUNCTIONS.—The functions of the Office are as follows:

(1) In cooperation with the medical, rehabilitation, health services, and cooperative studies research programs in the Office of Policy and the Office of Research and Development of the Veterans Health Administration, to assist the Under Secretary for Health in conducting, coordinating, promoting, and disseminating research into issues affecting veterans living in rural areas.

(2) To work with all personnel and offices of the Department of Veterans Affairs to develop, refine, and promulgate policies, best practices, lessons learned, and innovative and successful programs to improve care and services for veterans who reside in rural areas of the United States.

(3) To designate in each Veterans Integrated Service Network (VISN) an individual who shall consult on and coordinate the discharge in such Network of programs and activities of the Office for veterans who reside in rural areas of the United States.

(4) To perform such other functions and duties as the Secretary or the Under Secretary for Health considers appropriate.

(Added Pub. L. 109–461, title II, Sec. 212(a)(1), Dec. 22, 2006, 120 Stat. 3421.)

SUBCHAPTER II—GENERAL AUTHORITY AND ADMINISTRATION

§ 7311. Quality assurance

(a) The Secretary shall—

(1) establish and conduct a comprehensive program to monitor and evaluate the quality of health care furnished by the Veterans Health Administration (hereinafter in this section referred to as the "quality-assurance program"); and

(2) delineate the responsibilities of the Under Secretary for Health with respect to the quality-assurance program, including the duties prescribed in this section.

(b)(1) As part of the quality-assurance program, the Under Secretary for Health shall periodically evaluate—

(A) whether there are significant deviations in mortality and morbidity rates for surgical procedures performed by the Administration from prevailing national mortality and morbidity standards for similar procedures; and

(B) if there are such deviations, whether they indicate deficiencies in the quality of health care provided by the Administration.

(2) The evaluation under paragraph (1)(A) shall be made using the information compiled under subsection (c)(1). The evaluation under paragraph (1)(B) shall be made taking into account the factors described in subsection (c)(2)(B).

(3) If, based upon an evaluation under paragraph (1)(A), the Under Secretary for Health determines that there is a deviation referred to in that paragraph, the Under Secretary for Health shall explain the deviation in the report submitted under subsection (f).

(c)(1) The Under Secretary for Health shall—

(A) determine the prevailing national mortality and morbidity standards for each type of surgical procedure performed by the Administration; and

(B) collect data and other information on mortality and morbidity rates in the Administration for each type of surgical procedure performed by the Administration and (with respect to each such procedure) compile the data and other information so collected—

(i) for each medical facility of the Department, in the case of cardiac surgery, heart transplant, and renal transplant programs; and

(ii) in the aggregate, for each other type of surgical procedure.

(2) The Under Secretary for Health shall—

(A) compare the mortality and morbidity rates compiled under paragraph (1)(B) with the national mortality and morbidity standards determined under paragraph (1)(A); and

(B) analyze any deviation between such rates and such standards in terms of the following:

(i) The characteristics of the respective patient populations.

(ii) The level of risk for the procedure involved, based on—

(I) patient age;

(II) the type and severity of the disease;

(III) the effect of any complicating diseases; and

(IV) the degree of difficulty of the procedure.

(iii) Any other factor that the Under Secretary for Health considers appropriate.

(d) Based on the information compiled and the comparisons, analyses, evaluations, and explanations made under subsections (b) and (c), the Under Secretary for Health, in the report under subsection (f), shall make such recommendations with respect to quality assurance as the Under Secretary for Health considers appropriate.

(e)(1) The Secretary shall allocate sufficient resources (including sufficient personnel with the necessary skills and qualifications) to enable the Administration to carry out its responsibilities under this section.

(2) The Inspector General of the Department shall allocate sufficient resources (including sufficient personnel with the necessary skills and qualifications) to enable the Inspector General to monitor the quality-assurance program.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 214; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–446, title XII, Sec. 1201(g)(5), Nov. 2, 1994, 108 Stat. 4687.)

§ 7312. Special medical advisory group

(a) The Secretary shall establish an advisory committee to be known as the special medical advisory group. The advisory group shall advise the Secretary, through the Under Secretary for Health, and the Under Secretary for Health directly, relative to the care and treatment of disabled veterans and other matters pertinent to the Administration.

(b) Members of the special medical advisory group shall be appointed by the Secretary upon the recommendation of the Under Secretary for Health. The special medical advisory group shall be composed of—

(1) members of the medical, dental, podiatric, optometric, and allied scientific professions;

(2) other individuals considered by the Under Secretary for Health to have experience pertinent to the mission of the Administration; and

(3) a disabled veteran.

(c) The special medical advisory group shall meet on a regular basis as prescribed by the Secretary. The number, terms of service, pay, and allowances of members of the advisory group shall be prescribed in accordance with existing law and regulations.

(d) Not later than February 1 of each year, the special medical advisory group shall submit to the Secretary and the Congress a report on the activities of the advisory group during the preceding fiscal year. No report shall be required under this subsection after December 31, 2004.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 215; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–446, title XII, Sec. 1201(e)(20), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 106–419, title IV, Sec. 403(c)(5), Nov. 1, 2000, 114 Stat. 1864.)

§ 7313. Advisory committees: affiliated institutions

(a) In each case where the Secretary has a contract or agreement with any school, institution of higher learning, medical center, hospital, or other public or nonprofit agency, institution, or organization for the training or education of health personnel, the Secretary shall establish an advisory committee to advise the Secretary and the Under Secretary for Health with respect to policy matters arising in connection with, and the operation of, the program with respect to which it was appointed. Such a committee may be a dean's committee, a medical advisory committee, or the like.

(b) Any such advisory committee may be established on an institution-wide, multi-disciplinary basis or on a regional basis whenever establishment on such a basis is found to be feasible.

(c) Members of each such advisory committee shall be appointed by the Secretary and shall include personnel of the Department (including appropriate representation from the full-time staff) and of the entity with which the Secretary has entered into the contract or agreement. The number of members, and terms of members, of each advisory committee shall be prescribed by the Secretary.

(d) The Secretary shall require that the Chief of the Nursing Service (or the designee of the Chief) at each Department health-care facility be included in the membership of each policymaking committee at that facility. Such committees include: (1) committees relating to matters such as budget, education, position management, clinical executive issues, planning, and resource allocation, and (2) the dean's committee or other advisory committee established under subsection (a).

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 216; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7314. Geriatric research, education, and clinical centers

(a) The Secretary, upon the recommendation of the Under Secretary for Health and pursuant to the provisions of this section, shall designate not more than 25 Department health-care facilities as the locations for centers of geriatric research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this section.

(b) In designating locations for centers under subsection (a), the Secretary, upon the recommendation of the Under Secretary for Health, shall—

(1) designate each Department health-care facility that as of August 26, 1980, was operating a geriatric research, education, and clinical center unless (on the recommendation of the Under Secretary for Health) the Secretary determines that such facility does not meet the requirements of subsection (c) or has not demonstrated effectiveness in carrying out the established purposes of such center or the purposes of title III of

the Veterans' Administration Health-Care Amendments of 1980 (Public Law 96–330; 94 Stat. 1048) or the potential to carry out such purposes effectively in the reasonably foreseeable future; and

(2) assure appropriate geographic distribution of such facilities.

(c) The Secretary may not designate a health-care facility as a location for a center under subsection (a) unless the peer review panel established under subsection (d) has determined under that subsection that the proposal submitted by such facility as a location for a new center under subsection (a) is among those proposals which have met the highest competitive standards of scientific and clinical merit, and the Secretary (upon the recommendation of the Under Secretary for Health) determines that the facility has (or may reasonably be anticipated to develop) each of the following:

(1) An arrangement with an accredited medical school which provides education and training in geriatrics and with which such facility is affiliated under which residents receive education and training in geriatrics through regular rotation through such center and through nursing home, extended care, or domiciliary units of such facility so as to provide such residents with training in the diagnosis and treatment of chronic diseases of older individuals, including cardiopulmonary conditions, senile dementia, and neurological disorders.

(2) An arrangement under which nursing or allied health personnel receive training and education in geriatrics through regular rotation through nursing home, extended care, or domiciliary units of such facility.

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

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

(5) The capability to conduct effectively evaluations of the activities of such center.

(d)(1) In order to provide advice to assist the Secretary and the Under Secretary for Health in carrying out their responsibilities under this section, the Assistant Under Secretary for Health described in section 7306(b)(3) of this title shall establish a panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the establishment of new centers under this section.

(2) The membership of the panel shall consist of experts in the fields of geriatric and gerontological research, education, and clinical care. Members of the panel shall serve as consultants to the Department for a period of no longer than six months.

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

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

(e) Before providing funds for the operation of any such center at a health-care facility other than a health-care facility designated under subsection (b)(1), the Secretary shall assure that the center at each facility designated under such subsection is receiving adequate funding to enable such center to function effectively in the areas of geriatric research, education, and clinical activities.

(f) There are authorized to be appropriated such sums as may be necessary for the support of the research and education activities of the centers established pursuant to subsection (a). The Under Secretary for Health shall allocate to such centers from other funds appropriated generally for the Department medical services account and medical and prosthetics research account, as appropriate, such amounts as the Under Secretary for Health determines appropriate.

(g) Activities of clinical and scientific investigation at each center established under subsection (a) shall be eligible to compete for the award of funding from funds appropriated for the Department medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for research in geriatrics and gerontology.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 216; amended Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102–585, title V, Sec. 521, Nov. 4, 1992, 106 Stat. 4958; Pub. L. 103–446, title XII, Sec. 1201(c)(4), 1202(b)(2), Nov. 2, 1994, 108 Stat. 4683, 4689; Pub. L. 110–387, title IX, Sec. 901(a)(8), Oct. 10, 2008, 122 Stat. 4142.)

§ 7315. Geriatrics and Gerontology Advisory Committee

(a) The Secretary shall establish in the Veterans Health Administration a Geriatrics and Gerontology Advisory Committee (hereinafter in this section referred to as the "Committee"). The membership of the Committee shall be appointed by the Secretary, upon the recommendation of the Under Secretary for Health, and shall include individuals who are not employees of the Federal Government and who have demonstrated interest and expertise in research, education, and clinical activities related to aging and at least one representative of a national veterans service organization. The Secretary, upon the recommendation of the Under Secretary for Health, shall invite representatives of other appropriate departments and agencies of the United States to participate in the activities of the Committee and shall provide the Committee with such staff and other support as may be necessary for the Committee to carry out effectively its functions under this section.

(b) The Committee shall—

(1) advise the Under Secretary for Health on all matters pertaining to geriatrics and gerontology;

(2) assess, through an evaluation process (including a site visit conducted not later than three years after the date of the establishment of each new center and not later than two years after the date of the last evaluation of those centers in operation on August 26, 1980), the ability of each center established under section 7314 of this title to achieve its established purposes and the purposes of title III of the Veterans' Adminis-

tration Health-Care Amendments of 1980 (Public Law 96–330; 94 Stat. 1048);

(3) assess the capability of the Department to provide high quality geriatric services, extended services, and other health-care services to eligible older veterans, taking into consideration the likely demand for such services from such veterans;

(4) assess the current and projected needs of eligible older veterans for geriatric services, extended-care services, and other health-care services from the Department and its activities and plans designed to meet such needs; and

(5) perform such additional functions as the Secretary or Under Secretary for Health may direct.

(c)(1) The Committee shall submit to the Secretary, through the Under Secretary for Health, such reports as the Committee considers appropriate with respect to its findings and conclusions under subsection (b). Such reports shall include the following:

(A) Descriptions of the operations of the centers of geriatric research, education, and clinical activities established pursuant to section 7314 of this title.

(B) Assessments of the quality of the operations of such centers.

(C) An assessment of the extent to which the Department, through the operation of such centers and other health-care facilities and programs, is meeting the needs of eligible older veterans for geriatric services, extended-care services, and other health-care services.

(D) Assessments of and recommendations for correcting any deficiencies in the operations of such centers.

(E) Recommendations for such other geriatric services, extended-care services, and other health-care services as may be needed to meet the needs of older veterans.

(2) Whenever the Committee submits a report to the Secretary under paragraph (1), the Committee shall at the same time transmit a copy of the report in the same form to the appropriate committees of Congress. Not later than 90 days after receipt of a report under that paragraph, the Secretary shall submit to the appropriate committees of Congress a report containing any comments and recommendations of the Secretary with respect to the report of the Committee.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 217; amended Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 102–405, title I, Sec. 102, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1973, 1984; Pub. L. 103–446, title XII, Sec. 1201(i)(9), 1202(b)(2), Nov. 2, 1994, 108 Stat. 4688, 4689; Pub. L. 107–330, title III, Sec. 308(g)(13), Dec. 6, 2002, 116 Stat. 2829.)

§ 7316. Malpractice and negligence suits: defense by United States

(a)(1) The remedy—

(A) against the United States provided by sections 1346(b) and 2672 of title 28, or

(B) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of title 28,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a health care employee of the Administration in furnishing health care or treatment while in the exercise of that employee's duties in or for the Administration shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the health care employee (or employee's estate) whose act or omission gave rise to such claim.

(2) For purposes of paragraph (1), the term "health care employee of the Administration" means a physician, dentist, podiatrist, chiropractor, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (such as medical and dental technicians, nursing assistants, and therapists), or other supporting personnel.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or such person's estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Upon a certification by the Attorney General that the defendant was acting in the scope of such person's employment in or for the Administration at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the employee whose act or omission gave rise to the suit was not acting within the scope of such person's office or employment, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) The Secretary may, to the extent the Secretary considers appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of this section apply (as described in subsection (a)), for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment (including the conduct of clinical studies or investigations) in the exercise of such person's duties in or for the Administration, if such person is assigned to

a foreign country, detailed to State or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States, provided by sections 1346(b) and 2672 of title 28, for such damage or injury.

(f) The exception provided in section 2680(h) of title 28 shall not apply to any claim arising out of a negligent or wrongful act or omission of any person described in subsection (a) in furnishing medical care or treatment (including medical care or treatment furnished in the course of a clinical study or investigation) while in the exercise of such person's duties in or for the Administration.

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 219; amended Pub. L. 108–170, title III, Sec. 302(e), Dec. 6, 2003, 117 Stat. 2058.)

§ 7317. Hazardous research projects: indemnification of contractors

(a)(1) With the approval of the Secretary, any contract or research authorized by section 7303 of this title, the performance of which involves a risk of an unusually hazardous nature, may provide that the United States will indemnify the contractor as provided in paragraph (2), but only to the extent that the liability, loss, or damage concerned arises out of the direct performance of the contract and to the extent not covered by the financial protection required under subsection (e).

(2) Indemnity under paragraph (1) is indemnity against either or both of the following:

(A) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal workers' injury compensation laws to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(B) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with subsection (a) must also provide for—

(1) notice to the United States of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of any such suit or claim for which indemnification is provided hereunder.

(c) A payment may not be made under subsection (a) unless the Secretary certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(e) Each contractor which is a party to an indemnification agreement under subsection (a) shall have and maintain financial

protection of such type and in such amounts as the Secretary shall require to cover liability to third persons and loss of or damage to the contractor's property. The amount of financial protection required shall be the maximum amount of insurance available from private sources, except that the Secretary may establish a lesser amount, taking into consideration the cost and terms of private insurance. Such financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures.

(f) In administering the provisions of this section, the Secretary may use the facilities and services of private insurance organizations and may contract to pay a reasonable compensation therefor. Any contract made under the provisions of this section may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable, and advance payments may be made under any such contract.

(g) The authority to indemnify contractors under this section does not create any rights in third persons which would not otherwise exist by law.

(h) Funds appropriated to carry out this section shall remain available until expended.

(i) In this section, the term "contractor" includes subcontractors of any tier under a contract containing an indemnification provision pursuant to subsection (a).

(Added Pub. L. 102–40, title IV, Sec. 401(a)(3), May 7, 1991, 105 Stat. 220.)

§ 7318. National Center for Preventive Health

(a)(1) The Under Secretary for Health shall establish and operate in the Veterans Health Administration a National Center for Preventive Health (hereinafter in this section referred to as the "Center"). The Center shall be located at a Department health care facility.

(2) The head of the Center is the Director of Preventive Health (hereinafter in this section referred to as the "Director").

(3) The Under Secretary for Health shall provide the Center with such staff and other support as may be necessary for the Center to carry out effectively its functions under this section.

(b) The purposes of the Center are the following:

(1) To provide a central office for monitoring and encouraging the activities of the Veterans Health Administration with respect to the provision, evaluation, and improvement of preventive health services.

(2) To promote the expansion and improvement of clinical, research, and educational activities of the Veterans Health Administration with respect to such services.

(c) In carrying out the purposes of the Center, the Director shall do the following:

(1) Develop and maintain current information on clinical activities of the Veterans Health Administration relating to preventive health services, including activities relating to—

(A) the on-going provision of regularly-furnished services; and

(B) patient education and screening programs carried out throughout the Administration.

(2) Develop and maintain detailed current information on research activities of the Veterans Health Administration relating to preventive health services.

(3) In order to encourage the effective provision of preventive health services by Veterans Health Administration personnel—

(A) ensure the dissemination to such personnel of any appropriate information on such services that is derived from research carried out by the Administration; and

(B) acquire and ensure the dissemination to such personnel of any appropriate information on research and clinical practices relating to such services that are carried out by researchers, clinicians, and educators who are not affiliated with the Administration.

(4) Facilitate the optimal use of the unique resources of the Department for cooperative research into health outcomes by initiating recommendations, and responding to requests of the Under Secretary for Health and the Director of the Medical and Prosthetic Research Service, for such research into preventive health services.

(5) Provide advisory services to personnel of Department health-care facilities with respect to the planning or furnishing of preventive health services by such personnel.

(d) There is authorized to be appropriated $1,500,000 to the Medical Care General and Special Fund of the Department of Veterans Affairs for each fiscal year for the purpose of permitting the National Center for Preventive Health to carry out research, clinical, educational, and administrative activities under this section. Such activities shall be considered to be part of the operation of health-care facilities of the Department without regard to the location at which such activities are carried out.

(e) In this section, the term "preventive health services" has the meaning given such term in section 1701(9) of this title.

(Added Pub. L. 102–585, title V, Sec. 511(a)(1), Nov. 4, 1992, 106 Stat. 4955; amended Pub. L. 103–446, title XII, Sec. 1201(c)(5), Nov. 2, 1994, 108 Stat. 4683.)

§ 7319. Mammography quality standards

(a) A mammogram may not be performed at a Department facility unless that facility is accredited for that purpose by a private nonprofit organization designated by the Secretary. An organization designated by the Secretary under this subsection shall meet the standards for accrediting bodies established under subsection (e) of section 354 of the Public Health Service Act (42 U.S.C. 263b).

(b) The Secretary, in consultation with the Secretary of Health and Human Services, shall prescribe quality assurance and quality control standards relating to the performance and interpretation of mammograms and use of mammogram equipment and facilities of the Department of Veterans Affairs consistent with the requirements of section 354(f)(1) of the Public Health Service Act. Such standards shall be no less stringent than the standards prescribed by the Secretary of Health and Human Services under section 354(f) of the Public Health Service Act.

(c)(1) The Secretary, to ensure compliance with the standards prescribed under subsection (b), shall provide for an annual inspection of the equipment and facilities used by and in Department health care facilities for the performance of mammograms. Such inspections shall be carried out in a manner consistent with the inspection of certified facilities by the Secretary of Health and Human Services under section 354(g) of the Public Health Service Act.

(2) The Secretary may not provide for an inspection under paragraph (1) to be performed by a State agency.

(d) The Secretary shall ensure that mammograms performed for the Department under contract with any non-Department facility or provider conform to the quality standards prescribed by the Secretary of Health and Human Services under section 354 of the Public Health Service Act.

(e) For the purposes of this section, the term "mammogram" has the meaning given such term in paragraph (5) of section 354(a) of the Public Health Service Act.

(Added Pub. L. 104–262, title III, Sec. 321(a)(1), Oct. 9, 1996, 110 Stat. 3195.)

§ 7320. Centers for mental illness research, education, and clinical activities

(a) The purpose of this section is to provide for the improvement of the provision of health-care services and related counseling services to eligible veterans suffering from mental illness (especially mental illness related to service-related conditions) through—

(1) the conduct of research (including research on improving mental health service facilities of the Department and on improving the delivery of mental health services by the Department);

(2) the education and training of health care personnel of the Department; and

(3) the development of improved models and systems for the furnishing of mental health services by the Department.

(b)(1) The Secretary shall establish and operate centers for mental illness research, education, and clinical activities. Such centers shall be established and operated by collaborating Department facilities as provided in subsection (c)(1). Each such center shall function as a center for—

(A) research on mental health services;

(B) the use by the Department of specific models for furnishing services to treat serious mental illness;

(C) education and training of health-care professionals of the Department; and

(D) the development and implementation of innovative clinical activities and systems of care with respect to the delivery of such services by the Department.

(2) The Secretary shall, upon the recommendation of the Under Secretary for Health, designate the centers under this section. In making such designations, the Secretary shall ensure that the centers designated are located in various geographic regions of the United States. The Secretary may designate a center under this section only if—

(A) the proposal submitted for the designation of the center meets the requirements of subsection (c);

(B) the Secretary makes the finding described in subsection (d); and

(C) the peer review panel established under subsection (e) makes the determination specified in subsection (e)(3) with respect to that proposal.

(3) Not more than five centers may be designated under this section.

(4) The authority of the Secretary to establish and operate centers under this section is subject to the appropriation of funds for that purpose.

(c) A proposal submitted for the designation of a center under this section shall—

(1) provide for close collaboration in the establishment and operation of the center, and for the provision of care and the conduct of research and education at the center, by a Department facility or facilities in the same geographic area which have a mission centered on care of the mentally ill and a Department facility in that area which has a mission of providing tertiary medical care;

(2) provide that no less than 50 percent of the funds appropriated for the center for support of clinical care, research, and education will be provided to the collaborating facility or facilities that have a mission centered on care of the mentally ill; and

(3) provide for a governance arrangement between the collaborating Department facilities which ensures that the center will be established and operated in a manner aimed at improving the quality of mental health care at the collaborating facility or facilities which have a mission centered on care of the mentally ill.

(d) The finding referred to in subsection (b)(2)(B) with respect to a proposal for designation of a site as a location of a center under this section is a finding by the Secretary, upon the recommendation of the Under Secretary for Health, that the facilities submitting the proposal have developed (or may reasonably be anticipated to develop) each of the following:

(1) An arrangement with an accredited medical school that provides education and training in psychiatry and with which one or more of the participating Department facilities is affiliated under which medical residents receive education and training in psychiatry through regular rotation through the participating Department facilities so as to provide such residents with training in the diagnosis and treatment of mental illness.

(2) An arrangement with an accredited graduate program of psychology under which students receive education and training in clinical, counseling, or professional psychology through regular rotation through the participating Department facilities so as to provide such students with training in the diagnosis and treatment of mental illness.

(3) An arrangement under which nursing, social work, counseling, or allied health personnel receive training and edu-

cation in mental health care through regular rotation through the participating Department facilities.

(4) The ability to attract scientists who have demonstrated achievement in research—

(A) into the evaluation of innovative approaches to the design of mental health services; or

(B) into the causes, prevention, and treatment of mental illness.

(5) The capability to evaluate effectively the activities of the center, including activities relating to the evaluation of specific efforts to improve the quality and effectiveness of mental health services provided by the Department at or through individual facilities.

(e)(1) In order to provide advice to assist the Secretary and the Under Secretary for Health to carry out their responsibilities under this section, the official within the central office of the Veterans Health Administration responsible for mental health and behavioral sciences matters shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the designation of centers under this section.

(2) The panel shall consist of experts in the fields of mental health research, education and training, and clinical care. Members of the panel shall serve as consultants to the Department.

(3) The panel shall review each proposal submitted to the panel by the official referred to in paragraph (1) and shall submit to that official its views on the relative scientific and clinical merit of each such proposal. The panel shall specifically determine with respect to each such proposal whether that proposal is among those proposals which have met the highest competitive standards of scientific and clinical merit.

(4) The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(f) Clinical and scientific investigation activities at each center established under this section—

(1) may compete for the award of funding from amounts appropriated for the Department of Veterans Affairs medical and prosthetics research account; and

(2) shall receive priority in the award of funding from such account insofar as funds are awarded to projects and activities relating to mental illness.

(g) The Under Secretary for Health shall ensure that at least three centers designated under this section emphasize research into means of improving the quality of care for veterans suffering from mental illness through the development of community-based alternatives to institutional treatment for such illness.

(h) The Under Secretary for Health shall ensure that information produced by the research, education and training, and clinical activities of centers established under this section that may be useful for other activities of the Veterans Health Administration is disseminated throughout the Veterans Health Administration. Such dissemination shall be made through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means. Such programs

of continuing medical education shall receive priority in the award of funding.

(i) The official within the central office of the Veterans Health Administration responsible for mental health and behavioral sciences matters shall be responsible for supervising the operation of the centers established pursuant to this section and shall provide for ongoing evaluation of the centers and their compliance with the requirements of this section.

(j)(1) There are authorized to be appropriated to the Department of Veterans Affairs for the basic support of the research and education and training activities of centers established pursuant to this section amounts as follows:

(A) $3,125,000 for fiscal year 1998.

(B) $6,250,000 for each of fiscal years 1999 through 2001.

(2) In addition to funds appropriated for a fiscal year pursuant to the authorization of appropriations in paragraph (1), the Under Secretary for Health shall allocate to such centers from other funds appropriated for that fiscal year generally for the Department of Veterans Affairs medical services account and the Department of Veterans Affairs medical and prosthetics research account such amounts as the Under Secretary for Health determines appropriate to carry out the purposes of this section.

(Added Pub. L. 104–262, title III, Sec. 334(a)(1), Oct. 9, 1996, 110 Stat. 3200; amended Pub. L. 110–387, title IX, Sec. 901(a)(8), Oct. 10, 2008, 122 Stat. 4142.)

§ 7321. Committee on Care of Severely Chronically Mentally Ill Veterans

(a) The Secretary, acting through the Under Secretary for Health, shall establish in the Veterans Health Administration a Committee on Care of Severely Chronically Mentally Ill Veterans. The Under Secretary shall appoint employees of the Department with expertise in the care of the chronically mentally ill to serve on the committee.

(b) The committee shall assess, and carry out a continuing assessment of, the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of mentally ill veterans whose mental illness is severe and chronic and who are eligible for health care furnished by the Department, including the needs of such veterans who are women. In carrying out that responsibility, the committee shall—

(1) evaluate the care provided to such veterans through the Veterans Health Administration;

(2) identify systemwide problems in caring for such veterans in facilities of the Veterans Health Administration;

(3) identify specific facilities within the Veterans Health Administration at which program enrichment is needed to improve treatment and rehabilitation of such veterans; and

(4) identify model programs which the committee considers to have been successful in the treatment and rehabilitation of such veterans and which should be implemented more widely in or through facilities of the Veterans Health Administration.

(c) The committee shall—

(1) advise the Under Secretary regarding the development of policies for the care and rehabilitation of severely chronically mentally ill veterans; and

(2) make recommendations to the Under Secretary—

(A) for improving programs of care of such veterans at specific facilities and throughout the Veterans Health Administration;

(B) for establishing special programs of education and training relevant to the care of such veterans for employees of the Veterans Health Administration;

(C) regarding research needs and priorities relevant to the care of such veterans; and

(D) regarding the appropriate allocation of resources for all such activities.

(d)(1) Not later than April 1, 1997, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the implementation of this section. The report shall include the following:

(A) A list of the members of the committee.

(B) The assessment of the Under Secretary for Health, after review of the initial findings of the committee, regarding the capability of the Veterans Health Administration, on a systemwide and facility-by-facility basis, to meet effectively the treatment and rehabilitation needs of severely chronically mentally ill veterans who are eligible for Department care.

(C) The plans of the committee for further assessments.

(D) The findings and recommendations made by the committee to the Under Secretary for Health and the views of the Under Secretary on such findings and recommendations.

(E) A description of the steps taken, plans made (and a timetable for their execution), and resources to be applied toward improving the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of severely chronically mentally ill veterans who are eligible for Department care.

(2) Not later than June 1 of each year through 2012, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing information updating the reports submitted under this subsection before the submission of such report.

(Added Pub. L. 104–262, title III, Sec. 335(a), Oct. 9, 1996, 110 Stat. 3204; amended Pub. L. 106–419, title IV, Sec. 402(f), Nov. 1, 2000, 114 Stat. 1863; Pub. L. 108–170, title IV, Sec. 405(c), Dec. 6, 2003, 117 Stat. 2063; Pub. L. 110–387, title VIII, Sec. 807, Oct. 10, 2008, 122 Stat. 4141.)

§ 7322. Breast cancer mammography policy

(a) The Under Secretary for Health shall develop a national policy for the Veterans Health Administration on mammography screening for veterans.

(b) The policy developed under subsection (a) shall—

(1) specify standards of mammography screening;

(2) provide recommendations with respect to screening, and the frequency of screening, for—

(A) women veterans who are over the age of 39; and

(B) veterans, without regard to age, who have clinical symptoms, risk factors, or family history of breast cancer; and

(3) provide for clinician discretion.

(Added Pub. L. 105–114, title II, Sec. 208(a)(1), Nov. 21, 1997, 111 Stat. 2289.)

§ 7323. Required consultations with nurses

The Under Secretary for Health shall ensure that—

(1) the director of a geographic service area, in formulating policy relating to the provision of patient care, shall consult regularly with a senior nurse executive or senior nurse executives; and

(2) the director of a medical center shall include a registered nurse as a member of any committee used at that medical center to provide recommendations or decisions on medical center operations or policy affecting clinical services, clinical outcomes, budget, or resources.

(Added Pub. L. 106–419, title II, Sec. 201(b)(1), Nov. 1, 2000, 114 Stat. 1840.)

§ 7324. Annual report on use of authorities to enhance retention of experienced nurses

(a) ANNUAL REPORT.—Not later than January 31 each year, the Secretary, acting through the Under Secretary for Health, shall submit to Congress a report on the use during the preceding year of authorities for purposes of retaining experienced nurses in the Veterans Health Administration, as follows:

(1) The authorities under chapter 76 of this title.

(2) The authority under VA Directive 5102.1, relating to the Department of Veterans Affairs nurse qualification standard, dated November 10, 1999, or any successor directive.

(3) Any other authorities available to the Secretary for those purposes.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall specify for the period covered by such report, for each Department medical facility and for each geographic service area of the Department, the following:

(1) The number of waivers requested under the authority referred to in subsection (a)(2), and the number of waivers granted under that authority, to promote to the Nurse II grade or Nurse III grade under the Nurse Schedule under section 7404(b)(1) of this title any nurse who has not completed a baccalaureate degree in nursing in a recognized school of nursing, set forth by age, race, and years of experience of the individuals subject to such waiver requests and waivers, as the case may be.

(2) The programs carried out to facilitate the use of nursing education programs by experienced nurses, including programs for flexible scheduling, scholarships, salary replacement pay, and on-site classes.

(Added Pub. L. 107–135, title I, Sec. 125(a)(1), Jan. 23, 2002, 115 Stat. 2452.)

§ 7325. Medical emergency preparedness centers

(a) ESTABLISHMENT OF CENTERS.—(1) The Secretary shall establish four medical emergency preparedness centers in accordance with this section. Each such center shall be established at a Department medical center and shall be staffed by Department employees.

(2) The Under Secretary for Health shall be responsible for supervising the operation of the centers established under this section. The Under Secretary shall provide for ongoing evaluation of the centers and their compliance with the requirements of this section.

(3) The Under Secretary shall carry out the Under Secretary's functions under paragraph (2) in consultation with the Assistant Secretary of Veterans Affairs with responsibility for operations, preparedness, security, and law enforcement functions.

(b) MISSION.—The mission of the centers shall be as follows:

(1) To carry out research on, and to develop methods of detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, incendiary or other explosive weapons or devices posing threats to the public health and safety.

(2) To provide education, training, and advice to health care professionals, including health care professionals outside the Veterans Health Administration, through the National Disaster Medical System established pursuant to section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh-11(b)) or through interagency agreements entered into by the Secretary for that purpose.

(3) In the event of a disaster or emergency referred to in section 1785(b) of this title, to provide such laboratory, epidemiological, medical, or other assistance as the Secretary considers appropriate to Federal, State, and local health care agencies and personnel involved in or responding to the disaster or emergency.

(c) SELECTION OF CENTERS.—(1) The Secretary shall select the sites for the centers on the basis of a competitive selection process. The Secretary may not designate a site as a location for a center under this section unless the Secretary makes a finding under paragraph (2) with respect to the proposal for the designation of such site. To the maximum extent practicable, the Secretary shall ensure the geographic dispersal of the sites throughout the United States. Any such center may be a consortium of efforts of more than one medical center.

(2) A finding by the Secretary referred to in paragraph (1) with respect to a proposal for designation of a site as a location of a center under this section is a finding by the Secretary, upon the recommendations of the Under Secretary for Health and the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions, that the facility or facilities submitting the proposal have developed (or may reasonably be anticipated to develop) each of the following:

(A) An arrangement with a qualifying medical school and a qualifying school of public health (or a consortium of such schools) under which physicians and other persons in the health field receive education and training through the participating Department medical facilities so as to provide those persons with training in the detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses induced by exposures to chemical and biological substances, radiation, and incendiary or other explosive weapons or devices.

(B) An arrangement with a graduate school specializing in epidemiology under which students receive education and training in epidemiology through the participating Department facilities so as to provide such students with training in the epidemiology of contagious and infectious diseases and chemical and radiation poisoning in an exposed population.

(C) An arrangement under which nursing, social work, counseling, or allied health personnel and students receive training and education in recognizing and caring for conditions associated with exposures to toxins through the participating Department facilities.

(D) The ability to attract scientists who have made significant contributions to the development of innovative approaches to the detection, diagnosis, prevention, or treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, incendiary or other explosive weapons or devices posing threats to the public health and safety.

(3) For purposes of paragraph (2)(A)—

(A) a qualifying medical school is an accredited medical school that provides education and training in toxicology and environmental health hazards and with which one or more of the participating Department medical centers is affiliated; and

(B) a qualifying school of public health is an accredited school of public health that provides education and training in toxicology and environmental health hazards and with which one or more of the participating Department medical centers is affiliated.

(d) RESEARCH ACTIVITIES.—Each center shall conduct research on improved medical preparedness to protect the Nation from threats in the area of that center's expertise. Each center may seek research funds from public and private sources for such purpose.

(e) DISSEMINATION OF RESEARCH PRODUCTS.—(1) The Under Secretary for Health and the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions shall ensure that information produced by the research, education and training, and clinical activities of centers established under this section is made available, as appropriate, to health-care providers in the United States. Dissemination of such information shall be made through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means. Such programs of continuing medical education shall receive priority in the award of funding.

(2) The Secretary shall ensure that the work of the centers is conducted in close coordination with other Federal departments

and agencies and that research products or other information of the centers shall be coordinated and shared with other Federal departments and agencies.

(f) COORDINATION OF ACTIVITIES.—The Secretary shall take appropriate actions to ensure that the work of each center is carried out—

(1) in close coordination with the Department of Defense, the Department of Health and Human Services, and other departments, agencies, and elements of the Government charged with coordination of plans for United States homeland security; and

(2) after taking into consideration applicable recommendations of the working group on the prevention, preparedness, and response to bioterrorism and other public health emergencies established under section 319F(a) of the Public Health Service Act (42 U.S.C. 247d-6(a)) or any other joint interagency advisory group or committee designated by the President or the President's designee to coordinate Federal research on weapons of mass destruction.

(g) ASSISTANCE TO OTHER AGENCIES.—The Secretary may provide assistance requested by appropriate Federal, State, and local civil and criminal authorities in investigations, inquiries, and data analyses as necessary to protect the public safety and prevent or obviate biological, chemical, or radiological threats.

(h) DETAIL OF EMPLOYEES FROM OTHER AGENCIES.—Upon approval by the Secretary, the Director of a center may request the temporary assignment or detail to the center, on a nonreimbursable basis, of employees from other departments and agencies of the United States who have expertise that would further the mission of the center. Any such employee may be so assigned or detailed on a nonreimbursable basis pursuant to such a request.

(i) FUNDING.—(1) Amounts appropriated for the activities of the centers under this section shall be appropriated separately from amounts appropriated for the Department for medical care.

(2) In addition to funds appropriated for a fiscal year specifically for the activities of the centers pursuant to paragraph (1), the Under Secretary for Health shall allocate to such centers from other funds appropriated for that fiscal year generally for the Department medical services account and the Department medical and prosthetics research account such amounts as the Under Secretary determines appropriate to carry out the purposes of this section. Any determination by the Under Secretary under the preceding sentence shall be made in consultation with the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions.

(3) There are authorized to be appropriated for the centers under this section $20,000,000 for each of fiscal years 2003 through 2007.

(Added Pub. L. 107–287, Sec. 2(a)(1), Nov. 7, 2002, 116 Stat. 2024; amended Pub. L. 110–387, title IX, Sec. 901(a)(8), Oct. 10, 2008, 122 Stat. 4142.)

§ 7326. Education and training programs on medical responses to consequences of terrorist activities

(a) EDUCATION PROGRAM.—The Secretary shall carry out a program to develop and disseminate a series of model education and training programs on the medical responses to the consequences of terrorist activities.

(b) IMPLEMENTING OFFICIAL.—The program shall be carried out through the Under Secretary for Health, in consultation with the Assistant Secretary of Veterans Affairs with responsibility for operations, preparedness, security, and law enforcement functions.

(c) CONTENT OF PROGRAMS.—The education and training programs developed under the program shall be modelled after programs established at the F. Edward Hebert School of Medicine of the Uniformed Services University of the Health Sciences and shall include, at a minimum, training for health care professionals in the following:

(1) Recognition of chemical, biological, radiological, incendiary, or other explosive agents, weapons, or devices that may be used in terrorist activities.

(2) Identification of the potential symptoms of exposure to those agents.

(3) Understanding of the potential long-term health consequences, including psychological effects, resulting from exposure to those agents, weapons, or devices.

(4) Emergency treatment for exposure to those agents, weapons, or devices.

(5) An appropriate course of followup treatment, supportive care, and referral.

(6) Actions that can be taken while providing care for exposure to those agents, weapons, or devices to protect against contamination, injury, or other hazards from such exposure.

(7) Information on how to seek consultative support and to report suspected or actual use of those agents.

(d) POTENTIAL TRAINEES.—In designing the education and training programs under this section, the Secretary shall ensure that different programs are designed for health-care professionals in Department medical centers. The programs shall be designed to be disseminated to health professions students, graduate health and medical education trainees, and health practitioners in a variety of fields.

(e) CONSULTATION.—In establishing education and training programs under this section, the Secretary shall consult with appropriate representatives of accrediting, certifying, and coordinating organizations in the field of health professions education.

(Added Pub. L. 107–287, Sec. 3(a)(1), Nov. 7, 2002, 116 Stat. 2027.)

§ 7327. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries

(a) PURPOSE.—The purpose of this section is to provide for the improvement of the provision of health care services and related rehabilitation and education services to eligible veterans suffering

from complex multi-trauma associated with combat injuries through—

(1) the development of improved models and systems for the furnishing by the Department of health care, rehabilitation, and education services to veterans;

(2) the conduct of research to support the provision of such services in accordance with the most current evidence on multi-trauma injuries; and

(3) the education and training of health care personnel of the Department with respect to the provision of such services.

(b) DESIGNATION OF CENTERS.—(1) The Secretary shall designate an appropriate number of cooperative centers for clinical care, consultation, research, and education activities on combat injuries.

(2) Each center designated under paragraph (1) shall function as a center for—

(A) research on the long-term effects of injuries sustained as a result of combat in order to support the provision of services for such injuries in accordance with the most current evidence on complex multi-trauma;

(B) the development of rehabilitation methodologies for treating individuals with complex multi-trauma; and

(C) the continuous and consistent coordination of care from the point of referral throughout the rehabilitation process and ongoing follow-up after return to home and community.

(3) The Secretary shall designate one of the centers designated under paragraph (1) as the lead center for activities referred to in that paragraph. As the lead center for such activities, such center shall—

(A) develop and provide periodic review of research priorities, and implement protocols, to ensure that projects contribute to the activities of the centers designated under paragraph (1);

(B) oversee the coordination of the professional and technical activities of such centers to ensure the quality and validity of the methodologies and statistical services for research project leaders;

(C) develop and ensure the deployment of an efficient and cost-effective data management system for such centers;

(D) develop and distribute educational materials and products to enhance the evaluation and care of individuals with combat injuries by medical care providers of the Department who are not specialized in the assessment and care of complex multi-trauma;

(E) develop educational materials for individuals suffering from combat injuries and for their families; and

(F) serve as a resource for the clinical and research infrastructure of such centers by disseminating clinical outcomes and research findings to improve clinical practice.

(4) The Secretary shall designate centers under paragraph (1) upon the recommendation of the Under Secretary for Health.

(5) The Secretary may designate a center under paragraph (1) only if the center meets the requirements of subsection (c).

(c) REQUIREMENTS FOR CENTERS.—To be designated as a center under this section, a facility shall—

(1) be a regional lead center for the care of traumatic brain injury;

(2) be located at a tertiary care medical center and have on-site availability of primary and subspecialty medical services relating to complex multi-trauma;

(3) have, or have the capacity to develop, the capability of managing impairments associated with combat injuries;

(4) be affiliated with a school of medicine;

(5) have, or have experience with, participation in clinical research trials;

(6) provide amputation care and rehabilitation;

(7) have pain management programs;

(8) provide comprehensive brain injury rehabilitation; and

(9) provide comprehensive general rehabilitation.

(d) ADDITIONAL RESOURCES.—The Secretary shall provide each center designated under this section such resources as the Secretary determines to be required by such center to achieve adequate capability of managing individuals with complex multi-trauma, including—

(1) the upgrading of blind rehabilitation services by employing or securing the services of blind rehabilitation specialists;

(2) employing or securing the services of occupational therapists with blind rehabilitation training;

(3) employing or securing the services of additional mental health services providers; and

(4) employing or securing additional rehabilitation nursing staff to meet care needs.

(e) COOPERATION WITH DEPARTMENT OF DEFENSE.—(1) The Secretary of Veterans Affairs may assist the Secretary of Defense in the care of members of the Armed Forces with complex multi-trauma at military treatment facilities by—

(A) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, certified rehabilitation registered nurses of the Department of Veterans Affairs to such facilities to assess and coordinate the care of such members; and

(B) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, blind rehabilitation specialists of the Department of Veterans Affairs to such facilities to consult with the medical staff of such facilities on the special needs of such members who have visual impairment as a consequence of combat injury.

(2) Assistance shall be provided under this subsection through agreements for the sharing of health-care resources under section 8111 of this title.

(f) AWARD OF FUNDING.—Centers designated under this section may compete for the award of funding from amounts appropriated for the Department for medical and prosthetics research.

(g) DISSEMINATION OF INFORMATION.—(1) The Under Secretary for Health shall ensure that information produced by the centers designated under this section that may be useful for other activi-

ties of the Veterans Health Administration is disseminated throughout the Administration.

(2) Information shall be disseminated under this subsection through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means.

(h) NATIONAL OVERSIGHT.—The Under Secretary for Health shall designate an appropriate officer to oversee the operation of the centers designated under this section and provide for periodic evaluation of the centers.

(i) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Department of Veterans Affairs for the centers designated under this section amounts as follows:

(A) $7,000,000 for fiscal year 2005.

(B) $8,000,000 for each of fiscal years 2006 through 2008.

(2) In addition to amounts authorized to be appropriated by paragraph (1) for a fiscal year, the Under Secretary for Health may allocate to each center designated under this section, from other funds authorized to be appropriated for such fiscal year for the Department generally for medical and for medical and prosthetic research, such amounts as the Under Secretary for Health determines appropriate to carry out the purposes of this section.

(Added Pub. L. 108–422, title III, Sec. 302(a)(1), Nov. 30, 2004, 118 Stat. 2383.)

§ 7328. Medical preparedness centers

(a) ESTABLISHMENT OF CENTERS.—(1) The Secretary shall establish four medical emergency preparedness centers in accordance with this section. Each such center shall be established at a Department medical center and shall be staffed by Department employees.

(2) The Under Secretary for Health shall be responsible for supervising the operation of the centers established under this section. The Under Secretary shall provide for ongoing evaluation of the centers and their compliance with the requirements of this section.

(3) The Under Secretary shall carry out the Under Secretary's functions under paragraph (2) in consultation with the Assistant Secretary of Veterans Affairs with responsibility for operations, preparedness, security, and law enforcement functions.

(b) MISSION.—The mission of the centers shall be as follows:

(1) To carry out research on, and to develop methods of detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, incendiary or other explosive weapons or devices posing threats to the public health and safety.

(2) To provide education, training, and advice to health care professionals, including health care professionals outside the Veterans Health Administration, through the National Disaster Medical System established pursuant to section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh-11(b)) or through interagency agreements entered into by the Secretary for that purpose.

(3) In the event of a disaster or emergency referred to in section 1785(b) of this title, to provide such laboratory, epidemiological, medical, or other assistance as the Secretary considers appropriate to Federal, State, and local health care agencies and personnel involved in or responding to the disaster or emergency.

(c) SELECTION OF CENTERS.—(1) The Secretary shall select the sites for the centers on the basis of a competitive selection process. The Secretary may not designate a site as a location for a center under this section unless the Secretary makes a finding under paragraph (2) with respect to the proposal for the designation of such site. To the maximum extent practicable, the Secretary shall ensure the geographic dispersal of the sites throughout the United States. Any such center may be a consortium of efforts of more than one medical center.

(2) A finding by the Secretary referred to in paragraph (1) with respect to a proposal for designation of a site as a location of a center under this section is a finding by the Secretary, upon the recommendations of the Under Secretary for Health and the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions, that the facility or facilities submitting the proposal have developed (or may reasonably be anticipated to develop) each of the following:

(A) An arrangement with a qualifying medical school and a qualifying school of public health (or a consortium of such schools) under which physicians and other persons in the health field receive education and training through the participating Department medical facilities so as to provide those persons with training in the detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses induced by exposures to chemical and biological substances, radiation, and incendiary or other explosive weapons or devices.

(B) An arrangement with a graduate school specializing in epidemiology under which students receive education and training in epidemiology through the participating Department facilities so as to provide such students with training in the epidemiology of contagious and infectious diseases and chemical and radiation poisoning in an exposed population.

(C) An arrangement under which nursing, social work, counseling, or allied health personnel and students receive training and education in recognizing and caring for conditions associated with exposures to toxins through the participating Department facilities.

(D) The ability to attract scientists who have made significant contributions to the development of innovative approaches to the detection, diagnosis, prevention, or treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, incendiary or other explosive weapons or devices posing threats to the public health and safety.

(3) For purposes of paragraph (2)(A)—

(A) a qualifying medical school is an accredited medical school that provides education and training in toxicology and environmental health hazards and with which one or more of the participating Department medical centers is affiliated; and

(B) a qualifying school of public health is an accredited school of public health that provides education and training in toxicology and environmental health hazards and with which one or more of the participating Department medical centers is affiliated.

(d) RESEARCH ACTIVITIES.—Each center shall conduct research on improved medical preparedness to protect the Nation from threats in the area of that center's expertise. Each center may seek research funds from public and private sources for such purpose.

(e) DISSEMINATION OF RESEARCH PRODUCTS.—(1) The Under Secretary for Health and the Assistant Secretary with responsibility for operations, preparedness, security, and law enforcement functions shall ensure that information produced by the research, education and training, and clinical activities of centers established under this section is made available, as appropriate, to health-care providers in the United States. Dissemination of such information shall be made through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means. Such programs of continuing medical education shall receive priority in the award of funding.

(2) The Secretary shall ensure that the work of the centers is conducted in close coordination with other Federal departments and agencies and that research products or other information of the centers shall be coordinated and shared with other Federal departments and agencies.

(f) COORDINATION OF ACTIVITIES.—The Secretary shall take appropriate actions to ensure that the work of each center is carried out—

(1) in close coordination with the Department of Defense, the Department of Health and Human Services, and other departments, agencies, and elements of the Government charged with coordination of plans for United States homeland security; and

(2) after taking into consideration applicable recommendations of the working group on the prevention, preparedness, and response to bioterrorism and other public health emergencies established under section 319F(a) of the Public Health Service Act (42 U.S.C. 247d-6(a)) or any other joint interagency advisory group or committee designated by the President or the President's designee to coordinate Federal research on weapons of mass destruction.

(g) ASSISTANCE TO OTHER AGENCIES.—The Secretary may provide assistance requested by appropriate Federal, State, and local civil and criminal authorities in investigations, inquiries, and data analyses as necessary to protect the public safety and prevent or obviate biological, chemical, or radiological threats.

(h) DETAIL OF EMPLOYEES FROM OTHER AGENCIES.—Upon approval by the Secretary, the Director of a center may request the temporary assignment or detail to the center, on a nonreimbursable basis, of employees from other departments and agencies of the United States who have expertise that would further the mission of the center. Any such employee may be so assigned or detailed on a nonreimbursable basis pursuant to such a request.

(i) FUNDING.—(1) There are authorized to be appropriated for the centers under this section $10,000,000 for each of fiscal years 2005 through 2007.

(2) In addition to any amounts appropriated for a fiscal year specifically for the activities of the centers pursuant to paragraph (1), the Under Secretary for Health shall allocate to the centers from other funds appropriated for that fiscal year generally for the Department medical services account and the Department medical and prosthetic research account such amounts as the Under Secretary determines necessary in order to carry out the purposes of this section.

(Added Pub. L. 108–422, title III, Sec. 302(c)(1), Nov. 30, 2004, 118 Stat. 2386; amended Pub. L. 110–387, title IX, Sec. 901(a)(8), Oct. 10, 2008, 122 Stat. 4142.)

§ 7329. Parkinson's Disease research, education, and clinical centers

(a) ESTABLISHMENT OF CENTERS.—(1) The Secretary, upon the recommendation of the Under Secretary for Health, shall designate not less than six Department health-care facilities as the locations for centers of Parkinson's Disease research, education, and clinical activities.

(2) Subject to the availability of appropriations for such purpose, the Secretary shall establish and operate centers of Parkinson's Disease research, education, and clinical activities centers at the locations designated pursuant to paragraph (1).

(b) CRITERIA FOR DESIGNATION OF FACILITIES.—(1) In designating Department health-care facilities for centers under subsection (a), the Secretary, upon the recommendation of the Under Secretary for Health, shall assure appropriate geographic distribution of such facilities.

(2) Except as provided in paragraph (3), the Secretary shall designate as the location for a center of Parkinson's Disease research, education, and clinical activities pursuant to subsection (a)(1) each Department health-care facility that as of January 1, 2005, was operating a Parkinson's Disease research, education, and clinical center.

(3) The Secretary may not under subsection (a) designate a facility described in paragraph (2) if (on the recommendation of the Under Secretary for Health) the Secretary determines that such facility—

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

(B) has not demonstrated—

(i) effectiveness in carrying out the established purposes of such center; or

(ii) the potential to carry out such purposes effectively in the reasonably foreseeable future.

(c) REQUIREMENTS FOR DESIGNATION.—(1) The Secretary may not designate a Department health-care facility as a location for a center under subsection (a) unless the peer review panel established under subsection (d) has determined under that subsection that the proposal submitted by such facility as a location for a new center under subsection (a) is among those proposals that meet the highest competitive standards of scientific and clinical merit.

(2) The Secretary may not designate a Department health-care facility as a location for a center under subsection (a) unless the Secretary (upon the recommendation of the Under Secretary for Health) determines that the facility has (or may reasonably be anticipated to develop) each of the following:

(A) An arrangement with an accredited medical school that provides education and training in neurology and with which the Department health-care facility is affiliated under which residents receive education and training in innovative diagnosis and treatment of chronic neurodegenerative diseases and movement disorders, including Parkinson's Disease.

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

(C) An advisory committee composed of veterans and appropriate health-care and research representatives of the Department health-care facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of the center during the period of the operation of such center.

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

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

(F) The capability to jointly develop a consortium of providers with interest in treating neurodegenerative diseases, including Parkinson's Disease and other movement disorders, at facilities without centers established under subsection (a) in order to ensure better access to state-of-the-art diagnosis, care, and education for neurodegenerative disorders throughout the health-care system of the Department.

(G) The capability to develop a national repository in the health-care system of the Department for the collection of data on health services delivered to veterans seeking care for neurodegenerative diseases, including Parkinson's Disease, and other movement disorders.

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

(2)(A) The membership of the panel shall consist of experts in neurodegenerative diseases, including Parkinson's Disease and other movement disorders.

(B) Members of the panel shall serve for a period of no longer than two years, except as specified in subparagraph (C).

(C) Of the members first appointed to the panel, one half shall be appointed for a period of three years and one half shall be appointed for a period of two years, as designated by the Under Secretary at the time of appointment.

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

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

(e) PRIORITY OF FUNDING.—Before providing funds for the operation of a center designated under subsection (a) at a Department health-care facility other than at a facility designated pursuant to subsection (b)(2), the Secretary shall ensure that each Parkinson's Disease center at a facility designated pursuant to subsection (b)(2) is receiving adequate funding to enable that center to function effectively in the areas of Parkinson's Disease research, education, and clinical activities.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the support of the research and education activities of the centers established pursuant to subsection (a). The Under Secretary for Health shall allocate to such centers from other funds appropriated generally for the Department medical services account and medical and prosthetics research account, as appropriate, such amounts as the Under Secretary for Health determines appropriate.

(g) AWARD COMPETITIONS.—Activities of clinical and scientific investigation at each center established under subsection (a) shall be eligible to compete for the award of funding from funds appropriated for the Department medical and prosthetics research account. Such activities shall receive priority in the award of funding from such account insofar as funds are awarded to projects for research in Parkinson's Disease and other movement disorders.

(Added Pub. L. 109–461, title II, Sec. 209(a)(1), Dec. 22, 2006, 120 Stat. 3414.)

§ 7330. Multiple sclerosis centers of excellence

(a) ESTABLISHMENT OF CENTERS.—(1) The Secretary, upon the recommendation of the Under Secretary for Health, shall designate not less than two Department health-care facilities as the locations for multiple sclerosis centers of excellence.

(2) Subject to the availability of appropriations for such purpose, the Secretary shall establish and operate multiple sclerosis centers of excellence at the locations designated pursuant to paragraph (1).

(b) CRITERIA FOR DESIGNATION OF FACILITIES.—(1) In designating Department health-care facilities for centers under subsection (a), the Secretary, upon the recommendation of the Under Secretary for Health, shall assure appropriate geographic distribution of such facilities.

(2) Except as provided in paragraph (3), the Secretary shall designate as the location for a center pursuant to subsection (a)(1) each Department health-care facility that as of January 1, 2005, was operating a multiple sclerosis center of excellence.

(3) The Secretary may not under subsection (a) designate a facility described in paragraph (2) if (on the recommendation of the Under Secretary for Health) the Secretary determines that such facility—

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

(B) has not demonstrated—

(i) effectiveness in carrying out the established purposes of such center; or

(ii) the potential to carry out such purposes effectively in the reasonably foreseeable future.

(c) REQUIREMENTS FOR DESIGNATION.—(1) The Secretary may not designate a Department health-care facility as a location for a center under subsection (a) unless the peer review panel established under subsection (d) has determined under that subsection that the proposal submitted by such facility as a location for a new center under subsection (a) is among those proposals that meet the highest competitive standards of scientific and clinical merit.

(2) The Secretary may not designate a Department health-care facility as a location for a center under subsection (a) unless the Secretary (upon the recommendation of the Under Secretary for Health) determines that the facility has (or may reasonably be anticipated to develop) each of the following:

(A) An arrangement with an accredited medical school that provides education and training in neurology and with which the Department health-care facility is affiliated under which residents receive education and training in innovative diagnosis and treatment of autoimmune diseases affecting the central nervous system, including multiple sclerosis.

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

(C) An advisory committee composed of veterans and appropriate health-care and research representatives of the Department health-care facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of the center during the period of the operation of such center.

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

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

(F) The capability to jointly develop a consortium of providers with interest in treating multiple sclerosis at facilities without such centers in order to ensure better access to state-of-the-art diagnosis, care, and education for autoimmune disease affecting the central nervous system throughout the health-care system of the Department.

(G) The capability to develop a national repository in the health-care system of the Department for the collection of data on health services delivered to veterans seeking care for autoimmune disease affecting the central nervous system.

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

(2)(A) The membership of the panel shall consist of experts in autoimmune disease affecting the central nervous system.

(B) Members of the panel shall serve for a period of no longer than two years, except as specified in subparagraph (C).

(C) Of the members first appointed to the panel, one half shall be appointed for a period of three years and one half shall be ap-

pointed for a period of two years, as designated by the Under Secretary at the time of appointment.

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

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

(e) PRIORITY OF FUNDING.—Before providing funds for the operation of a center designated under subsection (a) at a Department health-care facility other than at a facility designated pursuant to subsection (b)(2), the Secretary shall ensure that each multiple sclerosis center at a facility designated pursuant to subsection (b)(2) is receiving adequate funding to enable that center to function effectively in the areas of multiple sclerosis research, education, and clinical activities.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the support of the research and education activities of the centers established pursuant to subsection (a). The Under Secretary for Health shall allocate to such centers from other funds appropriated generally for the Department medical services account and medical and prosthetics research account, as appropriate, such amounts as the Under Secretary for Health determines appropriate.

(g) AWARD COMPETITIONS.—Activities of clinical and scientific investigation at each center established under subsection (a) shall be eligible to compete for the award of funding from funds appropriated for the Department medical and prosthetics research account. Such activities shall receive priority in the award of funding from such account insofar as funds are awarded to projects for research in multiple sclerosis and other neurodegenerative disorders.

(Added Pub. L. 109–461, title II, Sec. 209(a)(1), Dec. 22, 2006, 120 Stat. 3416.)

§ 7330A. Epilepsy centers of excellence

(a) ESTABLISHMENT OF CENTERS.—(1) Not later than 120 days after the date of the enactment of the Veterans' Mental Health and Other Care Improvements Act of 2008, the Secretary shall designate at least four but not more than six Department health care facilities as locations for epilepsy centers of excellence for the Department.

(2) Of the facilities designated under paragraph (1), not less than two shall be centers designated under section 7327 of this title.

(3) Of the facilities designated under paragraph (1), not less than two shall be facilities that are not centers designated under section 7327 of this title.

(4) Subject to the availability of appropriations for such purpose, the Secretary shall establish and operate an epilepsy center of excellence at each location designated under paragraph (1).

(b) DESIGNATION OF FACILITIES.—(1) In designating locations for epilepsy centers of excellence under subsection (a), the Secretary shall solicit proposals from Department health care facilities seeking designation as a location for an epilepsy center of excellence.

(2) The Secretary may not designate a facility as a location for an epilepsy center of excellence under subsection (a) unless the peer review panel established under subsection (c) has determined under that subsection that the proposal submitted by such facility seeking designation as a location for an epilepsy center of excellence is among those proposals that meet the highest competitive standards of scientific and clinical merit.

(3) In choosing from among the facilities meeting the requirements of paragraph (2), the Secretary shall also consider appropriate geographic distribution when designating the epilepsy centers of excellence under subsection (a).

(c) PEER REVIEW PANEL.—(1) The Under Secretary for Health shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the designation of epilepsy centers of excellence under this section.

(2)(A) The membership of the peer review panel shall consist of experts on epilepsy, including post-traumatic epilepsy.

(B) Members of the peer review panel shall serve for a period of no longer than two years, except as specified in subparagraph (C).

(C) Of the members first appointed to the panel, one half shall be appointed for a period of three years and one half shall be appointed for a period of two years, as designated by the Under Secretary at the time of appointment.

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

(4) The peer review panel shall, in conjunction with the national coordinator designated under subsection (e), conduct regular evaluations of each epilepsy center of excellence established and operated under subsection (a) to ensure compliance with the requirements of this section.

(5) The peer review panel shall not be subject to the Federal Advisory Committee Act.

(d) EPILEPSY CENTER OF EXCELLENCE DEFINED.—In this section, the term "epilepsy center of excellence" means a health care facility that has (or in the foreseeable future can develop) the necessary capacity to function as a center of excellence in research, education, and clinical care activities in the diagnosis and treatment of epilepsy and has (or may reasonably be anticipated to develop) each of the following:

(1) An affiliation with an accredited medical school that provides education and training in neurology, including an arrangement with such school under which medical residents receive education and training in the diagnosis and treatment of epilepsy (including neurosurgery).

(2) The ability to attract the participation of scientists who are capable of ingenuity and creativity in health care research efforts.

(3) An advisory committee composed of veterans and appropriate health care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to

the activities of the center during the period of the operation of such center.

(4) The capability to conduct effectively evaluations of the activities of such center.

(5) The capability to assist in the expansion of the Department's use of information systems and databases to improve the quality and delivery of care for veterans enrolled within the Department's health care system.

(6) The capability to assist in the expansion of the Department telehealth program to develop, transmit, monitor, and review neurological diagnostic tests.

(7) The ability to perform epilepsy research, education, and clinical care activities in collaboration with Department medical facilities that have centers for research, education, and clinical care activities on complex multi-trauma associated with combat injuries established under section 7327 of this title.

(e) NATIONAL COORDINATOR FOR EPILEPSY PROGRAMS.—(1) To assist the Secretary and the Under Secretary for Health in carrying out this section, the Secretary shall designate an individual in the Veterans Health Administration to act as a national coordinator for epilepsy programs of the Veterans Health Administration.

(2) The duties of the national coordinator for epilepsy programs shall include the following:

(A) To supervise the operation of the centers established pursuant to this section.

(B) To coordinate and support the national consortium of providers with interest in treating epilepsy at Department health care facilities lacking such centers in order to ensure better access to state-of-the-art diagnosis, research, clinical care, and education for traumatic brain injury and epilepsy throughout the health care system of the Department.

(C) To conduct, in conjunction with the peer review panel established under subsection (c), regular evaluations of the epilepsy centers of excellence to ensure compliance with the requirements of this section.

(D) To coordinate (as part of an integrated national system) education, clinical care, and research activities within all facilities with an epilepsy center of excellence.

(E) To develop jointly a national consortium of providers with interest in treating epilepsy at Department health care facilities lacking an epilepsy center of excellence in order to ensure better access to state-of-the-art diagnosis, research, clinical care, and education for traumatic brain injury and epilepsy throughout the health care system of the Department. Such consortium should include a designated epilepsy referral clinic in each Veterans Integrated Service Network.

(3) In carrying out duties under this subsection, the national coordinator for epilepsy programs shall report to the official of the Veterans Health Administration responsible for neurology.

(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $6,000,000 for each of fiscal years 2009 through 2013 for the support of the clinical care, research, and edu-

cation activities of the epilepsy centers of excellence established and operated pursuant to subsection (a)(2).

(2) There are authorized to be appropriated for each fiscal year after fiscal year 2013 such sums as may be necessary for the support of the clinical care, research, and education activities of the epilepsy centers of excellence established and operated pursuant to subsection (a)(2).

(3) The Secretary shall ensure that funds for such centers are designated for the first three years of operation as a special purpose program for which funds are not allocated through the Veterans Equitable Resource Allocation system.

(4) In addition to amounts authorized to be appropriated under paragraphs (1) and (2) for a fiscal year, the Under Secretary for Health shall allocate to such centers from other funds appropriated generally for the Department medical services account and medical and prosthetics research account, as appropriate, such amounts as the Under Secretary for Health determines appropriate.

(5) In addition to amounts authorized to be appropriated under paragraphs (1) and (2) for a fiscal year, there are authorized to be appropriated such sums as may be necessary to fund the national coordinator established by subsection (e).

(Added Pub. L. 110–387, title IV, Sec. 404(a), Oct. 10, 2008, 122 Stat. 4124.)

SUBCHAPTER III—PROTECTION OF PATIENT RIGHTS

§ 7331. Informed consent

The Secretary, upon the recommendation of the Under Secretary for Health and pursuant to the provisions of section 7334 of this title, shall prescribe regulations establishing procedures to ensure that all medical and prosthetic research carried out and, to the maximum extent practicable, all patient care furnished under this title shall be carried out only with the full and informed consent of the patient or subject or, in appropriate cases, a representative thereof.

(Added Pub. L. 94–581, title I, Sec. 111(a)(1), Oct. 21, 1976, 90 Stat. 2849, Sec. 4131; renumbered Sec. 7331 and amended Pub. L. 102–40, title IV, Sec. 401(a)(4)(A), 402(d)(1), 403(a)(1), May 7, 1991, 105 Stat. 221, 239; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7332. Confidentiality of certain medical records

(a)(1) Records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia which is carried out by or for the Department under this title shall, except as provided in subsections (e) and (f), be confidential, and (section 5701 of this title to the contrary notwithstanding) such records may be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).

(2) Paragraph (1) prohibits the disclosure to any person or entity other than the patient or subject concerned of the fact that a

special written consent is required in order for such records to be disclosed.

(b)(1) The content of any record referred to in subsection (a) may be disclosed by the Secretary in accordance with the prior written consent of the patient or subject with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed by the Secretary.

(2) Whether or not any patient or subject, with respect to whom any given record referred to in subsection (a) is maintained, gives written consent, the content of such record may be disclosed by the Secretary as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient or subject in any report of such research, audit, or evaluation, or otherwise disclose patient or subject identities in any manner.

(C)(i) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the human immunodeficiency virus, to a Federal, State, or local public-health authority charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law.

(ii) A person to whom a record is disclosed under this paragraph may not redisclose or use such record for a purpose other than that for which the disclosure was made.

(D) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(E) To an entity described in paragraph (1)(B) of section 5701(k) of this title, but only to the extent authorized by such section.

(3) In the event that the patient or subject who is the subject of any record referred to in subsection (a) is deceased, the content of any such record may be disclosed by the Secretary only upon the prior written request of the next of kin, executor, administrator, or other personal representative of such patient or subject and only if the Secretary determines that such disclosure is necessary for such survivor to obtain benefits to which such survivor may be entitled, including the pursuit of legal action, but then only to the extent, under such circumstances, and for such purposes as may be al-

lowed in regulations prescribed pursuant to section 7334 of this title.

(c) Except as authorized by a court order granted under subsection (b)(2)(D), no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against, or to conduct any investigation of, a patient or subject.

(d) The prohibitions of this section shall continue to apply to records concerning any person who has been a patient or subject, irrespective of whether or when such person ceases to be a patient.

(e) The prohibitions of this section shall not prevent any interchange of records—

(1) within and among those components of the Department furnishing health care to veterans, or determining eligibility for benefits under this title; or

(2) between such components furnishing health care to veterans and the Armed Forces.

(f)(1) Notwithstanding subsection (a) but subject to paragraph (2), a physician or a professional counselor may disclose information or records indicating that a patient or subject is infected with the human immunodeficiency virus if the disclosure is made to (A) the spouse of the patient or subject, or (B) to an individual whom the patient or subject has, during the process of professional counseling or of testing to determine whether the patient or subject is infected with such virus, identified as being a sexual partner of such patient or subject.

(2)(A) A disclosure under paragraph (1) may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient or subject to provide the information to the spouse or sexual partner, reasonably believes that the patient or subject will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(B) A disclosure under such paragraph may be made by a physician or counselor other than the physician or counselor referred to in subparagraph (A) if such physician or counselor is unavailable by reason of absence or termination of employment to make the disclosure.

(g) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined, in the case of a first offense, up to the maximum amount provided under section 5701(f) of this title for a first offense under that section and, in the case of a subsequent offense, up to the maximum amount provided under section 5701(f) of this title for a subsequent offense under that section.

(Added Pub. L. 94–581, title I, Sec. 111(a)(1), Oct. 21, 1976, 90 Stat. 2849, Sec. 4132; amended Pub. L. 100–322, title I, Sec. 121, May 20, 1988, 102 Stat. 502; renumbered Sec. 7332 and amended Pub. L. 102–40, title IV, Sec. 401(a)(4)(A), 402(d)(1), 403(a)(1), (2), (4), (5), May 7, 1991, 105 Stat. 221, 239; Pub. L. 109–461, title II, Sec. 204(b), Dec. 22, 2006, 120 Stat. 3411.)

§ 7333. Nondiscrimination against alcohol and drug abusers and persons infected with the human immunodeficiency virus

(a) Veterans eligible for treatment under chapter 17 of this title who are alcohol or drug abusers or who are infected with the human immunodeficiency virus shall not be discriminated against in admission or treatment by any Department health-care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection.

(b) The Secretary shall prescribe regulations for the enforcement of this section. Such regulations, with respect to the admission and treatment of such veterans who are alcohol or drug abusers, shall be prescribed in accordance with section 7334 of this title.

(Added Pub. L. 94–581, title I, Sec. 111(a)(1), Oct. 21, 1976, 90 Stat. 2850, Sec. 4133; amended Pub. L. 100–322, title I, Sec. 122(a), May 20, 1988, 102 Stat. 503; renumbered Sec. 7333 and amended Pub. L. 102–40, title IV, Sec. 401(a)(4)(A), 402(d)(1), 403(a)(1), (2), May 7, 1991, 105 Stat. 221, 239.)

§ 7334. Regulations

(a) Regulations prescribed by the Secretary under section 7331 of this title, section 7332 of this title with respect to the confidentiality of alcohol and drug abuse medical records, and section 7333 of this title with respect to alcohol or drug abusers shall, to the maximum extent feasible consistent with other provisions of this title, make applicable the regulations described in subsection (b) to the conduct of research and to the provision of hospital care, nursing home care, domiciliary care, and medical services under this title.

(b) The regulations referred to in subsection (a) are—

(1) regulations governing human experimentation and informed consent prescribed by the Secretary of Health and Human Services, based on the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, established by section 201 of the National Research Act (Public Law 93–348; 88 Stat. 348); and

(2) regulations governing (A) the confidentiality of drug and alcohol abuse medical records, and (B) the admission of drug and alcohol abusers to private and public hospitals, prescribed pursuant to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4551 et seq.) and the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1101 et seq.).

(c) Regulations prescribed by the Secretary under sections 7331, 7332, and 7333 of this title may contain such definitions, and may provide for such safeguards and procedures (including procedures and criteria for the issuance and scope of court orders under section 7332(b)(2)(C) of this title), as are necessary to prevent circumvention or evasion of such regulations or to facilitate compliance with such regulations.

(d) In prescribing and implementing such regulations, the Secretary shall, from time to time, consult with the Secretary of Health and Human Services and, as appropriate, with the President (or the delegate of the President) in order to achieve the max-

imum possible coordination of the regulations, and the implementation of the regulations, which they and the Secretary prescribe.

(Added Pub. L. 94–581, title I, Sec. 111(a)(1), Oct. 21, 1976, 90 Stat. 2851, Sec. 4134; amended Pub. L. 97–295, Sec. 4(87), Oct. 12, 1982, 96 Stat. 1312; Pub. L. 100–322, title I, Sec. 122(a), May 20, 1988, 102 Stat. 504; renumbered Sec. 7334 and amended Pub. L. 102–40, title IV, Sec. 401(a)(4)(A), 402(d)(1), 403(a)(1), (4), May 7, 1991, 105 Stat. 221, 239.)

SUBCHAPTER IV—RESEARCH CORPORATIONS

§ 7361. Authority to establish; status

(a) The Secretary may authorize the establishment at any Department medical center of a nonprofit corporation to provide a flexible funding mechanism for the conduct of approved research and education at the medical center. Except as otherwise required in this subchapter or under regulations prescribed by the Secretary, any such corporation, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations. Such a corporation may be established to facilitate either research or education or both research and education.

(b) If by the end of the four-year period beginning on the date of the establishment of a corporation under this subchapter the corporation is not recognized as an entity the income of which is exempt from taxation under the Internal Revenue Code of 1986, the Secretary shall dissolve the corporation.

(Added Pub. L. 100–322, title II, Sec. 204(a), May 20, 1988, 102 Stat. 510, Sec. 4161; renumbered Sec. 7361 and amended Pub. L. 102–40, title IV, Sec. 401(a)(4)(B), 403(a)(1), (2), May 7, 1991, 105 Stat. 221, 239; Pub. L. 102–291, Sec. 3(a), May 20, 1992, 106 Stat. 179; Pub. L. 104–262, title III, Sec. 343(b), Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106–117, title II, Sec. 204(a), Nov. 30, 1999, 113 Stat. 1562.)

§ 7362. Purpose of corporations

(a) Any corporation established under this subchapter shall be established solely to facilitate research as described in section 7303(a) of this title and education and training as described in sections 7302, 7471, 8154, and 1701(6)(B) of this title in conjunction with the applicable Department medical center. Any funds received by the Secretary for the conduct of research or education at the medical center other than funds appropriated to the Department may be transferred to and administered by the corporation for these purposes.

(b) For purposes of this section, the term "education and training" means the following:

(1) In the case of employees of the Veterans Health Administration, such term means work-related instruction or other learning experiences to—

(A) improve performance of current duties;

(B) assist employees in maintaining or gaining specialized proficiencies; and

(C) expand understanding of advances and changes in patient care, technology, and health care administration.

Such term includes (in the case of such employees) education and training conducted as part of a residency or other program

designed to prepare an individual for an occupation or profession.

(2) In the case of veterans under the care of the Veterans Health Administration, such term means instruction or other learning experiences related to improving and maintaining the health of veterans to patients and to the families and guardians of patients.

(Added Pub. L. 100–322, title II, Sec. 204(a), May 20, 1988, 102 Stat. 510, Sec. 4162; renumbered Sec. 7362 and amended Pub. L. 102–40, title IV, Sec. 401(a)(4)(B), 403(a)(1)–(3), May 7, 1991, 105 Stat. 221, 239; Pub. L. 106–117, title II, Sec. 204(b), Nov. 30, 1999, 113 Stat. 1562.)

§ 7363. Board of directors; executive director

(a) The Secretary shall provide for the appointment of a board of directors for any corporation established under this subchapter. The board shall include—

(1) the director of the medical center, the chief of staff of the medical center, and as appropriate, the assistant chief of staff for research for the medical center and the assistant chief of staff for education for the medical center, or, in the case of a facility at which such positions do not exist, those officials who are responsible for carrying out the responsibilities of the medical center director, chief of staff, and, as appropriate, the assistant chief of staff for research and the assistant chief of staff for education; and

(2) subject to subsection (c), members who are not officers or employees of the Federal Government and who are familiar with issues involving medical and scientific research or education, as appropriate.

(b) Each such corporation shall have an executive director who shall be appointed by the board of directors with the concurrence of the Under Secretary for Health of the Department. The executive director of a corporation shall be responsible for the operations of the corporation and shall have such specific duties and responsibilities as the board may prescribe.

(c) An individual appointed under subsection (a)(2) to the board of directors of a corporation established under this subchapter may not be affiliated with, employed by, or have any other financial relationship with any entity that is a source of funding for research or education by the Department unless that source of funding is a governmental entity or an entity the income of which is exempt from taxation under the Internal Revenue Code of 1986.

(Added Pub. L. 100–322, title II, Sec. 204(a), May 20, 1988, 102 Stat. 510, Sec. 4163; renumbered Sec. 7363 and amended Pub. L. 102–40, title IV, Sec. 401(a)(4)(B), 403(a)(1), (2), (4), May 7, 1991, 105 Stat. 221, 239; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104–262, title III, Sec. 343(b), Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106–117, title II, Sec. 204(c), Nov. 30, 1999, 113 Stat. 1562.)

§ 7364. General powers

(a) A corporation established under this subchapter may—

(1) accept gifts and grants from, and enter into contracts with, individuals and public and private entities solely to carry out the purposes of this subchapter; and

(2) employ such employees as it considers necessary for such purposes and fix the compensation of such employees.

(b) A corporation established under this subchapter may not spend funds for a research project unless the project is approved in accordance with procedures prescribed by the Under Secretary for Health for research carried out with Department funds. Such procedures shall include a peer review process.

(c)(1) A corporation established under this subchapter may not spend funds for an education activity unless the activity is approved in accordance with procedures prescribed by the Under Secretary for Health.

(2) The Under Secretary for Health shall prescribe policies and procedures to guide the expenditure of funds by corporations under paragraph (1) consistent with the purpose of such corporations as flexible funding mechanisms.

(Added Pub. L. 100–322, title II, Sec. 204(a), May 20, 1988, 102 Stat. 511, Sec. 4164; renumbered Sec. 7364 and amended Pub. L. 102–40, title IV, Sec. 401(a)(4)(B), 403(a)(2), May 7, 1991, 105 Stat. 221, 239; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106–117, title II, Sec. 204(d), Nov. 30, 1999, 113 Stat. 1562.)

§ 7364A. Coverage of employees under certain Federal tort claims laws

(a) An employee of a corporation established under this subchapter who is described by subsection (b) shall be considered an employee of the Government, or a medical care employee of the Veterans Health Administration, for purposes of the following provisions of law:

(1) Section 1346(b) of title 28.

(2) Chapter 171 of title 28.

(3) Section 7316 of this title.

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

(1) has an appointment with the Department, whether with or without compensation;

(2) is directly or indirectly involved or engaged in research or education and training that is approved in accordance with procedures established by the Under Secretary for Health for research or education and training; and

(3) performs such duties under the supervision of Department personnel.

(Added Pub. L. 108–170, title IV, Sec. 402(a)(1), Dec. 6, 2003, 117 Stat. 2061.)

§ 7365. Applicable State law

Any corporation established under this subchapter shall be established in accordance with the nonprofit corporation laws of the State in which the applicable medical center is located and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State.

(Added Pub. L. 100–322, title II, Sec. 204(a), May 20, 1988, 102 Stat. 511, Sec. 4165; renumbered Sec. 7365, Pub. L. 102–40, title IV, Sec. 401(a)(4)(B), May 7, 1991, 105 Stat. 221.)

§ 7366. Accountability and oversight

(a)(1)(A) The records of a corporation established under this subchapter shall be available to the Secretary.

(B) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

(2) Such a corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

(b) Each such corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. A corporation with revenues in excess of $300,000 for any year shall obtain an audit of the corporation for that year. A corporation with annual revenues between $10,000 and $300,000 shall obtain an independent audit of the corporation at least once every three years. Any audit under the preceding sentences shall be performed by an independent auditor. The corporation shall include the most recent such audit in the corporation's report to the Secretary for that year.

(c)(1) Each member of the board of directors of a corporation established under this subchapter, each employee of such a corporation, and each employee of the Department who is involved in the functions of the corporation during any year shall be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions.

(2) Each corporation established under this subchapter shall each year submit to the Secretary a statement signed by the executive director of the corporation verifying that each director and employee has certified awareness of the laws and regulations referred to in paragraph (1) and of the consequences of violations of those laws and regulations in the same manner as Federal employees are required to so certify.

(d) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the corporations established under this subchapter. The report shall set forth the following information:

(1) The location of each corporation.

(2) The amount received by each corporation during the previous year, including—

(A) the total amount received;

(B) the amount received from governmental entities for research and the amount received from governmental entities for education;

(C) the amount received from all other sources for research and the amount received from all other sources for education; and

(D) if an amount received from a source referred to in subparagraph (C) exceeded $25,000, information that identifies the source.

(3) The amount expended by each corporation during the year, including—

(A) the amount expended for salary for research staff, the amount expended for salary for education staff, and the amount expended for salary for support staff;

(B) the amount expended for direct support of research and the amount expended for direct support of education; and

(C) if the amount expended with respect to any payee exceeded $35,000, information that identifies the payee.

(4) The amount expended by each corporation during the year for travel conducted in conjunction with research and the amount expended for travel in conjunction with education.

(Added Pub. L. 100–322, title II, Sec. 204(a), May 20, 1988, 102 Stat. 511, Sec. 4166; renumbered Sec. 7366 and amended Pub. L. 102–40, title IV, Sec. 401(a)(4)(B), 403(a)(1), (2), May 7, 1991, 105 Stat. 221, 239; Pub. L. 104–262, title III, Sec. 343(c)–(e), Oct. 9, 1996, 110 Stat. 3207; Pub. L. 106–117, title II, Sec. 204(e), Nov. 30, 1999, 113 Stat. 1563; Pub. L. 107–103, title V, Sec. 509(f), Dec. 27, 2001, 115 Stat. 997; Pub. L. 108–170, title IV, Sec. 402(b), Dec. 6, 2003, 117 Stat. 2062.)

[§ 7367. Repealed. Pub. L. 107–14, Sec. 8(a)(14)(A), June 5, 2001, 115 Stat. 35]

[§ 7368. Repealed. Pub. L. 110–387, title VIII, Sec. 806(a), Oct. 10, 2008, 122 Stat. 4141]

Chapter 74 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART V—BOARDS, ADMINISTRATIONS, AND SERVICES]

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SUBCHAPTER I—APPOINTMENTS

§ 7401. Appointments in Veterans Health Administration

There may be appointed by the Secretary such personnel as the Secretary may find necessary for the health care of veterans (in addition to those in the Office of the Under Secretary for Health appointed under section 7306 of this title), as follows:

(1) Physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries.

(2) Scientific and professional personnel, such as microbiologists, chemists, and biostatisticians.

(3) Audiologists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers, marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, and blind rehabilitation outpatient specialists.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108–170, title III, Secs. 301(a)(1), 302(a), Dec. 6, 2003, 117 Stat. 2054, 2057; Pub. L. 108–422, title V, Sec. 502, Nov. 30, 2004, 118 Stat. 2396; Pub. L. 109–461, title II, Sec. 201(a), Dec. 22, 2006, 120 Stat. 3409.)

§ 7402. Qualifications of appointees

(a) To be eligible for appointment to the positions in the Administration covered by subsection (b), a person must have the applicable qualifications set forth in that subsection.

(b)(1) PHYSICIAN.—To be eligible to be appointed to a physician position, a person must—

(A) hold the degree of doctor of medicine or of doctor of osteopathy from a college or university approved by the Secretary,

(B) have completed an internship satisfactory to the Secretary, and

(C) be licensed to practice medicine, surgery, or osteopathy in a State.

(2) DENTIST.—To be eligible to be appointed to a dentist position, a person must—

(A) hold the degree of doctor of dental surgery or dental medicine from a college or university approved by the Secretary, and

(B) be licensed to practice dentistry in a State.

(3) NURSE.—To be eligible to be appointed to a nurse position, a person must—

(A) have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, and

(B) be registered as a graduate nurse in a State.

(4) DIRECTOR OF A HOSPITAL, DOMICILIARY, CENTER, OR OUTPATIENT CLINIC.—To be eligible to be appointed to a director position, a person must have such business and administrative experience and qualifications as the Secretary shall prescribe.

(5) PODIATRIST.—To be eligible to be appointed to a podiatrist position, a person must—

(A) hold the degree of doctor of podiatric medicine, or its equivalent, from a school of podiatric medicine approved by the Secretary, and

(B) be licensed to practice podiatry in a State.

(6) OPTOMETRIST.—To be eligible to be appointed to an optometrist position, a person must—

(A) hold the degree of doctor of optometry, or its equivalent, from a school of optometry approved by the Secretary, and

(B) be licensed to practice optometry in a State.

(7) PHARMACIST.—To be eligible to be appointed to a pharmacist position, a person must—

(A) hold the degree of bachelor of science in pharmacy, or its equivalent, from a school of pharmacy, approved by the Secretary, and

(B) be registered as a pharmacist in a State.

(8) PSYCHOLOGIST.—To be eligible to be appointed to a psychologist position, a person must—

(A) hold a doctoral degree in psychology from a college or university approved by the Secretary,

(B) have completed study for such degree in a specialty area of psychology and an internship which are satisfactory to the Secretary, and

(C) be licensed or certified as a psychologist in a State, except that the Secretary may waive the requirement of licensure or certification for an individual psychologist for a period not to exceed two years on the condition that that psychologist provide patient care only under the direct supervision of a psychologist who is so licensed or certified.

(9) SOCIAL WORKER.—To be eligible to be appointed to a social worker position, a person must—

(A) hold a master's degree in social work from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice social work in a State, except that the Secretary may waive the requirement of licensure or certification for an individual social worker for a reasonable period of time recommended by the Under Secretary for Health.

(10) MARRIAGE AND FAMILY THERAPIST.—To be eligible to be appointed to a marriage and family therapist position, a person must—

(A) hold a master's degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.

(11) LICENSED PROFESSIONAL MENTAL HEALTH COUNSELOR.—To be eligible to be appointed to a licensed professional mental health counselor position, a person must—

(A) hold a master's degree in mental health counseling, or a related field, from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice mental health counseling.

(12) CHIROPRACTOR.—To be eligible to be appointed to a chiropractor position, a person must—

(A) hold the degree of doctor of chiropractic, or its equivalent, from a college of chiropractic approved by the Secretary; and

(B) be licensed to practice chiropractic in a State.

(13) PEER SPECIALIST.—To be eligible to be appointed to a peer specialist position, a person must—

(A) be a veteran who has recovered or is recovering from a mental health condition; and

(B) be certified by—

(i) a not-for-profit entity engaged in peer specialist training as having met such criteria as the Secretary shall establish for a peer specialist position; or

(ii) a State as having satisfied relevant State requirements for a peer specialist position.

(14) OTHER HEALTH-CARE POSITIONS.—To be appointed as a physician assistant, expanded-function dental auxiliary, certified or registered respiratory therapist, licensed physical therapist, licensed practical or vocational nurse, occupational therapist, dietitian, microbiologist, chemist, biostatistician, medical technologist, dental technologist, or other position, a person must have such medical, dental, scientific, or technical qualifications as the Secretary shall prescribe.

(c) Except as provided in section 7407(a) of this title, a person may not be appointed in the Administration to a position listed in section 7401(1) of this title unless the person is a citizen of the United States.

(d) A person may not be appointed under section 7401(1) of this title to serve in the Administration in any direct patient-care capacity unless the Under Secretary for Health determines that the person possesses such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable the person to carry out the person's health-care responsibilities satisfactorily. Any de-

termination by the Under Secretary for Health under this subsection shall be in accordance with regulations which the Secretary shall prescribe.

(e) A person may not serve as Chief of Staff of a Department health-care facility if the person is not serving on a full-time basis.

(f) A person may not be employed in a position under subsection (b) (other than under paragraph (4) of that subsection) if—

(1) the person is or has been licensed, registered, or certified (as applicable to such position) in more than one State; and

(2) either—

(A) any of those States has terminated such license, registration, or certification for cause; or

(B) the person has voluntarily relinquished such license, registration, or certification in any of those States after being notified in writing by that State of potential termination for cause.

(g) The Secretary may enter into contracts with not-for-profit entities to provide—

(1) peer specialist training to veterans; and

(2) certification for veterans under subsection (b)(13)(B)(i).

(Added Pub. L. 102–40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102–86, title III, Sec. 305(a), Aug. 14, 1991, 105 Stat. 417; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106–117, title II, Sec. 209, Nov. 30, 1999, 113 Stat. 1569; Pub. L. 106–419, title II, Sec. 205, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108–170, title III, Sec. 302(b), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 109–461, title II, Sec. 201(b), Dec. 22, 2006, 120 Stat. 3409; Pub. L. 110–387, title IV, Sec. 405, Oct. 10, 2008, 122 Stat. 4129.)

§ 7403. Period of appointments; promotions

(a)(1) Appointments under this chapter of health-care professionals to whom this section applies may be made only after qualifications have been satisfactorily established in accordance with regulations prescribed by the Secretary, without regard to civil-service requirements.

(2) This section applies to the following persons appointed under this chapter:

(A) Physicians.

(B) Dentists.

(C) Podiatrists.

(D) Optometrists.

(E) Nurses.

(F) Physician assistants.

(G) Expanded-function dental auxiliaries.

(H) Chiropractors.

(b)(1) Appointments described in subsection (a) shall be for a probationary period of two years.

(2) The record of each person serving under such an appointment in the Medical, Dental, and Nursing Services shall be reviewed from time to time by a board, appointed in accordance with regulations of the Secretary. If such a board finds that such person is not fully qualified and satisfactory, such person shall be separated from the service.

(c) Promotions of persons to whom this section applies shall be made only after examination given in accordance with regulations

prescribed by the Secretary. Advancement within grade may be made in increments of the minimum rate of basic pay of the grade in accordance with regulations prescribed by the Secretary.

(d) In determining eligibility for reinstatement in the Federal civil service of persons appointed to positions in the Administration under this chapter who at the time of appointment have a civil-service status, and whose employment in the Administration is terminated, the period of service performed in the Administration shall be included in computing the period of service under applicable civil-service rules and regulations.

(e) In accordance with regulations prescribed by the Secretary, the grade and annual rate of basic pay of a person to whom this section applies whose level of assignment is changed from a level of assignment in which the grade level is based on both the nature of the assignment and personal qualifications may be adjusted to the grade and annual rate of basic pay otherwise appropriate.

(f)(1) Upon the recommendation of the Under Secretary for Health, the Secretary may—

(A) use the authority in subsection (a) to establish the qualifications for and (subject to paragraph (2)) to appoint individuals to positions listed in section 7401(3) of this title; and

(B) use the authority provided in subsection (c) for the promotion and advancement of Department employees serving in such positions.

(2) In using such authority to appoint individuals to such positions, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(3) Notwithstanding any other provision of this title or other law, all matters relating to adverse actions, reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees, disciplinary actions, and grievance procedures involving individuals appointed to such positions , whether appointed under this section or section 7405(a)(1)(B) of this title (including similar actions and procedures involving an employee in a probationary status), shall be resolved under the provisions of title 5 as though such individuals had been appointed under that title.

(g)(1) The Secretary may appoint in the competitive civil service without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title) an individual who—

(A) has a recognized degree or certificate from an accredited institution in a health-care profession or occupation; and

(B) has successfully completed a clinical education program affiliated with the Department.

(2) In using the authority provided by this subsection, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(h)(1) If the Secretary uses the authority provided in subsection (c) for the promotion and advancement of an occupational category of employees described in section 7401(3) of this title, as authorized by subsection (f)(1)(B), the Secretary shall do so through

one or more systems prescribed by the Secretary. Each such system shall be planned, developed, and implemented in collaboration with, and with the participation of, exclusive employee representatives of such occupational category of employees.

(2)(A) Before prescribing a system of promotion and advancement of an occupational category of employees under paragraph (1), the Secretary shall provide to exclusive employee representatives of such occupational category of employees a written description of the proposed system.

(B) Not later than 30 days after receipt of the description of a proposed system under subparagraph (A), exclusive employee representatives may submit to the Secretary the recommendations, if any, of such exclusive employee representatives with respect to the proposed system.

(C) The Secretary shall give full and fair consideration to any recommendations received under subparagraph (B) in deciding whether and how to proceed with a proposed system.

(3) The Secretary shall implement immediately any part of a system of promotion and advancement under paragraph (1) that is proposed under paragraph (2) for which the Secretary receives no recommendations from exclusive employee representatives under paragraph (2).

(4) If the Secretary receives recommendations under paragraph (2) from exclusive employee representatives on any part of a proposed system of promotion and advancement under that paragraph, the Secretary shall determine whether or not to accept the recommendations, either in whole or in part. If the Secretary determines not to accept all or part of the recommendations, the Secretary shall—

(A) notify the congressional veterans' affairs committees of the recommendations and of the portion of the recommendations that the Secretary has determined not to accept;

(B) meet and confer with such exclusive employee representatives, for a period not less than 30 days, for purposes of attempting to reach an agreement on whether and how to proceed with the portion of the recommendations that the Secretary has determined not to accept;

(C) at the election of the Secretary, or of a majority of such exclusive employee representatives who are participating in negotiations on such matter, employ the services of the Federal Mediation and Conciliation Service during the period referred to in subparagraph (B) for purposes of reaching such agreement; and

(D) if the Secretary determines that activities under subparagraph (B), (C), or both are unsuccessful at reaching such agreement and determines (in the sole and unreviewable discretion of the Secretary) that further meeting and conferral under subparagraph (B), mediation under subparagraph (C), or both are unlikely to reach such agreement—

(i) notify the congressional veterans' affairs committees of such determinations, identify for such committees the portions of the recommendations that the Secretary has determined not to accept, and provide such committees an explanation and justification for determining to imple-

ment the part of the system subject to such portions of the recommendations without regard to such portions of the recommendations; and

(ii) commencing not earlier than 30 days after notice under clause (i), implement the part of the system subject to the recommendations that the Secretary has determined not to accept without regard to those recommendations.

(5) If the Secretary and exclusive employee representatives reach an agreement under paragraph (4) providing for the resolution of a disagreement on one or more portions of the recommendations that the Secretary had determined not to accept under that paragraph, the Secretary shall immediately implement such resolution.

(6) In implementing a system of promotion and advancement under this subsection, the Secretary shall—

(A) develop and implement mechanisms to permit exclusive employee representatives to participate in the periodic review and evaluation of the system, including peer review, and in any further planning or development required with respect to the system as a result of such review and evaluation; and

(B) provide exclusive employee representatives appropriate access to information to ensure that the participation of such exclusive employee representative in activities under subparagraph (A) is productive.

(7)(A) The Secretary may from time to time modify a system of promotion and advancement under this subsection.

(B) In modifying a system, the Secretary shall take into account any recommendations made by the exclusive employee representatives concerned.

(C) In modifying a system, the Secretary shall comply with paragraphs (2) through (5) and shall treat any proposal for the modification of a system as a proposal for a system for purposes of such paragraphs.

(D) The Secretary shall promptly submit to the congressional veterans' affairs committees a report on any modification of a system. Each report shall include—

(i) an explanation and justification of the modification; and

(ii) a description of any recommendations of exclusive employee representatives with respect to the modification and a statement whether or not the modification was revised in light of such recommendations.

(8) In the case of employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary may develop procedures for input from representatives under this subsection from any appropriate organization that represents a substantial percentage of such employees or, if none, in such other manner as the Secretary considers appropriate, consistent with the purposes of this subsection.

(9) In this subsection, the term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 224; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108–170, title III, Secs. 301(b), 302(c), Nov. 24, 2003, 117 Stat. 2055, 2058.)

§ 7404. Grades and pay scales

(a) The annual rates or ranges of rates of basic pay for positions provided in section 7306 of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law. The pay of physicians and dentists serving in positions to which an Executive order applies under the preceding sentence shall be determined under subchapter III of this chapter instead of such Executive order.

(b) The grades for positions provided for in paragraph (1) of section 7401 of this title shall be as follows. The annual ranges of rates of basic pay for those grades shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law:

PHYSICIAN AND DENTIST SCHEDULE

Physician grade.
Dentist grade.

NURSE SCHEDULE

Nurse V.
Nurse IV.
Nurse III.
Nurse II.
Nurse I.

CLINICAL PODIATRIST, CHIROPRACTOR, AND OPTOMETRIST SCHEDULE

Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

(d) Except as provided under subsection (e), subchapter III, and section 7457 of this title, pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule.

(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid at a rate determined by the Secretary, not to exceed the maximum rate established for the Senior Executive Service under section 5382 of title 5.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 225; amended Pub. L. 102–405, title II, Sec. 206, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102–585, title III, Sec. 301(a), Nov. 4, 1992, 106 Stat. 4951; Pub. L. 108–170, title III, Sec. 302(d), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 108–445, Sec. 3(a), (f), Dec. 3, 2004, 118 Stat. 2636, 2643; Pub. L. 109–461, title II, Sec. 202, Dec. 22, 2006, 120 Stat. 3410.)

§ 7405. Temporary full-time appointments, part-time appointments, and without-compensation appointments

(a) The Secretary, upon the recommendation of the Under Secretary for Health, may employ, without regard to civil service or classification laws, rules, or regulations, personnel as follows:

(1) On a temporary full-time basis, part-time basis, or without compensation basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Librarians.

(D) Other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs).

(2) On a fee basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Other professional and technical personnel.

(b) Personnel employed under subsection (a)—

(1) shall be in addition to personnel described in section 7306, paragraphs (1) and (3) of section 7401, and section 7408 of this title; and

(2) shall be paid such rates of pay as the Secretary may prescribe.

(c)(1) Temporary full-time appointments under this section of persons in positions listed in paragraphs (1) and (3) of section 7401 of this title may be for a period in excess of 90 days only if the Under Secretary for Health finds that circumstances render it impracticable to obtain the necessary services through appointments under that section.

(2) A temporary full-time appointment may not be made for a period in excess of two years in the case of a person who—

(A) has successfully completed—

(i) a full course of nursing in a recognized school of nursing, approved by the Secretary; or

(ii) a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title, or as a physician assistant, in a recognized education or training institution approved by the Secretary; and

(B) is pending registration or licensure in a State or certification by a national board recognized by the Secretary.

(3)(A) Temporary full-time appointments of persons in positions referred to in subsection (a)(1)(D) shall not exceed three years.

(B) Temporary full-time appointments under this paragraph may be renewed for one or more additional periods not in excess of three years each.

(4) Temporary full-time appointments of other personnel may not be for a period in excess of one year except as authorized in subsection (f).

(d) A part-time appointment may not be for a period of more than one year, except for appointments of persons specified in sub-

section (a)(1)(A) and interns, residents, and other trainees in medical support programs and except as authorized in subsection (f).

(e) A student who has a temporary appointment under this section and who is pursuing a full course of nursing in a recognized school of nursing approved by the Secretary, or who is pursuing a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized education or training institution approved by the Secretary, may be reappointed for a period not to exceed the duration of the student's academic program.

(f) During any period during which the Secretary is exercising the authority provided in subsections (a) and (f)(1) of section 7403 of this title in connection with the appointment, under paragraph (3) of section 7401 of this title, of personnel in a category of personnel described in such paragraph—

(1) the Secretary may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Under Secretary for Health finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 7401 of this title; and

(2) part-time appointments of personnel in such category may be for periods of more than one year.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 226; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106–419, title II, Sec. 204, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108–170, title III, Sec. 301(c), Dec. 6, 2003, 117 Stat. 2057.)

§ 7406. Residencies and internships

(a)(1) The Secretary may establish residencies and internships. The Secretary may appoint qualified persons to such positions without regard to civil service or classification laws, rules, or regulations.

(2) For the purposes of this section:

(A) The term "internship" includes the equivalency of an internship as determined in accordance with regulations which the Secretary shall prescribe.

(B) The term "intern" means a person serving an internship.

(b) The Secretary may prescribe the conditions of employment of persons appointed under this section, including necessary training, and the customary amount and terms of pay for such positions during the period of such employment and training. The amount and terms of such pay may be established retroactively based on changes in such customary amount and terms.

(c)(1) In order to carry out more efficiently the provisions of subsection (a)(1), the Secretary may contract with one or more hospitals, medical schools, or medical installations having hospital facilities and participating with the Department in the training of interns or residents to provide, by the designation of one such institution to serve as a central administrative agency, for the central administration—

(A) of stipend payments;

(B) provision of fringe benefits; and

(C) maintenance of records for such interns and residents.

(2) The Secretary may pay to such designated agency, without regard to any other law or regulation governing the expenditure of Government moneys either in advance or in arrears, an amount to cover the cost for the period such intern or resident serves in a Department facility furnishing hospital care or medical services of—

(A) stipends fixed by the Secretary pursuant to paragraph (1);

(B) hospitalization, medical care, and life insurance and any other employee benefits as are agreed upon by the participating institutions for the period that such intern or resident serves in a Department facility furnishing hospital care or medical services;

(C) tax on employers pursuant to chapter 21 of the Internal Revenue Code of 1986, where applicable; and

(D) an amount to cover a pro rata share of the cost of expense of such central administrative agency.

(3)(A) Any amounts paid by the Secretary to such central administrative agency to cover the cost of hospitalization, medical care, or life insurance or other employee benefits shall be in lieu of any benefits of like nature to which such intern or resident may be entitled under the provisions of title 5, and the acceptance of stipends and employee benefits from the designated central administrative agency shall constitute a waiver by the recipient of any claim such recipient might have to any payment of stipends or employee benefits to which such recipient may be entitled under this title or title 5.

(B) Notwithstanding subparagraph (A), any period of service of any such intern or resident in a Department facility furnishing hospital care or medical services shall be deemed creditable service for the purposes of section 8332 of title 5.

(4) The agreement with such central administrative agency may further provide that the designated central administrative agency shall—

(A) make all appropriate deductions from the stipend of each intern and resident for local, State, and Federal taxes;

(B) maintain all records pertinent to such deductions and make proper deposits of such deductions; and

(C) maintain all records pertinent to the leave accrued by such intern and resident for the period during which such recipient serves in a participating facility, including a Department facility furnishing hospital care or medical services.

(5) Leave described in paragraph (4)(C) may be pooled, and the intern or resident may be afforded leave by the facility in which such person is serving at the time the leave is to be used to the extent of such person's total accumulated leave, whether or not earned at the facility in which such person is serving at the time the leave is to be afforded.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 227; amended Pub. L. 104–262, title III, Sec. 345, Oct. 9, 1996, 110 Stat. 3208.)

§ 7407. Administrative provisions for section 7405 and 7406 appointments

(a) When the Under Secretary for Health determines that it is not possible to recruit qualified citizens for the necessary services, appointments under sections 7405 and 7406 of this title may be made without regard to the citizenship requirements of section 7402(c) of this title or of any other law prohibiting the employment of, or payment of compensation to, a person who is not a citizen of the United States.

(b)(1) Subject to paragraph (2), the Under Secretary for Health may waive for the purpose of the appointment of an individual under section 7405 or 7406 of this title the requirements set forth in section 7402(b) of this title—

(A) that a physician, dentist, psychologist, optometrist, registered nurse, practical or vocational nurse, or physical therapist be licensed or certified, as appropriate;

(B) that the licensure or certification of such an individual be in a State; and

(C) that a psychologist have completed an internship.

(2) The waivers authorized in paragraph (1) may be granted—

(A) in the case of clauses (A) and (C) of such paragraph, if the individual (i) will be employed to conduct research or serve in an academic position, and (ii) will have no responsibility for furnishing direct patient care services; and

(B) in the case of clause (B) of such paragraph, if the individual will be employed to serve in a country other than the United States and the individual's licensure or registration is in the country in which the individual is to serve.

(c) The program of training prescribed by the Secretary in order to qualify a person for the position of full-time physician assistant or expanded-function dental auxiliary shall be considered a full-time institutional program for purposes of chapter 34 of this title. The Secretary may consider training for such a position to be on a less than full-time basis for purposes of such chapter when the combined classroom (and other formal instruction) portion of the program and the on-the-job training portion of the program total less than 30 hours per week.

(d) A person may not be appointed under section 7405 or 7406 of this title to an occupational category described in section 7401(1) of this title or in section 7406 of this title unless the person meets the requirements established in section 7402(d) of this title and regulations prescribed under that section.

(e) In accordance with the provisions of section 7425(b) of this title, the provisions of chapter 34 of title 5 pertaining to part-time career employment shall not apply to part-time appointments under sections 7405 and 7406 of this title.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 228; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7408. Appointment of additional employees

(a) There shall be appointed by the Secretary under civil service laws, rules, and regulations, such additional employees, other than those provided in section 7306 and paragraphs (1) and (3) of

section 7401 of this title and those specified in sections 7405 and 7406 of this title, as may be necessary to carry out the provisions of this chapter.

(b) The Secretary, after considering an individual's existing pay, higher or unique qualifications, or the special needs of the Department, may appoint the individual to a position in the Administration providing direct patient-care services or services incident to direct patient-services at a rate of pay above the minimum rate of the appropriate grade.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 103–446, title XII, Sec. 1201(e)(21), Nov. 2, 1994, 108 Stat. 4686.)

§ 7409. Contracts for scarce medical specialist services

(a) The Secretary may enter into contracts with institutions and persons described in subsection (b) to provide scarce medical specialist services at Department facilities. Such services may include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel.

(b) Institutions and persons with whom the Secretary may enter into contracts under subsection (a) are the following:

(1) Schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing.

(2) Clinics.

(3) Any other group or individual capable of furnishing such scarce medical specialist services.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 108–170, title III, Sec. 302(f), Dec. 6, 2003, 117 Stat. 2058.)

§ 7410. Additional pay authorities

The Secretary may authorize the Under Secretary for Health to pay advance payments, recruitment or relocation bonuses, and retention allowances to the personnel described in paragraph (1) of section 7401 of this title, or interview expenses to candidates for appointment as such personnel, in the same manner, and subject to the same limitations, as in the case of the authority provided under sections 5524a, 5706b, 5753, and 5754 of title 5.

(Added Pub. L. 102–40, title I, Sec. 103(a)((1)), May 7, 1991, 105 Stat. 198; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7411. Full-time board-certified physicians and dentists: reimbursement of continuing professional education expenses

The Secretary shall reimburse any full-time board-certified physician or dentist appointed under section 7401(1) of this title for expenses incurred, up to $1,000 per year, for continuing professional education.

(Added Pub. L. 102–40, title I, Sec. 103(a)((1)), May 7, 1991, 105 Stat. 199.)

SUBCHAPTER II—COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

§ 7421. Personnel administration: in general

(a) Notwithstanding any law, Executive order, or regulation, the Secretary shall prescribe by regulation the hours and conditions of employment and leaves of absence of employees appointed under any provision of this chapter in positions in the Veterans Health Administration listed in subsection (b).

(b) Subsection (a) refers to the following positions:

(1) Physicians.
(2) Dentists.
(3) Podiatrists.
(4) Optometrists.
(5) Registered nurses.
(6) Physician assistants.
(7) Expanded-duty dental auxiliaries.
(8) Chiropractors.

(Added Pub. L. 102–40, title II, Sec. 202, May 7, 1991, 105 Stat. 200; amended Pub. L. 108–170, title III, Sec. 302(g), Dec. 6, 2003, 117 Stat. 2058.)

§ 7422. Collective bargaining

(a) Except as otherwise specifically provided in this title, the authority of the Secretary to prescribe regulations under section 7421 of this title is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them in accordance with chapter 71 of title 5 (relating to labor-management relations).

(b) Such collective bargaining (and any grievance procedures provided under a collective bargaining agreement) in the case of employees described in section 7421(b) of this title may not cover, or have any applicability to, any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title.

(c) For purposes of this section, the term "professional conduct or competence" means any of the following:

(1) Direct patient care.
(2) Clinical competence.

(d) An issue of whether a matter or question concerns or arises out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title shall be decided by the Secretary and is not itself subject to collective bargaining and may not be reviewed by any other agency.

(e) A petition for judicial review or petition for enforcement under section 7123 of title 5 in any case involving employees described in section 7421(b) of this title or arising out of the applicability of chapter 71 of title 5 to employees in those positions, shall be taken only in the United States Court of Appeals for the District of Columbia Circuit.

(Added Pub. L. 102–40, title II, Sec. 202, May 7, 1991, 105 Stat. 200.)

§ 7423. Personnel administration: full-time employees

(a) The hours of employment in carrying out responsibilities under this title of any employee who is appointed in the Administration under any provision of this chapter on a full-time basis in a position listed in section 7421(b) of this title (other than an intern or resident appointed pursuant to section 7406 of this title) and who accepts responsibilities for carrying out professional services for remuneration other than those assigned under this title shall consist of not less than 80 hours in a biweekly pay period (as that term is used in section 5504 of title 5).

(b) A person covered by subsection (a) may not do any of the following:

(1) Teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with such person's responsibilities under this title.

(2) Accept payment under any insurance or assistance program established under title XVIII or XIX of the Social Security Act or under chapter 55 of title 10 for professional services rendered by such person while carrying out such person's responsibilities under this title.

(3) Accept from any source, with respect to any travel performed by such person in the course of carrying out such person's responsibilities under this title, any payment or per diem for such travel, other than as provided for in section 4111 of title 5.

(4) Request or permit any individual or organization to pay, on such person's behalf for insurance insuring such person against malpractice claims arising in the course of carrying out such person's responsibilities under this title or for such person's dues or similar fees for membership in medical or dental societies or related professional associations, except where such payments constitute a part of such person's remuneration for the performance of professional responsibilities permitted under this section, other than those carried out under this title.

(5) Perform, in the course of carrying out such person's responsibilities under this title, professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's personal benefit, or both.

(c) In the case of any fund or account described in subsection (b)(5) that was established before September 1, 1973—

(1) the affiliated institution shall submit semiannually an accounting to the Secretary and to the Comptroller General of the United States with respect to such fund or account and shall maintain such fund or account subject to full public disclosure and audit by the Secretary and the Comptroller General for a period of three years or for such longer period as the Secretary shall prescribe, and

(2) no person in a position specified in paragraph (1)(B) may receive any cash from amounts deposited in such fund or account derived from services performed before that date.

(d) As used in this section:

(1) The term "affiliated institution" means a medical school or other institution of higher learning with which the Secretary has a contract or agreement as referred to in section 7313 of this title for the training or education of health personnel.

(2) The term "remuneration" means the receipt of any amount of monetary benefit from any non-Department source in payment for carrying out any professional responsibilities.

(e)(1) The Secretary shall establish a leave transfer program for the benefit of health-care professionals in positions listed in section 7401(1) of this title. The Secretary may also establish a leave bank program for the benefit of such health-care professionals.

(2) To the maximum extent feasible—

(A) the leave transfer program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

(B) any leave bank program established pursuant to paragraph (1) shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

(3) Participation by a health-care professional in the leave transfer program established pursuant to paragraph (1), and in any leave bank program established pursuant to such paragraph, shall be voluntary. The Secretary may not require any health-care professional to participate in such a program.

(4)(A) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) to participate in the leave transfer program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5 or in any leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5, or both.

(B) Participation of such health-care professionals in a leave transfer program or a leave bank program pursuant to an agreement entered into under subparagraph (A) shall be subject to such requirements and conditions as may be prescribed in such agreement.

(5) The Secretary is not required to establish a leave transfer program for any personnel permitted to participate in a leave transfer program pursuant to an agreement referred to in paragraph (4).

(f) The Secretary may purchase promotional items of nominal value for use in the recruitment of individuals for employment under this chapter. The Secretary shall prescribe guidelines for the administration of the preceding sentence.

(Added and amended Pub. L. 102–40, title II, Sec. 202, title IV, Sec. 401(b)(3)(A), May 7, 1991, 105 Stat. 201, 230; Pub. L. 102–405, title II, Sec. 203, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 104–262, title III, Sec. 347, Oct. 9, 1996, 110 Stat. 3208.)

§ 7424. Travel expenses of certain employees

(a) The Secretary may pay the expenses (other than membership fees) of persons described in sections 7306 and 7401(1) of this title (including persons in positions described in section 7401(1) of this title who are appointed on a temporary full-time basis or a part-time basis under section 7405 of this title) who are detailed by the Under Secretary for Health to attend meetings of associations for the promotion of medical and related science.

(b)(1) The Secretary may prescribe regulations establishing conditions under which officers and employees of the Administration who are nationally recognized principal investigators in medical research may be permitted to accept payment, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel and such reasonable subsistence expenses as are approved by the Secretary pursuant to such regulations—

(A) in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the Department; or

(B) in connection with acceptance of significant awards or with activity related thereto concerned with functions or activities of the Department.

(2) Any such payment may be retained by such officers and employees to cover the cost of such expenses or shall be deposited to the credit of the appropriation from which the cost of such expenses is paid, as may be provided in such regulations.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(3)(B), May 7, 1991, 105 Stat. 230; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7425. Employees: laws not applicable

(a) Physicians, dentists, nurses, and other health-care professionals employed by the Administration and appointed under section 7306, 7401(1), 7405, or 7406 of this chapter are not subject to the following provisions of law:

(1) Section 413 of the Civil Service Reform Act of 1978.
(2) Subchapter II of chapter 31 of title 5.
(3) Subchapter VIII of chapter 33 of title 5.
(4) Subchapter V of chapter 35 of title 5.
(5) Subchapter II of chapter 43 of title 5.
(6) Section 4507 of title 5.
(7) Subchapter VIII of chapter 53 of title 5.
(8) Subchapter V of chapter 75 of title 5.

(b) Notwithstanding any other provision of law, no provision of title 5 or any other law pertaining to the civil service system which is inconsistent with any provision of section 7306 of this title or this chapter shall be considered to supersede, override, or otherwise modify such provision of that section or this chapter except to the extent that such provision of title 5 or of such other law specifically provides, by specific reference to a provision of this chapter, or such provision to be superseded, overridden, or otherwise modified.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(3)(B), May 7, 1991, 105 Stat. 231.)

§ 7426. Retirement rights

(a) Except as provided in subsection (b), persons appointed to the Administration shall be subject to the provisions of and entitled to benefits under subchapter III of chapter 83 of title 5 or subchapter II of chapter 84 of title 5, whichever is applicable.

(b)(1) In computing the annuity under subchapter III of chapter 83, or subchapter II of chapter 84, of title 5 of an individual who retires under such subchapter (other than under section 8337 or 8451 of such title) after December 31, 1981, and who served at any time on a less-than-full-time basis in a position in the Administration to which such individual was appointed under subchapter I—

(A) for the purpose of determining such individual's average pay, as defined by section 8331(4) or 8401(3) of title 5, whichever is applicable, the annual rate of basic pay for full-time service shall be deemed to be such individual's rate of basic pay; and

(B) the amount of such individual's annuity as computed under section 8339 or 8415 of title 5 (before application of any reduction required by subsection (i) of section 8339) shall be multiplied by the fraction equal to the ratio that that individual's total full-time equivalent service bears to that individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable.

(2) For the purposes of paragraph (1)(B), an individual's full-time equivalent service is the individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable, except that any period of service of such individual served on a less-than-full-time basis shall be prorated based on the fraction such service bears to full-time service. For the purposes of the preceding sentence, full-time service shall be considered to be 80 hours of service per biweekly pay period.

(3) A survivor annuity computed under section 8341, or subchapter IV of chapter 84, of title 5 based on the service of an individual described in paragraph (1) shall be computed based upon such individual's annuity as determined in accordance with such paragraph.

(c) The provisions of subsection (b) shall not apply to the part-time service before April 7, 1986, of a registered nurse, physician assistant, or expanded-function dental auxiliary. In computing the annuity under the applicable provision of law specified in that subsection of an individual covered by the preceding sentence, the service described in that sentence shall be credited as full-time service.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(3)(B), May 7, 1991, 105 Stat. 231; amended Pub. L. 102–585, title V, Sec. 522, Nov. 4, 1992, 106 Stat. 4959; Pub. L. 106–398, Sec. 1[[div. A], title X, Sec. 1087(g)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A-294; Pub. L. 107–135, title I, Sec. 132, Jan. 23, 2002, 115 Stat. 2454.)

SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS

§ 7431. Pay

(a) ELEMENTS OF PAY.—Pay of physicians and dentists in the Veterans Health Administration shall consist of three elements as follows:

(1) Base pay as provided for under subsection (b).

(2) Market pay as provided for under subsection (c).

(3) Performance pay as provided under subsection (d).

(b) BASE PAY.—One element of pay for physicians and dentists shall be base pay. Base pay shall meet the following requirements:

(1) Each physician and dentist is entitled to base pay determined under the Physician and Dentist Base and Longevity Pay Schedule.

(2) The Physician and Dentist Base and Longevity Pay Schedule is composed of 15 rates of base pay designated, from the lowest rate of pay to the highest rate of pay, as base pay steps 1 through 15.

(3) The rate of base pay payable to a physician or dentist is based on the total number of the years of the service of the physician or dentist in the Veterans Health Administration as follows:

For a physician or dentist with total service of:	The rate of base pay is the rate payable for:
two years or less	step 1
more than 2 years and not more than 4 years	step 2
more than 4 years and not more than 6 years	step 3
more than 6 years and not more than 8 years	step 4
more than 8 years and not more than 10 years	step 5
more than 10 years and not more than 12 years	step 6
more than 12 years and not more than 14 years	step 7
more than 14 years and not more than 16 years	step 8
more than 16 years and not more than 18 years	step 9
more than 18 years and not more than 20 years	step 10
more than 20 years and not more than 22 years	step 11
more than 22 years and not more than 24 years	step 12
more than 24 years and not more than 26 years	step 13
more than 26 years and not more than 28 years	step 14
more than 28 years	step 15.

(4) At the same time as rates of basic pay are increased for a year under section 5303 of title 5, the Secretary shall increase the amount of base pay payable under this subsection for that year by a percentage equal to the percentage by which rates of basic pay are increased under such section for that year.

(c) MARKET PAY.—One element of pay for physicians and dentists shall be market pay. Market pay shall meet the following requirements:

(1) Each physician and dentist is eligible for market pay.

(2) Market pay shall consist of pay intended to reflect the recruitment and retention needs for the specialty or assignment (as defined by the Secretary) of a particular physician or dentist in a facility of the Department of Veterans Affairs.

(3) The annual amount of the market pay payable to a physician or dentist shall be determined by the Secretary on a case-by-case basis.

(4)(A) In determining the amount of market pay for physicians or dentists, the Secretary shall consult two or more national surveys of pay for physicians or dentists, as applicable, whether prepared by private, public, or quasi-public entities in order to make a general assessment of the range of pays payable to physicians or dentists, as applicable.

(B)(i) In determining the amount of the market pay for a particular physician or dentist under this subsection, and in determining a tier (if any) to apply to a physician or dentist under subsection (e)(1)(B), the Secretary shall consult with and consider the recommendations of an appropriate panel or board composed of physicians or dentists (as applicable).

(ii) A physician or dentist may not be a member of the panel or board that makes recommendations under clause (i) with respect to the market pay of such physician or dentist, as the case may be.

(iii) The Secretary should, to the extent practicable, ensure that a panel or board consulted under this subparagraph includes physicians or dentists (as applicable) who are practicing clinicians and who do not hold management positions in the medical facility of the Department at which the physician or dentist subject to the consultation is employed.

(5) The determination of the amount of market pay of a physician or dentist shall take into account—

(A) the level of experience of the physician or dentist in the specialty or assignment of the physician or dentist;

(B) the need for the specialty or assignment of the physician or dentist at the medical facility of the Department concerned;

(C) the health care labor market for the specialty or assignment of the physician or dentist, which may cover any geographic area the Secretary considers appropriate for the specialty or assignment;

(D) the board certifications, if any, of the physician or dentist;

(E) the prior experience, if any, of the physician or dentist as an employee of the Veterans Health Administration; and

(F) such other considerations as the Secretary considers appropriate.

(6) The amount of market pay of a physician or dentist shall be evaluated by the Secretary not less often than once every 24 months. The amount of market pay may be adjusted as the result of an evaluation under this paragraph. A physician or dentist whose market pay is evaluated under this paragraph shall receive written notice of the results of such evaluation in accordance with procedures prescribed under section 7433 of this title.

(7) No adjustment of the amount of market pay of a physician or dentist under paragraph (6) may result in a reduction of the amount of market pay of the physician or dentist while in the same position or assignment at the medical facility of the Department concerned.

(d) PERFORMANCE PAY.—(1) One element of pay for physicians and dentists shall be performance pay.

(2) Performance pay shall be paid to a physician or dentist on the basis of the physician's or dentist's achievement of specific goals and performance objectives prescribed by the Secretary.

(3) The Secretary shall ensure that each physician and dentist of the Department is advised of the specific goals or objectives that are to be measured by the Secretary in determining the eligibility of that physician or dentist for performance pay.

(4) The amount of the performance pay payable to a physician or dentist may vary annually on the basis of individual achievement or attainment of the goals or objectives applicable to the physician or dentist under paragraph (2).

(5) The amount of performance pay payable to a physician or dentist in a fiscal year shall be determined in accordance with regulations prescribed by the Secretary, but may not exceed the lower of—

(A) $15,000; or

(B) the amount equal to 7.5 percent of the sum of the base pay and the market pay payable to such physician or dentist in that fiscal year.

(6) A failure to meet goals or objectives applicable to a physician or dentist under paragraph (2) may not be the sole basis for an adverse personnel action against that physician or dentist.

(e) REQUIREMENTS AND LIMITATIONS ON TOTAL PAY.—(1)(A) Not less often than once every two years, the Secretary shall prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid under this section to physicians and the minimum and maximum amounts of annual pay that may be paid under this section to dentists.

(B) The Secretary may prescribe for Department-wide applicability under this paragraph separate minimum and maximum amounts of pay for a specialty or assignment. If the Secretary prescribes separate minimum and maximum amounts for a specialty or assignment, the Secretary may establish up to four tiers of minimum and maximum amounts for such specialty or assignment and prescribe for each tier a minimum amount and a maximum amount that the Secretary determines appropriate for the professional responsibilities, professional achievements, and administrative duties of the physicians or dentists (as the case may be) whose pay is set within that tier.

(C) Amounts prescribed under this paragraph shall be published in the Federal Register, and shall not take effect until at least 60 days after the date of publication.

(2) Except as provided in paragraph (3) and subject to paragraph (4), the sum of the total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection (c) may not be less than the minimum amount, nor more than the maximum amount, applicable to specialty or assignment of the physician or dentist under paragraph (1).

(3) The sum of the total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection

(c) may exceed the maximum amount applicable to the specialty or assignment of the physician or dentist under paragraph (1) as a result of an adjustment under paragraph (3) or (4) of subsection (b).

(4) In no case may the total amount of compensation paid to a physician or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(f) TREATMENT OF PAY.—Pay under subsections (b) and (c) of this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

(g) ANCILLARY EFFECTS OF DECREASES IN PAY.—(1) A decrease in pay of a physician or dentist resulting from an adjustment in the amount of market pay of the physician or dentist under subsection (c) shall not be treated as an adverse action.

(2) If the pay of a physician or dentist is reduced under this subchapter as a result of an involuntary reassignment in connection with a disciplinary action taken against the physician or dentist, the involuntary reassignment shall be subject to appeal under subchapter V of this chapter.

(h) DELEGATION OF RESPONSIBILITIES.—The Secretary may delegate to an appropriate officer or employee of the Department any responsibility of the Secretary under subsection (c), (d), or (e) except for the responsibilities of the Secretary under subsection (e)(1).

(Added Pub. L. 108–445, Sec. 3(b), Dec. 3, 2004, 118 Stat. 2636)

§ 7432. Pay of Under Secretary for Health

(a) BASE PAY.—The base pay of the Under Secretary for Health shall be the annual rate of basic pay for positions at Level III of the Executive Schedule under section 5314 of title 5.

(b) MARKET PAY.—(1) In the case of an Under Secretary for Health who is also a physician or dentist, in addition to the base pay specified in subsection (a) the Under Secretary for Health may also be paid the market pay element of pay of physicians and dentists under section 7431(c) of this title.

(2) The amount of market pay of the Under Secretary for Health under this subsection shall be established by the Secretary.

(3) In establishing the amount of market pay of the Under Secretary for Health under this subsection, the Secretary shall utilize an appropriate health care labor market selected by the Secretary for purposes of this subsection.

(c) TREATMENT OF PAY.—Pay under this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

(Added Pub. L. 108–445, Sec. 3(b), Dec. 3, 2004, 118 Stat. 2640.)

§ 7433. Administrative matters

(a) REGULATIONS.—(1) The Secretary shall prescribe regulations relating to the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

(2) In prescribing the regulations, the Secretary shall take into account the recommendations of the Under Secretary for Health on the administration of this subchapter. In formulating recommenda-

tions for the purpose of this paragraph, the Under Secretary shall request the views of representatives of labor organizations that are exclusive representatives of physicians and dentists of the Department and the views of representatives of professional organizations of physicians and dentists of the Department.

(b) REPORTS.—(1) Not later than 18 months after the Secretary prescribes the regulations required by subsection (a), and annually thereafter for the next 5 years, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

(2) Each report under this subsection shall include the following:

(A) A description of the rates of pay in effect during the current fiscal year with a comparison to the rates in effect during the fiscal year preceding the current fiscal year, set forth by facility and by specialty.

(B) The number of physicians and dentists who left the Veterans Health Administration during the preceding fiscal year.

(C) The number of unfilled physician positions and dentist positions in each specialty in the Veterans Health Administration, the average and maximum lengths of time that such positions have been unfilled, and an assessment of the reasons that such positions remain unfilled.

(D) An assessment of the impact of implementation of this subchapter on efforts to recruit and retain physicians and dentists in the Veterans Health Administration.

(3) The first two annual reports under this subsection shall also include a comparison of staffing levels, contract expenditures, and average salaries of physicians and dentists in the Veterans Health Administration for the current fiscal year and for the fiscal year preceding the current fiscal year, set forth by facility and by specialty.

(Added Pub. L. 108–445, Sec. 3(b), Dec. 3, 2004, 118 Stat. 2640.)

SUBCHAPTER IV—PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

§ 7451. Nurses and other health-care personnel: competitive pay

(a)(1) It is the purpose of this section to ensure, by a means providing increased responsibility and authority to directors of Department health-care facilities, that the rates of basic pay for health-care personnel positions described in paragraph (2) in each Department health-care facility (including the rates of basic pay of personnel employed in such positions on a part-time basis) are sufficient for that facility to be competitive, on the basis of pay and other employee benefits, with non-Department health-care facilities in the same labor-market area in the recruitment and retention of qualified personnel for those positions.

(2) The health-care personnel positions referred to in paragraph (1) (hereinafter in this section referred to as "covered positions") are the following:

(A) Registered nurse.

(B) Such positions referred to in paragraphs (1) and (3) of section 7401 of this title (other than the positions of physician, dentist, and registered nurse) as the Secretary may determine upon the recommendation of the Under Secretary for Health.

(3)(A) Except as provided in subparagraph (B), the rates of basic pay for covered positions in the Department shall be established and adjusted in accordance with this section instead of subsection (b)(1) of section 7404 of this title or chapter 53 of title 5.

(B) Under such regulations as the Secretary shall prescribe, the Secretary shall establish and adjust the rates of basic pay for covered positions at the following health-care facilities in order to provide rates of basic pay that enable the Secretary to recruit and retain sufficient numbers of health-care personnel in such positions at those facilities:

(i) The Veterans Memorial Medical Center in the Republic of the Philippines.

(ii) Department of Veterans Affairs health-care facilities located outside the contiguous States, Alaska, and Hawaii.

(4) The Secretary, after receiving the recommendation of the Under Secretary for Health, shall prescribe regulations setting forth criteria and procedures to carry out this section and section 7452 of this title. Requirements in such regulations for directors to provide and maintain documentation of actions taken under this section shall require no more documentation than the minimum essential for responsible administration.

(b) The Secretary shall maintain the five grade levels for nurses employed by the Department under section 7401(1) of this title as specified in the Nurse Schedule in section 7404(b) of this title. The Secretary shall, pursuant to regulations prescribed to carry out this subchapter, establish grades for other covered positions as the Secretary considers appropriate.

(c)(1) For each grade in a covered position, there shall be a range of basic pay. The maximum rate of basic pay for a grade shall be 133 percent of the minimum rate of basic pay for the grade, except that, if the Secretary determines that a higher maximum rate is necessary with respect to any such grade in order to recruit and retain a sufficient number of high-quality health-care personnel, the Secretary may raise the maximum rate of basic pay for that grade to a rate not in excess of 175 percent of the minimum rate of basic pay for the grade. Whenever the Secretary exercises the authority under the preceding sentence to establish the maximum rate of basic pay at a rate in excess of 133 percent of the minimum rate for that grade, the Secretary shall, in the next annual report required by subsection (g), provide justification for doing so to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(2) The maximum rate of basic pay for any grade for a covered position may not exceed the maximum rate of basic pay established for positions in level V of the Executive Schedule under section 5316 of title 5.

(3) The range of basic pay for each such grade shall be divided into equal increments, known as "steps". The Secretary shall prescribe the number of steps. Each grade in a covered position shall

have the same number of steps. Rates of pay within a grade may not be established at rates other than whole steps. Any increase (other than an adjustment under subsection (d)) within a grade in the rate of basic pay payable to an employee in a covered position shall be by one or more of such step increments.

(d)(1) Subject to subsection (e), the rates of basic pay for each grade in a covered position shall be adjusted periodically in accordance with this subsection in order to achieve the purposes of this section. Such adjustments shall be made—

(A) whenever there is an adjustment under section 5303 of title 5 in the rates of pay under the General Schedule, with the adjustment under this subsection to have the same effective date and to be by the same percentage as the adjustment in the rates of basic pay under the General Schedule; and

(B) at such additional times as the director of a Department health-care facility, with respect to employees in that grade at that facility, or the Under Secretary for Health, with respect to covered Regional and Central Office employees in that grade, determines.

(2) An adjustment in rates of basic pay under this subsection for a grade shall be carried out by adjusting the amount of the minimum rate of basic pay for that grade in accordance with paragraph (3) and then adjusting the other rates for that grade to conform to the requirements of subsection (c). Except as provided in paragraph (1)(A), such an adjustment in the minimum rate of basic pay for a grade shall be made by the director of a Department health-care facility so as to achieve consistency with the beginning rate of compensation for corresponding health-care professionals in the Bureau of Labor Statistics (BLS) labor-market area of that facility.

(3)(A) In the case of a Department health-care facility located in an area for which there is current information, based upon an industry-wage survey by the Bureau of Labor Statistics for that labor market, on compensation for corresponding health-care professionals for the BLS labor-market area of that facility, the director of the facility concerned shall use that information as the basis for making adjustments in rates of pay under this subsection. Whenever the Bureau of Labor Statistics releases the results of a new industry-wage survey for that labor market that includes information on compensation for corresponding health-care professionals, the director of that facility shall determine, not later than 30 days after the results of the survey are released, whether an adjustment in rates of pay for employees at that facility for any covered position is necessary in order to meet the purposes of this section. If the director determines that such an adjustment is necessary, the adjustment, based upon the information determined in the survey, shall take effect on the first day of the first pay period beginning after that determination.

(B) In the case of a Department health-care facility located in an area for which the Bureau of Labor Statistics does not have current information on compensation for corresponding health-care professionals for the labor-market area of that facility for any covered position, the director of that facility shall conduct a survey in accordance with this subparagraph and shall adjust the amount of

the minimum rate of basic pay for grades in that covered position at that facility based upon that survey. To the extent practicable, the director shall use third-party industry wage surveys to meet the requirements of the preceding sentence. Any such survey shall be conducted in accordance with regulations prescribed by the Secretary. Those regulations shall be developed in consultation with the Secretary of Labor in order to ensure that the director of a facility collects information that is valid and reliable and is consistent with standards of the Bureau. The survey should be conducted using methodology comparable to that used by the Bureau in making industry-wage surveys except to the extent determined infeasible by the Secretary. To the extent practicable, all surveys conducted pursuant to this subparagraph or subparagraph (A) shall include the collection of salary midpoints, actual salaries, lowest and highest salaries, average salaries, bonuses, incentive pays, differential pays, actual beginning rates of pay, and such other information needed to meet the purpose of this section. Upon conducting a survey under this subparagraph, the director concerned shall determine, not later than 30 days after the date on which the collection of information through the survey is completed or published, whether an adjustment in rates of pay for employees at that facility for any covered position is necessary in order to meet the purposes of this section. If the director determines that such an adjustment is necessary, the adjustment, based upon the information determined in the survey, shall take effect on the first day of the first pay period beginning after that determination.

(C)(i) A director of a Department health-care facility may use data on the compensation paid to certified registered nurse anesthetists who are employed on a salary basis by entities that provide anesthesia services through certified registered nurse anesthetists in the labor-market area only if the director—

(I) has conducted a survey of compensation for certified registered nurse anesthetists in the local labor-market area of the facility under subparagraph (B);

(II) has used all available administrative authority with regard to collection of survey data; and

(III) makes a determination (under regulations prescribed by the Secretary) that such survey methods are insufficient to permit the adjustments referred to in subparagraph (B) for such nurse anesthetists employed by the facility.

(ii) For the purposes of this subparagraph, certified registered nurse anesthetists who are so employed by such entities shall be deemed to be corresponding health-care professionals to the certified registered nurse anesthetists employed by the facility.

(D) The Under Secretary for Health shall prescribe regulations providing for the adjustment of the rates of basic pay for Regional and Central Office employees in covered positions in order to assure that those rates are sufficient and competitive.

(E) The director of a facility or Under Secretary for Health may not adjust rates of basic pay under this subsection for any pay grade so that the minimum rate of basic pay for that grade is greater than the beginning rates of compensation for corresponding positions at non-Department health-care facilities.

(4) If the director of a Department health-care facility, or the Under Secretary for Health with respect to Regional and Central Office employees, determines, after any survey under paragraph (3)(B), that it is not necessary to adjust the rates of basic pay for employees in a grade of a covered position at that facility in order to carry out the purpose of this section, such an adjustment for employees at that facility in that grade shall not be made.

(5) Information collected by the Department in surveys conducted under this subsection is not subject to disclosure under section 552 of title 5.

(6) In this subsection—

(A) The term "beginning rate of compensation", with respect to health-care personnel positions in non-Department health-care facilities corresponding to a grade of a covered position, means the sum of—

(i) the minimum rate of pay established for personnel in such positions who have education, training, and experience equivalent or similar to the education, training, and experience required for health-care personnel employed in the same category of Department covered positions; and

(ii) other employee benefits for those positions to the extent that those benefits are reasonably quantifiable.

(B) The term "corresponding", with respect to health-care personnel positions in non-Department health-care facilities, means those positions for which the education, training, and experience requirements are equivalent or similar to the education, training, and experience requirements for health-care personnel positions in Department health-care facilities.

(e)(1) An adjustment in a rate of basic pay under subsection (d) may not reduce the rate of basic pay applicable to any grade of a covered position.

(2) The director of a Department health-care facility, in determining whether to carry out a wage survey under subsection (d)(3) with respect to rates of basic pay for a grade of a covered position, may not consider as a factor in such determination the absence of a current recruitment or retention problem for personnel in that grade of that position. The director shall make such a determination based upon whether, in accordance with criteria established by the Secretary, there is a significant pay-related staffing problem at that facility in any grade for a position. If the director determines that there is such a problem, or that such a problem is likely to exist in the near future, the Director shall provide for a wage survey in accordance with subsection (d)(3).

(3) The Under Secretary for Health may, to the extent necessary to carry out the purposes of subsection (d), modify any determination made by the director of a Department health-care facility with respect to adjusting the rates of basic pay applicable to covered positions. If the determination of the director would result in an adjustment in rates of basic pay applicable to covered positions, any action by the Under Secretary under the preceding sentence shall be made before the effective date of such pay adjustment. Upon such action by the Under Secretary, any adjustment shall take effect on the first day of the first pay period beginning after such action. The Secretary shall ensure that the Under Sec-

retary establishes a mechanism for the timely exercise of the authority in this paragraph.

(4) Each director of a Department health-care facility shall provide to the Secretary, not later than July 31 each year, a report on staffing for covered positions at that facility. The report shall include the following:

(A) Information on turnover rates and vacancy rates for each covered position, including a comparison of those rates with the rates for the preceding three years.

(B) The director's findings concerning the review and evaluation of the facility's staffing situation, including whether there is, or is likely to be, in accordance with criteria established by the Secretary, a significant pay-related staffing problem at that facility for any covered position and, if so, whether a wage survey was conducted, or will be conducted with respect to that position.

(C) In any case in which the director conducts such a wage survey during the period covered by the report, information describing the survey and any actions taken or not taken based on the survey, and the reasons for taking (or not taking) such actions.

(D) In any case in which the director, after finding that there is, or is likely to be, in accordance with criteria established by the Secretary, a significant pay-related staffing problem at that facility for any covered position, determines not to conduct a wage survey with respect to that position, a statement of the reasons why the director did not conduct such a survey.

(5) Not later than September 30 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on staffing for covered positions at Department health care facilities. Each such report shall include the following:

(A) A summary and analysis of the information contained in the most recent reports submitted by facility directors under paragraph (4).

(B) The information for each such facility specified in paragraph (4).

(f) Not later than March 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding any pay adjustments under the authority of subsection (d) effective during the 12 months preceding the submission of the report. Each such report shall set forth, by health-care facility, the percentage of such increases and, in any case in which no increase was made, the basis for not providing an increase.

(g) For the purposes of this section, the term "health-care facility" means a medical center, an independent outpatient clinic, or an independent domiciliary facility.

(Added Pub. L. 101–366, title I, Sec. 102(b), Aug. 15, 1990, 104 Stat. 431, Sec. 4141; renumbered Sec. 7451 and amended Pub. L. 102–40, title III, Sec. 301(b), (c), title IV, Sec. 401(c)(1)(A), (2), May 7, 1991, 105 Stat. 208, 238; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102–585, title III, Sec. 301(b)-303, 304(b), 307, Nov. 4, 1992, 106 Stat. 4951–4953; Pub. L. 103–446, title XII, Sec. 1201(c)(7), (e)(23), Nov. 2, 1994, 108 Stat. 4684, 4686; Pub. L. 104–110, title I, Sec.

101(i), Feb. 13, 1996, 110 Stat. 768; Pub. L. 106–419, title II, Sec. 201(a), Nov. 1, 2000, 114 Stat. 1838; Pub. L. 107–135, title I, Sec. 133, Jan. 23, 2002, 115 Stat. 2454.)

§ 7452. Nurses and other health-care personnel: administration of pay

(a)(1) Regulations prescribed under section 7451(a) of this title shall provide that whenever an employee in a covered position is given a new duty assignment which is a promotion, the rate of basic pay of that employee shall be increased at least one step increment in that employee's grade.

(2) A nurse serving in a head nurse position shall while so serving receive basic pay at a rate two step increments above the rate that would otherwise be applicable to the nurse. If such a nurse is in the highest or next-to-highest step for that nurse's grade, the preceding sentence shall be applied by extrapolation to create additional steps only for the purposes of this paragraph. The limitation in section 7451(c)(1) of this title shall not apply with respect to increased basic pay under this paragraph.

(3) An employee in a covered position who is promoted to the next higher grade shall be paid in that grade at a step having a rate of basic pay that is greater than the rate of basic pay applicable to the employee in a covered position on the day before the effective date of the promotion.

(b)(1) Under regulations which the Secretary prescribes for the administration of this section, the director of a Department health-care facility (A) shall pay a cash bonus (in an amount to be determined by the director not to exceed $2,000) to an employee in a covered position at that facility who becomes certified in a specialty recognized by the Department, and (B) may provide such a bonus to an employee in such a position who has demonstrated both exemplary job performance and exemplary job achievement. The authority of the Secretary under this subsection is in addition to any other authority of the Secretary to provide job performance incentives.

(2) The Secretary shall include in the annual report under section 7451(g) of this title a discussion of the use during the period covered by the report of the payment of bonuses under this subsection and other job performance incentives

(c)(1) The Secretary shall provide (in regulations prescribed for the administration of this section) that the director of a Department health-care facility, in making a new appointment of a person under section 7401(1) of this title as an employee in a covered position for employment at that facility, may make that appointment at a rate of pay described in paragraph (3) without being subject to a requirement for prior approval at any higher level of authority within the Department in any case in which the director determines that it is necessary to do so in order to obtain the services of employees in covered positions in cases in which vacancies exist at that health-care facility.

(2) Such a determination may be made by the director of a health-care facility only in order to recruit employees in covered positions with specialized skills, especially employees with skills which are especially difficult or demanding.

(3) A rate of pay referred to in paragraph (1) is a rate of basic pay in excess of the minimum rate of basic pay applicable to the grade in which the appointment is made (but not in excess of the maximum rate of basic pay for that grade).

(4) Whenever the director of a health-care facility makes an appointment described in paragraph (1) without prior approval at a higher level of authority within the Department, the director shall—

(A) state in a document the reasons for employing the employee in a covered position at a rate of pay in excess of the minimum rate of basic pay applicable to the grade in which the employee is appointed (and retain that document on file); and

(B) in the first budget documents submitted to the Secretary by the director after the employee is employed, include documentation for the need for such increased rates of basic pay described in clause (A).

(5) Whenever the director of a health-care facility makes an appointment described in paragraph (1) on the basis of a determination described in paragraph (2), the covered employee appointed may continue to receive pay at a rate higher than that which would otherwise be applicable to that employee only so long as the employee continues to serve in a position requiring the specialized skills with respect to which the determination was made.

(d) Whenever the director of a health-care facility makes an appointment described in subsection (c)(1), the director may (without a regard to any requirement for prior approval at any higher level of authority within the Department) increase the rate of pay of other employees in the same covered position at that facility who are in the grade in which the appointment is made and are serving in a position requiring the specialized skills with respect to which the determination under subsection (c)(2) concerning the appointment was made. Any such increase shall continue in effect with respect to any employee only so long as the employee continues to serve in such a position.

(e) An employee in a covered position employed under section 7401(1) of this title who (without a break in employment) transfers from one Department health-care facility to another may not be reduced in grade or step within grade (except pursuant to a disciplinary action otherwise authorized by law) if the duties of the position to which the employee transfers are similar to the duties of the position from which the employee transferred. The rate of basic pay of such employee shall be established at the new health-care facility in a manner consistent with the practices at that facility for an employee of that grade and step, except that in the case of an employee whose transfer (other than pursuant to a disciplinary action otherwise authorized by law) to another health-care facility is at the request of the Secretary, the Secretary may provide that for at least the first year following such transfer the employee shall be paid at a rate of basic pay up to the rate applicable to such employee before the transfer, if the Secretary determines that such rate of pay is necessary to fill the position. Whenever the Secretary exercises the authority under the preceding sentence relating to the rate of basic pay of a transferred employee, the Secretary shall, in

the next annual report required under section 7451(g) of this title, provide justification for doing so.

(f) In this section, the term "covered position" has the meaning given that term in section 7451 of this title.

(g)(1) In order to recruit and retain highly qualified Department nurse executives, the Secretary may, in accordance with regulations prescribed by the Secretary, pay special pay to the nurse executive at each location as follows:

(A) Each Department health care facility.

(B) The Central Office.

(2) The amount of special pay paid to a nurse executive under paragraph (1) shall be not less than $10,000 or more than $25,000.

(3) The amount of special pay paid to a nurse executive under paragraph (1) shall be based on factors such as the grade of the nurse executive position, the scope and complexity of the nurse executive position, the personal qualifications of the nurse executive, the characteristics of the health care facility concerned, the nature and number of specialty care units at the health care facility concerned, demonstrated difficulties in recruitment and retention of nurse executives at the health care facility concerned, and such other factors as the Secretary considers appropriate.

(4) Special pay paid to a nurse executive under paragraph (1) shall be in addition to any other pay (including basic pay) and allowances to which the nurse executive is entitled, and shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits, but shall not be considered basic pay for purposes of adverse actions under subchapter V of this chapter.

(Added Pub. L. 101–366, title I, Sec. 102(b), Aug. 15, 1990, 104 Stat. 435, Sec. 4142; renumbered Sec. 7452 and amended Pub. L. 102–40, title III, Sec. 301(d), title IV, Sec. 401(c)(1)(A), (3), May 7, 1991, 105 Stat. 208, 238; Pub. L. 102–585, title III, Sec. 304(a), Nov. 4, 1992, 106 Stat. 4952; Pub. L. 108–445, Sec. 5, Dec. 3, 2004, 118 Stat. 2645.)

§ 7453. Nurses: additional pay

(a) In addition to the rate of basic pay provided for nurses, a nurse shall receive additional pay as provided by this section.

(b) A nurse performing service on a tour of duty, any part of which is within the period commencing at 6 postmeridian and ending at 6 antemeridian, shall receive additional pay for each hour of service on such tour at a rate equal to 10 percent of the nurse's hourly rate of basic pay if at least four hours of such tour fall between 6 postmeridian and 6 antemeridian. When less than four hours of such tour fall between 6 postmeridian and 6 antemeridian, the nurse shall be paid the differential for each hour of service performed between those hours.

(c) A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay for each hour of service on such tour at a rate equal to 25 percent of such nurse's hourly rate of basic pay.

(d) A nurse performing service on a holiday designated by Federal statute or Executive order shall receive for each hour of such service the nurse's hourly rate of basic pay, plus additional pay at

a rate equal to such hourly rate of basic pay, for that holiday service, including overtime service. Any service required to be performed by a nurse on such a designated holiday shall be deemed to be a minimum of two hours in duration.

(e)(1) A nurse performing officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service. The overtime rates shall be one and one-half times such nurse's hourly rate of basic pay.

(2) For the purposes of this subsection, overtime must be of at least 15 minutes duration in a day to be creditable for overtime pay.

(3) Compensatory time off in lieu of pay for service performed under the provisions of this subsection shall not be permitted, except as voluntarily requested in writing by the nurse in question.

(4) Any excess service performed under this subsection on a day when service was not scheduled for such nurse, or for which such nurse is required to return to the nurse's place of employment, shall be deemed to be a minimum of two hours in duration.

(5) For the purposes of this subsection, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless—

(A) such travel occurs during such nurse's tour of duty; or

(B) such travel—

(i) involves the performance of services while traveling,

(ii) is incident to travel that involves the performance of services while traveling,

(iii) is carried out under arduous conditions as determined by the Secretary, or

(iv) results from an event which could not be scheduled or controlled administratively.

(f) For the purpose of computing the additional pay provided by subsection (b), (c), (d), or (e), a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by 2,080.

(g) When a nurse is entitled to two or more forms of additional pay under subsection (b), (c), (d), or (e) for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in subsection (e) shall be payable for overtime service performed on a holiday designated by Federal statute or Executive order in addition to pay received under subsection (d) for such service.

(h) A nurse who is officially scheduled to be on call outside such nurse's regular hours or on a holiday designated by Federal statute or Executive order shall be paid for each hour of such on-call duty, except for such time as such nurse may be called back to work, at a rate equal to 10 percent of the hourly rate for excess service as provided in subsection (e).

(i) Any additional pay paid pursuant to this section shall not be considered as basic pay for the purposes of the following provisions of title 5 (and any other provision of law relating to benefits based on basic pay):

(1) Subchapter VI of chapter 55.

(2) Section 5595.

(3) Chapters 81, 83, 84, and 87.

(j)(1) Notwithstanding any other provision of law and subject to paragraph (2), the Secretary may increase the rates of additional pay authorized under subsections (b) through (h) if the Secretary determines that it is necessary to do so in order to obtain or retain the services of nurses.

(2) An increase under paragraph (1) in rates of additional pay—

(A) may be made at any specific Department health-care facility in order to provide nurses, or any category of nurses, at such facility additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as such Department health-care facility (based upon a reasonably representative sampling of such non-Federal facilities); and

(B) may be made on a nationwide, local, or other geographic basis if the Secretary finds that such an increase is justified on the basis of a review of the need for such increase (based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved).

(Added Pub. L. 102–40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 232; amended Pub. L. 103–446, title XII, Sec. 1201(e)(24), (g)(6), Nov. 2, 1994, 108 Stat. 4686, 4687.)

§ 7454. Physician assistants and other health care professionals: additional pay

(a) Physician assistants and expanded-function dental auxiliaries shall be entitled to additional pay on the same basis as provided for nurses in section 7453 of this title.

(b)(1) When the Secretary determines it to be necessary in order to obtain or retain the services of individuals in positions listed in section 7401(3) of this title, the Secretary may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in section 7453 of this title.

(2) Health care professionals employed in positions referred to in paragraph (1) shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.

(3) Employees appointed under section 7408 of this title shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.

(c) The Secretary shall prescribe by regulation standards for compensation and payment under this section.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 234; Pub. L. 107–135, title I, Sec. 121(a), Jan. 23, 2002, 115 Stat. 2450; Pub. L. 108–170, title III, Secs. 301(d), 303(a), Dec. 6, 2003, 117 Stat. 2057, 2058.)

§ 7455. Increases in rates of basic pay

(a)(1) Subject to subsections (b), (c), and (d), when the Secretary determines it to be necessary in order to obtain or retain the services of persons described in paragraph (2), the Secretary may

increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations. Any increase in such rates of basic pay—

(A) may be made on a nationwide basis, local basis, or other geographic basis; and

(B) may be made—

(i) for one or more of the grades listed in the schedules in subsection (b)(1) of section 7404 of this title;

(ii) for one or more of the health personnel fields within such grades; or

(iii) for one or more of the grades of the General Schedule under section 5332 of title 5.

(2) Paragraph (1) applies to the following:

(A) Individuals employed in positions listed in paragraphs (1) and (3) of section 7401 of this title.

(B) Health-care personnel who—

(i) are employed in the Administration (other than administrative, clerical, and physical plant maintenance and protective services employees);

(ii) are paid under the General Schedule pursuant to section 5332 of title 5;

(iii) are determined by the Secretary to be providing either direct patient-care services or services incident to direct patient-care services; and

(iv) would not otherwise be available to provide medical care and treatment for veterans.

(C) Employees who are Department police officers providing services under section 902 of this title.

(b) Increases in rates of basic pay may be made under subsection (a) only in order—

(1) to provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of personnel at non-Federal facilities in the same labor market;

(2) to achieve adequate staffing at particular facilities; or

(3) to recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

(c)(1) The amount of any increase under subsection (a) in the maximum rate for any grade may not (except in the case of nurse anesthetists, pharmacists, and licensed physical therapists) exceed by two times the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Under Secretary for Health.

(2) Whenever the amount of an increase under subsection (a) results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under paragraph (1), the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.

(d)(1) In the exercise of the authority provided in subsection (a) with respect to personnel described in subparagraph (B) or (C) of

paragraph (2) of that subsection to increase the rates of basic pay for any category of personnel not appointed under subchapter I, the Secretary shall, not less than 45 days before the effective date of a proposed increase, notify the President of the Secretary's intention to provide such an increase.

(2) Such a proposed increase shall not take effect if, before the effective date of the proposed increase, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval.

(3) If, before that effective date, the President approves such increase, the Secretary may advance the effective date to any date not earlier than the date of the President's approval.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 234; amended Pub. L. 102–83, Sec. 2(c)(7), Aug. 6, 1991, 105 Stat. 402; Pub. L. 102–405, title II, Sec. 201, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 106–419, title II, Sec. 203, Nov. 1, 2000, 114 Stat. 1841.)

§ 7456. Nurses: special rules for weekend duty

(a) Subject to subsection (b), if the Secretary determines it to be necessary in order to obtain or retain the services of nurses at any Department health-care facility, the Secretary may provide, in the case of nurses appointed under this chapter and employed at such facility, that such nurses who work two regularly scheduled 12-hour tours of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full 40-hour basic workweek.

(b)(1) Basic and additional pay for a nurse who is considered under subsection (a) to have worked a full 40-hour basic workweek shall be subject to paragraphs (2) and (3).

(2) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled 12-hour tour of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be derived by dividing the nurse's annual rate of basic pay by 1,248.

(3)(A) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled two 12-hour tours of duty is entitled to overtime pay under section 7453(e) of this title, or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a Saturday or Sunday or in excess of 24 hours within the period commencing at midnight Friday and ending at midnight the following Sunday.

(B) Except as provided in subparagraph (C), a nurse to whom this subsection is applicable is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 12-hour tour of duty.

(C) If the Secretary determines it to be further necessary in order to obtain or retain the services of nurses at a particular facility, a nurse to whom this paragraph is applicable who performs service in excess of such nurse's regularly scheduled two 12-hour tours of duty may be paid overtime pay under section 7453(e) of this title, or other applicable law, for all or part of the hours of offi-

cially ordered or approved service performed by such nurse in excess of 40 hours during an administrative workweek.

(c) A nurse described in subsection (b)(1) who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of five hours of leave for three hours of absence.

(d) The Secretary shall prescribe regulations for the implementation of this section.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 235.)

§ 7456A. Nurses: alternate work schedules

(a) APPLICABILITY.—This section applies to registered nurses appointed under this chapter.

(b) 36/40 WORK SCHEDULE.—(1)(A) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work three regularly scheduled 12-hour tours of duty within a work week shall be considered for all purposes to have worked a full 40-hour basic work week.

(B) A nurse who works under the authority in subparagraph (A) shall be considered a 0.90 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

(2)(A) Basic and additional pay for a nurse who is considered under paragraph (1) to have worked a full 40-hour basic work week shall be subject to subparagraphs (B) and (C).

(B) The hourly rate of basic pay for a nurse covered by this paragraph for service performed as part of a regularly scheduled 36-hour tour of duty within the work week shall be derived by dividing the nurse's annual rate of basic pay by 1,872.

(C) The Secretary shall pay overtime pay to a nurse covered by this paragraph who—

(i) performs a period of service in excess of such nurse's regularly scheduled 36-hour tour of duty within an administrative work week;

(ii) for officially ordered or approved service, performs a period of service in excess of 8 hours on a day other than a day on which such nurse's regularly scheduled 12-hour tour of duty falls;

(iii) performs a period of service in excess of 12 hours for any day included in the regularly scheduled 36-hour tour of duty work week; or

(iv) performs a period of service in excess of 40 hours during an administrative work week.

(D) The Secretary may provide a nurse to whom this subsection applies with additional pay under section 7453 of this title for any period included in a regularly scheduled 12-hour tour of duty.

(3) A nurse who works a work schedule described in this subsection who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for

such leave at a rate of ten hours of leave for every nine hours of absence.

(c) HOLIDAY PAY.—A nurse working a work schedule under subsection (b) that includes a holiday designated by law or Executive order shall be eligible for holiday pay under section 7453(d) of this title for any service performed by the nurse on such holiday under such section.

(d) 9-MONTH WORK SCHEDULE FOR CERTAIN NURSES.—(1) The Secretary may authorize a registered nurse appointed under section 7405 of this title, with the nurse's written consent, to work full time for nine months with 3 months off duty, within a fiscal year, and be paid at 75 percent of the full-time rate for such nurse's grade for each pay period of such fiscal year.

(2) A nurse who works under the authority in paragraph (1) shall be considered a 0.75 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

(3) Work under this subsection shall be considered part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

(4) A nurse who works under the authority in paragraph (1) shall be considered a full-time employee for purposes of chapter 89 of title 5.

(e) NOTIFICATION OF MODIFICATION OF BENEFITS.—The Secretary shall provide each employee with respect to whom an alternate work schedule under this section may apply written notice of the effect, if any, that the alternate work schedule will have on the employee's health care premium, retirement, life insurance premium, probationary status, or other benefit or condition of employment. The notice shall be provided not later than 14 days before the employee consents to the alternate work schedule.

(f) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.

(Added Pub. L. 108–445, Sec. 4(a)(1), Dec. 3, 2004, 118 Stat. 2643.)

§ 7457. On-call pay

(a) The Secretary may pay an employee to whom this section applies pay at the rate provided in section 7453(h) of this title except for such time as the employee may be called back to work.

(b) This section applies to an employee who meets each of the following criteria:

(1) The employee is employed in a position listed in paragraph (3) of section 7401 of this title or meets the criteria specified in clauses (i), (ii), and (iii) of section 7455(a)(2)(B) of this title.

(2) The employee is employed in a work unit for which on-call premium pay is authorized.

(3) The employee is officially scheduled to be on call outside such employee's regular hours or on a holiday designated by Federal statute or Executive order.

(c) An employee who is eligible for on-call pay under subsection (a) and who was receiving standby premium pay pursuant to section 5545 of title 5 on May 20, 1988, shall, as long as such employee is employed in the same position and work unit and remains

eligible for such standby pay, receive pay for any period of on-call duty at the rate equal to the greater of—

(1) the rate of pay which such employee would receive if being paid the rate of standby pay pursuant to such section that such individual would be entitled to receive if such individual were not scheduled to be on call instead, or

(2) the rate of pay which such employee is entitled to receive including on-call premium pay described in subsection (a).

(Added Pub. L. 102–40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 236.)

§ 7458. Recruitment and retention bonus pay

(a)(1) In order to recruit and retain registered nurses, the Secretary may enter into agreements under this section. Such an agreement may be entered into with any registered nurse who is employed at, or who agrees to accept employment with the Department at, a Department health-care facility that is designated by the Secretary as a health-care facility with a significant shortage in registered nurses in any clinical service.

(2) A registered nurse entering into an agreement under this section shall agree to remain employed by the Department as a registered nurse for a period of time to be specified in the agreement and to serve during that period in a specific health-care facility that is designated by the Secretary as a health-care facility with a significant shortage of registered nurses in that nurse's clinical service. Such period may not be less than two years or more than four years. Such employment during such period may be on a full-time basis or a part-time basis, as specified in the agreement. Part-time employment as specified in such an agreement may not be less than half-time.

(b)(1) The Secretary shall pay to any nurse entering into an agreement under this section bonus pay in an amount specified in the agreement. The amount of such bonus pay may not exceed—

(A) $2,000 per year, in the case of an agreement for two years,

(B) $3,000 per year, in the case of an agreement for three years, and

(C) $4,000 per year, in the case of an agreement for four years.

(2) In the case of an agreement for employment on less than a full-time basis, the amount of bonus pay shall be pro-rated accordingly.

(c)(1) Except as provided in paragraph (2) of this subsection, a bonus under this section shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement.

(2)(A) The Secretary may make a payment in an amount not in excess of 25 percent of the total bonus in a lump sum at the time that the period of obligated service commences under the agreement.

(B) If the Secretary makes a lump-sum payment under subparagraph (A) of this paragraph, the remaining balance of the bonus shall be paid in equal installments after each year of service

is completed throughout the period of obligated service specified in the agreement.

(d)(1) A bonus paid to any individual under this section shall be in addition to any pay or allowance to which the individual is entitled.

(2) The amount of a bonus paid under this section shall not be considered to be basic pay for the purposes of sections 5551, 5552, and 5595 of title 5, chapters 81, 83, 84, and 87 of such title, or any other provision of law creating an entitlement to benefits based on basic pay.

(e) At least once each year the Secretary, upon the recommendation of the Under Secretary for Health, shall determine the specific health-care facilities and clinical services, if any, as to which there are significant problems with respect to the recruitment and retention of registered nurses. Upon making any such determination, the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and the House of Representatives of the determination and the basis for the determination.

(f) The Secretary may enter into agreements under this section with individuals in a health profession other than nursing (and other than a health profession for which special pay may be provided under subchapter III) if the Secretary determines that there are significant problems with respect to recruitment and retention of employees in that health profession. The Secretary's authority to enter into any such agreement under this section, and such agreement, shall be subject to the provisions of this section in the same manner as are the authority to enter into an agreement under this section with a registered nurse and such an agreement.

(g)(1) Except as provided in paragraph (2) of this subsection, an individual who voluntarily, or because of misconduct, fails to perform services as assigned by the Secretary for the period of obligated service provided in an agreement under this section shall refund to the United States the amount by which the total amount of bonus payments received by that individual under this section exceeds the amount that such individual would have received under an agreement under this section to serve for the period of obligated service actually served (as determined at the time the agreement is entered into). If the period actually served is less than two years, the amount to be refunded is the entire amount paid to the individual.

(2) An individual shall not be required to make a refund under paragraph (1) of this subsection if the Secretary determines, in accordance with regulations prescribed under subsection (h) of this section, that the individual's failure to perform services for the period of obligated service is due to circumstances (not including separation for cause) beyond the control of the individual.

(3) An obligation to refund any portion of a bonus payment under this subsection is, for all purposes, a debt owed to the United States.

(4) The provisions of this subsection and the specific amounts that the individual could be required to refund shall be disclosed to the individual at the time the agreement is entered into and shall be clearly set forth in the contract.

(h) The Secretary shall prescribe regulations to carry out this section.

(Added Pub. L. 100–322, title II, Sec. 212(a)((1)), May 20, 1988, 102 Stat. 514, Sec. 4120; renumbered Sec. 7458 and amended Pub. L. 102–40, title IV, Sec. 401(c)(4), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–446, title XII, Sec. 1201(h)(4), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 110–387, title IX, Sec. 901(a)(6), Oct. 10, 2008, 122 Stat. 4142.)

SUBCHAPTER V—DISCIPLINARY AND GRIEVANCE PROCEDURES

§ 7461. Adverse actions: section 7401(1) employees

(a) Whenever the Under Secretary for Health (or an official designated by the Under Secretary for Health) brings charges based on conduct or performance against a section 7401(1) employee and as a result of those charges an adverse personnel action is taken against the employee, the employee shall have the right to appeal the action.

(b)(1) If the case involves or includes a question of professional conduct or competence in which a major adverse action was taken, such an appeal shall be made to a Disciplinary Appeals Board under section 7462 of this title.

(2) In any other case, such an appeal shall be made—

(A) through Department grievance procedures under section 7463 of this title, in any case that involves or includes a question of professional conduct or competence in which a major adverse action was not taken or in any case of an employee who is not covered by a collective bargaining agreement under chapter 71 of title 5; or

(B) through grievance procedures provided through collective bargaining under chapter 71 of title 5 or through Department grievance procedures under section 7463 of this title, as the employee elects, in the case of an employee covered by a collective bargaining agreement under chapter 71 of title 5 that does not involve or include a question of professional conduct or competence.

(c) For purposes of this subchapter—

(1) Section 7401(1) employees are employees of the Department employed on a full-time basis under a permanent appointment in a position listed in section 7401(1) of this title (other than interns and residents appointed pursuant to section 7406 of this title).

(2) A major adverse action is an adverse action which includes any of the following:

(A) Suspension.

(B) Transfer.

(C) Reduction in grade.

(D) Reduction in basic pay.

(E) Discharge.

(3) A question of professional conduct or competence is a question involving any of the following:

(A) Direct patient care.

(B) Clinical competence.

(d) An issue of whether a matter or question concerns, or arises out of, professional conduct or competence is not itself subject to any grievance procedure provided by law, regulation, or collective bargaining and may not be reviewed by any other agency.

(e) Whenever the Secretary proposes to prescribe regulations under this subchapter, the Secretary shall publish the proposed regulations in the Federal Register for notice-and-comment not less than 30 days before the day on which they take effect.

(Added Pub. L. 102–40, title II, Sec. 203(a), May 7, 1991, 105 Stat. 202; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7462. Major adverse actions involving professional conduct or competence

(a)(1) Disciplinary Appeals Boards appointed under section 7464 of this title shall have exclusive jurisdiction to review any case—

(A) which arises out of (or which includes) a question of professional conduct or competence of a section 7401(1) employee; and

(B) in which a major adverse action was taken.

(2) The board shall include in its record of decision in any mixed case a statement of the board's exclusive jurisdiction under this subsection and the basis for such exclusive jurisdiction.

(3) For purposes of paragraph (2), a mixed case is a case that includes both a major adverse action arising out of a question of professional conduct or competence and an adverse action which is not a major adverse action or which does not arise out of a question of professional conduct or competence.

(b)(1) In any case in which charges are brought against a section 7401(1) employee which arises out of, or includes, a question of professional conduct or competence which could result in a major adverse action, the employee is entitled to the following:

(A) At least 30 days advance written notice from the Under Secretary for Health or other charging official specifically stating the basis for each charge, the adverse actions that could be taken if the charges are sustained, and a statement of any specific law, regulation, policy, procedure, practice, or other specific instruction that has been violated with respect to each charge, except that the requirement for notification in advance may be waived if there is reasonable cause to believe that the employee has committed a crime for which the employee may be imprisoned.

(B) A reasonable time, but not less than seven days, to present an answer orally and in writing to the Under Secretary for Health or other deciding official, who shall be an official higher in rank than the charging official, and to submit affidavits and other documentary evidence in support of the answer.

(2) In any case described in paragraph (1), the employee is entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case.

(3)(A) If a proposed adverse action covered by this section is not withdrawn, the deciding official shall render a decision in writing within 21 days of receipt by the deciding official of the employee's answer. The decision shall include a statement of the specific

reasons for the decision with respect to each charge. If a major adverse action is imposed, the decision shall state whether any of the charges sustained arose out of a question of professional conduct or competence. If any of the charges are sustained, the notice of the decision to the employee shall include notice of the employee's rights of appeal.

(B) Notwithstanding the 21-day period specified in subparagraph (A), a proposed adverse action may be held in abeyance if the employee requests, and the deciding official agrees, that the employee shall seek counseling or treatment for a condition covered under the Rehabilitation Act of 1973. Any such abeyance of a proposed action may not extend for more than one year.

(4)(A) The Secretary may require that any answer and submission under paragraph (1)(B) be submitted so as to be received within 30 days of the date of the written notice of the charges, except that the Secretary shall allow the granting of extensions for good cause shown.

(B) The Secretary shall require that any appeal to a Disciplinary Appeals Board from a decision to impose a major adverse action shall be received within 30 days after the date of service of the written decision on the employee.

(c)(1) When a Disciplinary Appeals Board convenes to consider an appeal in a case under this section, the board, before proceeding to consider the merits of the appeal, shall determine whether the case is properly before it.

(2) Upon hearing such an appeal, the board shall, with respect to each charge appealed to the board, sustain the charge, dismiss the charge, or sustain the charge in part and dismiss the charge in part. If the deciding official is sustained (in whole or in part) with respect to any such charge, the board shall—

(A) approve the action as imposed;

(B) approve the action with modification, reduction, or exception; or

(C) reverse the action.

(3) A board shall afford an employee appealing an adverse action under this section an opportunity for an oral hearing. If such a hearing is held, the board shall provide the employee with a transcript of the hearing.

(4) The board shall render a decision in any case within 45 days of completion of the hearing, if there is a hearing, and in any event no later than 120 days after the appeal commenced.

(d)(1) After resolving any question as to whether a matter involves professional conduct or competence, the Secretary shall cause to be executed the decision of the Disciplinary Appeals Board in a timely manner and in any event in not more than 90 days after the decision of the Board is received by the Secretary. Pursuant to the board's decision, the Secretary may order reinstatement, award back pay, and provide such other remedies as the board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(2) If the Secretary finds a decision of the board to be clearly contrary to the evidence or unlawful, the Secretary may—

(A) reverse the decision of the board, or

(B) vacate the decision of the board and remand the matter to the Board for further consideration.

(3) If the Secretary finds the decision of the board (while not clearly contrary to the evidence or unlawful) to be not justified by the nature of the charges, the Secretary may mitigate the adverse action imposed.

(4) The Secretary's execution of a board's decision shall be the final administrative action in the case.

(e) The Secretary may designate an employee of the Department to represent management in any case before a Disciplinary Appeals Board.

(f)(1) A section 7401(1) employee adversely affected by a final order or decision of a Disciplinary Appeals Board (as reviewed by the Secretary) may obtain judicial review of the order or decision.

(2) In any case in which judicial review is sought under this subsection, the court shall review the record and hold unlawful and set aside any agency action, finding, or conclusion found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) obtained without procedures required by law, rule, or regulation having been followed; or

(C) unsupported by substantial evidence.

(Added Pub. L. 102–40, title II, Sec. 203(a), May 7, 1991, 105 Stat. 203; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7463. Other adverse actions

(a) The Secretary shall prescribe by regulation procedures for the consideration of grievances of section 7401(1) employees arising from adverse personnel actions in which each action taken either—

(1) is not a major adverse action; or

(2) does not arise out of a question of professional conduct or competence.

Disciplinary Appeals Boards shall not have jurisdiction to review such matters, other than as part of a mixed case (as defined in section 7462(a)(3) of this title).

(b) In the case of an employee who is a member of a collective bargaining unit under chapter 71 of title 5, the employee may seek review of an adverse action described in subsection (a) either under the grievance procedures provided through regulations prescribed under subsection (a) or through grievance procedures determined through collective bargaining, but not under both. The employee shall elect which grievance procedure to follow. Any such election may not be revoked.

(c)(1) In any case in which charges are brought against a section 7401(1) employee which could result in a major adverse action and which do not involve professional conduct or competence, the employee is entitled to the same notice and opportunity to answer with respect to those charges as provided in subparagraphs (A) and (B) of section 7462(b)(1) of this title.

(2) In any other case in which charges are brought against a section 7401(1) employee, the employee is entitled to—

(A) an advance written notice stating the specific reason for the proposed action, and

(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.

(d) Grievance procedures prescribed under subsection (a) shall include the following:

(1) A right to formal review by an impartial examiner within the Department of Veterans Affairs, who, in the case of an adverse action arising from a question of professional conduct or competence, shall be selected from the panel designated under section 7464 of this title.

(2) A right to a prompt report of the findings and recommendations by the impartial examiner.

(3) A right to a prompt review of the examiner's findings and recommendations by an official of a higher level than the official who decided upon the action. That official may accept, modify, or reject the examiner's recommendations.

(e) In any review of an adverse action under the grievance procedures prescribed under subsection (a), the employee is entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case.

(Added Pub. L. 102–40, title II, Sec. 203(a), May 7, 1991, 105 Stat. 205.)

§ 7464. Disciplinary Appeals Boards

(a) The Secretary shall from time to time appoint boards to hear appeals of major adverse actions described in section 7462 of this title. Such boards shall be known as Disciplinary Appeals Boards. Each board shall consist of three employees of the Department, each of whom shall be of the same grade as, or be senior in grade to, the employee who is appealing an adverse action. At least two of the members of each board shall be employed in the same category of position as the employee who is appealing the adverse action. Members of a board shall be appointed from individuals on the panel established under subsection (d).

(b)(1) In appointing a board for any case, the Secretary shall designate one of the members to be chairman and one of the members to be secretary of the board, each of whom shall have authority to administer oaths.

(2) Appointment of boards, and the proceedings of such boards, shall be carried out under regulations prescribed by the Secretary. A verbatim record shall be maintained of board hearings.

(c)(1) Notwithstanding sections 5701 and 7332 of this title, the chairman of a board, upon request of an employee whose case is under consideration by the board (or a representative of that employee) may, in connection with the considerations of the board, review records or information covered by those sections and may authorize the disclosure of such records or information to that employee (or representative) to the extent the board considers appropriate for purposes of the proceedings of the board in that case.

(2) In any such case the board chairman may direct that measures be taken to protect the personal privacy of individuals whose records are involved. Any person who uses or discloses a record or information covered by this subsection for any purpose other than in connection with the proceedings of the board shall be fined not

more than $5,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

(d)(1) The Secretary shall provide for the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. Those employees shall constitute the panel from which board members in a case are appointed. The Secretary shall provide (without charge) a list of the names of employees on the panel to any person requesting such list.

(2) The Secretary shall announce periodically, and not less often than annually, that the roster of employees on the panel is available as described in paragraph (1). Such announcement shall be made at Department medical facilities and through publication in the Federal Register. Notice of a name being on the list must be provided at least 30 days before the individual selected may serve on a Board or as a grievance examiner. Employees, employee organizations, and other interested parties may submit comments to the Secretary concerning the suitability for service on the panel of any employee whose name is on the list.

(3) The Secretary shall provide training in the functions and duties of Disciplinary Appeals Boards and grievance procedures under section 7463 of this title for employees selected to be on the panel.

(Added Pub. L. 102–40, title II, Sec. 203(a), May 7, 1991, 105 Stat. 206.)

SUBCHAPTER VI—REGIONAL MEDICAL EDUCATION CENTERS

§ 7471. Designation of Regional Medical Education Centers

(a) In carrying out the Secretary's functions under section 7302 of this title with regard to the training of health personnel, the Secretary shall implement a program under which the Secretary shall designate as Regional Medical Education Centers such Department hospitals as the Secretary determines appropriate to carry out the provisions of this subchapter.

(b) Each Regional Medical Education Center (hereinafter in this subchapter referred to as "Center") designated under subsection (a) shall provide continuing medical and related education programs for personnel eligible for training under this subchapter. Such programs shall include the following:

(1) The teaching of newly developed medical skills and the use of newly developed medical technologies and equipment.

(2) Advanced clinical instruction.

(3) The opportunity for conducting clinical investigations.

(4) Clinical demonstrations in the use of new types of health personnel and in the better use of the skills of existing health personnel.

(5) Routine verification of basic medical skills and, where determined necessary, remediation of any deficiency in such skills.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(5), May 7, 1991, 105 Stat. 237.)

§ 7472. Supervision and staffing of Centers

(a) Centers shall be operated under the supervision of the Under Secretary for Health and shall be staffed with personnel

qualified to provide the highest quality instruction and training in various medical and health care disciplines.

(b) As a means of providing appropriate recognition to persons in the career service of the Administration who possess outstanding qualifications in a particular medical or health care discipline, the Under Secretary for Health shall from time to time and for such period as the Under Secretary for Health considers appropriate assign such persons to serve as visiting instructors at Centers.

(c) Whenever the Under Secretary for Health considers it necessary for the effective conduct of the program provided for under this subchapter, the Under Secretary for Health may contract for the services of highly qualified medical and health personnel from outside the Department to serve as instructors at such Centers.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(5), May 7, 1991, 105 Stat. 237; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7473. Personnel eligible for training

(a) The Under Secretary for Health shall determine the manner in which personnel are to be selected for training in the Centers. Preference shall be given to career personnel of the Administration.

(b) To the extent that facilities are available medical and health personnel from outside the Administration may, on a reimbursable basis, be provided training in the Centers. Such reimbursement may include reciprocal training of personnel of the Administration provided under sharing arrangements entered into by the Under Secretary for Health and the heads of the entities providing such reciprocal training. Any amounts received by the United States as reimbursement under this subsection shall be credited to the applicable Department medical appropriation account.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(5), May 7, 1991, 105 Stat. 237; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 7474. Consultation

The Under Secretary for Health shall carry out this subchapter after consultation with the special medical advisory group established pursuant to section 7312(a) of this title.

(Added Pub. L. 102–40, title IV, Sec. 401(b)(5), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

Chapter 75 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[CHAPTER 75—INTENTIONALLY LEFT BLANK]

Chapter 76 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART V—BOARDS, ADMINISTRATIONS, AND SERVICES]

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[7684. Repealed.]

SUBCHAPTER I—GENERAL

§ 7601. Establishment of program; purpose

(a) There is hereby established a program to be known as the Department of Veterans Affairs Health Professionals Educational Assistance Program (hereinafter in this chapter referred to as the "Educational Assistance Program"). The program consists of—

(1) the scholarship program provided for in subchapter II of this chapter;

(2) the tuition reimbursement program provided for in subchapter III of this chapter;

(3) the Selected Reserve member stipend program provided for under subchapter V of this chapter;

(4) the employee incentive scholarship program provided for in subchapter VI of this chapter; and

(5) the education debt reduction program provided for in subchapter VII of this chapter.

(b) The purpose of the Educational Assistance Program is to assist in providing an adequate supply of trained health-care personnel for the Department and the Nation.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 518, Sec. 4301; amended Pub. L. 101–366, title II, Sec. 205(c)(1), Aug. 15, 1990, 104 Stat. 441; renumbered Sec. 7601, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(2)(B)(vi), (3), (4), Aug. 6, 1991, 105 Stat. 403, 404; Pub. L. 103–446, title XII, Sec. 1201(e)(25), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 105–368, title VIII, Sec. 805(1), Nov. 11, 1998, 112 Stat. 3358.)

§ 7602. Eligibility

(a)(1) To be eligible to participate in the Educational Assistance Program under subchapter II, III, or VI of this chapter, an individual must be accepted for enrollment or be currently enrolled as a student at a qualifying educational institution in a course of education or training that is approved by the Secretary and that leads toward completion of a degree in a field of education or training for which a scholarship may be awarded under subchapter II of this chapter, for which tuition reimbursement may be provided under subchapter III of this chapter, or for which a scholarship may be awarded under subchapter VI of this chapter, as the case may be.

(2) A qualifying educational institution for purposes of this section is an educational institution that is in a State and that (as determined by the Secretary) is an accredited institution.

(b) An individual is not eligible to apply to participate in the Educational Assistance Program under subchapter II, III, or VI of this chapter if the individual is obligated under any other Federal program to perform service after completion of the course of education or training of such individual referred to in subsection (a) of this section.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 518, Sec. 4302; amended Pub. L. 101–366, title II, Sec. 205(c)(2), Aug. 15, 1990, 104 Stat. 441; renumbered Sec. 7602, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105–368, title VIII, Sec. 805(2), Nov. 11, 1998, 112 Stat. 3358.)

§ 7603. Application and acceptance

(a)(1) To apply to participate in the Educational Assistance Program under subchapter II, III, V, or VI of this chapter, an individual shall submit to the Secretary an application for such participation together with an agreement described in section 7604 of this title under which the participant agrees to serve a period of obligated service in the Veterans Health Administration as provided in the agreement in return for payment of educational assistance as provided in the agreement.

(2) To apply to participate in the Educational Assistance Program under subchapter VII of this chapter, an individual shall submit to the Secretary an application for such participation.

(b)(1) An individual becomes a participant in the Educational Assistance Program upon the Secretary's approval of the individual's application and the Secretary's acceptance of the agreement (if required).

(2) Upon the Secretary's approval of an individual's participation in the program, the Secretary shall promptly notify the individual of that approval. Such notice shall be in writing.

(c)(1) In distributing application forms and agreement forms to individuals desiring to participate in the Educational Assistance Program, the Secretary shall include with such forms the following:

(A) A fair summary of the rights and liabilities of an individual whose application is approved (and whose agreement is accepted) by the Secretary, including a clear explanation of the damages to which the United States is entitled if the individual breaches the agreement.

(B) A full description of the terms and conditions that apply to participation in the Educational Assistance Program and service in the Veterans Health Administration.

(2) The Secretary shall make such application forms and other information available to individuals desiring to participate in the Educational Assistance Program on a date sufficiently early to allow such individuals adequate time to prepare and submit such forms.

(d) In selecting applicants for acceptance in the Educational Assistance Program, the Secretary shall give priority to the applications of individuals who have previously received educational assistance under the program and have not completed the course of education or training undertaken under such program.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 518, Sec. 4303; renumbered Sec. 7603 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–446, title XII, Sec. 1201(b)(1), Nov. 2, 1994, 108 Stat. 4682; Pub. L. 105–368, title VIII, Sec. 805(3), Nov. 11, 1998, 112 Stat. 3359; Pub. L. 106–419, title IV, Sec. 404(a)(10), Nov. 1, 2000, 114 Stat. 1865.)

§ 7604. Terms of agreement

An agreement between the Secretary and a participant in the Educational Assistance Program shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Secretary's agreement—

(A) to provide the participant with educational assistance as authorized in subchapter II, III, V, or VI of this chapter and specified in the agreement; and

(B) to afford the participant the opportunity for employment in the Veterans Health Administration (subject to the availability of appropriated funds for such purpose and other qualifications established in accordance with section 7402 of this title).

(2) The participant's agreement—

(A) to accept such educational assistance;

(B) to maintain enrollment and attendance in the course of training until completed;

(C) while enrolled in such course, to maintain an acceptable level of academic standing (as determined by the educational institution offering such course of training under regulations prescribed by the Secretary); and

(D) after completion of the course of training, to serve as a full-time employee in the Veterans Health Administration as specified in the agreement in accordance with subchapter II, III, V, or VI of this chapter.

(3) A provision that any financial obligation of the United States arising out of an agreement entered into under this chapter, and any obligation of the participant which is conditioned on such agreement, is contingent upon funds being appropriated for educational assistance under this chapter.

(4) A statement of the damages to which the United States is entitled under this chapter for the participant's breach of the agreement.

(5) Such other terms as are required to be included in the agreement under subchapter II, III, V, or VI of this chapter or as the Secretary may require consistent with the provisions of this chapter.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 519, Sec. 4304; amended Pub. L. 101–366, title II, Sec. 205(c)(3), Aug. 15, 1990, 104 Stat. 441; renumbered Sec. 7604 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), 403(b)(3), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–446, title XII, Sec. 1201(b)(1), (e)(26), Nov. 2, 1994, 108 Stat. 4682, 4686; Pub. L. 105–368, title VIII, Sec. 805(4), Nov. 11, 1998, 112 Stat. 3359.)

SUBCHAPTER II—SCHOLARSHIP PROGRAM

§ 7611. Authority for program

As part of the Educational Assistance Program, the Secretary shall carry out a scholarship program under this subchapter. The program shall be known as the Department of Veterans Affairs Health Professional Scholarship Program (hereinafter in this chapter referred to as the "Scholarship Program").

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 520, Sec. 4311; renumbered Sec. 7611, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105

Stat. 238; amended Pub. L. 102–83, Sec. 4(a)(2)(B)(vi), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

§ 7612. Eligibility; application; agreement

(a)(1) Except as provided in paragraph (2) of this subsection, an individual must be accepted for enrollment or be enrolled (as described in section 7602 of this title) as a full-time student to be eligible to participate in the Scholarship Program.

(2) An individual who is an eligible Department employee may be accepted as a participant if accepted for enrollment or enrolled (as described in section 7602 of this title) for study on less than a full-time but not less than a half-time basis. (Such a participant is hereinafter in this subchapter referred to as a "part-time student".)

(3) For the purposes of paragraph (2) of this subsection, an eligible Department employee is a full-time Department employee who is permanently assigned to a Department health-care facility on the date on which the individual submits the application referred to in section 7603 of this title and on the date on which the individual becomes a participant in the Scholarship Program.

(b)(1) A scholarship may be awarded under this subchapter only in a qualifying field of education or training.

(2) A qualifying field of education or training for purposes of this subchapter is education or training leading to employment (under section 7401 of this title) as any of the following:

(A) A physician, dentist, podiatrist, optometrist, nurse, physician assistant, or expanded function dental auxiliary.

(B) A psychologist described in section 7401(3) of this title or a certified or registered respiratory therapist, licensed physical therapist, or licensed practical or vocational nurse.

(3) The Secretary may designate additional fields of education or training as qualifying fields of education or training if the education or training leads to employment in a position which would qualify the individual for increased basic pay under subsection (a)(1) of section 7455 of this title for personnel described in subsection (a)(2)(B) of such section.

(4) Before awarding the initial scholarship in a course of education or training other than medicine or nursing, the Secretary shall notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the Secretary's intent to award a scholarship in such course of education or training. The notice shall include a statement of the reasons why the award of scholarships in that course of education or training is necessary to assist in providing the Department with an adequate supply of personnel in the health profession concerned. Any such notice shall be given not less than 60 days before the first such scholarship is awarded.

(5) In selecting applicants for the Scholarship Program, the Secretary—

(A) shall give priority to applicants who will be entering their final year in a course of training; and

(B) shall ensure an equitable allocation of scholarships to persons enrolled in the second year of a program leading to an associate degree in nursing.

(c)(1) An agreement between the Secretary and a participant in the Scholarship Program shall (in addition to the requirements set forth in section 7604 of this title) include the following:

(A) The Secretary's agreement to provide the participant with a scholarship under this subchapter for a specified number (from one to four) of school years during which the participant is pursuing a course of education or training described in section 7602 of this title.

(B) The participant's agreement to serve as a full-time employee in the Veterans Health Administration for a period of time (hereinafter in this subchapter referred to as the "period of obligated service") of one calendar year for each school year or part thereof for which the participant was provided a scholarship under the Scholarship Program, but for not less than two years.

(2) In a case in which an extension is granted under section 7614(3) of this title, the number of years for which a scholarship may be provided under this subchapter shall be the number of school years provided for as a result of the extension.

(3) In the case of a participant who is a part-time student—

(A) the period of obligated service shall be reduced in accordance with the proportion that the number of credit hours carried by such participant in any such school year bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant, but in no event to less than one year; and

(B) the agreement shall include the participant's agreement to maintain employment, while enrolled in such course of education or training, as a Department employee permanently assigned to a Department health-care facility.

(4) If a participant's period of obligated service is deferred under section 7616(b)(3)(A)(i) of this title, the agreement terms under paragraph (1) of this subsection shall provide for the participant to serve any additional period of obligated service that is prescribed by the Secretary under section 7616(b)(4)(B) of this title.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 520, Sec. 4312; amended Pub. L. 101–237, title II, Sec. 207(a), Dec. 18, 1989, 103 Stat. 2068; renumbered Sec. 7612 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), 403(b)(4), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–405, title II, Sec. 202(a), Oct. 9, 1992, 106 Stat. 1983; Pub. L. 103–446, title XII, Sec. 1201(b)(1), Nov. 2, 1994, 108 Stat. 4682.)

§ 7613. Scholarship

(a) A scholarship provided to a participant in the Scholarship Program for a school year under the Scholarship Program shall consist of payment of the tuition of the participant for that school year, payment of other reasonable educational expenses (including fees, books, and laboratory expenses) for that school year, and a stipend determined under subsection (b) of this section.

(b) A stipend under this section for a school year shall be payment to the participant of not in excess of $485 per month (adjusted in accordance with section 7631 of this title) for each of the 12 consecutive months beginning with the first month of the school year, except that a stipend may not be paid to a participant who

is a full-time employee of the Department. The stipend of a participant who is a part-time student shall be adjusted as provided in sections 7614(1) and 7614(2) of this title.

(c) The Secretary may arrange with an educational institution in which a participant in the Scholarship Program is enrolled for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in subsection (a) of this section. Such payments may be made without regard to subsections (a) and (b) of section 3324 of title 31.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 521, Sec. 4313; renumbered Sec. 7613 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 7614. Part-time students

In the case of a participant who is a part-time student—

(1) the maximum amount of the stipend payable to the participant shall be reduced in accordance with the proportion that the number of credit hours carried by such participant bears to the number of credit hours required to be carried by a full-time student in the course of education or training being pursued by the participant;

(2) a stipend may not be paid for any month during which the participant is not actually attending the course of training in which the participant is enrolled; and

(3) the Secretary may extend the period for which a scholarship may be awarded to the participant to a maximum of six school years if the Secretary determines that the extension would be in the best interest of the United States.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 522, Sec. 4314; renumbered Sec. 7614, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 7615. Status of participants

Participants in the Scholarship Program shall not by reason of their participation in such program (1) be considered to be employees of the Federal Government, or (2) be counted against any personnel ceiling affecting the Veterans Health Administration.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 522, Sec. 4315; renumbered Sec. 7615, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 103–446, title XII, Sec. 1201(b)(1), Nov. 2, 1994, 108 Stat. 4682.)

§ 7616. Obligated service

(a) Each participant in the Scholarship Program shall provide service as a full-time employee of the Department for the period of obligated service provided in the agreement of the participant entered into under section 7603 of this title. Such service shall be provided in the full-time clinical practice of such participant's profession or in another health-care position in an assignment or location determined by the Secretary.

(b)(1) Not later than 60 days before the participant's service commencement date, the Secretary shall notify the participant of

that service commencement date. That date is the date for the beginning of the participant's period of obligated service.

(2) As soon as possible after the participant's service commencement date, the Secretary shall—

(A) in the case of a participant who is not a full-time employee in the Veterans Health Administration, appoint such participant as such an employee; and

(B) in the case of a participant who is an employee in the Veterans Health Administration but is not serving in a position for which such participant's course of education or training prepared such participant, assign such participant to such a position.

(3)(A)(i) In the case of a participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, the participant's service commencement date is the date upon which the participant becomes licensed to practice medicine, osteopathy, dentistry, optometry, or podiatry, as the case may be, in a State. However, the Secretary may, at the request of such participant, defer such date until the end of the period of time required for the participant to complete an internship or residency or other advanced clinical training. If the participant requests such a deferral, the Secretary shall notify the participant that such deferral could lead to an additional period of obligated service in accordance with paragraph (4) of this subsection.

(ii) No such period of internship or residency or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subchapter.

(B) In the case of a participant receiving a degree from a school of nursing, the participant's service commencement date is the later of (i) the participant's course completion date, or (ii) the date upon which the participant becomes licensed as a registered nurse in a State.

(C) In the case of a participant not covered by subparagraph (A) or (B) of this paragraph, the participant's service commencement date is the later of (i) the participant's course completion date, or (ii) the date the participant meets any applicable licensure or certification requirements.

(4) A participant whose period of obligated service is deferred under paragraph (3)(A) of this subsection shall be required to undertake internship or residency or other advanced clinical training in an accredited program in an educational institution which is an affiliated institution (as defined in section 7423(d)(1) of this title) and with respect to which the affiliation agreement provides that all or part of the internship or residency or other advanced clinical training will be undertaken in a Department health-care facility. Such a participant may, at the discretion of the Secretary and upon the recommendation of the Under Secretary for Health, incur an additional period of obligated service—

(A) at the rate of one-half of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is in a medical specialty necessary to meet the health-care requirements of the Department

(as determined under regulations prescribed by the Secretary); or

(B) at the rate of three-quarters of a calendar year for each year of internship or residency or other advanced clinical training (or a proportionate ratio thereof), if the internship, residency, or advanced clinical training is not in a medical specialty necessary to meet the health-care requirements of the Department (as determined under regulations prescribed by the Secretary).

(5) The Secretary shall by regulation prescribe the service commencement date for participants who were part-time students. Such regulations shall prescribe terms as similar as practicable to the terms set forth in paragraph (3) of this subsection.

(c)(1) Except as provided in paragraph (2) of this subsection, a participant in the Scholarship Program shall be considered to have begun serving such participant's period of obligated service—

(A) on the date, after such participant's course completion date, on which such participant (in accordance with subsection (b) of this section) is appointed under this chapter as a full-time employee in the Veterans Health Administration; or

(B) if the participant is a full-time employee in the Veterans Health Administration on such course completion date, on the date thereafter on which such participant is assigned to a position for which such participant's course of training prepared such participant.

(2) A participant in the Scholarship Program who on such participant's course completion date is a full-time employee in the Veterans Health Administration serving in a capacity for which such participant's course of training prepared such participant shall be considered to have begun serving such participant's period of obligated service on such course completion date.

(3) For the purposes of this section, the term "course completion date" means the date on which a participant in the Scholarship Program completes such participant's course of education or training under the program.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 522, Sec. 4316; renumbered Sec. 7616 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), 403(b)(5), May 7, 1991, 105 Stat. 238–240; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–446, title XII, Sec. 1201(b)(1), Nov. 2, 1994, 108 Stat. 4682.)

§ 7617. Breach of agreement: liability

(a) A participant in the Scholarship Program (other than a participant described in subsection (b) of this section) who fails to accept payment, or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the agreement entered into under section 7603 of this title shall be liable to the United States for liquidated damages in the amount of $1,500. Such liability is in addition to any period of obligated service or other obligation or liability under the agreement.

(b) A participant in the Scholarship Program shall be liable to the United States for the amount which has been paid to or on be-

half of the participant under the agreement if any of the following occurs:

(1) The participant fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled (as determined by the educational institution under regulations prescribed by the Secretary).

(2) The participant is dismissed from such educational institution for disciplinary reasons.

(3) The participant voluntarily terminates the course of training in such educational institution before the completion of such course of training.

(4) The participant fails to become licensed to practice medicine, osteopathy, dentistry, podiatry, or optometry in a State, fails to become licensed as a registered nurse in a State, or fails to meet any applicable licensure requirement in the case of any other health-care personnel who provide either direct patient-care services or services incident to direct patient-care services, during a period of time determined under regulations prescribed by the Secretary.

(5) In the case of a participant who is a part-time student, the participant fails to maintain employment, while enrolled in the course of training being pursued by such participant, as a Department employee permanently assigned to a Department health-care facility.

Liability under this subsection is in lieu of any service obligation arising under the participant's agreement.

(c)(1) If a participant in the Scholarship Program breaches the agreement by failing (for any reason) to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula: $A=3\Phi(t-s/t)$

In such formula:

(A) "A" is the amount the United States is entitled to recover.

(B) "Φ" is the sum of (i) the amounts paid under this subchapter to or on behalf of the participant, and (ii) the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(C) "t" is the total number of months in the participant's period of obligated service, including any additional period of obligated service in accordance with section 7616(b)(4) of this title.

(D) "s" is the number of months of such period served by the participant in accordance with section 7613 of this title.

(2) Any amount of damages which the United States is entitled to recover under this section shall be paid to the United States within the one-year period beginning on the date of the breach of the agreement.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 524, Sec. 4317; renumbered Sec. 7617 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 7618. Expiration of program

The Secretary may not furnish scholarships to new participants in the Scholarship Program after December 31, 1998.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 525, Sec. 4318; renumbered Sec. 7618, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–585, title V, Sec. 523(a), Nov. 4, 1992, 106 Stat. 4959; Pub. L. 104–110, title I, Sec. 101(j), Feb. 13, 1996, 110 Stat. 769; Pub. L. 105–114, title II, Sec. 207(a), Nov. 21, 1997, 111 Stat. 2289.)

SUBCHAPTER III—TUITION REIMBURSEMENT PROGRAM

§ 7621. Authority for program

As part of the Educational Assistance Program, the Secretary shall carry out a tuition reimbursement program under this subchapter. The program shall be known as the Department of Veterans Affairs Nurse Education Tuition Reimbursement Program (hereinafter in this chapter referred to as the "Tuition Reimbursement Program").

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 525, Sec. 4321; renumbered Sec. 7621, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(a)(2)(B)(vi), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405.)

§ 7622. Eligibility; application; agreement

(a) To be eligible to participate in the Tuition Reimbursement Program, an individual must be a full-time employee in the Department permanently assigned to a Department health-care facility and must be enrolled in a course of training offered by an institution approved by the Secretary leading toward completion of (1) an associate or higher degree in nursing, or (2) a masters degree or doctoral degree in nursing.

(b) In selecting applicants for acceptance in the Tuition Reimbursement Program, the Secretary (in addition to according priorities as set forth in section 7603(d) of this title) shall give special consideration and emphasis to individuals pursuing a course of study which will expedite an increase in the number of registered nurses employed by the Department. The Secretary shall then give priority, in the following order, to—

(1) individuals who have been employed as full-time employees in the Nursing Service in the Veterans Health Administration; and

(2) individuals who have previously received tuition reimbursement under the Tuition Reimbursement Program.

(c) An agreement between the Secretary and a participant in the Tuition Reimbursement Program shall (in addition to the requirements set forth in section 7604 of this title) contain the following:

(1) The Secretary's agreement to provide the participant with tuition reimbursement following successful completion (as determined, pursuant to regulations prescribed by the Secretary, by the educational institution involved) of (A) a course or courses required for the course of study described in subsection (a) of this section, or (B) a course or courses taken as necessary prerequisites for degree program enrollment if a let-

ter regarding the potential enrollment of the participant from an appropriate official of the institution involved includes a statement specifying such prerequisites.

(2) The participant's agreement—

(A) to maintain employment, while enrolled in the course of training being pursued by such participant, as a full-time Department employee in the Veterans Health Administration permanently assigned to a Department health-care facility; and

(B) to continue to serve as a full-time employee in the Veterans Health Administration for one year (hereinafter in this subchapter referred to as the "period of obligated service") after completion of the course for which the participant received tuition reimbursement.

(d) Tuition reimbursement provided to a participant in the Tuition Reimbursement Program may not exceed $2,000 per year (adjusted in accordance with section 7631 of this title).

(e) The Secretary may arrange with an educational institution pursuant to which such an institution would provide a course or courses at a Department health-care facility to participants in the Tuition Reimbursement Program. Under such an arrangement, the Secretary may agree to pay to the institution an amount not in excess of an amount determined by multiplying the number of participants in such a course by the amount of tuition reimbursement each participant would receive for enrolling and successfully completing such course.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 525, Sec. 4322; renumbered Sec. 7622 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(e)(9), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–446, title XII, Sec. 1201(b), Nov. 2, 1994, 108 Stat. 4682.)

§ 7623. Obligated service

(a) Each participant in the Tuition Reimbursement Program shall provide service in the full-time clinical practice of such participant's profession as a full-time employee of the Department for the period of obligated service provided in the agreement of such participant entered into under section 7603 of this title.

(b) A participant who on such participant's course completion date is a full-time employee in the Veterans Health Administration shall be considered to have begun serving such participant's period of obligated service on the course completion date.

(c) Except in the case of a participant whose tuition was paid pursuant to section 7622(e) of this title, if a participant in the Tuition Reimbursement Program fails to successfully complete a course, no reimbursement will be provided and no period of obligated service will be incurred.

(d) In the case of a participant whose tuition was paid pursuant to section 7622(e) of this title and who fails to complete the course involved, the period of obligation shall be of the same duration as it would have been if the participant had successfully completed the course and the course completion date shall be considered to be the date on which the participant's failure becomes an established fact.

(e) For the purposes of this section, the term "course completion date" means the date on which a participant in the Tuition Reimbursement Program completes such participant's course of training under the program.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 526, Sec. 4323; amended Pub. L. 100–687, div. B, title XV, Sec. 1503(a)(3), Nov. 18, 1988, 102 Stat. 4134; renumbered Sec. 7623 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 103–446, title XII, Sec. 1201(b)(1), Nov. 2, 1994, 108 Stat. 4682.)

§ 7624. Breach of agreement: liability

(a) A participant in the Tuition Reimbursement Program who fails to maintain employment as a Department employee permanently assigned to a Department health-care facility—

(1) may not be provided reimbursement for tuition for the course or courses in which the participant is enrolled; and

(2) in lieu of any service obligation arising from participation in the program, shall be liable to the United States for the amount which has been paid or is payable to or on behalf of the participant under the agreement, reduced by the proportion that the number of days served for completion of the service obligation bears to the total number of days in the participant's period of obligated service.

(b) Any amount of damages which the United States is entitled to recover under this section shall be paid to the United States within the one-year period beginning on the date of the breach of the agreement.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 527, Sec. 4324; amended Pub. L. 100–687, div. B, title XV, Sec. 1503(a)(4), Nov. 18, 1988, 102 Stat. 4134; renumbered Sec. 7624, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

§ 7625. Allocation and distribution of funding

In determining the amount of funding to allocate to Department health-care facilities for any fiscal year in connection with the Tuition Reimbursement Program, the Secretary shall take into account (1) the personnel ceiling for that fiscal year for nursing personnel, and (2) the recruitment and retention needs of such facilities, as determined by the Secretary.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 527, Sec. 4325; renumbered Sec. 7625, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

SUBCHAPTER IV—ADMINISTRATIVE MATTERS

§ 7631. Periodic adjustments in amount of assistance

(a)(1) Whenever there is a general Federal pay increase, the Secretary shall increase the maximum monthly stipend amount, the maximum tuition reimbursement amount, the maximum Selected Reserve member stipend amount, the maximum employee incentive scholarship amount, and the maximum education debt reduction payments amount. Any such increase shall take effect with respect to any school year that ends in the fiscal year in which the pay increase takes effect.

(2) The amount of any increase under paragraph (1) of this subsection is the previous maximum amount under that paragraph multiplied by the overall percentage of the adjustment in the rates of pay under the General Schedule made under the general Federal pay increase. Such amount shall be rounded to the next lower multiple of $1.

(b) For purposes of this section:

(1) The term "maximum monthly stipend amount" means the maximum monthly stipend that may be paid to a participant in the Scholarship Program specified in section 7613(b) of this title and as previously adjusted (if at all) in accordance with this section.

(2) The term "maximum tuition reimbursement amount" means the maximum amount of tuition reimbursement provided to a participant in the Tuition Reimbursement Program specified in section 7622(e) of this title and as previously adjusted (if at all) in accordance with this section.

(3) The term "maximum Selected Reserve member stipend amount" means the maximum amount of assistance provided to a person receiving assistance under subchapter V of this chapter, as specified in section 7653 of this title and as previously adjusted (if at all) in accordance with this section.

(4) The term "maximum employee incentive scholarship amount" means the maximum amount of the scholarship payable to a participant in the Department of Veterans Affairs Employee Incentive Scholarship Program under subchapter VI of this chapter, as specified in section 7673(b)(1) of this title and as previously adjusted (if at all) in accordance with this section.

(5) The term "maximum education debt reduction payments amount" means the maximum amount of education debt reduction payments payable to a participant in the Department of Veterans Affairs Education Debt Reduction Program under subchapter VII of this chapter, as specified in section 7683(d)(1) of this title and as previously adjusted (if at all) in accordance with this section.

(6) The term "general Federal pay increase" means an adjustment (if an increase) in the rates of pay under the General Schedule under subchapter III of chapter 53 of title 5.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 528, Sec. 4331; amended Pub. L. 101–366, title II, Sec. 205(b), Aug. 15, 1990, 104 Stat. 441; renumbered Sec. 7631 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(e)(10), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 107–135, title I, Secs. 101(f), (g), 102(d)(1), Jan. 23, 2002, 115 Stat. 2448, 2449.)

§ 7632. Annual report

Not later than March 1 of each year, the Secretary shall submit to Congress a report on the Educational Assistance Program. Each such report shall include the following information:

(1) The number of students receiving educational assistance under the Educational Assistance Program, showing the numbers of students receiving assistance under the Scholarship Program, the Tuition Reimbursement Program, the Employee Incentive Scholarship Program, and the Education Debt

Reduction Program separately, and the number of students (if any) enrolled in each type of health profession training under each program.

(2) The education institutions (if any) providing such training to students in each program.

(3) The number of applications filed under each program, by health profession category, during the school year beginning in such year and the total number of such applications so filed for all years in which the Educational Assistance Program (or predecessor program) has been in existence.

(4) The average amounts of educational assistance provided per participant in the Scholarship Program, per participant in the Tuition Reimbursement Program, per participant in the Employee Incentive Scholarship Program, and per participant in the Education Debt Reduction Program.

(5) The amount of tuition and other expenses paid, by health profession category, in the aggregate and at each educational institution for the school year beginning in such year and for prior school years.

(6) The number of scholarships accepted, by health profession category, during the school year beginning in such year and the number, by health profession category, which were offered and not accepted.

(7) The number of participants who complete a course or course of training in each program each year and for all years that such program (or predecessor program) has been in existence.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 528, Sec. 4332; renumbered Sec. 7632, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105–368, title VIII, Sec. 805(5), Nov. 11, 1998, 112 Stat. 3359.)

§ 7633. Regulations

The Secretary shall prescribe regulations to carry out the Educational Assistance Program.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 529, Sec. 4333; renumbered Sec. 7633, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 7634. Breach of agreement; waiver of liability

(a) An obligation under the Educational Assistance Program (or an agreement under the program) of a participant in the Educational Assistance Program for performance of services or payment of damages is canceled upon the death of the participant.

(b) The Secretary shall prescribe regulations providing for the waiver or suspension of any obligation of a participant for service or payment under the Educational Assistance Program (or an agreement under the program) whenever noncompliance by the participant is due to circumstances beyond the control of the participant or whenever the Secretary determines that the waiver or suspension of compliance is in the best interest of the United States.

(c) An obligation of a participant under the Educational Assistance Program (or an agreement thereunder) for payment of damages may not be released by a discharge in bankruptcy under title

11 before the expiration of the five-year period beginning on the first date the payment of such damages is due.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 529, Sec. 4334; renumbered Sec. 7634, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 7635. Service in other agencies

(a) The Secretary, with the consent of the participant or individual involved and the consent of the head of the department or agency involved, may permit—

(1) a period of obligated service required under this chapter to be performed in the Veterans Health Administration to be performed in another Federal department or agency or in the Armed Forces in lieu of performance of such service in the Veterans Health Administration; and

(2) a period of obligated service required to be performed in another Federal department or agency or in the Armed Forces under another Federal health personnel educational assistance program to be performed in the Veterans Health Administration.

(b) This section shall be carried out in cooperation with the heads of other appropriate departments and agencies.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 529, Sec. 4335; renumbered Sec. 7635, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–446, title XII, Sec. 1201(b)(1), Nov. 2, 1994, 108 Stat. 4682.)

§ 7636. Exemption of educational assistance payments from taxation

Notwithstanding any other law, any payment to, or on behalf of a participant in the Educational Assistance Program, for tuition, education expenses, a stipend, or education debt reduction under this chapter shall be exempt from taxation.

(Added Pub. L. 100–322, title II, Sec. 216(b), May 20, 1988, 102 Stat. 529, Sec. 4336; renumbered Sec. 7636, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title VIII, Sec. 805(6), Nov. 11, 1998, 112 Stat. 3359.)

SUBCHAPTER V—STIPEND PROGRAM FOR MEMBERS OF THE SELECTED RESERVE

§ 7651. Authority for program

(a) As part of the Educational Assistance Program, the Secretary of Veterans Affairs may select qualified individuals to receive assistance under this subchapter.

(b) To be eligible to receive assistance under this subchapter, an individual must be accepted for enrollment or be enrolled as a full-time student at a qualifying educational institution in a course of education or training that is approved by the Secretary and that leads toward completion of a degree in a health profession involving direct patient care or care incident to direct patient care.

(Added Pub. L. 101–366, title II, Sec. 205(a)(1), Aug. 15, 1990, 104 Stat. 439, Sec. 4351; renumbered Sec. 7651, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

§ 7652. Eligibility: individuals entitled to benefits under the GI Bill program for members of the Selected Reserve

The Secretary of Veterans Affairs may not approve an application under section 7603 of this title of an individual applying to receive assistance under this subchapter unless—

(1) the individual is entitled to benefits under chapter 106 of title 10; and

(2) the score of the individual on the Armed Forces Qualification Test was above the 50th percentile.

(Added Pub. L. 101–366, title II, Sec. 205(a)(1), Aug. 15, 1990, 104 Stat. 440, Sec. 4352; renumbered Sec. 7652 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

§ 7653. Amount of assistance

The Secretary may pay to a person selected to receive assistance under this subchapter the amount of $400 (adjusted in accordance with section 7631 of this title) for each month of the person's enrollment in a program of education or training covered by the agreement of the person entered into under section 7603 of this title. Payment of such benefits for any period shall be coordinated with any payment of benefits for the same period under chapter 106 of title 10.

(Added Pub. L. 101–366, title II, Sec. 205(a)(1), Aug. 15, 1990, 104 Stat. 440, Sec. 4353; renumbered Sec. 7653 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

§ 7654. Obligated service

A person receiving assistance under this subchapter shall provide service in the full-time clinical practice of the person's profession as a full-time employee of the Department for the period of obligated service provided in the agreement of such person entered into under section 7603 of this title.

(Added Pub. L. 101–366, title II, Sec. 205(a)(1), Aug. 15, 1990, 104 Stat. 440, Sec. 4354; renumbered Sec. 7654 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

§ 7655. Breach of agreement; liability

(a)(1) Subject to paragraph (2), an individual who is receiving or has received a reserve member stipend under this subchapter and who fails to perform the service for which the individual is obligated under section 7654 of this title shall be liable to the United States in an amount determined in accordance with section 7617(c)(1) of this title.

(2) An individual who, as a result of performing active duty (including active duty for training), is unable to perform the service for which the individual is obligated under section 7654 of this title shall be permitted to perform that service upon completion of the active duty service (or active duty for training). The Secretary may, by regulation, waive the requirement for the performance of the service for which the individual is obligated under section 7654 of this title in any case in which the Secretary determines that the individual is unable to perform the service for reasons beyond the

control of the individual or in any case in which the waiver would be in the best interest of the individual and the United States.

(b) Any amount owed the United States under subsection (a) of this section shall be paid to the United States during the one-year period beginning on the date of the breach of the agreement.

(Added Pub. L. 101–366, title II, Sec. 205(a)(1), Aug. 15, 1990, 104 Stat. 440, Sec. 4355; renumbered Sec. 7655 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

SUBCHAPTER VI—EMPLOYEE INCENTIVE SCHOLARSHIP PROGRAM

§ 7671. Authority for program

As part of the Educational Assistance Program, the Secretary may carry out a scholarship program under this subchapter. The program shall be known as the Department of Veterans Affairs Employee Incentive Scholarship Program (hereinafter in this subchapter referred to as the "Program"). The purpose of the Program is to assist, through the establishment of an incentive program for individuals employed in the Veterans Health Administration, in meeting the staffing needs of the Veterans Health Administration for health professional occupations for which recruitment or retention of qualified personnel is difficult.

(Added Pub. L. 105–368, title VIII, Sec. 802(a), Nov. 11, 1998, 112 Stat. 3352; amended Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

§ 7672. Eligibility; agreement

(a) ELIGIBILITY.—To be eligible to participate in the Program, an individual must be an eligible Department employee who is accepted for enrollment or enrolled (as described in section 7602 of this title) as a full-time or part-time student in a field of education or training described in subsection (c).

(b) ELIGIBLE DEPARTMENT EMPLOYEES.—For purposes of subsection (a), an eligible Department employee is any employee of the Department who, as of the date on which the employee submits an application for participation in the Program, has been continuously employed by the Department for not less than one year.

(c) QUALIFYING FIELDS OF EDUCATION OR TRAINING.—A scholarship may be awarded under the Program only for education and training in a field leading to appointment or retention in a position under section 7401 of this title.

(d) AWARD OF SCHOLARSHIPS.—Notwithstanding section 7603(d) of this title, the Secretary, in selecting participants in the Program, may award a scholarship only to applicants who have a record of employment with the Veterans Health Administration which, in the judgment of the Secretary, demonstrates a high likelihood that the applicant will be successful in completing such education or training and in employment in such field.

(e) AGREEMENT.—(1) An agreement between the Secretary and a participant in the Program shall (in addition to the requirements set forth in section 7604 of this title) include the following:

(A) The Secretary's agreement to provide the participant with a scholarship under the Program for a specified number (from one to three) of school years during which the participant

pursues a course of education or training described in subsection (c) that meets the requirements set forth in section 7602(a) of this title.

(B) The participant's agreement to serve as a full-time employee in the Veterans Health Administration for a period of time (hereinafter in this subchapter referred to as the "period of obligated service") determined in accordance with regulations prescribed by the Secretary of up to three calendar years for each school year or part thereof for which the participant was provided a scholarship under the Program, but for not less than 3 years.

(C) The participant's agreement to serve under subparagraph (B) in a Department facility selected by the Secretary.

(2) In a case in which an extension is granted under section 7673(c)(2) of this title, the number of years for which a scholarship may be provided under the Program shall be the number of school years provided for as a result of the extension.

(3) In the case of a participant who is a part-time student, the period of obligated service shall be reduced in accordance with the proportion that the number of credit hours carried by such participant in any such school year bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant, but in no event to less than 1 year.

(Added Pub. L. 105–368, title VIII, Sec. 802(a), Nov. 11, 1998, 112 Stat. 3352; amended Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35; Pub. L. 107–135, title I, Sec. 101(b), Jan. 23, 2002, 115 Stat. 2447.)

§ 7673. Scholarship

(a) SCHOLARSHIP.—A scholarship provided to a participant in the Program for a school year shall consist of payment of the tuition (or such portion of the tuition as may be provided under subsection (b)) of the participant for that school year and payment of other reasonable educational expenses (including fees, books, and laboratory expenses) for that school year.

(b) AMOUNTS.—The total amount of the scholarship payable under subsection (a)—

(1) in the case of a participant in the Program who is a full-time student, may not exceed $10,000 for the equivalent of one year of full-time coursework; and

(2) in the case of a participant in the Program who is a part-time student, shall bear the same ratio to the amount that would be paid under paragraph (1) if the participant were a full-time student in the course of education or training being pursued by the participant as the coursework carried by the participant to full-time coursework in that course of education or training.

(c) LIMITATIONS ON PERIOD OF PAYMENT.—(1) The maximum number of school years for which a scholarship may be paid under subsection (a) to a participant in the Program shall be six school years.

(2) A participant in the Program may not receive a scholarship under subsection (a) for more than the equivalent of three years of full-time coursework.

(d) PAYMENT OF EDUCATIONAL EXPENSES BY EDUCATIONAL INSTITUTIONS.—The Secretary may arrange with an educational institution in which a participant in the Program is enrolled for the payment of the educational expenses described in subsection (a). Such payments may be made without regard to subsections (a) and (b) of section 3324 of title 31.

(e) FULL-TIME COURSEWORK.—For purposes of this section, full-time coursework shall consist of the following:

(1) In the case of undergraduate coursework, 30 semester hours per undergraduate school year.

(2) In the case of graduate coursework, 18 semester hours per graduate school year.

(Added Pub. L. 105–368, title VIII, Sec. 802(a), Nov. 11, 1998, 112 Stat. 3353; amended Pub. L. 107–135, title I, Sec. 101(c)–(e), Jan. 23, 2002, 115 Stat. 2447, 2448.)

§ 7674. Obligated service

(a) IN GENERAL.—Each participant in the Program shall provide service as a full-time employee of the Department for the period of obligated service provided in the agreement of the participant entered into under section 7603 of this title. Such service shall be provided in the full-time clinical practice of such participant's profession or in another health-care position in an assignment or location determined by the Secretary.

(b) DETERMINATION OF SERVICE COMMENCEMENT DATE.—(1) Not later than 60 days before a participant's service commencement date, the Secretary shall notify the participant of that service commencement date. That date is the date for the beginning of the participant's period of obligated service.

(2) As soon as possible after a participant's service commencement date, the Secretary shall—

(A) in the case of a participant who is not a full-time employee in the Veterans Health Administration, appoint the participant as such an employee; and

(B) in the case of a participant who is an employee in the Veterans Health Administration but is not serving in a position for which the participant's course of education or training prepared the participant, assign the participant to such a position.

(3)(A) In the case of a participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, the participant's service commencement date is the date upon which the participant becomes licensed to practice medicine, osteopathy, dentistry, optometry, or podiatry, as the case may be, in a State.

(B) In the case of a participant receiving a degree from a school of nursing, the participant's service commencement date is the later of—

(i) the participant's course completion date; or

(ii) the date upon which the participant becomes licensed as a registered nurse in a State.

(C) In the case of a participant not covered by subparagraph (A) or (B), the participant's service commencement date is the later of—

(i) the participant's course completion date; or

(ii) the date the participant meets any applicable licensure or certification requirements.

(4) The Secretary shall by regulation prescribe the service commencement date for participants who were part-time students. Such regulations shall prescribe terms as similar as practicable to the terms set forth in paragraph (3).

(c) COMMENCEMENT OF OBLIGATED SERVICE.—(1) Except as provided in paragraph (2), a participant in the Program shall be considered to have begun serving the participant's period of obligated service—

(A) on the date, after the participant's course completion date, on which the participant (in accordance with subsection (b)) is appointed as a full-time employee in the Veterans Health Administration; or

(B) if the participant is a full-time employee in the Veterans Health Administration on such course completion date, on the date thereafter on which the participant is assigned to a position for which the participant's course of training prepared the participant.

(2) A participant in the Program who on the participant's course completion date is a full-time employee in the Veterans Health Administration serving in a capacity for which the participant's course of training prepared the participant shall be considered to have begun serving the participant's period of obligated service on such course completion date.

(d) COURSE COMPLETION DATE DEFINED.—In this section, the term "course completion date" means the date on which a participant in the Program completes the participant's course of education or training under the Program.

(Added Pub. L. 105–368, title VIII, Sec. 802(a), Nov. 11, 1998, 112 Stat. 3354.)

§ 7675. Breach of agreement: liability

(a) LIQUIDATED DAMAGES.—A participant in the Program (other than a participant described in subsection (b)) who fails to accept payment, or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the agreement entered into under section 7603 of this title shall be liable to the United States for liquidated damages in the amount of $1,500. Such liability is in addition to any period of obligated service or other obligation or liability under the agreement.

(b) LIABILITY DURING COURSE OF EDUCATION OR TRAINING.—(1) Except as provided in subsection (d), a participant in the Program shall be liable to the United States for the amount which has been paid to or on behalf of the participant under the agreement if any of the following occurs:

(A) The participant fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled (as determined by the educational institution under regulations prescribed by the Secretary).

(B) The participant is dismissed from such educational institution for disciplinary reasons.

(C) The participant voluntarily terminates the course of education or training in such educational institution before the completion of such course of education or training.

(D) The participant fails to become licensed to practice medicine, osteopathy, dentistry, podiatry, or optometry in a State, fails to become licensed as a registered nurse in a State, or fails to meet any applicable licensure requirement in the case of any other health-care personnel who provide either direct patient-care services or services incident to direct patient-care services, during a period of time determined under regulations prescribed by the Secretary.

(E) In the case of a participant who is a part-time student, the participant fails to maintain employment, while enrolled in the course of training being pursued by the participant, as a Department employee.

(2) Liability under this subsection is in lieu of any service obligation arising under a participant's agreement.

(c) LIABILITY DURING PERIOD OF OBLIGATED SERVICE.—(1) Except as provided in subsection (d), if a participant in the Program breaches the agreement by failing for any reason to complete such participant's period of obligated service, the United States shall be entitled to recover from the participant an amount determined in accordance with the following formula: $A=3\Phi(t-s/t)$

(2) In such formula:

(A) "A" is the amount the United States is entitled to recover.

(B) "Φ" is the sum of—

(i) the amounts paid under this subchapter to or on behalf of the participant; and

(ii) the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(C) "t" is the total number of months in the participant's period of obligated service, including any additional period of obligated service in accordance with section 7673(c)(2) of this title.

(D) "s" is the number of months of such period served by the participant in accordance with section 7673 of this title.

(d) LIMITATION ON LIABILITY FOR REDUCTIONS-IN-FORCE.—Liability shall not arise under subsection (b)(1)(E) or (c) in the case of a participant otherwise covered by the subsection concerned if the participant fails to maintain employment as a Department employee due to a staffing adjustment.

(e) PERIOD FOR PAYMENT OF DAMAGES.—Any amount of damages which the United States is entitled to recover under this section shall be paid to the United States within the 1-year period beginning on the date of the breach of the agreement.

(Added Pub. L. 105–368, title VIII, Sec. 802(a), Nov. 11, 1998, 112 Stat. 3355.)

[§ 7676. Repealed. Pub. L. 107–135, title I, Sec. 101(a)(1), Jan. 23, 2002, 115 Stat. 2447]

SUBCHAPTER VII—EDUCATION DEBT REDUCTION PROGRAM

§ 7681. Authority for program

(a) IN GENERAL.—(1) As part of the Educational Assistance Program, the Secretary may carry out an education debt reduction program under this subchapter. The program shall be known as the Department of Veterans Affairs Education Debt Reduction Program (hereinafter in this subchapter referred to as the "Education Debt Reduction Program").

(2) The purpose of the Education Debt Reduction Program is to assist in the recruitment of qualified health care professionals for positions in the Veterans Health Administration for which recruitment or retention of an adequate supply of qualified personnel is difficult.

(b) RELATIONSHIP TO EDUCATIONAL ASSISTANCE PROGRAM.—Education debt reduction payments under the Education Debt Reduction Program may be in addition to other assistance available to individuals under the Educational Assistance Program.

(Added Pub. L. 105–368, title VIII, Sec. 803(a), Nov. 11, 1998, 112 Stat. 3357; amended Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

§ 7682. Eligibility

(a) ELIGIBILITY.—An individual is eligible to participate in the Education Debt Reduction Program if the individual—

(1) is a recently appointed employee in the Veterans Health Administration serving in a position (as determined by the Secretary) providing direct-patient care services or services incident to direct-patient care services for which recruitment or retention of qualified health-care personnel (as so determined) is difficult; and

(2) owes any amount of principal or interest under a loan, the proceeds of which were used by or on behalf of that individual to pay costs relating to a course of education or training which led to a degree that qualified the individual for the position referred to in paragraph (1).

(b) COVERED COSTS.—For purposes of subsection (a)(2), costs relating to a course of education or training include—

(1) tuition expenses;

(2) all other reasonable educational expenses, including expenses for fees, books, and laboratory expenses; and

(3) reasonable living expenses.

(c) RECENTLY APPOINTED INDIVIDUALS.—For purposes of subsection (a), an individual shall be considered to be recently appointed to a position if the individual has held that position for less than 6 months.

(Added Pub. L. 105–368, title VIII, Sec. 803(a), Nov. 11, 1998, 112 Stat. 3357; amended Pub. L. 107–135, title I, Sec. 102(b), Jan. 23, 2002, 115 Stat. 2448.)

§ 7683. Education debt reduction

(a) IN GENERAL.—Education debt reduction payments under the Education Debt Reduction Program shall consist of payments to individuals selected to participate in the program of amounts to reimburse such individuals for payments by such individuals of principal and interest on loans described in section 7682(a)(2) of this title.

(b) FREQUENCY OF PAYMENT.—(1) The Secretary may make education debt reduction payments to any given participant in the Education Debt Reduction Program on a monthly or annual basis, as determined by the Secretary.

(2) The Secretary shall make such payments at the end of the period determined by the Secretary under paragraph (1).

(c) PERFORMANCE REQUIREMENT.—The Secretary may make education debt reduction payments to a participant in the Education Debt Reduction Program for a period only if the Secretary determines that the individual maintained an acceptable level of performance in the position or positions served by the participant during the period.

(d) MAXIMUM ANNUAL AMOUNT.—(1) Subject to paragraph (2), the amount of education debt reduction payments made to a participant under the Education Debt Reduction Program may not exceed $44,000 over a total of five years of participation in the Program, of which not more than $10,000 of such payments may be made in each of the fourth and fifth years of participation in the Program.

(2) The total amount payable to a participant in such Program for any year may not exceed the amount of the principal and interest on loans referred to in subsection (a) that is paid by the individual during such year.

(Added Pub. L. 105–368, title VIII, Sec. 803(a), Nov. 11, 1998, 112 Stat. 3357; amended Pub. L. 107–135, title I, Sec. 102(c), Jan. 23, 2002, 115 Stat. 2448.)

[§ 7684. Repealed. Pub. L. 107–135, title I, Sec. 102(a)(1), Jan. 23, 2002, 115 Stat. 2448]

Chapter 77 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART V—BOARDS, ADMINISTRATIONS, AND SERVICES]

CHAPTER 77—VETERANS BENEFITS ADMINISTRATION

SUBCHAPTER I—ORGANIZATION; GENERAL

Sec.
7701. Organization of the Administration.
7703. Functions of the Administration.

SUBCHAPTER II—QUALITY ASSURANCE

7731. Establishment.
7732. Functions.
7732A. Employee certification.
7733. Personnel.
7734. Annual report to Congress.

SUBCHAPTER I—ORGANIZATION; GENERAL

§ 7701. Organization of the Administration

(a) There is in the Department of Veterans Affairs a Veterans Benefits Administration. The primary function of the Veterans Benefits Administration is the administration of nonmedical benefits programs of the Department which provide assistance to veterans and their dependents and survivors.

(b) The Veterans Benefits Administration is under the Under Secretary for Benefits, who is directly responsible to the Secretary for the operations of the Administration. The Under Secretary for Benefits may be referred to as the Chief Benefits Director.

(Added Pub. L. 102–83, Sec. 2(b), Aug. 6, 1991, 105 Stat. 399; amended Pub. L. 102–405, title III, Sec. 302(c)(1), (3), Oct. 9, 1992, 106 Stat. 1984.)

§ 7703. Functions of the Administration

The Veterans Benefits Administration is responsible for the administration of the following programs of the Department:

(1) Compensation and pension programs.

(2) Vocational rehabilitation and educational assistance programs.

(3) Veterans' housing loan programs.

(4) Veterans' and servicemembers' life insurance programs.

(5) Outreach programs and other veterans' services programs.

(Added Pub. L. 102–83, Sec. 2(b), Aug. 6, 1991, 105 Stat. 399.)

SUBCHAPTER II—QUALITY ASSURANCE

§ 7731. Establishment

(a) The Secretary shall carry out a quality assurance program in the Veterans Benefits Administration. The program may be carried out through a single quality assurance division in the Administration or through separate quality assurance entities for each of the principal organizational elements (known as "services") of the Administration.

(b) The Secretary shall ensure that any quality assurance entity established and operated under subsection (a) is established and operated so as to meet generally applicable governmental standards for independence and internal controls for the performance of quality reviews of Government performance and results.

(c)(1) The Secretary shall enter into a contract with an independent third-party entity to conduct, during the three-year period beginning on the date of the enactment of the Veterans' Benefits Improvement Act of 2008, an assessment of the quality assurance program carried out under subsection (a).

(2) The assessment conducted under paragraph (1) shall evaluate the following:

(A) The quality and accuracy of the work of employees of the Veterans Benefits Administration, using a statistically valid sample of such employees and a statistically valid sample of such work.

(B) The performance of each regional office of the Veterans Benefits Administration.

(C) The accuracy of the disability ratings assigned under the schedule for rating disabilities under section 1155 of this title.

(D) The consistency of disability ratings among regional offices of the Veterans Benefits Administration, based on a sample of specific disabilities.

(E) The performance of employees and managers of the Veterans Benefits Administration.

(3) The Secretary shall develop a mechanism for the automated gathering and producing of data that can be used to monitor and assess trends relating to the items described in paragraph (2).

(4)(A) Beginning on the date that is six months after the date of the enactment of the Veterans' Benefits Improvement Act of 2008, the Secretary shall—

(i) for each claim for disability compensation under laws administered by the Secretary submitted to the Secretary on or after such date, retain, monitor, and store in an accessible format the data described in subparagraph (B); and

(ii) develop a demographic baseline for the data retained, monitored, and stored under subparagraph (A).

(B) The data described in this subparagraph includes the following:

(i) For each claim for disability compensation under laws administered by the Secretary submitted by a claimant—

(I) the State in which the claimant resided when the claim was submitted;

(II) the decision of the Secretary with respect to the claim and each issue claimed; and

(III) the regional office and individual employee of the Department responsible for rating the claim.

(ii) The State in which the claimant currently resides.

(iii) Such other data as the Secretary determines is appropriate for monitoring the accuracy and consistency of decisions with respect to such claims.

(5) Nothing in this subsection shall be construed to require the Secretary to replace the quality assurance program under subsection (a) that was in effect on the day before the date of the enactment of this subsection.

(Added Pub. L. 106–117, Sec. 801(a)(1), Nov. 30, 1999, 113 Stat. 1585; amended Pub. L. 110–389, title II, Sec. 224(a), Oct. 10, 2008, 122 Stat. 4157.)

§ 7732. Functions

The Under Secretary for Benefits, acting through the quality assurance entities established under section 7731(a), shall on an ongoing basis perform and oversee quality reviews of the functions of each of the principal organizational elements of the Veterans Benefits Administration.

(Added Pub. L. 106–117, Sec. 801(a)(1), Nov. 30, 1999, 113 Stat. 1585.)

§ 7732A. Employee certification

(a) DEVELOPMENT OF CERTIFICATION EXAMINATION.—(1) The Secretary shall provide for an examination of appropriate employees and managers of the Veterans Benefits Administration who are responsible for processing claims for compensation and pension benefits under the laws administered by the Secretary.

(2) In developing the examination required by paragraph (1), the Secretary shall—

(A) consult with appropriate individuals or entities, including examination development experts, interested stakeholders, and employee representatives; and

(B) consider the data gathered and produced under section 7731(c)(3) of this title.

(b) EMPLOYEE AND MANAGER REQUIREMENT.—The Secretary shall require appropriate employees and managers of the Veterans Benefits Administration who are responsible for processing claims for compensation and pension benefits under the laws administered by the Secretary to take the examination provided under subsection (a).

(Added Pub. L. 110–389, title II, Sec. 225(a)(1), Oct. 10, 2008, 122 Stat. 4158.)

§ 7733. Personnel

The Secretary shall ensure that the number of full-time employees of the Veterans Benefits Administration assigned to quality assurance functions under this subchapter is adequate to perform the quality assurance functions for which they have responsibility.

(Added Pub. L. 106–117, Sec. 801(a)(1), Nov. 30, 1999, 113 Stat. 1585.)

§ 7734. Annual report to Congress

The Secretary shall include in the annual report to the Congress required by section 529 of this title a report on the quality assurance activities carried out under this subchapter. Each such report shall include—

(1) an appraisal of the quality of services provided by the Veterans Benefits Administration, including—

(A) the number of decisions reviewed;

(B) a summary of the findings on the decisions reviewed;

(C) the number of full-time equivalent employees assigned to quality assurance in each division or entity;

(D) specific documentation of compliance with the standards for independence and internal control required by section 7731(b) of this title; and

(E) actions taken to improve the quality of services provided and the results obtained;

(2) information with respect to the accuracy of decisions, including trends in that information; and

(3) such other information as the Secretary considers appropriate.

(Added Pub. L. 106–117, Sec. 801(a)(1), Nov. 30, 1999, 113 Stat. 1585.)

Chapter 78 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART V—BOARDS, ADMINISTRATIONS, AND SERVICES]

CHAPTER 78—VETERANS' CANTEEN SERVICE

Sec.
7801. Purpose of Veterans' Canteen Service.
7802. Duties of Secretary with respect to Service.
7803. Operation of Service.
7804. Financing of Service.
7805. Revolving fund.
7806. Budget of Service.
7807. Audit of accounts.
7808. Service to be independent unit.
7809. Child-care centers.
7810. Exemption from personnel ceilings.

§ 7801. Purpose of Veterans' Canteen Service

The Veterans' Canteen Service (hereinafter in this chapter referred to as the "Service") in the Department is an instrumentality of the United States, created for the primary purpose of making available to veterans of the Armed Forces who are hospitalized or domiciled in hospitals and homes of the Department, at reasonable prices, articles of merchandise and services essential to their comfort and well-being.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1248, Sec. 4201; renumbered Sec. 7801 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35.)

§ 7802. Duties of Secretary with respect to Service

(a) LOCATIONS FOR CANTEENS.—The Secretary shall establish, maintain, and operate canteens where deemed necessary and practicable at hospitals and homes of the Department and at other Department establishments where similar essential facilities are not reasonably available from outside commercial sources.

(b) WAREHOUSES AND STORAGE DEPOTS.—The Secretary shall establish, maintain, and operate such warehouses and storage depots as may be necessary in operating the canteens.

(c) SPACE, BUILDINGS, AND STRUCTURES.—The Secretary shall furnish the Service for its use in connection with the establishment, maintenance, and operation thereof, such space, buildings, and structures under control of the Department as the Secretary may consider necessary, including normal maintenance and repair service thereon. Reasonable charges, to be determined by the Secretary, shall be paid annually by the Service for the space, buildings, and structures so furnished, except that the Secretary may reduce or waive such charges whenever payment of such charges would impair the working capital required by the Service.

(d) EQUIPMENT, SERVICES, AND UTILITIES.—The Secretary shall transfer to the Service without charge, rental, or reimbursement such necessary equipment as may not be needed for other purposes, and furnish the Service such services and utilities, including light, water, and heat, as may be available and necessary for its use. Reasonable charges, to be determined by the Secretary, shall be paid annually by the Service for the utilities so furnished.

(e) PERSONNEL.—The Secretary shall employ such persons as are necessary for the establishment, maintenance, and operation of the Service, and pay the salaries, wages, and expenses of all such employees from the funds of the Service. Personnel necessary for the transaction of the business of the Service at canteens, warehouses, and storage depots shall be appointed, compensated from funds of the Service, and removed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5. Those employees are subject to the provisions of title 5 relating to a preference eligible described in section 2108(3) of title 5, subchapter I of chapter 81 of title 5, and subchapter III of chapter 83 of title 5. An employee appointed under this section may be considered for appointment to a Department position in the competitive service in the same manner that a Department employee in the competitive service is considered for transfer to such position. An employee of the Service who is appointed to a Department position in the competitive service under the authority of the preceding sentence may count toward the time-in-service requirement for a career appointment in such position any previous period of employment in the Service.

(f) CONTRACTS AND AGREEMENTS.—The Secretary shall make all necessary contracts or agreements to purchase or sell merchandise, fixtures, equipment, supplies, and services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) and to do all things necessary to carry out such contracts or agreements, including the making of necessary adjustments and compromising of claims in connection therewith.

(g) PRICES.—The Secretary shall fix the prices of merchandise and services in canteens so as to carry out the purposes of this chapter.

(h) GIFTS AND DONATIONS.—The Secretary may accept gifts and donations of merchandise, fixtures, equipment, and supplies for the use and benefit of the Service.

(i) RULES AND REGULATIONS.—The Secretary shall make such rules and regulations, not inconsistent with the provisions of this chapter, as the Secretary considers necessary or appropriate to effectuate its purposes.

(j) DELEGATION.—The Secretary may delegate such duties and powers to employees as the Secretary considers necessary or appropriate, whose official acts performed within the scope of the delegated authority shall have the same force and effect as though performed by the Secretary.

(k) AUTHORITY TO CASH CHECKS, ETC.—The Secretary may authorize the use of funds of the Service when available, subject to such regulations as the Secretary may deem appropriate, for the purpose of cashing checks, money orders, and similar instruments

in nominal amounts for the payment of money presented by veterans hospitalized or domiciled at hospitals and homes of the Department, and by other persons authorized by section 7803 of this title to make purchases at canteens. Such checks, money orders, and other similar instruments may be cashed outright or may be accepted, subject to strict administrative controls, in payment for merchandise or services, and the difference between the amount of the purchase and the amount of the tendered instrument refunded in cash.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1248, Sec. 4202; Pub. L. 86–109, Sec. 1, July 28, 1959, 73 Stat. 258; Pub. L. 94–581, title II, Sec. 210(d), Oct. 21, 1976, 90 Stat. 2864; Pub. L. 97–295, Sec. 4(88), Oct. 12, 1982, 96 Stat. 1312; Pub. L. 99–576, title VII, Sec. 702(13), Oct. 28, 1986, 100 Stat. 3302; renumbered Sec. 7802 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(e)(7), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 108–170, title III, Sec. 304, Dec. 6, 2003, 117 Stat. 2058.)

§ 7803. Operation of Service

(a) PRIMARY BENEFICIARIES.—Canteens operated by the Service shall be primarily for the use and benefit of—

(1) veterans hospitalized or domiciled at the facilities at which canteen services are provided; and

(2) other veterans who are enrolled under section 1705 of this title.

(b) OTHER AUTHORIZED USERS.—Service at such canteens may also be furnished to—

(1) personnel of the Department and recognized veterans' organizations who are employed at a facility at which canteen services are provided and to other persons so employed;

(2) the families of persons referred to in paragraph (1) who reside at the facility; and

(3) relatives and other persons while visiting a person specified in this section.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1249, Sec. 4203; renumbered Sec. 7803 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 106–117, title III, Sec. 302, Nov. 30, 1999, 113 Stat. 1572; Pub. L. 108–422, title VI, Sec. 603, Nov. 30, 2004, 118 Stat. 2397.)

§ 7804. Financing of Service

To finance the establishment, maintenance, and operation of the Service there is hereby authorized to be appropriated, from time to time, such amounts as are necessary to provide for (1) the acquisition of necessary furniture, furnishings, fixtures, and equipment for the establishment, maintenance, and operation of canteens, warehouses, and storage depots; (2) stocks of merchandise and supplies for canteens and reserve stocks of same in warehouses and storage depots; (3) salaries, wages, and expenses of all employees; (4) administrative and operation expenses; and (5) adequate working capital for each canteen and for the Service as a whole. Amounts appropriated under the authority contained in this chapter and all income from canteen operations become and will be administered as a revolving fund to effectuate the provisions of this chapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1250, Sec. 4204; Pub. L. 92–310, title II, Sec. 209, June 6, 1972, 86 Stat. 204; Pub. L. 99–576, title VII, Sec. 702(14), Oct. 28, 1986, 100 Stat. 3302; renumbered Sec. 7804 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), May 7, 1991, 105 Stat. 238.)

§ 7805. Revolving fund

The revolving fund shall be deposited in a checking account with the Treasury of the United States. Such amounts thereof as the Secretary may determine to be necessary to establish and maintain operating accounts for the various canteens may be deposited in checking accounts or other interest-bearing accounts in other depositaries selected by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1250, Sec. 4205; Pub. L. 100–322, title IV, Sec. 414(a)(1), May 20, 1988, 102 Stat. 549; renumbered Sec. 7805 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 7806. Budget of Service

The Service shall prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31, which shall contain an estimate of the needs of the Service for the ensuing fiscal year including an estimate of the amount required to restore any impairment of the revolving fund resulting from operations of the current fiscal year.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1250, Sec. 4206; Pub. L. 97–258, Sec. 3(k)(8), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 100–322, title IV, Sec. 414(a)(2), May 20, 1988, 102 Stat. 549; renumbered Sec. 7806 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), May 7, 1991, 105 Stat. 238.)

§ 7807. Audit of accounts

The Service shall maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of chapter 35 of title 31.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1250, Sec. 4207; Pub. L. 93–604, title VII, Sec. 704, Jan. 2, 1975, 88 Stat. 1964; Pub. L. 97–295, Sec. 4(89), Oct. 12, 1982, 96 Stat. 1312; Pub. L. 97–452, Sec. 2(e)(3), Jan. 12, 1983, 96 Stat. 2479; renumbered Sec. 7807 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), May 7, 1991, 105 Stat. 238.)

§ 7808. Service to be independent unit

It is the purpose of this chapter that, under control and supervision of the Secretary, the Service shall function as an independent unit in the Department and shall have exclusive control over all its activities including sales, procurement and supply, finance, including disbursements, and personnel management, except as otherwise provided in this chapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1250, Sec. 4208; Pub. L. 97–295, Sec. 4(90), Oct. 12, 1982, 96 Stat. 1312; renumbered Sec. 7808 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 7809. Child-care centers

(a)(1) The Secretary, through the Service, shall provide for the operation of child-care centers at Department facilities in accordance with this section. The operation of such centers shall be carried out to the extent that the Secretary determines, based on the

demand for the care involved, that such operation is in the best interest of the Department and that is practicable to do so. The centers shall be available for the children of Department employees and, to the extent space is available, the children of other employees of the Federal Government and the children of employees of affiliated schools and corporations created under section 7361 of this title.

(2) There shall be in the Service an official who is responsible for all matters relating to the provision of child-care services under the authority of this section.

(b) The Service shall establish reasonable charges for child-care services provided at each child-care center operated under this section. The charges shall be subject to the approval of the Secretary. In the case of a center operated directly by the Service, the charges with respect to the center shall be sufficient to provide for the operating expenses of the center, including the expenses of personnel assigned to the center. In the case of a center operated by a contractor which is a for-profit entity, the charges shall be established by taking into consideration the value of the space and services furnished with respect to the center under subsection (c)(1) of this section.

(c) In connection with the establishment and operation of any child-care center under this section, the Secretary—

(1) shall furnish, at no cost to the center, space in existing Department facilities and utilities, custodial services, and other services and amenities necessary (as determined by the Secretary) for the health and safety of the children provided care at the center;

(2) may, on a reimbursable basis, convert space furnished under clause (1) of this subsection for use as the child-care center and provide other items necessary for the operation of the center, including furniture, office machines and equipment, and telephone service, except that the Secretary may furnish basic telephone service and surplus furniture and equipment without reimbursement;

(3) shall provide for the participation (directly or through a parent advisory committee) of parents of children receiving care in the center in the establishment of policies to govern the operation of the center and in the oversight of the implementation of such policies;

(4) shall require the development and use of a process for determining the fitness and suitability of prospective employees of or volunteers at the center; and

(5) shall require in connection with the operation of the center compliance with all State and local laws, ordinances, and regulations relating to health and safety and the operation of child-care centers.

(d) The Secretary shall prescribe regulations to carry out this section.

(e) For the purpose of this section, the term "parent advisory committee" means a committee comprised of, and selected by, the parents of children receiving care in a child-care center operated under this section.

(Added Pub. L. 100–322, title IV, Sec. 412(a), May 20, 1988, 102 Stat. 547, Sec. 4209; renumbered Sec. 7809 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(e)(8), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 7810. Exemption from personnel ceilings

Persons who are employed by the Service and compensated from the revolving fund established by section 7804 of this title may not be considered to be employees of the Department for the purposes of any personnel ceiling which may otherwise be applied to employees of the Department by the President or an official of the executive branch.

(Added Pub. L. 100–322, title IV, Sec. 414(b)(1), May 20, 1988, 102 Stat. 549, Sec. 4210; renumbered Sec. 7810 and amended Pub. L. 102–40, title IV, Sec. 402(a), (b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

Chapter 79 of Title 38, United States Code

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART V—BOARDS, ADMINISTRATIONS, AND SERVICES]

CHAPTER 79—INFORMATION SECURITY EDUCATION ASSISTANCE PROGRAM

Sec.
7901. Programs; purpose.
7902. Scholarship program.
7903. Education debt reduction program.
7904. Preferences in awarding financial assistance.
7905. Requirement of honorable discharge for veterans receiving assistance.
7906. Regulations.
7907. Termination.

§ 7901. Programs; purpose

(a) IN GENERAL.—To encourage the recruitment and retention of Department personnel who have the information security skills necessary to meet Department requirements, the Secretary may carry out programs in accordance with this chapter to provide financial support for education in computer science and electrical and computer engineering at accredited institutions of higher education.

(b) TYPES OF PROGRAMS.—The programs authorized under this chapter are as follows:

(1) Scholarships for pursuit of doctoral degrees in computer science and electrical and computer engineering at accredited institutions of higher education.

(2) Education debt reduction for Department personnel who hold doctoral degrees in computer science and electrical and computer engineering at accredited institutions of higher education.

(Added Pub. L. 109–461, title IX, Sec. 903(a)(1), Dec. 22, 2006, 120 Stat. 3460.)

§ 7902. Scholarship program

(a) AUTHORITY.—(1) Subject to the availability of appropriations, the Secretary may establish a scholarship program under which the Secretary shall, subject to subsection (d), provide financial assistance in accordance with this section to a qualified person—

(A) who is pursuing a doctoral degree in computer science or electrical or computer engineering at an accredited institution of higher education; and

(B) who enters into an agreement with the Secretary as described in subsection (b).

(2)(A) Except as provided in subparagraph (B), the Secretary may provide financial assistance under this section to an individual for up to five years.

(B) The Secretary may waive the limitation under subparagraph (A) if the Secretary determines that such a waiver is appropriate.

(b) SERVICE AGREEMENT FOR SCHOLARSHIP RECIPIENTS.—(1) To receive financial assistance under this section an individual shall enter into an agreement to accept and continue employment in the Department for the period of obligated service determined under paragraph (2).

(2) For the purposes of this subsection, the period of obligated service for a recipient of financial assistance under this section shall be the period determined by the Secretary as being appropriate to obtain adequate service in exchange for the financial assistance and otherwise to achieve the goals set forth in section 7901(a) of this title. In no event may the period of service required of a recipient be less than the period equal to the total period of pursuit of a degree for which the Secretary agrees to provide the recipient with financial assistance under this section. The period of obligated service is in addition to any other period for which the recipient is obligated to serve on active duty or in the civil service, as the case may be.

(3) An agreement entered into under this section by a person pursuing a doctoral degree shall include terms that provide the following:

(A) That the period of obligated service begins on a date after the award of the degree that is determined under the regulations prescribed under section 7906 of this title.

(B) That the individual will maintain satisfactory academic progress, as determined in accordance with those regulations, and that failure to maintain such progress constitutes grounds for termination of the financial assistance for the individual under this section.

(C) Any other terms and conditions that the Secretary determines appropriate for carrying out this section.

(c) AMOUNT OF ASSISTANCE.—(1) The amount of the financial assistance provided for an individual under this section shall be the amount determined by the Secretary as being necessary to pay—

(A) the tuition and fees of the individual; and

(B) $1,500 to the individual each month (including a month between academic semesters or terms leading to the degree for which such assistance is provided or during which the individual is not enrolled in a course of education but is pursuing independent research leading to such degree) for books, laboratory expenses, and expenses of room and board.

(2) In no case may the amount of assistance provided for an individual under this section for an academic year exceed $50,000.

(3) In no case may the total amount of assistance provided for an individual under this section exceed $200,000.

(4) Notwithstanding any other provision of law, financial assistance paid an individual under this section shall not be considered as income or resources in determining eligibility for, or the amount of benefits under, any Federal or federally assisted program.

(d) REPAYMENT FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—(1) An individual who receives financial assistance under this

section shall repay to the Secretary an amount equal to the unearned portion of the financial assistance if the individual fails to satisfy the requirements of the service agreement entered into under subsection (b), except in circumstances authorized by the Secretary.

(2) The Secretary may establish, by regulations, procedures for determining the amount of the repayment required under this subsection and the circumstances under which an exception to the required repayment may be granted.

(3) An obligation to repay the Secretary under this subsection is, for all purposes, a debt owed the United States. A discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after the date of the termination of the agreement or contract on which the debt is based.

(e) WAIVER OR SUSPENSION OF COMPLIANCE.—The Secretary shall prescribe regulations providing for the waiver or suspension of any obligation of an individual for service or payment under this section (or an agreement under this section) whenever noncompliance by the individual is due to circumstances beyond the control of the individual or whenever the Secretary determines that the waiver or suspension of compliance is in the best interest of the United States.

(f) INTERNSHIPS.—(1) The Secretary may offer a compensated internship to an individual for whom financial assistance is provided under this section during a period between academic semesters or terms leading to the degree for which such assistance is provided. Compensation provided for such an internship shall be in addition to the financial assistance provided under this section.

(2) An internship under this subsection shall not be counted toward satisfying a period of obligated service under this section.

(g) INELIGIBILITY OF INDIVIDUALS RECEIVING MONTGOMERY GI BILL EDUCATION ASSISTANCE PAYMENTS.—An individual who receives a payment of educational assistance under chapter 30, 31, 32, 34, or 35 of this title or chapter 1606 or 1607 of title 10 for a month in which the individual is enrolled in a course of education leading to a doctoral degree in information security is not eligible to receive financial assistance under this section for that month.

(Added Pub. L. 109–461, title IX, Sec. 903(a)(1), Dec. 22, 2006, 120 Stat. 3460.)

§ 7903. Education debt reduction program

(a) AUTHORITY.—Subject to the availability of appropriations, the Secretary may establish an education debt reduction program under which the Secretary shall make education debt reduction payments under this section to qualified individuals eligible under subsection (b) for the purpose of reimbursing such individuals for payments by such individuals of principal and interest on loans described in paragraph (2) of that subsection.

(b) ELIGIBILITY.—An individual is eligible to participate in the program under this section if the individual—

(1) has completed a doctoral degree in computer science or electrical or computer engineering at an accredited institution of higher education during the five-year period preceding the date on which the individual is hired;

(2) is an employee of the Department who serves in a position related to information security (as determined by the Secretary); and

(3) owes any amount of principal or interest under a loan, the proceeds of which were used by or on behalf of that individual to pay costs relating to a doctoral degree in computer science or electrical or computer engineering at an accredited institution of higher education.

(c) AMOUNT OF ASSISTANCE.—(1) Subject to paragraph (2), the amount of education debt reduction payments made to an individual under this section may not exceed $82,500 over a total of five years, of which not more than $16,500 of such payments may be made in each year.

(2) The total amount payable to an individual under this section for any year may not exceed the amount of the principal and interest on loans referred to in subsection (b)(3) that is paid by the individual during such year.

(d) PAYMENTS.—(1) The Secretary shall make education debt reduction payments under this section on an annual basis.

(2) The Secretary shall make such a payment—

(A) on the last day of the one-year period beginning on the date on which the individual is accepted into the program established under subsection (a); or

(B) in the case of an individual who received a payment under this section for the preceding fiscal year, on the last day of the one-year period beginning on the date on which the individual last received such a payment.

(3) Notwithstanding any other provision of law, education debt reduction payments under this section shall not be considered as income or resources in determining eligibility for, or the amount of benefits under, any Federal or federally assisted program.

(e) PERFORMANCE REQUIREMENT.—The Secretary may make education debt reduction payments to an individual under this section for a year only if the Secretary determines that the individual maintained an acceptable level of performance in the position or positions served by the individual during the year.

(f) NOTIFICATION OF TERMS OF PROVISION OF PAYMENTS.—The Secretary shall provide to an individual who receives a payment under this section notice in writing of the terms and conditions that apply to such a payment.

(g) COVERED COSTS.—For purposes of subsection (b)(3), costs relating to a course of education or training include—

(1) tuition expenses; and

(2) all other reasonable educational expenses, including fees, books, and laboratory expenses.

(Added Pub. L. 109–461, title IX, Sec. 903(a)(1), Dec. 22, 2006, 120 Stat. 3462.)

§ 7904. Preferences in awarding financial assistance

In awarding financial assistance under this chapter, the Secretary shall give a preference to qualified individuals who are otherwise eligible to receive the financial assistance in the following order of priority:

(1) Veterans with service-connected disabilities.

(2) Veterans.

(3) Persons described in section 4215(a)(1)(B) of this title.

(4) Individuals who received or are pursuing degrees at institutions designated by the National Security Agency as Centers of Academic Excellence in Information Assurance Education.

(5) Citizens of the United States.

(Added Pub. L. 109–461, title IX, Sec. 903(a)(1), Dec. 22, 2006, 120 Stat. 3463.)

§ 7905. Requirement of honorable discharge for veterans receiving assistance

No veteran shall receive financial assistance under this chapter unless the veteran was discharged from the Armed Forces under honorable conditions.

(Added Pub. L. 109–461, title IX, Sec. 903(a)(1), Dec. 22, 2006, 120 Stat. 3464.)

§ 7906. Regulations

The Secretary shall prescribe regulations for the administration of this chapter.

(Added Pub. L. 109–461, title IX, Sec. 903(a)(1), Dec. 22, 2006, 120 Stat. 3464.)

§ 7907. Termination

The authority of the Secretary to make a payment under this chapter shall terminate on July 31, 2017.

(Added Pub. L. 109–461, title IX, Sec. 903(a)(1), Dec. 22, 2006, 120 Stat. 3464.)

CHAPTER 81 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

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

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Pub. L. 108–422, title IV, Sec. 411(c)(2), (f), Nov. 30, 2004, 118 Stat. 2389, 2390, provided that, effective at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with section 1710B(b) of this title, this analysis is amended by striking out item 8116.

SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

§ 8101. Definitions

For the purposes of this subchapter:

(1) The term "alter", with respect to a medical facility, means to repair, remodel, improve, or extend such medical facility.

(2) The terms "construct" and "alter", with respect to a medical facility, include such engineering, architectural, legal, fiscal, and economic investigations and studies and such surveys, designs, plans, construction documents, specifications, procedures, and other similar actions as are necessary for the construction or alteration, as the case may be, of such medical facility and as are carried out after the completion of the advanced planning (including the development of project requirements and design development) for such facility.

(3) The term "medical facility" means any facility or part thereof which is, or will be, under the jurisdiction of the Secretary for the provision of health-care services (including hospital, nursing home, or domiciliary care or medical services), including any necessary building and auxiliary structure, garage, parking facility, mechanical equipment, trackage facilities leading thereto, abutting sidewalks, accommodations for attending personnel, and recreation facilities associated therewith.

(4) The term "committee" means the Committee on Veterans' Affairs of the House of Representatives or the Committee on Vet-

erans' Affairs of the Senate, and the term "committees" means both such committees.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 55, Sec. 5001; renumbered Sec. 8101, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 104–262, title II, Sec. 207(a), Oct. 9, 1996, 110 Stat. 3190.)

§ 8102. Acquisition of medical facilities

(a) The Secretary shall provide medical facilities for veterans entitled to hospital, nursing home, or domiciliary care or medical services under this title.

(b) No medical facility may be constructed or otherwise acquired or altered except in accordance with the provisions of this subchapter.

(c) In carrying out this subchapter, the Secretary—

(1) shall provide for the construction and acquisition of medical facilities in a manner that results in the equitable distribution of such facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility; and

(2) shall give due consideration to excellence of architecture and design.

(d) In considering the need for any project for the construction, alteration, or acquisition (other than by exchange) of a medical facility which is expected to involve a total expenditure of more than $2,000,000, the Secretary shall give consideration to the sharing of health-care resources with the Department of Defense under section 8111 of this title as an alternative to all or part of such project.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 55, Sec. 5002; amended Pub. L. 99–576, title II, Sec. 221(a), Oct. 28, 1986, 100 Stat. 3259; renumbered Sec. 8102 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(f)(2), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8103. Authority to construct and alter, and to acquire sites for, medical facilities

(a) Subject to section 8104 of this title, the Secretary—

(1) may construct or alter any medical facility and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for such construction or alteration;

(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility (including the site of such facility) that the Secretary considers necessary for use as a medical facility; and

(3) in order to assure compliance with section 8110(a)(2) of this title, in the case of any outpatient medical facility for which it is proposed to lease space and for which a qualified lessor and an appropriate leasing arrangement are available, shall execute a lease for such facility within 12 months after funds are made available for such purpose.

(b) Whenever the Secretary considers it to be in the interest of the United States to construct a new medical facility to replace an existing medical facility, the Secretary (1) may demolish the existing facility and use the site on which it is located for the site of the new medical facility, or (2) if in the judgment of the Secretary it is more advantageous to construct such medical facility on a different site in the same locality, may exchange such existing facility and the site of such existing facility for the different site.

(c) Whenever the Secretary determines that any site acquired for the construction of a medical facility is not suitable for that purpose, the Secretary may exchange such site for another site to be used for that purpose or may sell such site.

(d)(1) The Secretary may provide for the acquisition of not more than three facilities for the provision of outpatient services or nursing home care through lease-purchase arrangements on real property under the jurisdiction of the Department of Veterans Affairs.

(2)(A) In carrying out this subsection and notwithstanding any other provision of law, the Secretary may lease, with or without compensation and for a period of not to exceed 35 years, to another party any of the real property described in paragraph (1) of this subsection.

(B) Such real property shall be used as the site of a facility referred to in paragraph (1) of this subsection—

(i) constructed and owned by the lessee of such real property; and

(ii) leased under paragraph (3)(A) of this subsection to the Department for such use and for such other activities as the Secretary determines are appropriate.

(3)(A) The Secretary may enter into a lease for the use of any facility described in paragraph (2)(B) of this subsection for not more than 35 years under such terms and conditions as may be in the best interests of the Department.

(B) Each agreement to lease a facility under subparagraph (A) of this paragraph shall include a provision that—

(i) the obligation of the United States to make payments under the agreement is subject to the availability of appropriations for that purpose; and

(ii) the ownership of such facility shall vest in the United States at the end of such lease.

(4)(A) The Secretary may sublease any space in such a facility to another party at a rate not less than—

(i) the rental rate paid by the Secretary for such space under paragraph (3) of this subsection; plus

(ii) the amount the Secretary pays for the costs of administering such facility (including operation, maintenance, utility, and rehabilitation costs) which are attributable to such space.

(B) In any such sublease, the Secretary shall include such terms relating to default and nonperformance as the Secretary considers appropriate to protect the interests of the United States.

(5) The Secretary shall use the receipts of any payment for the lease of real property under paragraph (2) for the payment of the lease of a facility under paragraph (3).

(6) The authority to enter into an agreement under this subsection—

(A) shall not take effect until the Secretary has entered into agreements under section 316 of this title to carry out at least three collocations; and

(B) shall expire on October 1, 1993.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 56, Sec. 5003; amended Pub. L. 101–237, title VI, Sec. 603(b), Dec. 18, 1989, 103 Stat. 2097; renumbered Sec. 8103 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–446, title XII, Sec. 1201(d)(16), Nov. 2, 1994, 108 Stat. 4684.)

§ 8104. Congressional approval of certain medical facility acquisitions

(a)(1) The purpose of this subsection is to enable Congress to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility.

(2) No funds may be appropriated for any fiscal year, and the Secretary may not obligate or expend funds (other than for advance planning and design), for any major medical facility project or any major medical facility lease unless funds for that project or lease have been specifically authorized by law.

(3) For the purpose of this subsection:

(A) The term "major medical facility project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $10,000,000, but such term does not include an acquisition by exchange.

(B) The term "major medical facility lease" means a lease for space for use as a new medical facility at an average annual rental of more than $1,000,000.

(b) Whenever the President or the Secretary submit to the Congress a request for the funding of a major medical facility project (as defined in subsection (a)(3)(A)) or a major medical facility lease (as defined in subsection (a)(3)(B)), the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Any such prospectus shall include the following:

(1) A detailed description of the medical facility to be constructed, altered, leased, or otherwise acquired under this subchapter, including a description of the location of such facility and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a description of the consideration that was given to acquiring an existing facility by lease or purchase and to the sharing of health-care resources with the Department of Defense under section 8111 of this title.

(2) An estimate of the cost to the United States of the construction, alteration, lease, or other acquisition of such facility (including site costs, if applicable).

(3) An estimate of the cost to the United States of the equipment required for the operation of such facility.

(4) Demographic data applicable to such facility, including information on projected changes in the population of veterans to be served by the facility over a five-year period and a ten-year period.

(5) Current and projected workload and utilization data regarding the facility.

(6) Current and projected operating costs of the facility, including both recurring and non-recurring costs.

(7) The priority score assigned to the project or lease under the Department's prioritization methodology and, if the project or lease is being proposed for funding before a project or lease with a higher score, a specific explanation of the factors other than the priority score that were considered and the basis on which the project or lease is proposed for funding ahead of projects or leases with higher priority scores.

(8) In the case of a prospectus proposing the construction of a new or replacement medical facility, a description of each alternative to construction of the facility that was considered.

(c) Not less than 30 days before obligating funds for a major medical facility project approved by a law described in subsection (a)(2) of this section in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by more than 10 percent, the Secretary shall provide the committees with notice of the Secretary's intention to do so and the reasons for the specified amount being exceeded.

(d) In any case in which the Secretary proposes that funds be used for a purpose other than the purpose for which such funds were appropriated, the Secretary shall promptly notify each committee, in writing, of the particulars involved and the reasons why such funds were not used for the purpose for which appropriated.

(e) The Secretary may accept gifts or donations for any of the purposes of this subchapter.

(f) The Secretary may not obligate funds in an amount in excess of $500,000 from the Advance Planning Fund of the Department toward design or development of a major medical facility project (as defined in subsection (a)(3)(A)) until—

(1) the Secretary submits to the committees a report on the proposed obligation; and

(2) a period of 30 days has passed after the date on which the report is received by the committees.

(g) The limitation in subsection (f) does not apply to a project for which funds have been authorized by law in accordance with subsection (a)(2).

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 56, Sec. 5004; amended Pub. L. 99–166, title III, Sec. 301, 303, Dec. 3, 1985, 99 Stat. 954, 955; Pub. L. 99–576, title II, Sec. 221(b), Oct. 28, 1986, 100 Stat. 3259; Pub. L. 100–322, title IV, Sec. 422, May 20, 1988, 102 Stat. 553; renumbered Sec. 8104 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–405, title III, Sec. 301(a), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–79, Sec. 3(a), Aug. 13, 1993, 107 Stat. 771; Pub. L. 104–262, title II, Sec. 205(a), 206(a), (c), Oct. 9, 1996, 110 Stat. 3189, 3190; Pub. L. 105–368, title VII, Sec. 704, Nov. 11, 1998, 112 Stat. 3350; Pub. L. 108–170, title II, Sec. 201, Dec. 6, 2003, 117 Stat. 2047; Pub. L. 108–422, title IV, Sec. 416, Nov. 30, 2004, 118 Stat. 2393; Pub. L. 109–461, title

VIII, Sec. 812, Dec. 22, 2006, 120 Stat. 3447; Pub. L. 110–387, title VII, Sec. 705, Oct. 10, 2008, 122 Stat. 4138.)

§ 8105. Structural requirements

(a) Each medical facility (including each nursing home facility for which the Secretary contracts under section 1720 of this title and each State home facility constructed or altered under subchapter III of this chapter) shall be of fire, earthquake, and other natural disaster resistant construction in accordance with standards which the Secretary shall prescribe on a State or regional basis after surveying appropriate State and local laws, ordinances, and building codes and climatic and seismic conditions pertinent to each such facility. When an existing structure is acquired for use as a medical facility, it shall be altered to comply with such standards.

(b)(1) In order to carry out this section, the Secretary shall appoint an advisory committee to be known as the "Advisory Committee on Structural Safety of Department Facilities", on which shall serve at least one architect and one structural engineer who are experts in structural resistance to fire, earthquake, and other natural disasters and who are not employees of the Federal Government.

(2) Such advisory committee shall advise the Secretary on all matters of structural safety in the construction and altering of medical facilities in accordance with the requirements of this section and shall review and make recommendations to the Secretary on the regulations prescribed under this section.

(3) The Associate Deputy Secretary, the Under Secretary for Health or the designee of the Under Secretary for Health, and the Department official charged with the responsibility for construction shall be ex officio members of such advisory committee.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 57, Sec. 5005; amended Pub. L. 96–128, title V, Sec. 501(e), Nov. 28, 1979, 93 Stat. 987; renumbered Sec. 8105, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

§ 8106. Construction contracts

(a) The Secretary may carry out any construction or alteration authorized under this subchapter by contract if the Secretary considers it to be advantageous to the United States to do so.

(b)(1) The Secretary may obtain, by contract or otherwise, the services of individuals who are architects or engineers and of architectural and engineering corporations and firms, to the extent that the Secretary may require such services for any medical facility authorized to be constructed or altered under this subchapter.

(2) No corporation, firm, or individual may be employed under the authority of paragraph (1) of this subsection on a permanent basis.

(c) Notwithstanding any other provision of this section, the Secretary shall be responsible for all construction authorized under this subchapter, including the interpretation of construction contracts, the approval of materials and workmanship supplied pursuant to a construction contract, approval of changes in the construc-

tion contract, certification of vouchers for payments due the contractor, and final settlement of the contract.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 58, Sec. 5006; renumbered Sec. 8106, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8107. Operational and construction plans for medical facilities

(a) In order to promote effective planning for the efficient provision of care to eligible veterans, the Secretary, based on the analysis and recommendations of the Under Secretary for Health, shall submit to each committee an annual report regarding long-range health planning of the Department. The report shall be submitted each year not later than the date on which the budget for the next fiscal year is submitted to the Congress under section 1105 of title 31.

(b) Each report under subsection (a) shall include the following:

(1) A five-year strategic plan for the provision of care under chapter 17 of this title to eligible veterans through coordinated networks of medical facilities operating within prescribed geographic service-delivery areas, such plan to include provision of services for the specialized treatment and rehabilitative needs of disabled veterans (including veterans with spinal cord dysfunction, blindness, amputations, and mental illness) through distinct programs or facilities of the Department dedicated to the specialized needs of those veterans.

(2) A description of how planning for the networks will be coordinated.

(c) The Secretary shall submit to each committee not later than January 31 of each year a report showing the location, space, cost, and status of each medical facility (1) the construction, alteration, lease, or other acquisition of which has been approved under section 8104(a) of this title, and (2) which was uncompleted as of the date of the last preceding report made under this subsection.

(d)(1) The Secretary shall submit to each committee, not later than January 31 of each year, a report showing the current priorities of the Department for proposed major medical construction projects. Each such report shall identify the 20 projects, from within all the projects in the Department's inventory of proposed projects, that have the highest priority and, for those 20 projects, the relative priority and rank scoring of each such project and the projected cost of such project (including the projected operating costs, including both recurring and nonrecurring costs). The 20 projects shall be compiled, and their relative rankings shall be shown, by category of project (including the categories of ambulatory care projects, nursing home care projects, and such other categories as the Secretary determines).

(2) The Secretary shall include in each report, for each project listed, a description of the specific factors that account for the relative ranking of that project in relation to other projects within the same category.

(3) In a case in which the relative ranking of a proposed project has changed since the last report under this subsection was sub-

mitted, the Secretary shall also include in the report a description of the reasons for the change in the ranking, including an explanation of any change in the scoring of the project under the Department's scoring system for proposed major medical construction projects.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 58, Sec. 5007; amended Pub. L. 99–166, title III, Sec. 302(a)–(c)(1), Dec. 3, 1985, 99 Stat. 955; Pub. L. 99–576, title II, Sec. 222, Oct. 28, 1986, 100 Stat. 3259; renumbered Sec. 8107 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(f)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104–262, title II, Sec. 204, Oct. 9, 1996, 110 Stat. 3188; Pub. L. 105–368, title X, Sec. 1005(b)(18), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 108–170, title II, Sec. 203, Dec. 6, 2003, 117 Stat. 2048.)

§ 8108. Contributions to local authorities

The Secretary may make contributions to local authorities toward, or for, the construction of traffic controls, road improvements, or other devices adjacent to a medical facility if considered necessary for safe ingress or egress.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 58, Sec. 5008; renumbered Sec. 8108, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8109. Parking facilities

(a) For the purpose of this section—

(1) The term "garage" means a structure (or part of a structure) in which vehicles may be parked.

(2) The term "parking facility" includes—

(A) a surface parking lot; and

(B) a garage.

(3) The term "eligible person" means an individual to whom the Secretary is authorized to furnish medical examination or treatment.

(b) In order to accommodate the vehicles of employees of medical facilities, vehicles used to transport veterans and eligible persons to or from such facilities for the purpose of examination or treatment, and the vehicles of visitors and other individuals having business at such facilities, the Secretary—

(1) may construct or alter parking facilities, and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for any such construction or alteration;

(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility that the Secretary considers necessary for use as a parking facility; and

(3) may operate and maintain parking facilities.

(c)(1) Except as provided in paragraph (2) of this subsection, each employee, visitor, and other individual having business at a medical facility for which parking fees have been established under subsection (d) or (e) of this section shall be charged the applicable parking fee for the use of a parking facility at such medical facility.

(2) A parking fee shall not be charged under this subsection for the accommodation of any vehicle used to transport to or from a medical facility—

(A) a veteran or eligible person in connection with such veteran or eligible person seeking examination or treatment; or

(B) a volunteer worker (as determined in accordance with regulations which the Secretary shall prescribe) in connection with such worker performing services for the benefit of veterans receiving care at a medical facility.

(3) The Secretary shall collect (or provide for the collection of) parking fees charged under this subsection.

(d)(1) For each medical facility where funds from the revolving fund described in subsection (h) of this section are expended for—

(A) a garage constructed or acquired by the Department at a cost exceeding $500,000 (or, in the case of acquisition by lease, $100,000 per year); or

(B) a project for the alteration of a garage at a cost exceeding $500,000,

the Secretary shall prescribe a schedule of parking fees to be charged at all parking facilities used in connection with such medical facility.

(2) The parking fee schedule prescribed for a medical facility referred to in paragraph (1) of this subsection shall be designed to establish fees which the Secretary determines are reasonable under the circumstances.

(e) The Secretary may prescribe a schedule of parking fees for the parking facilities at any medical facility not referred to in subsection (d) of this section. Any such schedule shall be designed to establish fees which the Secretary determines to be reasonable under the circumstances and shall cover all parking facilities used in connection with such medical facility.

(f) The Secretary may contract (by lease or otherwise) for the operation of parking facilities at medical facilities under such terms and conditions as the Secretary prescribes and may do so without regard to laws requiring full and open competition.

(g) Subject to subsections (h) and (i) of this section, there are authorized to be appropriated such amounts as are necessary to finance (in whole or in part) the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities.

(h)(1) Amounts appropriated pursuant to subsection (g) of this section and parking fees collected under subsection (c) of this section shall be administered as a revolving fund and shall be available without fiscal year limitation.

(2) The revolving fund shall be deposited in a checking account with the Treasurer of the United States.

(3)(A) Except as provided in subparagraph (B) of this paragraph, no funds other than funds from the revolving fund may be expended for the construction, alteration, or acquisition (including site acquisition) of a garage at a medical facility after September 30, 1986.

(B) Subparagraph (A) of this paragraph does not apply to the use of funds for investigations and studies, surveys, designs, plans,

construction documents, specifications, and similar actions not directly involved in the physical construction of a structure.

(i)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities and may be made only as provided for in appropriation Acts.

(2) For the purpose of section 8104(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund (including any funds proposed in such bill, resolution, or amendment to be appropriated to the revolving fund) may be expended for a project involving a total expenditure of more than $4,000,000 for the construction, alteration, or acquisition (including site acquisition) of a parking facility or facilities at a medical facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.

(j) Funds in a construction account or capital account that are available for a construction project or a nonrecurring maintenance project may be used for the construction or relocation of a surface parking lot incidental to that project.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 59, Sec. 5009; amended Pub. L. 99–576, title II, Sec. 223(a)(1), Oct. 28, 1986, 100 Stat. 3259; renumbered Sec. 8109 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–79, Sec. 3(b), Aug. 13, 1993, 107 Stat. 771; Pub. L. 104–262, title II, Sec. 207(b), Oct. 9, 1996, 110 Stat. 3190; Pub. L. 105–368, title VII, Sec. 705, Nov. 11, 1998, 112 Stat. 3350; Pub. L. 108–422, title IV, Sec. 415, Nov. 30, 2004, 118 Stat. 2393.)

§ 8110. Operation of medical facilities

(a)(1) The Secretary shall establish the total number of hospital beds and nursing home beds in medical facilities over which the Secretary has direct jurisdiction for the care and treatment of eligible veterans. The Secretary shall establish the total number of such beds so as to maintain a contingency capacity to assist the Department of Defense in time of war or national emergency to care for the casualties of such war or national emergency. Of the number of beds authorized pursuant to the preceding sentence, the Secretary shall maintain the availability of such additional beds and facilities in addition to the operating bed level as the Secretary considers necessary for such contingency purposes. The President shall include in the Budget transmitted to the Congress for each fiscal year pursuant to section 1105 of title 31, an amount for medical care and amounts for construction sufficient to maintain the availability of the contingency capacity referred to in the second sentence of this paragraph. The Secretary shall staff and maintain, in such a manner as to ensure the immediate acceptance and timely and complete care of patients, and in a manner consistent with the policies of the Secretary on overtime, sufficient beds and other treatment capacities to accommodate, and provide such care to, eligible veterans applying for admission and found to be in need of hospital care or medical services.

(2) The Secretary shall maintain the bed and treatment capacities of all Department medical facilities, including the staffing required to maintain such capacities, so as to ensure the accessibility

and availability of such beds and treatment capacities to eligible veterans in all States, to minimize delays in admissions and in the provision of hospital, nursing home, and domiciliary care, and of medical services furnished pursuant to section 1710(a) of this title, and to ensure that eligible veterans are provided such care and services in an appropriate manner.

(3)(A) The Under Secretary for Health shall at the end of each fiscal year (i) analyze agencywide admission policies and the records of those eligible veterans who apply for hospital care, medical services, and nursing home care, but are rejected or not immediately admitted or provided such care or services, and (ii) review and make recommendations regarding the adequacy of staff levels for compliance with the policy established under subparagraph (C), the adequacy of the established operating bed levels, the geographic distribution of operating beds, the demographic characteristics of the veteran population and the associated need for medical care and nursing home facilities and services in each State, and the proportion of the total number of operating beds that are hospital beds and that are nursing home beds.

(B) After considering the analyses and recommendations of the Under Secretary for Health pursuant to subparagraph (A) of this paragraph for any fiscal year, the Secretary shall report to the committees, on or before December 1 after the close of such fiscal year, on the results of the analysis of the Under Secretary for Health and on the numbers of operating beds and level of treatment capacities required to enable the Department to carry out the primary function of the Veterans Health Administration. The Secretary shall include in each such report recommendations for (i) the numbers of operating beds and the level of treatment capacities required for the health care of veterans and the maintenance of the contingency capacity referred to in paragraph (1) of this subsection, and (ii) the appropriate staffing and funds therefor.

(C) The Secretary shall, in consultation with the Under Secretary for Health, establish a nationwide policy on the staffing of Department medical facilities in order to ensure that such facilities have adequate staff for the provision to veterans of appropriate, high-quality care and services. The policy shall take into account the staffing levels and mixture of staff skills required for the range of care and services provided veterans in Department facilities.

(4)(A) With respect to each law making appropriations for the Department for any fiscal year (or any part of a fiscal year), there shall be provided to the Department the funded personnel ceiling defined in subparagraph (C) of this paragraph and the funds appropriated therefor.

(B) In order to carry out the provisions of subparagraph (A) of this paragraph, the Director of the Office of Management and Budget shall, with respect to each such law (i) provide to the Department for the fiscal year (or part of a fiscal year) concerned such funded personnel ceiling and the funds necessary to achieve such ceiling, and (ii) submit to the appropriate committees of the Congress and to the Comptroller General of the United States certification that the Director has so provided such ceiling. Not later than the thirtieth day after the enactment of such a law or, in the event of the enactment of such a law more than thirty days prior

to the fiscal year for which such law makes such appropriations, not later than the tenth day of such fiscal year, the certification required in the first sentence of this subparagraph shall be submitted, together with a report containing complete information on the personnel ceiling that the Director has provided to the Department for the employees described in subparagraph (C) of this paragraph.

(C) For the purposes of this paragraph, the term "funded personnel ceiling" means, with respect to any fiscal year (or part of a fiscal year), the authorization by the Director of the Office of Management and Budget to employ (under the appropriation accounts for medical care, medical and prosthetic research, and medical administration and miscellaneous operating expenses) not less than the number of employees for the employment of which appropriations have been made for such fiscal year (or part of a fiscal year).

(5) Notwithstanding any other provision of this title or of any other law, funds appropriated for the Department under the appropriation accounts for medical care, medical and prosthetic research, and medical administration and miscellaneous operating expenses may not be used for, and no employee compensated from such funds may carry out any activity in connection with, the conduct of any study comparing the cost of the provision by private contractors with the cost of the provision by the Department of commercial or industrial products and services for the Veterans Health Administration unless such funds have been specifically appropriated for that purpose.

(6)(A) Temporary research personnel of the Veterans Health Administration shall be excluded from any ceiling on full-time equivalent employees of the Department or any other personnel ceiling otherwise applicable to employees of the Department.

(B) For purposes of subparagraph (A) of this paragraph, the term "temporary research personnel" means personnel who are employed in the Veterans Health Administration in other than a career appointment for work on a research activity and who are not paid by the Department or are paid from funds appropriated to the Department to support such activity.

(b) When the Secretary determines, in accordance with regulations which the Secretary shall prescribe, that a Department facility serves a substantial number of veterans with limited English-speaking ability, the Secretary shall establish and implement procedures, upon the recommendation of the Under Secretary for Health, to ensure the identification of sufficient numbers of individuals on such facility's staff who are fluent in both the language most appropriate to such veterans and in English and whose responsibilities shall include providing guidance to such veterans and to appropriate Department staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

(c) The Secretary shall include in the materials submitted to Congress each year in support of the budget of the Department for the next fiscal year a report on activities and proposals involving contracting for performance by contractor personnel of work previously performed by Department employees. The report shall—

(1) identify those specific activities that are currently performed at a Department facility by more than 10 Department

employees which the Secretary proposes to study for possible contracting involving conversion from performance by Department employees to performance by employees of a contractor; and

(2) identify those specific activities that have been contracted for performance by contractor employees during the prior fiscal year (shown by location, subject, scope of contracts, and savings) and shall describe the effect of such contracts on the quality of delivery of health services during such year.

(d) The Secretary may not in any fiscal year close more than 50 percent of the beds within a bed section (of 20 or more beds) of a Department medical center unless the Secretary first submits to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report providing a justification for the closure. No action to carry out such closure may be taken after the submission of such report until the end of the 21-day period beginning on the date of the submission of the report.

(e) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives, not later than January 20 of each year, a report documenting by network for the preceding fiscal year the following:

(1) The number of medical service and surgical service beds, respectively, that were closed during that fiscal year and, for each such closure, a description of the changes in delivery of services that allowed such closure to occur.

(2) The number of nursing home beds that were the subject of a mission change during that fiscal year and the nature of each such mission change.

(f) For purposes of this section:

(1) The term "closure", with respect to beds in a medical center, means ceasing to provide staffing for, and to operate, those beds. Such term includes converting the provision of such bed care from care in a Department facility to care under contract arrangements.

(2) The term "bed section", with respect to a medical center, means psychiatric beds (including beds for treatment of substance abuse and post-traumatic stress disorder), intermediate, neurology, and rehabilitation medicine beds, extended care (other than nursing home) beds, and domiciliary beds.

(3) The term "justification", with respect to closure of beds, means a written report that includes the following:

(A) An explanation of the reasons for the determination that the closure is appropriate and advisable.

(B) A description of the changes in the functions to be carried out and the means by which such care and services would continue to be provided to eligible veterans.

(C) A description of the anticipated effects of the closure on veterans and on their access to care.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 59, Sec. 5010; amended Pub. L. 96–151, title III, Sec. 301(a), Dec. 20, 1979, 93 Stat. 1095; Pub. L. 97–66, title VI, Sec. 601(b), Oct. 17, 1981, 95 Stat. 1033; Pub. L. 97–72, title I, Sec. 108, Nov. 3, 1981, 95 Stat. 1053; Pub. L. 97–306, title IV, Sec. 409(b), Oct. 14, 1982, 96 Stat. 1446; Pub. L. 97–452, Sec. 2(e)(4), Jan. 12, 1983, 96 Stat. 2479; Pub. L. 98–160, title VII, Sec. 702(19), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98–528, title I, Sec. 102, Oct. 19, 1984, 98 Stat. 2688; Pub. L. 99–576, title VII, Sec. 702(15), Oct.

28, 1986, 100 Stat. 3302; Pub. L. 100–322, title II, Sec. 222(a), title IV, Sec. 401(a), May 20, 1988, 102 Stat. 531, 543; renumbered Sec. 8110 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–446, title XI, Sec. 1103, title XII, Sec. 1201(b)(1), (d)(17), (g)(7), Nov. 2, 1994, 108 Stat. 4681, 4682, 4684, 4687; Pub. L. 104–66, title I, Sec. 1141(c), Dec. 21, 1995, 109 Stat. 726; Pub. L. 104–262, title I, Sec. 101(e)(4), title III, Sec. 305, Oct. 9, 1996, 110 Stat. 3181, 3194; Pub. L. 106–117, title III, Sec. 301, Nov. 30, 1999, 113 Stat. 1571; Pub. L. 107–135, title I, Sec. 124, Jan. 23, 2002, 115 Stat. 2452; Pub. L. 107–314, div. A, title VII, Sec. 726(a), Dec. 2, 2002, 116 Stat. 2599.)

§ 8111. Sharing of Department of Veterans Affairs and Department of Defense health care resources

(a) REQUIRED COORDINATION AND SHARING OF HEALTH CARE RESOURCES.—The Secretary of Veterans Affairs and the Secretary of Defense shall enter into agreements and contracts for the mutually beneficial coordination, use, or exchange of use of the health care resources of the Department of Veterans Affairs and the Department of Defense with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Veterans Health Administration and the Military Health System to the beneficiaries of both Departments.

(b) JOINT REQUIREMENTS FOR SECRETARIES OF VETERANS AFFAIRS AND DEFENSE.—To facilitate the mutually beneficial coordination, use, or exchange of use of the health care resources of the two Departments, the two Secretaries shall carry out the following functions:

(1) Develop and publish a joint strategic vision statement and a joint strategic plan to shape, focus, and prioritize the coordination and sharing efforts among appropriate elements of the two Departments and incorporate the goals and requirements of the joint sharing plan into the strategic plan of each Department under section 306 of title 5 and the performance plan of each Department under section 1115 of title 31.

(2) Jointly fund the Department of Veterans Affairs-Department of Defense Joint Executive Committee under section 320 of this title.

(3) Continue to facilitate and improve sharing between individual Department of Veterans Affairs and Department of Defense health care facilities, but giving priority of effort to initiatives (A) that improve sharing and coordination of health resources at the intraregional and nationwide levels, and (B) that improve the ability of both Departments to provide coordinated health care.

(4) Establish a joint incentive program under subsection (d).

[(c) Repealed. Pub. L. 108–136, div. A, title V, Sec. 583(b)(1), Nov. 24, 2003, 117 Stat. 1491.]

(d) JOINT INCENTIVES PROGRAM.—(1) Pursuant to subsection (b)(4), the two Secretaries shall carry out a program to identify, provide incentives to, implement, fund, and evaluate creative coordination and sharing initiatives at the facility, intraregional, and nationwide levels. The program shall be administered by the Department of Veterans Affairs-Department of Defense Joint Execu-

tive Committee, under procedures jointly prescribed by the two Secretaries.

(2) To facilitate the incentive program, there is established in the Treasury a fund to be known as the "DOD-VA Health Care Sharing Incentive Fund". Each Secretary shall annually contribute to the fund a minimum of $15,000,000 from the funds appropriated to that Secretary's Department. Such funds shall remain available until expended and shall be available for any purpose authorized by this section.

(3) The program under this subsection shall terminate on September 30, 2010.

(e) GUIDELINES AND POLICIES FOR IMPLEMENTATION OF COORDINATION AND SHARING RECOMMENDATIONS, CONTRACTS, AND AGREEMENTS.—(1) To implement the recommendations made by the Department of Veterans Affairs-Department of Defense Joint Executive Committee with respect to health care resources, as well as to carry out other health care contracts and agreements for coordination and sharing initiatives as they consider appropriate, the two Secretaries shall jointly issue guidelines and policy directives. Such guidelines and policies shall provide for coordination and sharing that—

(A) is consistent with the health care responsibilities of the Department of Veterans Affairs under this title and with the health care responsibilities of the Department of Defense under chapter 55 of title 10;

(B) will not adversely affect the range of services, the quality of care, or the established priorities for care provided by either Department; and

(C) will not reduce capacities in certain specialized programs of the Department of Veterans Affairs that the Secretary is required to maintain in accordance with section 1706(b) of this title.

(2) To facilitate the sharing and coordination of health care services between the two Departments, the two Secretaries shall jointly develop and implement guidelines for a standardized, uniform payment and reimbursement schedule for those services. Such schedule shall be revised periodically as necessary. The two Secretaries may on a case-by-case basis waive elements of the schedule if they jointly agree that such a waiver is in the best interests of both Departments.

(3)(A) The guidelines established under paragraph (1) shall authorize the heads of individual Department of Defense and Department of Veterans Affairs medical facilities and service regions to enter into health care resources coordination and sharing agreements.

(B) Under any such agreement, an individual who is a primary beneficiary of one Department may be provided health care, as provided in the agreement, at a facility or in the service region of the other Department that is a party to the sharing agreement.

(C) Each such agreement shall identify the health care resources to be shared.

(D) Each such agreement shall provide, and shall specify procedures designed to ensure, that the availability of direct health care to individuals who are not primary beneficiaries of the providing

Department is (i) on a referral basis from the facility or service region of the other Department, and (ii) does not (as determined by the head of the providing facility or region) adversely affect the range of services, the quality of care, or the established priorities for care provided to the primary beneficiaries of the providing Department.

(E) Each such agreement shall provide that a providing Department or service region shall be reimbursed for the cost of the health care resources provided under the agreement and that the rate of such reimbursement shall be as determined in accordance with paragraph (2).

(F) Each proposal for an agreement under this paragraph shall be effective (i) on the 46th day after the receipt of such proposal by the Committee, unless earlier disapproved, or (ii) if earlier approved by the Committee, on the date of such approval.

(G) Any funds received through such a uniform payment and reimbursement schedule shall be credited to funds that have been allotted to the facility of either Department that provided the care or services, or is due the funds from, any such agreement.

(f) ANNUAL JOINT REPORT.—(1) At the time the President's budget is transmitted to Congress in any year pursuant to section 1105 of title 31, the two Secretaries shall submit to Congress a joint report on health care coordination and sharing activities under this section during the fiscal year that ended during the previous calendar year.

(2) Each report under this section shall include the following:

(A) The guidelines prescribed under subsection (e) (and any revision of such guidelines).

(B) The assessment of further opportunities identified by the Department of Veterans Affairs-Department of Defense Joint Executive Committee under subsection (d)(3) of section 320 of this title for the sharing of health-care resources between the two Departments.

(C) Any recommendation made by that committee under subsection (c)(2) of that section during that fiscal year.

(D) A review of the sharing agreements entered into under subsection (e) and a summary of activities under such agreements during such fiscal year and a description of the results of such agreements in improving access to, and the quality and cost effectiveness of, the health care provided by the Veterans Health Administration and the Military Health System to the beneficiaries of both Departments.

(E) A summary of other planning and activities involving either Department in connection with promoting the coordination and sharing of Federal health-care resources during the preceding fiscal year.

(F) Such recommendations for legislation as the two Secretaries consider appropriate to facilitate the sharing of health-care resources between the two Departments.

(3) In addition to the matters specified in paragraph (2), the two Secretaries shall include in the annual report under this subsection an overall status report of the progress of health resources sharing between the two Departments as a consequence of subtitle C of title VII of the Bob Stump National Defense Authorization Act

for Fiscal Year 2003 (Public Law 107–314) and of other sharing initiatives taken during the period covered by the report. Such status report shall indicate the status of such sharing and shall include appropriate data as well as analyses of that data. The annual report shall include the following:

(A) Enumerations and explanations of major policy decisions reached by the two Secretaries during the period covered by the report period with respect to sharing between the two Departments.

(B) A description of progress made in new ventures or particular areas of sharing and coordination that would be of policy interest to Congress consistent with the intent of such subtitle.

(C) A description of enhancements of access to care of beneficiaries of both Departments that came about as a result of new sharing approaches brought about by such subtitle.

(D) A description of proposals for which funds are provided through the joint incentives program under subsection (d), together with a description of their results or status at the time of the report, including access improvements, savings, and quality-of-care enhancements they brought about, and a description of any additional use of funds made available under subsection (d).

(4) In addition to the matters specified in paragraphs (2) and (3), the two Secretaries shall include in the annual report under this subsection for each year through 2008 the following:

(A) A description of the measures taken, or planned to be taken, to implement the health resources sharing project under section 722 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314) and any cost savings anticipated, or cost sharing achieved, at facilities participating in the project, including information on improvements in access to care, quality, and timeliness, as well as impediments encountered and legislative recommendations to ameliorate such impediments.

(B) A description of the use of the waiver authority provided by section 722(d)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), including—

(i) a statement of the numbers and types of requests for waivers under that section of administrative policies that have been made during the period covered by the report and, for each such request, an explanation of the content of each request, the intended purpose or result of the requested waiver, and the disposition of each request; and

(ii) descriptions of any new administrative policies that enhance the success of the project.

(5) In addition to the matters specified in paragraphs (2), (3), and (4), the two Secretaries shall include in the annual report under this subsection for each year through 2009 a report on the pilot program for graduate medical education under section 725 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), including activities under the program

during the preceding year and each Secretary's assessment of the efficacy of providing education and training under that program.

(g) DEFINITIONS.—For the purposes of this section:

(1) The term "beneficiary" means a person who is a primary beneficiary of the Department of Veterans Affairs or of the Department of Defense.

(2) The term "direct health care" means health care provided to a beneficiary in a medical facility operated by the Department of Veterans Affairs or the Department of Defense.

(3) The term "head of a medical facility" (A) with respect to a medical facility of the Department of Veterans Affairs, means the director of the facility, and (B) with respect to a medical facility of the Department of Defense, means the medical or dental officer in charge or the contract surgeon in charge.

(4) The term "health-care resource" includes hospital care, medical services, and rehabilitative services, as those terms are defined in paragraphs (5), (6), and (8), respectively, of section 1701 of this title, services under sections 1782 and 1783 of this title, any other health-care service, and any health-care support or administrative resource.

(5) The term "primary beneficiary" (A) with respect to the Department means a person who is eligible under this title (other than under section 1782, 1783, or 1784 or subsection (d) of this section) or any other provision of law for care or services in Department medical facilities, and (B) with respect to the Department of Defense, means a member or former member of the Armed Forces who is eligible for care under section 1074 of title 10.

(6) The term "providing Department" means the Department of Veterans Affairs, in the case of care or services furnished by a facility of the Department of Veterans Affairs, and the Department of Defense, in the case of care or services furnished by a facility of the Department of Defense.

(7) The term "service region" means a geographic service area of the Veterans Health Administration, in the case of the Department of Veterans Affairs, and a service region, in the case of the Department of Defense.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 60, Sec. 5011; amended Pub. L. 97–174, Sec. 3(a), (b)(1), May 4, 1982, 96 Stat. 70, 73; Pub. L. 97–452, Sec. 2(e)(4), Jan. 12, 1983, 96 Stat. 2479; renumbered Sec. 8111 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–446, title XII, Sec. 1201(g)(8), (i)(10), Nov. 2, 1994, 108 Stat. 4687, 4688; Pub. L. 107–135, title II, Sec. 208(e)(6), Jan. 23, 2002, 115 Stat. 2464; Pub. L. 107–314, div. A, title VII, Sec. 721(a)(1), Dec. 2, 2002, 116 Stat. 2589; Pub. L. 108–136, div. A, title V, Sec. 583(b), (c), Nov. 24, 2003, 117 Stat. 1491, 1492; Pub. L. 108–422, title VI, Sec. 605, Nov. 30, 2004, 118 Stat. 2399; Pub. L. 109–163, div. A, title VII, Sec. 747(a), title X, Sec. 1056(g), Jan. 6, 2006, 119 Stat. 3363, 3440; Pub. L. 109–364, div. A, title VII, Sec. 743, Oct. 17, 2006, 120 Stat. 2308; Pub. L. 109–444, Sec. 8(a)(6), (7), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109–461, title X, Secs. 1004(a)(6), (7), 1006(b), Dec. 22, 2006, 120 Stat. 3465, 3468.)

§ 8111A. Furnishing of health-care services to members of the Armed Forces during a war or national emergency

(a)(1) During and immediately following a period of war, or a period of national emergency declared by the President or the Congress that involves the use of the Armed Forces in armed conflict, the Secretary may furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty.

(2)(A) During and immediately following a disaster or emergency referred to in subparagraph (B), the Secretary may furnish hospital care and medical services to members of the Armed Forces on active duty responding to or involved in that disaster or emergency.

(B) A disaster or emergency referred to in this subparagraph is any disaster or emergency as follows:

(i) A major disaster or emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(ii) A disaster or emergency in which the National Disaster Medical System established pursuant to section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh-11(b)) is activated by the Secretary of Health and Human Services under paragraph (3)(A) of that section or as otherwise authorized by law.

(3) The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of veterans with service-connected disabilities.

(4) For the purposes of this section, the terms "hospital care", "nursing home care", and "medical services" have the meanings given such terms by sections 1701(5), 101(28), and 1701(6) of this title, respectively, and the term "medical services" includes services under sections 1782 and 1783 of this title.

(b)(1) During a period in which the Secretary is authorized to furnish care and services to members of the Armed Forces under subsection (a) of this section, the Secretary, to the extent authorized by the President and subject to the availability of appropriations or reimbursements under subsection (c) of this section, may enter into contracts with private facilities for the provision during such period by such facilities of hospital care and medical services described in paragraph (2) of this subsection.

(2) Hospital care and medical services referred to in paragraph (1) of this subsection are—

(A) hospital care and medical services authorized under this title for a veteran and necessary for the care or treatment of a condition for which the veteran is receiving medical services at a Department facility under subsection (a) of section 1710 of this title, in a case in which the delay involved in furnishing such care or services at such Department facility or at any other Department facility reasonably accessible to the veteran would, in the judgment of the Under Secretary for Health, be likely to result in a deterioration of such condition; and

(B) hospital care for a veteran who—

(i) is receiving hospital care under section 1710 of this title; or

(ii) is eligible for hospital care under such section and requires such care in a medical emergency that poses a serious threat to the life or health of the veteran;

if Department facilities are not capable of furnishing or continuing to furnish the care required because of the furnishing of care and services to members of the Armed Forces under subsection (a) of this section.

(c)(1) The cost of any care or services provided by the Department under subsection (a) of this section shall be reimbursed to the Department by the Department of Defense at such rates as may be agreed upon by the Secretary and the Secretary of Defense based on the cost of the care or services provided.

(2) Amounts received under this subsection shall be credited to funds allotted to the Department facility that provided the care or services.

(d)(1) The Secretary of Veterans Affairs and the Secretary of Defense shall jointly review plans for the implementation of this section not less often than annually.

(2) Whenever a modification to such plans is agreed to, the Secretaries shall jointly submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on such modification. Any such report shall be submitted within 30 days after the modification is agreed to.

(e) The Secretary shall prescribe regulations to govern any exercise of the authority of the Secretary under subsections (a) and (b) of this section and of the Under Secretary for Health under subsection (b)(2)(A) of this section.

(Added Pub. L. 97–174, Sec. 4(a), May 4, 1982, 96 Stat. 74, Sec. 5011A; renumbered Sec. 8111A, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–54, Sec. 14(f)(4), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104–262, title I, Sec. 101(e)(5), Oct. 9, 1996, 110 Stat. 3181; Pub. L. 106–419, title IV, Sec. 403(b), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 107–135, title II, Sec. 208(e)(7), Jan. 23, 2002, 115 Stat. 2464; Pub. L. 107–287, Sec. 4(b), Nov. 7, 2002, 116 Stat. 2029; Pub. L. 109–444, Sec. 8(a)(8), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109–461, title X, Secs. 1004(a)(8), 1006(b), Dec. 22, 2006, 120 Stat. 3466, 3468.)

§ 8112. Partial relinquishment of legislative jurisdiction

The Secretary, on behalf of the United States, may relinquish to the State in which any lands or interests therein under the supervision or control of the Secretary are situated, such measure of legislative jurisdiction over such lands or interests as is necessary to establish concurrent jurisdiction between the Federal Government and the State concerned. Such partial relinquishment of legislative jurisdiction shall be initiated by filing a notice thereof with the Governor of the State concerned, or in such other manner as may be prescribed by the laws of such State, and shall take effect upon acceptance by such State.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 60, Sec. 5012; renumbered Sec. 8112, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8113. Property formerly owned by National Home for Disabled Volunteer Soldiers

If by reason of any defeasance or conditional clause or clauses contained in any deed of conveyance of property to the National Home for Disabled Volunteer Soldiers, which property is owned by the United States, the full and complete enjoyment and use of such property is threatened, the Attorney General, upon request of the President, shall institute in the United States district court for the district in which the property is located such proceedings as may be proper to extinguish all outstanding adverse interests. The Attorney General may procure and accept, on behalf of the United States, by gift, purchase, cession, or otherwise, absolute title to, and complete jurisdiction over, all such property.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 61, Sec. 5013; renumbered Sec. 8113, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

§ 8114. Use of federally owned facilities; use of personnel

(a) The Secretary, subject to the approval of the President, may use as medical facilities such suitable buildings, structures, and grounds owned by the United States on March 3, 1925, as may be available for such purposes, and the President may by Executive order transfer any such buildings, structures, and grounds to the control and jurisdiction of the Department upon the request of the Secretary.

(b) The President may require the architectural, engineering, constructing, or other forces of any of the departments of the Government to do or assist in the construction and alteration of medical facilities, and the President may employ for such purposes individuals and agencies not connected with the Government, if in the opinion of the President such is desirable, at such compensation as the President may consider reasonable.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 61, Sec. 5014; renumbered Sec. 8114, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8115. Acceptance of certain property

The President may accept from any State or other political subdivision, or from any person, any building, structure, equipment, or grounds suitable for the care of disabled persons, with due regard to fire or other hazards, state of repair, and all other pertinent considerations. The President may designate which agency of the Federal Government shall have the control and management of any property so accepted.

(Added Pub. L. 96–22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 61, Sec. 5015; renumbered Sec. 8115, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

§ 8116. Nursing home revolving fund

(a)(1) Amounts realized from a transfer pursuant to section 8122(a)(2)(C) of this title shall be administered as a revolving fund and shall be available without fiscal year limitation.

(2) The revolving fund shall be deposited in a checking account with the Treasurer of the United States.

(b)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, and acquisition (including site acquisition) of nursing home facilities and may be made only as provided for in appropriation Acts.

(2) For the purpose of section 8104(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund may be expended for a project involving a total expenditure of more than $2,000,000 for the construction, alteration, or acquisition (including site acquisition) of a nursing home facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.

(Added Pub. L. 100–322, title II, Sec. 205(a), May 20, 1988, 102 Stat. 512, Sec. 5016; renumbered Sec. 8116 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

REPEAL OF SECTION

Pub. L. 108–422, title IV, Sec. 411(c)(1),(f), Nov. 30, 2004, 118 Stat. 2389, 2390, provided that this section is repealed effective at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with section 1710B(b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with section 1710B(b) of this title, see section 411(f) of Pub. L. 108–422, set out as an Effective Date of 2004 Amendment note under section 1710B of this title.

§ 8117. Emergency preparedness

(a) READINESS OF DEPARTMENT MEDICAL CENTERS.—(1) The Secretary shall take appropriate actions to provide for the readiness of Department medical centers to protect the patients and staff of such centers from a public health emergency (as defined in section 2801 of the Public Health Service Act) or otherwise to respond to such an emergency so as to enable such centers to fulfill their obligations as part of the Federal response to such emergencies.

(2) Actions under paragraph (1) shall include—

(A) the provision of decontamination equipment and personal protection equipment at Department medical centers;

(B) the provision of training in the use of such equipment to staff of such centers;

(C) organizing, training, and equipping the staff of such centers to support the activities carried out by the Secretary of Health and Human Services under section 2801 of the Public Health Service Act in the event of a public health emergency and incidents covered by the National Response Plan devel-

oped pursuant to section 502(6) of the Homeland Security Act of 2002, or any successor plan; and

(D) providing medical logistical support to the National Disaster Medical System and the Secretary of Health and Human Services as necessary, on a reimbursable basis, and in coordination with other designated Federal agencies.

(b) SECURITY AT DEPARTMENT MEDICAL AND RESEARCH FACILITIES.—(1) The Secretary shall take appropriate actions to provide for the security of Department medical centers and research facilities, including staff and patients at such centers and facilities.

(2) In taking actions under paragraph (1), the Secretary shall take into account the results of the evaluation of the security needs at Department medical centers and research facilities required by section 154(b)(1) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 116 Stat. 631), including the results of such evaluation relating to the following needs:

(A) Needs for the protection of patients and medical staff during emergencies, including a chemical or biological attack or other terrorist attack.

(B) Needs, if any, for screening personnel engaged in research relating to biological pathogens or agents, including work associated with such research.

(C) Needs for securing laboratories or other facilities engaged in research relating to biological pathogens or agents.

(c) TRACKING OF PHARMACEUTICALS AND MEDICAL SUPPLIES AND EQUIPMENT.—The Secretary shall develop and maintain a centralized system for tracking the current location and availability of pharmaceuticals, medical supplies, and medical equipment throughout the Department health care system in order to permit the ready identification and utilization of such pharmaceuticals, supplies, and equipment for a variety of purposes, including response to a public health emergency. The Secretary shall, through existing medical procurement contracts, and on a reimbursable basis, make available as necessary, medical supplies, equipment, and pharmaceuticals in response to a public health emergency in support of the Secretary of Health and Human Services.

(d) TRAINING.—The Secretary shall ensure that the Department medical centers, in consultation with the accredited medical school affiliates of such medical centers, implement curricula to train resident physicians and health care personnel in medical matters relating to public health emergencies or attacks from an incendiary or other explosive weapon consistent with section 319F(a) of the Public Health Service Act.

(e) PARTICIPATION IN NATIONAL DISASTER MEDICAL SYSTEM.—(1) The Secretary shall establish and maintain a training program to facilitate the participation of the staff of Department medical centers, and of the community partners of such centers, in the National Disaster Medical System established pursuant to section 2812 of the Public Health Service Act (42 U.S.C. 300hh-11(b)[1]).

(2) The Secretary shall establish and maintain the training program under paragraph (1) in accordance with the recommenda-

[1]Term "(b)" probably should not appear.

tions of the working group on the prevention, preparedness, and response to public health emergencies established under section 319F of the Public Health Service Act (42 U.S.C. 247d-6(a)[2]).

(3) The Secretary shall establish and maintain the training program under paragraph (1) in consultation with the following:

(A) The Secretary of Defense.

(B) The Secretary of Health and Human Services.

(C) The Administrator of the Federal Emergency Management Agency.

(f) MENTAL HEALTH COUNSELING.—(1) With respect to activities conducted by personnel serving at Department medical centers, the Secretary shall develop and maintain various strategies for providing mental health counseling and assistance, including counseling and assistance for post-traumatic stress disorder, following a bioterrorist attack or other public health emergency to the following persons:

(A) Veterans.

(B) Local and community emergency response providers.

(C) Active duty military personnel.

(D) Individuals seeking care at Department medical centers.

(2) The strategies under paragraph (1) shall include the following:

(A) Training and certification of providers of mental health counseling and assistance.

(B) Mechanisms for coordinating the provision of mental health counseling and assistance to emergency response providers referred to in paragraph (1).

(3) The Secretary shall develop and maintain the strategies under paragraph (1) in consultation with the Secretary of Health and Human Services, the American Red Cross, and the working group referred to in subsection (e)(2).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this section for each of fiscal years 2007 through 2011.

(Added Pub. L. 107–287, Sec. 6(a)(1), Nov. 7, 2002, 116 Stat. 2030; amended Pub. L. 109–295, title VI, Sec. 612(c), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 109–417, title III, Sec. 306, Dec. 19, 2006, 120 Stat. 2863; Pub. L. 110–387, title IX, Sec. 901(a)(7), Oct. 10, 2008, 122 Stat. 4142.)

§ 8118. Authority for transfer of real property; Department of Veterans Affairs Capital Asset Fund

(a)(1) The Secretary may transfer real property under the jurisdiction or control of the Secretary (including structures and equipment associated therewith) to another department or agency of the United States, to a State (or a political subdivision of a State), or to any public or private entity, including an Indian tribe. Such a transfer may be made only if the Secretary receives compensation of not less than the fair market value of the property, except that no compensation is required, or compensation at less than fair market value may be accepted, in the case of a transfer to a grant and per diem provider (as defined in section 2002 of this

[2]Term "(a)" probably should not appear.

title). When a transfer is made to a grant and per diem provider for less than fair market value, the Secretary shall require in the terms of the conveyance that if the property transferred is used for any purpose other than a purpose under chapter 20 of this title, all right, title, and interest to the property shall revert to the United States.

(2) The Secretary may exercise the authority provided by this section notwithstanding sections 521, 522, and 541 through 545 of title 40. Any such transfer shall be in accordance with this section and section 8122 of this title.

(3) The authority provided by this section may not be used in a case to which section 8164 of this title applies.

(4) The Secretary may enter into partnerships or agreements with public or private entities dedicated to historic preservation to facilitate the transfer, leasing, or adaptive use of structures or properties specified in subsection (b)(3)(D).

(5) The authority of the Secretary under paragraph (1) expires on the date that is seven years after the date of the enactment of this section.

(b)(1) There is established in the Treasury of the United States a revolving fund to be known as the Department of Veterans Affairs Capital Asset Fund (hereinafter in this section referred to as the "Fund"). Amounts in the Fund shall remain available until expended.

(2) Proceeds from the transfer of real property under this section shall be deposited into the Fund.

(3) To the extent provided in advance in appropriations Acts, amounts in the Fund may be expended for the following purposes:

(A) Costs associated with the transfer of real property under this section, including costs of demolition, environmental remediation, maintenance and repair, improvements to facilitate the transfer, and administrative expenses.

(B) Costs, including costs specified in subparagraph (A), associated with future transfers of property under this section.

(C) Costs associated with enhancing medical care services to veterans by improving, renovating, replacing, updating, or establishing patient care facilities through construction projects to be carried out for an amount less than the amount specified in 8104(a)(3)(A) for a major medical facility project.

(D) Costs, including costs specified in subparagraph (A), associated with the transfer, lease, or adaptive use of a structure or other property under the jurisdiction of the Secretary that is listed on the National Register of Historic Places.

(c) The Secretary shall include in the budget justification materials submitted to Congress for any fiscal year in support of the President's budget for that fiscal year for the Department specification of the following:

(1) The real property transfers to be undertaken in accordance with this section during that fiscal year.

(2) All transfers completed under this section during the preceding fiscal year and completed and scheduled to be completed during the fiscal year during which the budget is submitted.

(3) The deposits into, and expenditures from, the Fund that are incurred or projected for each of the preceding fiscal year, the current fiscal year, and the fiscal year covered by the budget.

(Added Pub. L. 108–422, title IV, Sec. 411(a)(1), Nov. 30, 2004, 118 Stat. 2388.)

§ 8119. Annual report on outpatient clinics

(a) ANNUAL REPORT REQUIRED.—The Secretary shall submit to the committees an annual report on community-based outpatient clinics and other outpatient clinics of the Department. The report shall be submitted each year not later than the date on which the budget for the next fiscal year is submitted to the Congress under section 1105 of title 31.

(b) CONTENTS OF REPORT.—Each report required under subsection (a) shall include the following:

(1) A list of each community-based outpatient clinic and other outpatient clinic of the Department, and for each such clinic, the type of clinic, location, size, number of health professionals employed by the clinic, workload, whether the clinic is leased or constructed and operated by the Secretary, and the annual cost of operating the clinic.

(2) A list of community-based outpatient clinics and other outpatient clinics that the Secretary opened during the fiscal year preceding the fiscal year during which the report is submitted and a list of clinics the Secretary proposes opening during the fiscal year during which the report is submitted and the subsequent fiscal year, together with the cost of activating each such clinic and the information required to be provided under paragraph (1) for each such clinic and proposed clinic.

(3) A list of proposed community-based outpatient clinics and other outpatient clinics that are, as of the date of the submission of the report, under review by the National Review Panel and a list of possible locations for future clinics identified in the Department's strategic planning process, including any identified locations in rural and underserved areas.

(4) A prioritized list of sites of care identified by the Secretary that the Secretary could establish without carrying out construction or entering into a lease, including—

(A) any such sites that could be expanded by hiring additional staff or allocating staff to Federal facilities or facilities operating in collaboration with the Federal Government; and

(B) any sites established, or able to be established, under sections 8111 and 8153 of this title.

(Added Pub. L. 110–387, title VII, Sec. 708(a), Oct. 10, 2008, 122 Stat. 4139.)

SUBCHAPTER II—PROCUREMENT AND SUPPLY

§ 8121. Revolving supply fund

(a) The revolving supply fund established for the operation and maintenance of a supply system for the Department (including procurement of supplies, equipment, and personal services and the repair and reclamation of used, spent, or excess personal property) shall be—

(1) available without fiscal year limitations for all expenses necessary for the operation and maintenance of such supply system;

(2) reimbursed from appropriations for the cost of all services, equipment, and supplies furnished, at rates determined by the Secretary on the basis of estimated or actual direct cost (which may be based on the cost of recent significant purchases of the equipment or supply item involved) and indirect cost; and

(3) credited with advances from appropriations for activities to which services or supplies are to be furnished, and all other receipts resulting from the operation of the fund, including property returned to the supply system when no longer required by activities to which it had been furnished, the proceeds of disposal of scrap, excess or surplus personal property of the fund, and receipts from carriers and others for loss of or damage to personal property.

(b) The Secretary may authorize the Secretary of Defense to make purchases through the fund in the same manner as activities of the Department. When services, equipment, or supplies are furnished to the Secretary of Defense through the fund, the reimbursement required by paragraph (2) of subsection (a) shall be made from appropriations made to the Department of Defense, and when services or supplies are to be furnished to the Department of Defense, the fund may be credited, as provided in paragraph (3) of subsection (a), with advances from appropriations available to the Department of Defense.

(c) At the end of each fiscal year, there shall be covered into the Treasury of the United States as miscellaneous receipts such amounts as the Secretary determines to be in excess of the requirements necessary for the maintenance of adequate inventory levels and for the effective financial management of the revolving supply fund.

(d) An adequate system of accounts for the fund shall be maintained on the accrual method, and financial reports prepared on the basis of such accounts. An annual business type budget shall be prepared for operations under the fund.

(e) The Secretary is authorized to capitalize, at fair and reasonable values as determined by the Secretary, all supplies and materials and depot stocks of equipment on hand or on order.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1253, Sec. 5011; amended Pub. L. 87–314, Sept. 26, 1961, 75 Stat. 675; Pub. L. 94–581, title II, Sec. 210(e)(6), Oct. 21, 1976, 90 Stat. 2865; renumbered Sec. 5021, Pub. L. 96–22, title III, Sec. 301(b)(1), June 13, 1979, 93 Stat. 61; Pub. L. 96–330, title IV, Sec. 402(a), Aug. 26, 1980, 94 Stat. 1051; renumbered Sec. 8121, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 108–170, title IV, Sec. 403(a), Dec. 6, 2003, 117 Stat. 2062.)

§ 8122. Authority to procure and dispose of property and to negotiate for common services

(a)(1) The Secretary may lease for a term not exceeding three years lands or buildings, or parts or parcels thereof, belonging to the United States and under the Secretary's control. Any lease made pursuant to this subsection to any public or nonprofit organization may be made without regard to the provisions of section

3709 of the Revised Statutes (41 U.S.C. 5). Notwithstanding section 1302 of title 40, or any other provision of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection, ore restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease. Prior to the execution of any such lease, the Secretary shall give appropriate public notice of the Secretary's intention to do so in the newspaper of the community in which the lands or buildings to be leased are located. The proceeds from such leases, less expenses for maintenance, operation, and repair of buildings leased for living quarters, shall be covered into the Treasury of the United States as miscellaneous receipts.

(2) Except as provided in paragraph (3), the Secretary may not during any fiscal year transfer to any other department or agency of the United States or to any other entity real property that is owned by the United States and administered by the Secretary unless the proposed transfer is described in the budget submitted to Congress pursuant to section 1105 of title 31 for that fiscal year.

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary may, without regard to paragraph (2) of this subsection or any other provision of law relating to the disposition of real property by the United States, transfer to a State for use as the site of a State nursing-home or domiciliary facility real property described in subparagraph (E) of this paragraph which the Secretary determines to be excess to the needs of the Department.

(B) A transfer of real property may not be made under this paragraph unless—

(i) the Secretary has determined that the State has provided sufficient assurance that it has the resources (including any resources which are reasonably likely to be available to the State under subchapter III of chapter 81 of this title and section 1741 of this title) necessary to construct and operate a State home nursing or domiciliary care facility; and

(ii) the transfer is made subject to the conditions (I) that the property be used by the State for a nursing-home or domiciliary care facility in accordance with the conditions and limitations applicable to State home facilities constructed with assistance under subchapter III of chapter 81 of this title, and (II) that, if the property is used at any time for any other purpose, all right, title, and interest in and to the property shall revert to the United States.

(C) A transfer of real property may not be made under this paragraph until—

(i) the Secretary submits to the Committees on Veterans' Affairs of the Senate and House of Representatives, not later than June 1 of the year in which the transfer is proposed to be made (or the year preceding that year), a report providing notice of the proposed transfer; and

(ii) a period of 90 consecutive days elapses after the report is received by those committees.

(D) A transfer under this paragraph shall be made under such additional terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(E) Real property described in this subparagraph is real property that is owned by the United States and administered by the Secretary.

(b) The Secretary may, for the purpose of extending benefits to veterans and dependents, and to the extent the Secretary deems necessary, procure the necessary space for administrative purposes by lease, purchase, or construction of buildings, or by condemnation or declaration of taking, pursuant to law.

(c) The Secretary may procure laundry services, and other common services as specifically approved by the Secretary from nonprofit, tax-exempt educational, medical or community institutions, without regard to the requirements of section 302(c) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(c)), whenever such services are not reasonably available from private commercial sources. Notwithstanding this exclusion, the provisions of section 304 of that Act (41 U.S.C. 254) shall apply to procurement authorized by this subsection.

(d)(1) Real property under the jurisdiction of the Secretary may not be declared excess by the Secretary and disposed of by the General Services Administration or any other entity of the Federal Government unless the Secretary determines that the property is no longer needed by the Department in carrying out its functions and is not suitable for use for the provision of services to homeless veterans by the Department or by another entity under an enhanced-use lease of such property under section 8162 of this title.

(2) The Secretary may transfer real property under this section, or under section 8118 of this title, if the Secretary—

(A) places a notice in the real estate section of local newspapers and in the Federal Register of the Secretary's intent to transfer that real property (including land, structures, and equipment associated with the property);

(B) holds a public hearing;

(C) provides notice to the Administrator of General Services of the Secretary's intention to transfer that real property and waits for 30 days to elapse after providing that notice; and

(D) after such 30-day period has elapsed, notifies the congressional veterans' affairs committees of the Secretary's intention to dispose of the property and waits for 60 days to elapse from the date of that notice.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1253, Sec. 5012; amended Pub. L. 89–785, title II, Sec. 202(a), (b), Nov. 7, 1966, 80 Stat. 1373; Pub. L. 93–82, title III, Sec. 302(2), Aug. 2, 1973, 87 Stat. 195; Pub. L. 94–581, title II, Sec. 210(e)(7), Oct. 21, 1976, 90 Stat. 2865; renumbered Sec. 5022 and amended Pub. L. 96–22, title III, Sec. 301(b), June 13, 1979, 93 Stat. 61; Pub. L. 96–330, title IV, Sec. 403(a), Aug. 26, 1980, 94 Stat. 1052; Pub. L. 97–295, Sec. 4(91), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98–160, title IV, Sec. 401, Nov. 21, 1983, 97 Stat. 1004; Pub. L. 100–322, title IV, Sec. 421(a)(1), May 20, 1988, 102 Stat. 552; Pub. L. 100–687, div. B, title XV, Sec. 1505, Nov. 18, 1988, 102 Stat. 4135; renumbered Sec. 8122 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(f)(5), June 13, 1991, 105 Stat. 288; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403–406; Pub. L. 107–95, Sec. 10(a), Dec. 21, 2001, 115 Stat. 920; Pub. L. 107–217, Sec. 3(j)(3), Aug. 21, 2002, 116 Stat. 1300; Pub. L. 108–422, title IV, Sec. 411(e)(1), (2), Nov. 30, 2004, 118 Stat. 2389.)

§ 8123. Procurement of prosthetic appliances

The Secretary may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as the Secretary may determine to be proper, without regard to any other provision of law.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1254, Sec. 5013; amended Pub. L. 94–581, title II, Sec. 210(e)(8), Oct. 21, 1976, 90 Stat. 2865; renumbered Sec. 5023, Pub. L. 96–22, title III, Sec. 301(b)(1), June 13, 1979, 93 Stat. 61; renumbered Sec. 8123, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8124. Grant of easements in Government-owned lands

The Secretary, whenever the Secretary deems it advantageous to the Government and upon such terms and conditions as the Secretary deems advisable, may grant on behalf of the United States to any State, or any agency or political subdivision thereof, or to any public-service company, easements in and rights-of-way over lands belonging to the United States which are under the Secretary's supervision and control. Such grant may include the use of such easements or rights-of-way by public utilities to the extent authorized and under the conditions imposed by the laws of such State relating to use of public highways. Such partial, concurrent, or exclusive jurisdiction over the areas covered by such easements or rights-of-way, as the Secretary deems necessary or desirable, is hereby ceded to the State in which the land is located. The Secretary may accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as the Secretary may deem necessary or desirable over the land so acquired. Any such easement or right-of-way shall be terminated upon abandonment or nonuse of the same and all right, title, and interest in the land covered thereby shall thereupon revert to the United States or its assignee.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1254, Sec. 5014; amended Pub. L. 94–581, title II, Sec. 210(e)(9), Oct. 21, 1976, 90 Stat. 2865; renumbered Sec. 5024, Pub. L. 96–22, title III, Sec. 301(b)(1), June 13, 1979, 93 Stat. 61; renumbered Sec. 8124, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8125. Procurement of health-care items

(a) Except as provided in subsections (b) and (c) of this section, the Secretary may not procure health-care items under local contracts.

(b)(1) A health-care item for use by the Department may be procured under a local contract if—

(A) the procurement is within the limits prescribed in paragraph (3) of this subsection; and

(B)(i) the item is not otherwise available to the Department medical center concerned,

(ii) procurement of the item by a local contract is necessary for the effective furnishing of health-care services or the conduct of a research or education program at a Department medical center, as determined by the director of the center in ac-

cordance with regulations which the Under Secretary for Health shall prescribe, or

(iii) procurement under a local contract is demonstrably more cost-effective for the item.

(2) In the case of the need for an emergency procurement of a health-care item, such item may be procured under a local contract, but no greater quantity of such item may be procured by a local contract than is reasonably necessary to meet the emergency need and the reasonably foreseeable need for the item at the medical center concerned until resupply can be achieved through procurement actions other than emergency procurement.

(3)(A) Except as provided in subparagraphs (C) and (D) of this paragraph, not more than 20 percent of the total of all health-care items procured by the Department in any fiscal year (measured as a percent of the total cost of all such health-care items procured by the Department in that fiscal year) may be procured under local contracts.

(B) Local contracts for the procurement of health-care items shall, to the maximum extent feasible, be awarded to regular dealers or manufacturers engaged in the wholesale supply of such items.

(C) The Secretary may increase for a fiscal year the percentage specified in subparagraph (A) of this section to a percentage not greater than 30 percent if the Secretary, based on the experience of the Department during the two fiscal years preceding such fiscal year, determines that the increase and the amount of the increase are necessary in the interest of the effective furnishing of health-care services by the Department. The authority to increase such percentage may not be delegated.

(D) Items procured through an emergency procurement shall not be counted for the purpose of this paragraph.

(c) A provision of law that is inconsistent with subsection (a) or (b) of this section shall not apply, to the extent of the inconsistency, to the procurement of a health-care item for use by the Department.

(d)(1) Not later than December 1 of each year, the director of each Department medical center shall transmit to the Secretary a report containing a list indicating the quantity of each health-care item procured at that medical center under a local contract during the preceding fiscal year and the total amount paid for such item during such fiscal year.

(2) Not later than February 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out this section during the preceding fiscal year.

(e) For the purposes of this section:

(1) The term "health-care item" includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 65 or 66. Effective December 1, 1992, such term also includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73. Such term does not include perishable items.

(2) The term "local contract" means a contract entered into by a Department medical center for procurement of an item for use by that medical center.

(3) The term "emergency procurement" means a procurement necessary to meet an emergency need, affecting the health or safety of a person being furnished health-care services by the Department, for an item.

(Added Pub. L. 100–322, title IV, Sec. 403(a)(1), May 20, 1988, 102 Stat. 543, Sec. 5025; amended Pub. L. 100–687, div. B, title XV, Sec. 1507(b), (c), Nov. 18, 1988, 102 Stat. 4136, 4137; renumbered Sec. 8125, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 107–14, Sec. 8(a)(15), June 5, 2001, 115 Stat. 35.)

§ 8126. Limitation on prices of drugs procured by Department and certain other Federal agencies

(a) Each manufacturer of covered drugs shall enter into a master agreement with the Secretary under which—

(1) beginning January 1, 1993, the manufacturer shall make available for procurement on the Federal Supply Schedule of the General Services Administration each covered drug of the manufacturer;

(2) with respect to each covered drug of the manufacturer procured by a Federal agency described in subsection (b) on or after January 1, 1993, that is purchased under depot contracting systems or listed on the Federal Supply Schedule, the manufacturer has entered into and has in effect a pharmaceutical pricing agreement with the Secretary (or the Federal agency involved, if the Secretary delegates to the Federal agency the authority to enter into such a pharmaceutical pricing agreement) under which the price charged during the one-year period beginning on the date on which the agreement takes effect may not exceed 76 percent of the non-Federal average manufacturer price (less the amount of any additional discount required under subsection (c)) during the one-year period ending one month before such date (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period are not available, during such period as the Secretary considers appropriate), except that such price may nominally exceed such amount if found by the Secretary to be in the best interests of the Department or such Federal agencies;

(3) with respect to each covered drug of the manufacturer procured by a State home receiving funds under section 1741 of this title, the price charged may not exceed the price charged under the Federal Supply Schedule at the time the drug is procured; and

(4) unless the manufacturer meets the requirements of paragraphs (1), (2), and (3), the manufacturer may not receive payment for the purchase of drugs or biologicals from—

(A) a State plan under title XIX of the Social Security Act, except as authorized under section 1927(a)(3) of such Act,

(B) any Federal agency described in subsection (b), or

(C) any entity that receives funds under the Public Health Service Act.

(b) The Federal agencies described in this subsection are as follows:

(1) The Department.

(2) The Department of Defense.

(3) The Public Health Service, including the Indian Health Service.

(4) The Coast Guard.

(c) With respect to any covered drug the price of which is determined in accordance with a pharmaceutical pricing agreement entered into pursuant to subsection (a)(2), beginning on or after January 1, 1993, the manufacturer shall provide a discount in an amount equal to the amount by which the change in non-Federal price exceeds the amount equal to—

(1) the non-Federal average manufacturer price of the drug during the 3-month period that ends one year before the last day of the month preceding the month during which the contract for the covered drug goes into effect (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period as the Secretary considers appropriate); multiplied by

(2) the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) between the last month of the period described in paragraph (1) and the last month preceding the month during which the contract goes into effect for which Consumer Price Index data is available.

(d) In the case of a covered drug of a manufacturer that has entered into a multi-year contract with the Secretary under subsection (a)(2) for the procurement of the drug—

(1) during any one-year period that follows the first year for which the contract is in effect, the contract price charged for the drug may not exceed the contract price charged during the preceding one-year period, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) during the 12-month period ending with the last month of such preceding one-year period for which Consumer Price Index data is available; and

(2) in applying subsection (c) to determine the amount of the discount provided with respect to the drug during a year that follows the first year for which the contract is in effect, any reference in such subsection to "the month during which the contract goes into effect" shall be considered a reference to the first month of such following year.

(e)(1) The manufacturer of any covered drug the price of which is determined in accordance with a pharmaceutical pricing agreement entered into pursuant to subsection (a)(2) shall—

(A) not later than 30 days after the first day of the last quarter that begins before the agreement takes effect (or, in the case of an agreement that takes effect on January 1, 1993, not later than December 4, 1992), report to the Secretary the non-Federal average manufacturer price for the drug during

the one-year period that ends on the last day of the previous quarter; and

(B) not later than 30 days after the last day of each quarter for which the agreement is in effect, report to the Secretary the non-Federal average manufacturer price for the drug during such quarter.

(2) The provisions of subparagraphs (B) and (C) of section 1927(b)(3) of the Social Security Act shall apply to drugs described in paragraph (1) and the Secretary in the same manner as such provisions apply to covered outpatient drugs and the Secretary of Health and Human Services under such subparagraphs, except that references in such subparagraphs to prices or information reported or required under "subparagraph (A)" shall be deemed to refer to information reported under paragraph (1).

(3) In order to determine the accuracy of a drug price that is reported to the Secretary under paragraph (1), the Secretary may audit the relevant records of the manufacturer or of any wholesaler that distributes the drug, and may delegate the authority to audit such records to the appropriate Federal agency described in subsection (b).

(4) Any information contained in a report submitted to the Secretary under paragraph (1) or obtained by the Secretary through any audit conducted under paragraph (3) shall remain confidential, except as the Secretary determines necessary to carry out this section and to permit the Comptroller General and the Director of the Congressional Budget Office to review the information provided.

(f) The Secretary shall supply to the Secretary of Health and Human Services—

(1) upon the execution or termination of any master agreement, the name of the manufacturer, and

(2) on a quarterly basis, a list of manufacturers who have entered into master agreements under this section.

(g)(1) Any reference in this section to a provision of the Social Security Act shall be deemed to be a reference to the provision as in effect on November 4, 1992.

(2) A manufacturer is deemed to meet the requirements of subsection (a) if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of this section (as in effect immediately after the enactment of this section), and would have entered into an agreement under this section (as such section was in effect at such time), but for a legislative change in this section after November 4, 1992.

(h) In this section:

(1) The term "change in non-Federal price" means, with respect to a covered drug that is subject to an agreement under this section, an amount equal to—

(A) the non-Federal average manufacturer price of the drug during the 3-month period that ends with the month preceding the month during which a contract goes into effect (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period as the Secretary considers appropriate); minus

(B) the non-Federal average manufacturer price of the drug during the 3-month period that ends one year before the end of the period described in subparagraph (A) (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period preceding the period described in subparagraph (A) as the Secretary considers appropriate).

(2) The term "covered drug" means—

(A) a drug described in section 1927(k)(7)(A)(ii) of the Social Security Act, or that would be described in such section but for the application of the first sentence of section 1927(k)(3) of such Act;

(B) a drug described in section 1927(k)(7)(A)(iv) of the Social Security Act, or that would be described in such section but for the application of the first sentence of section 1927(k)(3) of such Act; or

(C) any biological product identified under section 600.3 of title 21, Code of Federal Regulations.

(3) The term "depot" means a centralized commodity management system through which covered drugs procured by an agency of the Federal Government are—

(A) received, stored, and delivered through—

(i) a federally owned and operated warehouse system, or

(ii) a commercial entity operating under contract with such agency; or

(B) delivered directly from the commercial source to the entity using such covered drugs.

(4) The term "manufacturer" means any entity which is engaged in—

(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

(5) The term "non-Federal average manufacturer price" means, with respect to a covered drug and a period of time (as determined by the Secretary), the weighted average price of a single form and dosage unit of the drug that is paid by wholesalers in the United States to the manufacturer, taking into account any cash discounts or similar price reductions during that period, but not taking into account—

(A) any prices paid by the Federal Government; or

(B) any prices found by the Secretary to be merely nominal in amount.

(6) The term "weighted average price" means, with respect to a covered drug and a period of time (as determined by the Secretary) an amount equal to—

(A) the sum of the products of the average price per package unit of each quantity of the drug sold during the period and the number of package units of the drug sold during the period; divided by

(B) the total number of package units of the drug sold during the period.

(i)(1) If the Secretary modifies a multi-year contract described in subsection (d) to include a covered drug of the manufacturer that was not available for inclusion under the contract at the time the contract went into effect, the price of the drug shall be determined as follows:

(A) For the portion of the first contract year during which the drug is so included, the price of the drug shall be determined in accordance with subsection (a)(2), except that the reference in such subsection to "the one-year period beginning on the date the agreement takes effect" shall be considered a reference to such portion of the first contract year.

(B) For any subsequent contract year, the price of the drug shall be determined in accordance with subsection (d), except that each reference in such subsection to "the first year for which the contract is in effect" shall be considered a reference to the portion of the first contract year during which the drug is included under the contract.

(2) In this subsection, the term "contract year" means any one-year period for which a multi-year contract described in subsection (d) is in effect.

(Added Pub. L. 102–585, title VI, Sec. 603(a)(1), Nov. 4, 1992, 106 Stat. 4971; amended Pub. L. 103–18, Sec. 1(a), Apr. 12, 1993, 107 Stat. 53; Pub. L. 103–446, title XII, Sec. 1201(e)(27), (f)(6), Nov. 2, 1994, 108 Stat. 4686, 4687; Pub. L. 104–106, div. A, title VII, Sec. 737(a), Feb. 10, 1996, 110 Stat. 383; Pub. L. 105–115, title I, Sec. 125(b)(2)(E), Nov. 21, 1997, 111 Stat. 2325.)

§ 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences

(a) CONTRACTING GOALS.—(1) In order to increase contracting opportunities for small business concerns owned and controlled by veterans and small business concerns owned and controlled by veterans with service-connected disabilities, the Secretary shall—

(A) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans who are not veterans with service-connected disabilities in accordance with paragraph (2); and

(B) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans with service-connected disabilities in accordance with paragraph (3).

(2) The goal for a fiscal year for participation under paragraph (1)(A) shall be determined by the Secretary.

(3) The goal for a fiscal year for participation under paragraph (1)(B) shall be not less than the Government-wide goal for that fiscal year for participation by small business concerns owned and controlled by veterans with service-connected disabilities under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(4) The Secretary shall establish a review mechanism to ensure that, in the case of a subcontract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal.

(b) USE OF NONCOMPETITIVE PROCEDURES FOR CERTAIN SMALL CONTRACTS.—For purposes of meeting the goals under subsection (a), and in accordance with this section, in entering into a contract with a small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)), a contracting officer of the Department may use procedures other than competitive procedures.

(c) SOLE SOURCE CONTRACTS FOR CONTRACTS ABOVE SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if—

(1) such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) but will not exceed $5,000,000; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

(d) USE OF RESTRICTED COMPETITION.—Except as provided in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.

(e) ELIGIBILITY OF SMALL BUSINESS CONCERNS.—A small business concern may be awarded a contract under this section only if the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f).

(f) DATABASE OF VETERAN-OWNED BUSINESSES.—(1) Subject to paragraphs (2) through (6), the Secretary shall maintain a database of small business concerns owned and controlled by veterans and the veteran owners of such business concerns.

(2) To be eligible for inclusion in the database, such a veteran shall submit to the Secretary such information as the Secretary may require with respect to the small business concern or the veteran.

(3) Information maintained in the database shall be submitted on a voluntary basis by such veterans.

(4) In maintaining the database, the Secretary shall carry out at least the following two verification functions:

(A) Verification that each small business concern listed in the database is owned and controlled by veterans.

(B) In the case of a veteran who indicates a service-connected disability, verification of the service-disabled status of such veteran.

(5) The Secretary shall make the database available to all Federal departments and agencies and shall notify each such department and agency of the availability of the database.

(6) If the Secretary determines that the public dissemination of certain types of information maintained in the database is inappropriate, the Secretary shall take such steps as are necessary to maintain such types of information in a secure and confidential manner.

(g) ENFORCEMENT PENALTIES FOR MISREPRESENTATION.—Any business concern that is determined by the Secretary to have misrepresented the status of that concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans for purposes of this subsection shall be debarred from contracting with the Department for a reasonable period of time, as determined by the Secretary.

(h) TREATMENT OF BUSINESSES AFTER DEATH OF VETERAN-OWNER.—(1) Subject to paragraph (3), if the death of a veteran causes a small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a small business concern owned and controlled by veterans.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(A) The date on which the surviving spouse remarries.

(B) The date on which the surviving spouse relinquishes an ownership interest in the small business concern.

(C) The date that is ten years after the date of the veteran's death.

(3) Paragraph (1) only applies to a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability.

(i) PRIORITY FOR CONTRACTING PREFERENCES.—Preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans with service-connected disabilities.

(2) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans that are not covered by paragraph (1).

(3) Contracts awarded pursuant to—

(A) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(B) section 31 of such Act (15 U.S.C. 657a).

(4) Contracts awarded pursuant to any other small business contracting preference.

(j) APPLICABILITY OF REQUIREMENTS TO CONTRACTS.—(1) If after December 31, 2008, the Secretary enters into a contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods or services, the Secretary shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of this section in acquiring such goods or services.

(2) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

(k) ANNUAL REPORTS.—Not later than December 31 each year, the Secretary shall submit to Congress a report on small business contracting during the fiscal year ending in such year. Each report shall include, for the fiscal year covered by such report, the following:

(1) The percentage of the total amount of all contracts awarded by the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(2) The percentage of the total amount of all such contracts awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(3) The percentage of the total amount of all contracts awarded by each Administration of the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(4) The percentage of the total amount of all contracts awarded by each such Administration during that fiscal year that were awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(l) DEFINITIONS.—In this section:

(1) The term "small business concern" has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term "small business concern owned and controlled by veterans" means a small business concern—

(A)(i) not less than 51 percent of which is owned by one or more veterans or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) the management and daily business operations of which are controlled by one or more veterans; or

(B) not less than 51 percent of which is owned by one or more veterans with service-connected disabilities that are permanent and total who are unable to manage the daily business operations of such concern or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more such veterans.

(Added Pub. L. 109–461, title V, Sec. 502(a)(1), Dec. 22, 2006, 120 Stat. 3431; amended Pub. L. 110–389, title VIII, Sec. 806, Oct. 10, 2008, 122 Stat. 4189.)

§ 8128. Small business concerns owned and controlled by veterans: contracting priority

(a) CONTRACTING PRIORITY.—In procuring goods and services pursuant to a contracting preference under this title or any other provision of law, the Secretary shall give priority to a small business concern owned and controlled by veterans, if such business concern also meets the requirements of that contracting preference.

(b) DEFINITION.—For purposes of this section, the term "small business concern owned and controlled by veterans" means a small business concern that is included in the small business database maintained by the Secretary under section 8127(f) of this title.

(Added Pub. L. 109–461, title V, Sec. 503(a)(1), Dec. 22, 2006, 120 Stat. 3435.)

SUBCHAPTER III—STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

§ 8131. Definitions

For the purpose of this subchapter—

(1) The veteran population of each State shall be determined on the basis of the latest figures certified by the Department of Commerce.

(2) The term "State" does not include any possession of the United States.

(3) The term "construction" means the construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary, nursing home, adult day health, or hospital care in State homes, and the provision of initial equipment for any such buildings.

(4) The term "cost of construction" means the amount found by the Secretary to be necessary for a construction project, including architect fees, but excluding land acquisition costs.

(Added Pub. L. 88–450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 501, Sec. 5031; amended Pub. L. 94–581, title II, Sec. 206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95–62, Sec. 3(1), (2), July 5, 1977, 91 Stat. 262; Pub. L. 99–576, title II, Sec. 224(d), Oct. 28, 1986, 100 Stat. 3263; renumbered Sec. 8131, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 104–262, title III, Sec. 342(b)(1), Oct. 9, 1996, 110 Stat. 3206.)

§ 8132. Declaration of purpose

The purpose of this subchapter is to assist the several States to construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, and to expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home, adult day health, or hospital care to veterans in State homes.

(Added Pub. L. 88–450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 501, Sec. 5032; amended Pub. L. 94–581, title II, Sec. 206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95–62, Sec. 3(3), July 5, 1977, 91 Stat. 262; Pub. L. 98–528, title I, Sec. 105(1), Oct. 19, 1984, 98 Stat. 2689; renumbered Sec. 8132, Pub. L. 102–40, title IV, Sec. 402(b)(1),

May 7, 1991, 105 Stat. 238; Pub. L. 104–262, title III, Sec. 342(b)(2), Oct. 9, 1996, 110 Stat. 3206.)

§ 8133. Authorization of appropriations

(a) There are hereby authorized to be appropriated such sums as are necessary to carry out this subchapter. Sums appropriated pursuant to this section shall be used for making grants to States which have submitted, and have had approved by the Secretary, applications for carrying out the purposes and meeting the requirements of this subchapter.

(b) Sums appropriated pursuant to subsection (a) of this section shall remain available until expended.

(Added Pub. L. 88–450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 501, Sec. 5033; amended Pub. L. 89–311, Sec. 7(a), Oct. 31, 1965, 79 Stat. 1157; Pub. L. 90–432, Sec. 2, July 26, 1968, 82 Stat. 448; Pub. L. 93–82, title IV, Sec. 403(c), Aug. 2, 1973, 87 Stat. 196; Pub. L. 95–62, Sec. 3(4), July 5, 1977, 91 Stat. 262; Pub. L. 96–151, title I, Sec. 101(a), Dec. 20, 1979, 93 Stat. 1092; Pub. L. 97–251, Sec. 8, Sept. 8, 1982, 96 Stat. 716; Pub. L. 99–576, title II, Sec. 224(a), Oct. 28, 1986, 100 Stat. 3262; Pub. L. 101–110, Sec. 1(c), Oct. 6, 1989, 103 Stat. 682; Pub. L. 101–237, title II, Sec. 201(b), Dec. 18, 1989, 103 Stat. 2066; renumbered Sec. 8133, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–585, title IV, Sec. 402, Nov. 4, 1992, 106 Stat. 4954.)

§ 8134. General regulations

(a)(1) The Secretary shall prescribe regulations for the purposes of this subchapter.

(2) In those regulations, the Secretary shall prescribe for each State the number of nursing home and domiciliary beds for which assistance under this subchapter may be furnished. Such regulations shall be based on projected demand for such care 10 years after the date of the enactment of the Veterans Millennium Health Care and Benefits Act by veterans who at such time are 65 years of age or older and who reside in that State. In determining such projected demand, the Secretary shall take into account travel distances for veterans and their families.

(3)(A) In those regulations, the Secretary shall establish criteria under which the Secretary shall determine, with respect to an application for assistance under this subchapter for a project described in subparagraph (B) which is from a State that has a need for additional beds as determined under subsections (a)(2) and (d)(1), whether the need for such beds is most aptly characterized as great, significant, or limited. Such criteria shall take into account the availability of beds already operated by the Secretary and other providers which appropriately serve the needs which the State proposes to meet with its application.

(B) This paragraph applies to a project for the construction or acquisition of a new State home facility, a project to increase the number of beds available at a State home facility, and a project to replace beds at a State home facility.

(4) The Secretary shall review and, as necessary, revise regulations prescribed under paragraphs (2) and (3) not less often than every four years.

(b) The Secretary shall prescribe the following by regulation:

(1) General standards of construction, repair, and equipment for facilities constructed or acquired with assistance received under this subchapter.

(2) General standards for the furnishing of care in facilities which are constructed or acquired with assistance received under this subchapter, which standards shall be no less stringent than those standards prescribed by the Secretary pursuant to section 1720(b) of this title.

(c) The Secretary may inspect any State facility constructed or acquired with assistance received under this subchapter at such times as the Secretary deems necessary to insure that such facility meets the standards prescribed under subsection (b)(2).

(d)(1) In prescribing regulations to carry out this subchapter, the Secretary shall provide that in the case of a State that seeks assistance under this subchapter for a project described in subsection (a)(3)(B), the determination of the unmet need for beds for State homes in that State shall be reduced by the number of beds in all previous applications submitted by that State under this subchapter, including beds which have not been recognized by the Secretary under section 1741 of this title.

(2)(A) Financial assistance under this subchapter for a renovation project may only be provided for a project for which the total cost of construction is in excess of $400,000 (as adjusted from time-to-time in such regulations to reflect changes in costs of construction).

(B) For purposes of this paragraph, a renovation project is a project to remodel or alter existing buildings for which financial assistance under this subchapter may be provided and does not include maintenance and repair work which is the responsibility of the State.

(Added Pub. L. 88–450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 502, Sec. 5034; amended Pub. L. 89–311, Sec. 7(b), Oct. 31, 1965, 79 Stat. 1157; Pub. L. 93–82, title IV, Sec. 403(d), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94–581, title I, Sec. 107(b), title II, Sec. 206(b), Oct. 21, 1976, 90 Stat. 2847, 2859; Pub. L. 95–62, Sec. 3(5), (6), July 5, 1977, 91 Stat. 262; Pub. L. 96–330, title IV, Sec. 404, Aug. 26, 1980, 94 Stat. 1052; Pub. L. 98–528, title I, Sec. 105(2), Oct. 19, 1984, 98 Stat. 2689; renumbered Sec. 8134, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(f)(6), June 13, 1991, 105 Stat. 288; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 106–117, title II, Sec. 207(a), Nov. 30, 1999, 113 Stat. 1564.)

§ 8135. Applications with respect to projects; payments

(a) Any State desiring to receive assistance for a project for construction of State home facilities (or acquisition of a facility to be used as a State home facility) must submit to the Secretary an application. Such application shall set forth the following:

(1) The amount of the grant requested with respect to such project which may not exceed 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of such project.

(2) A description of the site for such project.

(3) Plans and specifications for such project in accordance with regulations prescribed by the Secretary pursuant to section 8134(a)(2) of this title.

(4) Reasonable assurance that upon completion of such project the facilities will be used principally to furnish to veterans the level of care for which such application is made and that not more than 25 percent of the bed occupancy at any one time will consist of patients who are not receiving such level of care as veterans.

(5) Reasonable assurance that title to such site is or will be vested solely in the applicant, a State home, or another agency or instrumentality of the State.

(6) Reasonable assurance that adequate financial support will be available for the construction of the project (or for facility acquisition and construction of the project) by July 1 of the fiscal year for which the application is approved and for its maintenance and operation when complete.

(7) Reasonable assurance that the State will make such reports in such form and containing such information as the Secretary may from time to time reasonably require, and give the Secretary, upon demand, access to the records upon which such information is based.

(8) Reasonable assurance that the rates of pay for laborers and mechanics engaged in construction of the project will be not less than the prevailing local wage rates for similar work as determined in accordance with sections 3141–3144, 3146, and 3147 of title 40.

(9) In the case of a project for acquisition of a facility, reasonable assurance that the estimated total cost of acquisition of the facility and of any expansion, remodeling, and alteration of the acquired facility will not be greater than the estimated cost of construction of an equivalent new facility.

(b)(1) Any State seeking to receive assistance under this subchapter for a project that would involve construction or acquisition of either nursing home or domiciliary facilities shall include with its application under subsection (a) the following:

(A) Documentation (i) that the site for the project is in reasonable proximity to a sufficient concentration and population of veterans who are 65 years of age and older, and (ii) that there is a reasonable basis to conclude that the facilities when complete will be fully occupied.

(B) A financial plan for the first three years of operation of such facilities.

(C) A five-year capital plan for the State home program for that State.

(2) Failure to provide adequate documentation under paragraph (1)(A) or to provide an adequate financial plan under paragraph (1)(B) shall be a basis for disapproving the application.

(c)(1) Upon receipt of an application under subsection (a) for financial assistance under this subchapter, the Secretary—

(A) shall determine whether the application meets the requirements of this section and of the regulations prescribed under section 8134 of this title;

(B) shall notify the State submitting the application whether the application conforms with those requirements and, if it does not, of the actions necessary to bring the application into conformance with those requirements; and

(C) shall determine the priority of the project described in the application in accordance with the provisions of this subsection.

(2) Subject to paragraphs (3) and (5)(C) of this subsection, the Secretary shall accord priority to applications in the following order:

(A) An application from a State that has made sufficient funds available for the project for which the grant is requested so that such project may proceed upon approval of the grant without further action required by the State to make such funds available for such purpose.

(B) An application from a State for a project at an existing facility to remedy a condition or conditions that have been cited by an accrediting institution, by the Secretary, or by a local licensing or approving body of the State as being threatening to the lives or safety of the patients in the facility.

(C) An application from a State that has not previously applied for award of a grant under this subchapter for construction or acquisition of a State nursing home.

(D) An application for construction or acquisition of a nursing home or domiciliary from a State that the Secretary determines, in accordance with regulations under this subchapter, has a great need for the beds to be established at such home or facility.

(E) An application from a State for renovations to a State home facility other than renovations described in subparagraph (B).

(F) An application for construction or acquisition of a nursing home or domiciliary from a State that the Secretary determines, in accordance with regulations under this subchapter, has a significant need for the beds to be established at such home or facility.

(G) An application that meets other criteria as the Secretary determines appropriate and has established in regulations.

(H) An application for construction or acquisition of a nursing home or domiciliary from a State that the Secretary determines, in accordance with regulations under this subchapter, has a limited need for the beds to be established at such home or facility.

(3) In according priorities to projects under paragraph (2) of this subsection, the Secretary—

(A) may not accord any priority to a project for the construction or acquisition of a hospital; and

(B) may not accord any priority to a project which would expand a State's capacity to furnish hospital care in a State home.

(4) The Secretary shall establish a list of approved projects (including projects that have been conditionally approved under paragraph (6) of this subsection), in the order of their priority, as of August 15 of each year. The Secretary shall award grants in the order of their priority on the list during the fiscal year beginning on October 1 of the calendar year in which the list was made.

(5)(A) The Secretary shall defer approval of an application that otherwise meets the requirements of this section if the State submitting the application does not, by the July 1 deadline (as defined in subparagraph (D) of this paragraph), demonstrate to the satisfaction of the Secretary that the State has provided adequate financial support for construction of the project.

(B) In a case in which approval of an application is deferred under subparagraph (A) of this paragraph, the Secretary shall select for award of a grant or grants under this subsection an application or applications which would not have been approved during the fiscal year but for the deferral and to which the Secretary accords the highest priority under paragraph (2) of this subsection.

(C) An application deferred in accordance with the requirements of this paragraph shall be accorded priority in any subsequent fiscal year ahead of applications that had not been approved before the first day of the fiscal year in which the deferred application was first approved.

(D) For the purposes of this paragraph, the term "July 1 deadline" means July 1 of the fiscal year in which the State is notified by the Secretary of the availability of funding for a grant for such project.

(6)(A) The Secretary may conditionally approve a project under this section, conditionally award a grant for the project, and obligate funds for the grant if the Secretary determines that the application for the grant is sufficiently complete to warrant awarding the grant and that, based on assurances provided by the State submitting the application, the State will complete the application and meet all the requirements referred to in paragraph (1)(A) of this subsection by the date, not later than 180 days after the date of the conditional approval, specified by the Secretary.

(B) If a State does not complete the application and meet all the requirements referred to in such paragraph by the date specified by the Secretary under subparagraph (A) of this paragraph, the Secretary shall rescind the conditional approval and award under such subparagraph and deobligate the funds previously obligated in connection with the application. In the event the Secretary rescinds conditional approval of a project under this subparagraph, the Secretary may not further obligate funds for the project during the fiscal year in which the Secretary rescinds such approval.

(7)(A) Subject to subparagraph (B) of this paragraph, the Secretary may increase the amount of any grant awarded to any State for a project under this section by an amount by which the Secretary determines that the estimated cost of the construction or acquisition has increased from the estimated cost on which the Secretary based the determination to award the grant, without regard to the position of such project on the list established under paragraph (4) of this subsection, if the Secretary determines that the grant was awarded before the State entered into a contract for the construction or acquisition provided for in such project.

(B) A grant may not be increased under subparagraph (A) of this paragraph by more than 10 percent of the amount of the grant initially awarded for such project, and the amount of such grant, as increased, may not exceed 65 percent of the cost of the project.

(d) No application submitted to the Secretary under this section shall be disapproved until the Secretary has afforded the applicant notice and an opportunity for a hearing.

(e) The amount of a grant under this subchapter shall be paid to the applicant or, if designated by the applicant, the State home for which such project is being carried out or any other agency or instrumentality of the applicant. Such amount shall be paid, in advance or by way of reimbursement, and in such installments consistent with the progress of the project as the Secretary may determine and certify for payment to the Secretary of the Treasury. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved.

(f) Any amendment of any application, whether or not approved, shall be subject to approval in the same manner as an original application.

(Added Pub. L. 88–450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 502, Sec. 5035; amended Pub. L. 89–311, Sec. 7(a), Oct. 31, 1965, 79 Stat. 1157; Pub. L. 93–82, title IV, Sec. 403(e), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94–581, title II, Sec. 206(b), 210(e)(10), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 95–62, Sec. 3(7)–(12), July 5, 1977, 91 Stat. 262, 263; Pub. L. 97–295, Sec. 4(92), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98–528, title I, Sec. 105(3), Oct. 19, 1984, 98 Stat. 2689; Pub. L. 99–166, title II, Sec. 205, Dec. 3, 1985, 99 Stat. 953; Pub. L. 99–576, title II, Sec. 224(b), (c), Oct. 28, 1986, 100 Stat. 3262, 3263; Pub. L. 100–322, title II, Sec. 206, May 20, 1988, 102 Stat. 513; renumbered Sec. 8135 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(f)(7), June 13, 1991, 105 Stat. 288; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–585, title IV, Sec. 403(a), 404(a), Nov. 4, 1992, 106 Stat. 4954; Pub. L. 103–446, title XII, Sec. 1201(d)(18), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 104–262, title III, Sec. 342(b)(3), Oct. 9, 1996, 110 Stat. 3206; Pub. L. 106–117, title II, Sec. 207(b), Nov. 30, 1999, 113 Stat. 1565; Pub. L. 107–217, Sec. 3(j)(4), Aug. 21, 2002, 116 Stat. 1300.)

§ 8136. Recapture provisions

(a) If, within the 20-year period beginning on the date of the approval by the Secretary of the final architectural and engineering inspection of any project with respect to which a grant has been made under this subchapter (except that the Secretary, pursuant to regulations which the Secretary shall prescribe, may at the time of such grant provide for a shorter period than 20, but not less than seven, years, based on the magnitude of the project and the grant amount involved, in the case of the acquisition, expansion, remodeling, or alteration of existing facilities), the facilities covered by the project cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home, or hospital care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant under this subchapter, or from the then owner of such facilities, 65 percent of the then value of such project (but in no event an amount greater than the amount of assistance provided under this subchapter), as determined by agreement of the parties or by action brought in the district court of the United States for the district in which such facilities are situated.

(b) The establishment and operation by the Secretary of an outpatient clinic in facilities described in subsection (a) shall not constitute grounds entitling the United States to any recovery under that subsection.

(Added Pub. L. 88–450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 503, Sec. 5036; amended Pub. L. 93–82, title IV, Sec. 403(f), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94–581, title II, Sec. 206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95–62, Sec. 3(13), July 5, 1977, 91 Stat. 263; Pub. L. 97–295, Sec. 4(92), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98–528, title I, Sec. 105(4), Oct. 19, 1984, 98 Stat. 2690; renumbered Sec. 8136, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–585, title IV, Sec. 405, Nov. 4, 1992, 106 Stat. 4954; Pub. L. 106–419, title II, Sec. 222, Nov. 1, 2000, 114 Stat. 1845.)

§ 8137. State control of operations

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any State home for which facilities are constructed or acquired with assistance received under this subchapter.

(Added Pub. L. 88–450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 503, Sec. 5037; amended Pub. L. 98–528, title I, Sec. 105(5), Oct. 19, 1984, 98 Stat. 2690; renumbered Sec. 8137, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

§ 8138. Treatment of certain health facilities as State homes

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

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

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

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

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

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

(b) The Secretary may not treat a health facility (or certain beds in a health facility) as a State home under subsection (a) if the Secretary determines that such treatment would increase the number of beds allocated to the State in excess of the limit on the number of beds provided for by regulations prescribed under section 8134(a) of this title.

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

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

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

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

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

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

(e) The Secretary may not treat any new health facilities (or any new certain beds in a health facility) as a State home under subsection (a) after September 30, 2009.

(Added Pub. L. 109–461, title II, Sec. 211(c)(1), Dec. 22, 2006, 120 Stat. 3420.)

SUBCHAPTER IV—SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

§ 8151. Statement of congressional purpose

It is the purpose of this subchapter to strengthen the medical programs at Department facilities and improve the quality of health care provided veterans under this title by authorizing the Secretary to enter into agreements with health-care providers in order to share health-care resources with, and receive health-care resources from, such providers while ensuring no diminution of services to veterans.

(Added Pub. L. 89–785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1373, Sec. 5051; amended Pub. L. 101–366, title II, Sec. 202(a), Aug. 15, 1990, 104 Stat. 438; renumbered Sec. 8151, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–210, Sec. 3(a), Dec. 20, 1993, 107 Stat. 2497; Pub. L. 104–262, title III, Sec. 301(a), Oct. 9, 1996, 110 Stat. 3191.)

§ 8152. Definitions

For the purposes of this subchapter—

(1) The term "health-care resource" includes hospital care and medical services (as those terms are defined in section 1701 of this title), services under sections 1782 and 1783 of this title, any other health-care service, and any health-care support or administrative resource.

(2) The term "health-care providers" includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources.

(3) The term "hospital", unless otherwise specified, includes any Federal, State, local, or other public or private hospital.

(Added Pub. L. 89–785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1373, Sec. 5052; renumbered Sec. 8152, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–54, Sec. 14(f)(8), June 13, 1991, 105 Stat. 288; Pub.

L. 103–210, Sec. 3(b), Dec. 20, 1993, 107 Stat. 2497; Pub. L. 104–262, title III, Sec. 301(b), Oct. 9, 1996, 110 Stat. 3191; Pub. L. 107–135, title II, Sec. 208(e)(8), Jan. 23, 2002, 115 Stat. 2464.)

§ 8153. Sharing of health-care resources

(a)(1) To secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, the Secretary may, when the Secretary determines it to be in the best interest of the prevailing standards of the Department medical care program, make arrangements, by contract or other form of agreement for the mutual use, or exchange of use, of health-care resources between Department health-care facilities and any health-care provider, or other entity or individual.

(2) The Secretary may enter into a contract or other agreement under paragraph (1) if such resources are not, or would not be, used to their maximum effective capacity.

(3)(A) If the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of this title, including medical practice groups and other entities associated with affiliated institutions, blood banks, organ banks, or research centers, the Secretary may make arrangements for acquisition of the resource without regard to any law or regulation (including any Executive order, circular, or other administrative policy) that would otherwise require the use of competitive procedures for acquiring the resource.

(B)(i) If the health-care resource required is a commercial service or the use of medical equipment or space, and is not to be acquired from an entity described in subparagraph (A), any procurement of the resource may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring the resource, but only if the procurement is conducted in accordance with the simplified procedures prescribed pursuant to clause (ii).

(ii) The Secretary, in consultation with the Administrator for Federal Procurement Policy, may prescribe simplified procedures for the procurement of health-care resources under this subparagraph. The Secretary shall publish such procedures for public comment in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b). Such procedures shall permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.

(iii) Pending publication of the procedures under clause (ii), the Secretary shall (except as provided under subparagraph (A)) procure health-care resources referred to in clause (i) in accordance with all procurement laws and regulations.

(C) Any procurement of health-care resources other than those covered by subparagraph (A) or (B) shall be conducted in accordance with all procurement laws and regulations.

(D) For any procurement to be conducted on a sole source basis other than a procurement covered by subparagraph (A), a written

justification shall be prepared that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)).

(E) As used in this paragraph, the term "commercial service" means a service that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

(b) Arrangements entered into under this section shall provide for payment to the Department in accordance with procedures that provide appropriate flexibility to negotiate payment which is in the best interest of the Government. Any proceeds to the Government received therefrom shall be credited to the applicable Department medical appropriation and to funds that have been allotted to the facility that furnished the resource involved.

(c) Eligibility for hospital care and medical services furnished any veteran pursuant to this section shall be subject to the same terms as though provided in a Department health care facility, and provisions of this title applicable to persons receiving hospital care or medical services in a Department health care facility shall apply to veterans treated under this section.

(d) When a Department health care facility provides hospital care or medical services, pursuant to a contract or agreement authorized by this section, to an individual who is not eligible for such care or services under chapter 17 of this title and who is entitled to hospital or medical insurance benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), such benefits shall be paid, notwithstanding any condition, limitation, or other provision in that title which would otherwise preclude such payment to such facility for such care or services or, if the contract or agreement so provides, to the community health care facility which is a party to the contract or agreement.

(e) The Secretary may make an arrangement that authorizes the furnishing of services by the Secretary under this section to individuals who are not veterans only if the Secretary determines—

(1) that veterans will receive priority under such an arrangement; and

(2) that such an arrangement—

(A) is necessary to maintain an acceptable level and quality of service to veterans at that facility; or

(B) will result in the improvement of services to eligible veterans at that facility.

(f) Any amount received by the Secretary from a non-Federal entity as payment for services provided by the Secretary during a prior fiscal year under an agreement entered into under this section may be obligated by the Secretary during the fiscal year in which the Secretary receives the payment.

(g) The Secretary shall submit to the Congress not later than February 1 of each year a report on the activities carried out under this section during the preceding fiscal year. Each report shall include—

(1) an appraisal of the effectiveness of the activities authorized in this section and the degree of cooperation from other sources, financial and otherwise; and

(2) recommendations for the improvement or more effective administration of such activities.

(Added Pub. L. 89–785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1374, Sec. 5053; amended Pub. L. 91–496, Sec. 4, Oct. 22, 1970, 84 Stat. 1092; Pub. L. 93–82, title III, Sec. 303, Aug. 2, 1973, 87 Stat. 195; Pub. L. 94–581, title I, Sec. 115(a)(1), title II, Sec. 206(c), 210(e)(11), Oct. 21, 1976, 90 Stat. 2852, 2859, 2865; Pub. L. 96–151, title III, Sec. 304, Dec. 20, 1979, 93 Stat. 1096; Pub. L. 97–295, Sec. 4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98–160, title VII, Sec. 702(20), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 99–576, title II, Sec. 231(c)(1), Oct. 28, 1986, 100 Stat. 3264; Pub. L. 101–366, title II, Sec. 202(b), Aug. 15, 1990, 104 Stat. 438; renumbered Sec. 8153, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, Sec. 14(f)(9), June 13, 1991, 105 Stat. 288; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(D), (E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–210, Sec. 3(c), Dec. 20, 1993, 107 Stat. 2498; Pub. L. 104–262, title III, Sec. 301(c), (d)(1), Oct. 9, 1996, 110 Stat. 3191, 3193; Pub. L. 105–114, title IV, Sec. 402(d), (e), Nov. 21, 1997, 111 Stat. 2294; Pub. L. 106–419, title IV, Sec. 404(b)(2), Nov. 1, 2000, 114 Stat. 1866; Pub. L. 108–170, title IV, Sec. 405(d), Dec. 6, 2003, 117 Stat. 2063.)

§ 8154. Exchange of medical information

(a) The Secretary is authorized to enter into agreements with medical schools, hospitals, research centers, and individual members of the medical profession under which medical information and techniques will be freely exchanged and the medical information services of all parties to the agreement will be available for use by any party to the agreement under conditions specified in the agreement. In carrying out the purposes of this section, the Secretary shall utilize recent developments in electronic equipment to provide a close educational, scientific, and professional link between Department hospitals and major medical centers. Such agreements shall be utilized by the Secretary to the maximum extent practicable to create, at each Department hospital which is a part of any such agreement, an environment of academic medicine which will help such hospital attract and retain highly trained and qualified members of the medical profession.

(b) In order to bring about utilization of all medical information in the surrounding medical community, particularly in remote areas, and to foster and encourage the widest possible cooperation and consultation among all members of the medical profession in such community, the educational facilities and programs established at Department hospitals and the electronic link to medical centers shall be made available for use by the surrounding medical community (including State home facilities furnishing domiciliary, nursing home, or hospital care to veterans). The Secretary may charge a fee for such services (on annual or like basis) at rates which the Secretary determines, after appropriate study, to be fair and equitable. The financial status of any user of such services shall be taken into consideration by the Secretary in establishing the amount of the fee to be paid. Any proceeds to the Government received therefrom shall be credited to the applicable Department medical appropriation.

(c) The Secretary is authorized to enter into agreements with public and nonprofit private institutions, organizations, corporations, and other entities in order to participate in cooperative

health-care personnel education programs within the geographical area of any Department health-care facility located in an area remote from major academic health centers.

(Added Pub. L. 89–785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1374, Sec. 5054; amended Pub. L. 94–424, Sec. 1(1), Sept. 28, 1976, 90 Stat. 1332; Pub. L. 94–581, title II, Sec. 206(d), 210(e)(12), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 96–151, title I, Sec. 102(a), Dec. 20, 1979, 93 Stat. 1092; Pub. L. 97–251, Sec. 9, Sept. 8, 1982, 96 Stat. 716; renumbered Sec. 8154, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8155. Pilot programs; grants to medical schools

(a) The Secretary may establish an Advisory Subcommittee on Programs for Exchange of Medical Information, of the Special Medical Advisory Group, established under section 7312 of this title, to advise the Secretary on matters regarding the administration of this section and to coordinate these functions with other research and education programs in the Department of Medicine and Surgery. The Assistant Under Secretary for Health charged with administration of the Department of Medicine and Surgery medical research program shall be an ex officio member of this Subcommittee.

(b) The Secretary, upon the recommendation of the Subcommittee, is authorized to make grants to medical schools, hospitals, and research centers to assist such medical schools, hospitals, and research centers in planning and carrying out agreements authorized by section 8154 of this title. Such grants may be used for the employment of personnel, the construction of facilities, the purchasing of equipment when necessary to implement such programs, and for such other purposes as will facilitate the administration of this section.

(c)(1) There is hereby authorized to be appropriated an amount not to exceed $3,500,000 for fiscal year 1976; $1,700,000 for the period beginning July 1, 1976, and ending September 30, 1976; $4,000,000 for fiscal year 1977; $4,000,000 for fiscal year 1978; and $4,000,000 for fiscal year 1979 and for each of the three succeeding fiscal years, for the purpose of developing and carrying out medical information programs under this section on a pilot program basis and for the grants authority in subsection (b) of this section. Pilot programs authorized by this subsection shall be carried out at Department hospitals in geographically dispersed areas of the United States.

(2) Funds authorized under this section shall not be available to pay the cost of hospital, medical, or other care of patients except to the extent that such cost is determined by the Secretary to be incident to research, training, or demonstration activities carried out under this section.

(d) The Secretary, after consultation with the Subcommittee shall prescribe regulations covering the terms and conditions for making grants under this section.

(e) Each recipient of a grant under this section shall keep such records as the Secretary may prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the

amount of that portion of the cost of the project or undertaking supplied by other sources, and such records as will facilitate an effective audit.

(f) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient of any grant under this section which are pertinent to any such grant.

(Added Pub. L. 89–785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1375, Sec. 5055; amended Pub. L. 92–69, Aug. 6, 1971, 85 Stat. 178; Pub. L. 94–424, Sec. 1(2), Sept. 28, 1976, 90 Stat. 1332; Pub. L. 94–581, title II, Sec. 206(e), 210(e)(13), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 96–151, title I, Sec. 102(b), Dec. 20, 1979, 93 Stat. 1092; renumbered Sec. 8155 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103–446, title XII, Sec. 1201(d)(19), Nov. 2, 1994, 108 Stat. 4684.)

§ 8156. Coordination with health services development activities carried out under the National Health Planning and Resources Development Act of 1974

The Secretary and the Secretary of Health and Human Services shall, to the maximum extent practicable, coordinate programs carried out under this subchapter and programs carried out under part F of title XVI of the Public Health Service Act (42 U.S.C. 300t et seq.).

(Added Pub. L. 89–785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1375, Sec. 5056; amended Pub. L. 94–581, title I, Sec. 115(a)(2), Oct. 21, 1976, 90 Stat. 2853; Pub. L. 97–295, Sec. 4(93), (95)(A), Oct. 12, 1982, 96 Stat. 1313; renumbered Sec. 8156, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8157. Joint title to medical equipment

(a) Subject to subsection (b), the Secretary may enter into agreements with institutions described in section 8153(a) of this title for the joint acquisition of medical equipment.

(b)(1) The Secretary may not pay more than one-half of the purchase price of equipment acquired through an agreement under subsection (a).

(2) Any equipment to be procured under such an agreement shall be procured by the Secretary. Title to such equipment shall be held jointly by the United States and the institution.

(3) Before equipment acquired under such an agreement may be used, the parties to the agreement shall arrange by contract under section 8153 of this title for the exchange or use of the equipment.

(4) The Secretary may not contract for the acquisition of medical equipment to be purchased jointly under an agreement under subsection (a) until the institution which enters into the agreement provides to the Secretary its share of the purchase price of the medical equipment.

(c)(1) Notwithstanding any other provision of law, the Secretary may transfer the interest of the Department in equipment acquired through an agreement under subsection (a) to the institution which holds joint title to the equipment if the Secretary determines that the transfer would be justified by compelling clinical

considerations or the economic interest of the Department. Any such transfer may only be made upon agreement by the institution to pay to the Department the amount equal to one-half of the depreciated purchase price of the equipment. Any such payment when received shall be credited to the applicable Department medical appropriation.

(2) Notwithstanding any other provision of law, the Secretary may acquire the interest of an institution in equipment acquired under subsection (a) if the Secretary determines that the acquisition would be justified by compelling clinical considerations or the economic interests of the Department. The Secretary may not pay more than one-half the depreciated purchase price of that equipment.

(Added Pub. L. 102–405, title I, Sec. 103(a)(1), Oct. 9, 1992, 106 Stat. 1973.)

§ 8158. Deposit in escrow

(a) To facilitate the procurement of medical equipment pursuant to section 8157 of this title, the Secretary may enter into escrow agreements with institutions described in section 8153(a) of this title. Any such agreement shall provide that—

(1) the institutions shall pay to the Secretary the funds necessary to make a payment under section 8157(b)(4) of this title;

(2) the Secretary, as escrow agent, shall administer those funds in an escrow account; and

(3) the Secretary shall disburse the escrowed funds to pay for such equipment upon its delivery or in accordance with the contract to procure the equipment and shall disburse all accrued interest or other earnings on the escrowed funds to the institution.

(b) As escrow agent for funds placed in escrow pursuant to an agreement under subsection (a), the Secretary may—

(1) invest the escrowed funds in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government;

(2) retain in the escrow account interest or other earnings on such investments;

(3) disburse the funds pursuant to the escrow agreement; and

(4) return undisbursed funds to the institution.

(c)(1) If the Secretary enters into an escrow agreement under this section, the Secretary may enter into an agreement to procure medical equipment if one-half the purchase price of the equipment is available in an appropriation or fund for the expenditure or obligation.

(2) Funds held in an escrow account under this section shall not be considered to be public funds.

(Added Pub. L. 102–405, title I, Sec. 103(a)(1), Oct. 9, 1992, 106 Stat. 1974.)

SUBCHAPTER V—ENHANCED-USE LEASES OF REAL PROPERTY

§ 8161. Definitions

For the purposes of this subchapter:

(1) The term "enhanced-use lease" means a written lease entered into by the Secretary under this subchapter.

(2) The term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(Added Pub. L. 102–86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 417.)

§ 8162. Enhanced-use leases

(a)(1) The Secretary may in accordance with this subchapter enter into leases with respect to real property that is under the jurisdiction or control of the Secretary. Any such lease under this subchapter may be referred to as an "enhanced-use lease". The Secretary may dispose of any such property that is leased to another party under this subchapter in accordance with section 8164 of this title. The Secretary may exercise the authority provided by this subchapter notwithstanding section 8122 of this title, subchapter II of chapter 5 of title 40, sections 541–555 and 1302 of title 40, or any other provision of law (other than Federal laws relating to environmental and historic preservation) inconsistent with this section. The applicability of this subchapter to section 421(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100–322; 102 Stat. 553) is covered by subsection (c).

(2) The Secretary may enter into an enhanced-use lease only if—

(A) the Secretary determines that—

(i) at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department;

(ii) the lease will not be inconsistent with and will not adversely affect the mission of the Department; and

(iii) the lease will enhance the use of the property; or

(B) the Secretary determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(3) The provisions of sections 3141–3144, 3146, and 3147 of title 40 shall not, by reason of this section, become inapplicable to property that is leased to another party under an enhanced-use lease.

(4) A property that is leased to another party under an enhanced-use lease may not be considered to be unutilized or underutilized for purposes of section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(b)(1)(A) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall select the party with whom the lease will be entered into using selection procedures determined by the Secretary that ensure the integrity of the selection process.

(B) In the case of a property that the Secretary determines is appropriate for use as a facility to furnish services to homeless veterans under chapter 20 of this title, the Secretary may enter into an enhanced-use lease with a provider of homeless services without

regard to the selection procedures required under subparagraph (A).

(2) The term of an enhanced-use lease may not exceed 75 years.

(3)(A) Each enhanced-use lease shall be for fair consideration, as determined by the Secretary. Consideration under such a lease may be provided in whole or in part through consideration in-kind.

(B) Consideration in-kind may include provision of goods or services of benefit to the Department, including construction, repair, remodeling, or other physical improvements of Department facilities, maintenance of Department facilities, or the provision of office, storage, or other usable space.

(4) The terms of an enhanced-use lease may provide for the Secretary to—

(A) obtain facilities, space, or services on the leased property; and

(B) use minor construction funds for capital contribution payments.

(c)(1) Subject to paragraph (2), the entering into an enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100–322; 102 Stat. 553) or section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008 shall be considered to be prohibited by such sections unless specifically authorized by law.

(2) The entering into an enhanced-use lease by the Secretary covering any land or improvement described in such section 421(b)(2) shall not be considered to be prohibited under that section if under the lease—

(A) the designated property is to be used only for child-care services;

(B) those services are to be provided only for the benefit of—

(i) employees of the Department;

(ii) individuals employed on the premises of such property; and

(iii) employees of a health-personnel educational institution that is affiliated with a Department facility;

(C) over one-half of the employees benefited by the child-care services provided are required to be employees of the Department; and

(D) over one-half of the children to whom child-care services are provided are required to be children of employees of the Department.

(Added Pub. L. 102–86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 417; amended Pub. L. 106–117, title II, Sec. 208(a), (b), Nov. 30, 1999, 113 Stat. 1567; Pub. L. 106–400, Sec. 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107–95, Sec. 10(b), Dec. 21, 2001, 115 Stat. 920; Pub. L. 107–217, Sec. 3(j)(5), Aug. 21, 2002, 116 Stat. 1300; Pub. L. 108–178, Sec. 4(i)(1), Dec. 15, 2003, 117 Stat. 2642; Pub. L. 110–161, div. I, title II, Sec. 224(c), Dec. 26, 2007, 121 Stat. 2272.)

§ 8163. Hearing and notice requirements regarding proposed leases

(a) If the Secretary proposes to enter into an enhanced-use lease with respect to certain property, the Secretary shall conduct

a public hearing before entering into the lease. The hearing shall be conducted in the community in which the property is located. At the hearing, the Secretary shall receive the views of veterans service organizations and other interested parties regarding the proposed lease of the property and the possible effects of the uses to be made of the property under a lease of the general character then contemplated. The possible effects to be addressed at the hearing shall include effects on—

(1) local commerce and other aspects of the local community;

(2) programs administered by the Department; and

(3) services to veterans in the community.

(b) Before conducting such a hearing, the Secretary shall provide reasonable notice to the congressional veterans' affairs committees and to the public of the proposed lease and of the hearing. The notice shall include the following:

(1) The time and place of the hearing.

(2) Identification of the property proposed to be leased.

(3) A description of the proposed uses of the property under the lease.

(4) A description of how the uses to be made of the property under a lease of the general character then contemplated—

(A) would—

(i) contribute in a cost-effective manner to the mission of the Department;

(ii) not be inconsistent with the mission of the Department;

(iii) not adversely affect the mission of the Department; and

(iv) affect services to veterans; or

(B) would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(5) A description of how those uses would affect services to veterans.

(c)(1) If after a hearing under subsection (a) the Secretary intends to enter into an enhanced-use lease of the property involved, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intention to enter into such lease and shall publish a notice of such intention in the Federal Register.

(2) The Secretary may not enter into an enhanced use lease until the end of the 45-day period beginning on the date of the submission of notice under paragraph (1).

(3) Each notice under paragraph (1) shall include the following:

(A) An identification of the property involved.

(B) An explanation of the background of, rationale for, and economic factors in support of, the proposed lease.

(C) A summary of the views expressed by interested parties at the public hearing conducted in connection with the proposed designation, together with a summary of the Secretary's evaluation of those views.

(D) A description of the provisions of the proposed lease.

(E) A description of how the proposed lease—

(i) would—

(I) contribute in a cost-effective manner to the mission of the Department;

(II) not be inconsistent with the mission of the Department;

(III) not adversely affect the mission of the Department; and

(IV) affect services to veterans; or

(ii) would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(F) A description of how the proposed lease would affect services to veterans.

(G) A summary of a cost-benefit analysis of the proposed lease.

(Added Pub. L. 102–86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 419; amended Pub. L. 106–117, title II, Sec. 208(c), Nov. 30, 1999, 113 Stat. 1567; Pub. L. 106–419, title II, Sec. 241, title IV, Sec. 404(b)(1), Nov. 1, 2000, 114 Stat. 1847, 1865; Pub. L. 108–170, title II, Sec. 202(a), (d)(1), Dec. 6, 2003, 117 Stat. 2047, 2048.)

§ 8164. Authority for disposition of leased property

(a) If, during the term of an enhanced-use lease or within 30 days after the end of the term of the lease, the Secretary determines that the leased property is no longer needed by the Department, the Secretary may initiate action for the transfer to the lessee of all right, title, and interest of the United States in the property . A disposition of property may not be made under this section unless the Secretary determines that the disposition under this section rather than under section 8118 or 8122 of this title is in the best interests of the Department.

(b) A disposition under this section may be made for such consideration as the Secretary determines is in the best interest of the United States and upon such other terms and conditions as the Secretary considers appropriate.

(c) Not less than 45 days before a disposition of property is made under this section, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intent to dispose of the property and shall publish notice of the proposed disposition in the Federal Register. The notice shall describe the background of, rationale for, and economic factors in support of, the proposed disposition (including a cost-benefit analysis summary) and the method, terms, and conditions of the proposed disposition.

(Added Pub. L. 102–86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 420; amended Pub. L. 108–170, title II, Sec. 202(b), Dec. 6, 2003, 117 Stat. 2047; Pub. L. 108–422, title IV, Sec. 411(e)(3), Nov. 30, 2004, 118 Stat. 2390.)

§ 8165. Use of proceeds

(a)(1) Funds received by the Department under an enhanced-use lease and remaining after any deduction from those funds under subsection (b) shall be deposited in the Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of this title.

(2) Funds received by the Department from a disposal of leased property under section 8164 of this title shall be deposited in the

Department of Veterans Affairs Capital Asset Fund established under section 8118 of this title.

(b) An amount sufficient to pay for any expenses incurred by the Secretary in any fiscal year in connection with an enhanced-use lease shall be deducted from the proceeds of the lease for that fiscal year and may be used by the Secretary to reimburse the account from which the funds were used to pay such expenses. The Secretary may use the proceeds from any enhanced-use lease to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional enhanced-use leases.

(Added Pub. L. 102–86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 421; Pub. L. 106–117, title II, Sec. 208(d), Nov. 30, 1999, 113 Stat. 1568; Pub. L. 107–217, Sec. 3(j)(6), Aug. 21, 2002, 116 Stat. 1301; Pub. L. 108–7, div. K, title I, Sec. 113(d)(1), Feb. 20, 2003, 117 Stat. 482; Pub. L. 108–170, title II, Sec. 202(c), Dec. 6, 2003, 117 Stat. 2048; Pub. L. 108–178, Sec. 4(i)(2), Dec. 15, 2003, 117 Stat. 2642; Pub. L. 108–422, title IV, Sec. 411(e)(4), Nov. 30, 2004, 118 Stat. 2390.)

§ 8166. Construction standards

(a) Unless the Secretary provides otherwise, the construction, alteration, repair, remodeling, or improvement of the property that is the subject of the lease shall be carried out so as to comply with all standards applicable to construction of Federal buildings. Any such construction, alteration, repair, remodeling, or improvement shall not be subject to any State or local law relating to land use, building codes, permits, or inspections unless the Secretary provides otherwise.

(b) Unless the Secretary has provided that Federal construction standards are not applicable to a property, the Secretary shall conduct periodic inspections of any such construction, alteration, repair, remodeling, or improvement for the purpose of ensuring that the standards are met.

(Added Pub. L. 102–86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 421; amended Pub. L. 108–422, title IV, Sec. 417, Nov. 30, 2004, 118 Stat. 2393.)

§ 8167. Exemption from State and local taxes

The interest of the United States in any property subject to an enhanced-use lease and any use by the United States of such property during such lease shall not be subject, directly or indirectly, to any State or local law relative to taxation, fees, assessments, or special assessments, except sales taxes charged in connection with any construction, alteration, repair, remodeling, or improvement project carried out under the lease.

(Added Pub. L. 102–86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 421.)

[§ 8168. Repealed. Pub. L. 105–114, title II, Sec. 205(b)(1), Nov. 21, 1997, 111 Stat. 2288]

§ 8169. Expiration

The authority of the Secretary to enter into enhanced-use leases under this subchapter expires on December 31, 2011.

(Added Pub. L. 102–86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 422; amended Pub. L. 103–452, title I, Sec. 103(d), Nov. 2, 1994, 108 Stat. 4786; Pub. L. 104–110, title I, Sec. 101(k), Feb. 13, 1996, 110 Stat. 769; Pub. L. 105–114, title II, Sec.

205(a), Nov. 21, 1997, 111 Stat. 2288; Pub. L. 106–117, title II, Sec. 208(e), Nov. 30, 1999, 113 Stat. 1568.)

CHAPTER 82 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART VI—ACQUISITION AND DISPOSITION OF PROPERTY]

CHAPTER 82—ASSISTANCE IN ESTABLISHING NEW STATE MEDICAL SCHOOLS; GRANTS TO AFFILIATED MEDICAL SCHOOLS; ASSISTANCE TO HEALTH MANPOWER TRAINING INSTITUTIONS

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§ 8201. Coordination with public health programs; administration

(a) The Secretary and the Secretary of Health and Human Services shall, to the maximum extent practicable, coordinate the programs carried out under this chapter and the programs carried out under titles VII, VIII, and IX of the Public Health Service Act (42 U.S.C. 292 et seq.).

(b) The Secretary may not enter into any agreement under subchapter I of this chapter after September 30, 1979.

(c) The Secretary, after consultation with the special medical advisory committee established pursuant to section 7312(a) of this title, shall prescribe regulations covering the terms and conditions

for entering into agreements and making grants under this chapter.

(d) Payments made pursuant to grants under this chapter may be made in installments, and either in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(e) In carrying out the purposes of this chapter, the Secretary may lease to any eligible institution for such consideration and under such terms and conditions as the Secretary deems appropriate, such land, buildings, and structures (including equipment therein) under the control and jurisdiction of the Department as may be necessary. The three-year limitation on the term of a lease prescribed in section 8122(a) of this title shall not apply with respect to any lease entered into pursuant to this chapter, but no such lease may be for a period of more than 50 years. Any lease entered into pursuant to this chapter may be entered into without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Notwithstanding section 1302 of title 40, or any other provision of law, a lease entered into pursuant to this chapter may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration of the lease.

(f) In making grants under this chapter, the Secretary shall give special consideration to applications from institutions which provide reasonable assurances, which shall be included in the grant agreement, that priority for admission to health manpower and training programs carried out by such institutions will be given to otherwise qualified veterans who during their military service acquired medical military occupation specialties, and that among such qualified veterans those who served during the Vietnam era and those who are entitled to disability compensation under laws administered by the Secretary or whose discharge or release was for a disability incurred or aggravated in line of duty will be given the highest priority. In carrying out this chapter and section 7302 of this title in connection with health manpower and training programs assisted or conducted under this title or in affiliation with a Department medical facility, the Secretary shall take appropriate steps to encourage the institutions involved to afford the priorities described in the first sentence of this subsection and to advise all qualified veterans with such medical military occupation specialties of the steps the Secretary has taken under this subsection and the opportunities available to them as a result of such steps.

(g)(1) Each recipient of assistance under this chapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is made or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, docu-

ments, papers, and records of the recipient of any assistance under this chapter which are pertinent to such assistance.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1101, Sec. 5070; amended Pub. L. 94–581, title I, Sec. 116(1), (2), title II, Sec. 210(f)(1), Oct. 21, 1976, 90 Stat. 2853, 2854, 2865; Pub. L. 96–151, title I, Sec. 103(a), Dec. 20, 1979, 93 Stat. 1093; Pub. L. 96–330, title IV, Sec. 403(b), Aug. 26, 1980, 94 Stat. 1052; Pub. L. 97–295, Sec. 4(94), Oct. 12, 1982, 96 Stat. 1313; renumbered Sec. 8201 and amended Pub. L. 102–40, title IV, Sec. 402(b)(2)(A), (d)(1), 403(b)(6), May 7, 1991, 105 Stat. 239, 240; Pub. L. 102–54, Sec. 14(f)(10), June 13, 1991, 105 Stat. 288; Pub. L. 102–83, Sec. 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 103–446, title XII, Sec. 1201(d)(20), Nov. 2, 1994, 108 Stat. 4685; Pub. L. 106–419, title IV, Sec. 403(b), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 107–217, Sec. 3(j)(7), Aug. 21, 2002, 116 Stat. 1301.)

SUBCHAPTER I—PILOT PROGRAM FOR ASSISTANCE IN THE ESTABLISHMENT OF NEW STATE MEDICAL SCHOOLS

§ 8211. Declaration of purpose

The purpose of this subchapter is to authorize the Secretary to implement a pilot program under which the Secretary may provide assistance in the establishment of new State medical schools at colleges or universities which are primarily supported by the States in which they are located if such schools are located in proximity to, and operated in conjunction with, Department medical facilities.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1102, Sec. 5071; amended Pub. L. 94–581, title II, Sec. 210(f)(2), Oct. 21, 1976, 90 Stat. 2865; renumbered Sec. 8211, Pub. L. 102–40, title IV, Sec. 402(b)(2)(B), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8212. Authorization of appropriations

(a) There is authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1973, and a like sum for each of the six succeeding fiscal years. Sums appropriated pursuant to this section shall be used for making grants pursuant to section 8213 of this title.

(b) Sums appropriated pursuant to subsection (a) of this section shall remain available until the end of the sixth fiscal year following the fiscal year for which they are appropriated.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1102, Sec. 5072; renumbered Sec. 8212 and amended Pub. L. 102–40, title IV, Sec. 402(b)(2)(B), (d)(1), May 7, 1991, 105 Stat. 239.)

§ 8213. Pilot program assistance

(a) Subject to subsection (b) of this section, the Secretary may enter into an agreement to provide to any college or university which is primarily supported by the State in which it is located (hereinafter in this subchapter referred to as "institution") the following assistance to enable such institution to establish a new medical school:

(1) The extension, alteration, remodeling, improvement, or repair of buildings and structures (including, as part of a lease made under paragraph (1), the provision of equipment) provided under paragraph (1) to the extent necessary to make them suitable for use as medical school facilities.

(2) The making of grants to assist the institution to pay the cost of the salaries of the faculty of such school during the

initial 12-month period of operation of the school and the next six such 12-month periods, but payment under this paragraph may not exceed an amount equal to—

(A) 90 percent of the cost of faculty salaries during the first 12-month period of operation,

(B) 90 percent of such cost during the second such period,

(C) 90 percent of such cost during the third such period,

(D) 80 percent of such cost during the fourth such period,

(E) 70 percent of such cost during the fifth such period,

(F) 60 percent of such cost during the sixth such period, and

(G) 50 percent of such cost during the seventh and eighth such periods.

(b)(1) The Secretary may not enter into any agreement under subsection (a) of this section unless the Secretary finds, and the agreement includes satisfactory assurances, that—

(A) there will be adequate State or other financial support for the proposed school;

(B) the overall plans for the school meet such professional and other standards as the Secretary deems appropriate;

(C) the school will maintain such arrangements with the Department medical facility with which it is associated (including but not limited to such arrangements as may be made under subchapter IV of chapter 81 of this title) as will be mutually beneficial in the carrying out of the mission of the medical facility and the school; and

(D) on the basis of consultation with the appropriate accreditation body or bodies approved for such purpose by the Secretary of Education, there is reasonable assurance that, with the aid of an agreement under subsection (a) of this section, such school will meet the accreditation standards of such body or bodies within a reasonable time.

(2) Any agreement entered into by the Secretary under this subchapter shall contain such terms and conditions (in addition to those imposed pursuant to section 8201(e) of this title and subsection (b)(1) of this section) as the Secretary deems necessary and appropriate to protect the interest of the United States.

(c) If the Secretary, in accordance with such regulations as the Secretary shall prescribe, determines that any school established with assistance under this chapter—

(1) is not accredited and fails to gain appropriate accreditation within a reasonable period of time;

(2) is accredited but fails substantially to carry out the terms of the agreement entered into under this chapter; or

(3) is no longer operated for the purpose for which such assistance was granted,

the Secretary shall be entitled to recover from the recipient of assistance under this chapter the facilities of such school which were established with assistance under this chapter. In order to recover such facilities the Secretary may bring an action in the district

court of the United States for the district in which such facilities are situated.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1102, Sec. 5073; amended Pub. L. 94–581, title I, Sec. 116(3), (4), title II, Sec. 210(f)(3), Oct. 21, 1976, 90 Stat. 2854, 2865; Pub. L. 97–15, June 17, 1981, 95 Stat. 99; Pub. L. 97–295, Sec. 4(95)(B), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 99–576, title VII, Sec. 702(16), Oct. 28, 1986, 100 Stat. 3302; renumbered Sec. 8213 and amended Pub. L. 102–40, title IV, Sec. 402(b)(2)(B), (d)(1), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8214. Limitations

The Secretary may not use the authority under this subchapter to assist in the establishment of more than eight new medical schools. Such schools shall be located in geographically dispersed areas of the United States.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1104, Sec. 5074; renumbered Sec. 8214, Pub. L. 102–40, title IV, Sec. 402(b)(2)(B), May 7, 1991, 105 Stat. 239; amended Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

SUBCHAPTER II—GRANTS TO AFFILIATED MEDICAL SCHOOLS

§ 8221. Declaration of purpose

The purpose of this subchapter is to authorize the Secretary to carry out a program of grants to medical schools which have maintained affiliations with the Department in order to assist such schools to expand and improve their training capacities and to cooperate with institutions of the types assisted under subchapter III of this chapter in carrying out the purposes of such subchapter.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1104, Sec. 5081; renumbered Sec. 8221, Pub. L. 102–40, title IV, Sec. 402(b)(2)(C), May 7, 1991, 105 Stat. 239; amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8222. Authorization of appropriations

(a) There is authorized to be appropriated for carrying out programs authorized under this chapter $50,000,000 for the fiscal year ending June 30, 1973; a like sum for each of the six succeeding fiscal years; $15,000,000 for the fiscal year ending September 30, 1980; $25,000,000 for the fiscal year ending September 30, 1981; and $30,000,000 for the fiscal year ending September 30, 1982.

(b) Sums appropriated pursuant to subsection (a) of this section shall remain available until the end of the sixth fiscal year following the fiscal year for which they are appropriated.

(c) There is authorized to be appropriated for fiscal year 1979 to carry out the programs authorized under this chapter such sums as may be necessary (1) to make to institutions with which the Secretary has entered into agreements under subchapter I of this chapter supplemental grants for which the Secretary had, before May 1, 1978, approved applications from such institutions, and (2) to meet fully the commitments made by the Secretary before May 1, 1978, for grants and applications approved under authority of this subchapter and subchapters III and IV of this chapter, except that no funds appropriated under this subsection may be used for grants and applications approved under this subchapter and such subchapters III and IV until the full amounts for which applica-

tions had been so approved have been obligated under such subchapter I.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1104, Sec. 5082; amended Pub. L. 95–520, Sec. 7, Oct. 26, 1978, 92 Stat. 1822; Pub. L. 96–151, title I, Sec. 103(b)(1), Dec. 20, 1979, 93 Stat. 1093; renumbered Sec. 8222, Pub. L. 102–40, title IV, Sec. 402(b)(2)(C), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8223. Grants

(a) Any medical school which is affiliated with the Department under an agreement entered into pursuant to this title may apply to the Secretary for a grant under this subchapter to assist such school, in part, to carry out, through the Department medical facility with which it is affiliated, projects and programs in furtherance of the purposes of this subchapter, except that no grant shall be made for the construction of any building which will not be located on land under the jurisdiction of the Secretary. Any such application shall contain such information in such detail as the Secretary deems necessary and appropriate.

(b) An application for a grant under this section may be approved by the Secretary only upon the Secretary's determination that—

(1) the proposed projects and programs for which the grant will be made will make a significant contribution to improving the medical education (including continuing education) program of the school;

(2) the application contains or is supported by adequate assurance that any Federal funds made available under this subchapter will be supplemented by funds or other resources available from other sources, whether public or private;

(3) the application sets forth such fiscal control and accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds expended under this subchapter; and

(4) the application provides for making such reports, in such form and containing such information, as the Secretary may require to carry out the Secretary's functions under this subchapter, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1104, Sec. 5083; amended Pub. L. 94–581, title II, Sec. 207, 210(f)(4), Oct. 21, 1976, 90 Stat. 2860, 2865; Pub. L. 96–151, title I, Sec. 103(b)(2), Dec. 20, 1979, 93 Stat. 1093; renumbered Sec. 8223, Pub. L. 102–40, title IV, Sec. 402(b)(2)(C), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

SUBCHAPTER III—ASSISTANCE TO PUBLIC AND NONPROFIT INSTITUTIONS OF HIGHER LEARNING, HOSPITALS AND OTHER HEALTH MANPOWER INSTITUTIONS AFFILIATED WITH THE DEPARTMENT TO INCREASE THE PRODUCTION OF PROFESSIONAL AND OTHER HEALTH PERSONNEL

§ 8231. Declaration of purpose

The purpose of this subchapter is to authorize the Secretary to carry out a program of grants to provide assistance in the establishment of cooperative arrangements among universities, colleges, junior colleges, community colleges, schools of allied health professions, State and local systems of education, hospitals, and other nonprofit health manpower institutions affiliated with the Department, designed to coordinate, improve, and expand the training of professional and technical allied health and paramedical personnel, and to assist in developing and evaluating new health careers, interdisciplinary approaches and career advancement opportunities, so as to improve and expand allied and other health manpower utilization.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1105, Sec. 5091; renumbered Sec. 8231, Pub. L. 102–40, title IV, Sec. 402(b)(2)(D), May 7, 1991, 105 Stat. 239; amended Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8232. Definition

For the purpose of this subchapter, the term "eligible institution" means any nonprofit educational facility or other public or nonprofit institution, including universities, colleges, junior colleges, community colleges, schools of allied health professions, State and local systems of education, hospitals, and other nonprofit health manpower institutions for the training or education of allied health or other health personnel affiliated with the Department for the conduct of or the providing of guidance for education and training programs for health manpower.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1105, Sec. 5092; renumbered Sec. 8232, Pub. L. 102–40, title IV, Sec. 402(b)(2)(D), May 7, 1991, 105 Stat. 239; amended Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

§ 8233. Grants

(a) Any eligible institution may apply to the Secretary for a grant under this subchapter to assist such institution to carry out through the Department medical facility with which it is, or will become affiliated, educational and clinical projects and programs, matching the clinical requirements of the facility to the health manpower training potential of the eligible institution, for the expansion and improvement of such institution's capacity to train health manpower, including physicians' assistants, nurse practitioners, and other new types of health personnel in furtherance of the purposes of this subchapter. Any such application shall contain a plan to carry out such projects and programs and such other information in such detail as the Secretary deems necessary and appropriate.

(b) An application for a grant under this section may be approved by the Secretary only upon the Secretary's determination that—

(1) the proposed projects and programs for which the grant will be made will make a significant contribution to improving the education (including continuing education) or training program of the eligible institution;

(2) the application contains or is supported by adequate assurance that any Federal funds made available under this subchapter will be supplemented by funds or other resources available from other sources, whether public or private;

(3) the application sets forth such fiscal control and accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds expended under this subchapter; and

(4) the application provides for making such reports, in such form and containing such information, as the Secretary may require to carry out the Secretary's functions under this subchapter, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1106, Sec. 5093; amended Pub. L. 94–581, title II, Sec. 210(f)(5), Oct. 21, 1976, 90 Stat. 2866; Pub. L. 96–330, title IV, Sec. 405, Aug. 26, 1980, 94 Stat. 1052; renumbered Sec. 8233, Pub. L. 102–40, title IV, Sec. 402(b)(2)(D), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

SUBCHAPTER IV—EXPANSION OF DEPARTMENT HOSPITAL EDUCATION AND TRAINING CAPACITY

§ 8241. Expenditures to remodel and make special allocations to Department hospitals for health manpower education and training

Out of funds appropriated to the Department pursuant to the authorization in section 8222 of this title, the Secretary may expend such sums as the Secretary deems necessary, not to exceed 30 per centum thereof, for (1) the necessary extension, expansion, alteration, improvement, remodeling, or repair of Department buildings and structures (including provision of initial equipment, replacement of obsolete or worn-out equipment, and, where necessary, addition of classrooms, lecture facilities, laboratories, and other teaching facilities) to the extent necessary to make them suitable for use for health manpower education and training in order to carry out the purpose set forth in section 7302, and (2) special allocations to Department hospitals and other medical facilities for the development or initiation of improved methods of education and training which may include the development or initiation of plans which reduce the period of required education and training for health personnel but which do not adversely affect the quality of such education or training.

(Added Pub. L. 92–541, Sec. 2(a), Oct. 24, 1972, 86 Stat. 1106, Sec. 5096; amended Pub. L. 94–581, title II, Sec. 210(f)(6), Oct. 21, 1976, 90 Stat. 2866; renumbered Sec. 8241 and amended Pub. L. 102–40, title IV, Sec. 402(b)(2)(E), (d)(1), 403(b)(7), May 7, 1991, 105 Stat. 239, 240; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

CHAPTER 83 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART VI—ACQUISITION AND DISPOSITION OF PROPERTY]

CHAPTER 83—ACCEPTANCE OF GIFTS AND BEQUESTS

Sec.
8301. Authority to accept gifts, devises, and bequests.
8302. Legal proceedings.
8303. Restricted gifts.
8304. Disposition of property.
8305. Savings provision.

§ 8301. Authority to accept gifts, devises, and bequests

The Secretary may accept devises, bequests, and gifts, made in any manner, with respect to which the testator or donor shall have indicated the intention that such property shall be for the benefit of groups of persons formerly in the active military, naval, or air service who by virtue of such service alone, or disability suffered therein or therefrom, are or shall be patients or members of any one or more hospitals or homes operated by the United States Government, or has indicated the intention that such property shall be for the benefit of any such hospital or home, or shall be paid or delivered to any official, as such, or any agency in administrative control thereof. The Secretary may also accept, for use in carrying out all laws administered by the Secretary, gifts, devises, and bequests which will enhance the Secretary's ability to provide services or benefits.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1254, Sec. 5101; Pub. L. 99–576, title VII, Sec. 701(89), Oct. 28, 1986, 100 Stat. 3299; renumbered Sec. 8301, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102–86, title V, Sec. 504, Aug. 14, 1991, 105 Stat. 426.)

§ 8302. Legal proceedings

For the purpose of acquiring title to and possession of any property which the Secretary is by this chapter authorized to accept, the Secretary may initiate and appear in any appropriate legal proceedings, and take such steps therein or in connection therewith as in the Secretary's discretion may be desirable and appropriate to reduce said property to possession. The Secretary may incur such expenses incident to such proceedings as the Secretary deems necessary or appropriate, which shall be paid as are other administrative expenses of the Department. All funds received by devise, bequest, gift, or otherwise, for the purposes contemplated in this chapter, including net proceeds of sales authorized by this chapter, shall be deposited with the Treasurer of the United States to the credit of the General Post Fund.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1254, Sec. 5102; Pub. L. 99–576, title VII, Sec. 701(90), Oct. 28, 1986, 100 Stat. 3299; renumbered Sec. 8302, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8303. Restricted gifts

Disbursements from the General Post Fund shall be made on orders by and within the discretion of the Secretary and in the manner prescribed in section 8523 of this title; except that (1) if the testator or donor has directed or shall direct that the devise, bequest, or gift be devoted to a particular use authorized by this chapter, the same, less expenses incurred, or the net proceeds thereof, shall be used or disbursed as directed, except that a precatory direction shall be fulfilled only insofar as may be proper or practicable; and (2) if the testator or donor shall have indicated the desire that the devise, bequest, or gift shall be for the benefit of persons in hospitals or homes, or other institutions operated by the United States but under the jurisdiction of an official other than the Secretary, the same, less expenses incurred, or the net proceeds thereof which may come into possession of the Secretary, shall be disbursed by transfer to the governing authorities of such institution, or otherwise, in such manner as the Secretary may determine, for the benefit of the persons in the institution indicated by the testator or donor, for proper purposes, as nearly as practicable in conformity with such desire of the testator or donor.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1255, Sec. 5103; Pub. L. 99–576, title VII, Sec. 701(91), Oct. 28, 1986, 100 Stat. 3299; renumbered Sec. 8303 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8304. Disposition of property

If the Secretary receives any property other than moneys as contemplated by this chapter, the Secretary is authorized in the Secretary's discretion to sell, assign, transfer, and convey the same, or any interest therein claimed by virtue of such devise, bequest, or gift, for such price and upon such terms as the Secretary deems advantageous (including consent to partition of realty and compromise of contested claim of title) and the Secretary's assignment, deed, or other conveyance of any such property, executed in the name and on behalf of the United States, shall be valid to pass to the purchaser thereof such title to said property as the United States, beneficially or as trustee of the General Post Fund, may have by virtue of any such devise, bequest, or gift, and the proceedings incident thereto, subject to the conditions, limitations, and provisions of the instruments so executed by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1255, Sec. 5104; Pub. L. 99–576, title VII, Sec. 701(92), Oct. 28, 1986, 100 Stat. 3299; renumbered Sec. 8304, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8305. Savings provision

(a) Nothing contained in this chapter shall be construed to repeal or modify any law authorizing the acceptance of devises, bequests, or gifts to the United States for their own use and benefit or for any particular purpose specified by the donors or testators.

(b) Whenever the United States receives property and it appears that it is, or shall have been, the intention of the testator or donor that such devise, bequest, or gift be for the benefit of those persons described in section 8301 of this title, or any particular hospital or other institution operated primarily for their benefit, such property or the proceeds thereof shall be credited to the General Post Fund, and shall be used or disbursed in accordance with the provisions of this chapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1255, Sec. 5105; renumbered Sec. 8305 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

CHAPTER 85 OF TITLE 38, UNITED STATES CODE

[As Amended Through P.L. 111–5, Enacted February 17, 2009]

[TITLE 38—VETERANS' BENEFITS]

[PART VI—ACQUISITION AND DISPOSITION OF PROPERTY]

CHAPTER 85—DISPOSITION OF DECEASED VETERANS' PERSONAL PROPERTY

SUBCHAPTER I—PROPERTY LEFT ON DEPARTMENT FACILITY

Sec.
8501. Vesting of property left by decedents.
8502. Disposition of unclaimed personal property.
8503. Notice of provisions of this subchapter.
8504. Disposition of other unclaimed property.
8505. Sale or other disposition of property.
8506. Notice of sale.
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SUBCHAPTER II—DEATH WHILE PATIENT OF DEPARTMENT FACILITY

8520. Vesting of property left by decedents.
8521. Presumption of contract for disposition of personalty.
8522. Sale of assets accruing to the Fund.
8523. Disbursements from the Fund.
8524. Disposal of remaining assets.
8525. Court actions.
8526. Filing of claims for assets.
8527. Notice of provisions of subchapter.
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SUBCHAPTER I—PROPERTY LEFT ON DEPARTMENT FACILITY

§ 8501. Vesting of property left by decedents

(a) Personal property left by any decedent upon premises used as a Department facility, which premises are subject to the exclusive legislative jurisdiction of the United States and are within the exterior boundaries of any State or dependency of the United States, shall vest and be disposed of as provided in this subchapter, except that—

(1) if such person died leaving a last will and testament probated under the laws of the place of such person's domicile or under the laws of the State or dependency of the United States within the exterior boundaries of which such premises or a part thereof may be, the personal property of such decedent situated upon such premises shall vest in the person or persons entitled thereto under the provisions of such last will and testament; and

(2) if such person died leaving any such property not disposed of by a last will and testament probated in accord with

the provisions of paragraph (1) such property shall vest in the persons entitled to take such property by inheritance under and upon the conditions provided by the law of the decedent's domicile. This paragraph shall not apply to property to which the United States is entitled except where such title is divested out of the United States.

(b) Any officer or employee of the United States in possession of any such property may deliver same to the executor (or the administrator with will annexed) who shall have qualified in either jurisdiction as provided in subsection (a)(1); or if none such then to the domiciliary administrator or to any other qualified administrator who shall demand such property. When delivery shall have been made to any such executor or administrator in accordance with this subsection, neither the United States nor any officer or employee thereof shall be liable therefor.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1256, Sec. 5201; Pub. L. 99–576, title VII, Sec. 701(93), Oct. 28, 1986, 100 Stat. 3299; renumbered Sec. 8501, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

§ 8502. Disposition of unclaimed personal property

(a) Notwithstanding the provisions of section 8501 of this title, the Secretary may dispose of the personal property of such decedent left or found upon such premises as hereafter provided in this subchapter.

(b) If any veteran (admitted as a veteran), or a dependent or survivor of a veteran receiving care under the penultimate sentence of section 1781(b) of this title, upon such person's last admission to, or during such person's last period of maintenance in, a Department facility, has personal property situated on such facility and shall have designated in writing a person (natural or corporate) to receive such property when such veteran, dependent or survivor dies, the Secretary or employee of the Department authorized by the Secretary so to act, may transfer possession of such personal property to the person so designated. If there exists no person so designated by such veteran, dependent, or survivor or if the one so designated declines to receive such property, or failed to request such property within ninety days after the Department mails to such designate a notice of death and of the fact of such designation, a description of the property, and an estimate of transportation cost, which shall be paid by such designate if required under the regulations hereinafter mentioned, or if the Secretary declines to transfer possession to such designate, possession of such property may in the discretion of the Secretary or the Secretary's designated subordinate, be transferred to the following persons in the order and manner herein specified unless the parties otherwise agree in writing delivered to the Department, namely, executor or administrator, or if no notice of appointment received, to the spouse, children, grandchildren, parents, grandparents, siblings of the veteran. If claim is made by two or more such relatives having equal priorities, as hereinabove prescribed, or if there are conflicting claims the Secretary or the Secretary's designee may in such case deliver the property either jointly or separately in equal values, to those equally entitled thereto or may make delivery as may be agreed

upon by those entitled, or may in the discretion of the Secretary or the Secretary's designee withhold delivery from them and require the qualification of an administrator or executor of the veterans' estate and thereupon make delivery to such.

(c) If the property of any decedent is not so delivered or claimed and accepted the Secretary or the Secretary's designee may dispose of such property by public or private sale in accordance with the provisions of this subchapter and regulations prescribed by the Secretary.

(d) All sales authorized by this subchapter shall be for cash upon delivery at the premises where sold and without warranty, express or implied. The proceeds of such sales after payment of any expenses incident thereto as may be prescribed by regulations, together with any other moneys left or found on a facility, not disposed of in accordance with this subchapter, shall be credited to the General Post Fund, National Homes, Department of Veterans Affairs, a trust fund provided for in section 1321(a)(45) of title 31. In addition to the purposes for which such fund may be used under the existing law, disbursements may be made therefrom as authorized by the Secretary by regulation or otherwise for the purpose of satisfying any legal liability incurred by any employee in administering the provisions of this subchapter, including any expense incurred in connection therewith. Legal liability shall not exist when delivery or sale shall have been made in accordance with this subchapter.

(e) If, notwithstanding such sale, a claim is filed with the Secretary within five years after notice of sale as herein required, by or on behalf of any person or persons who if known would have been entitled to the property under section 8501 of this title or to possession thereof under this section, the Secretary shall determine the person or persons entitled under the provisions of this subchapter and may pay to such person or persons so entitled the proceeds of sale of such property, less expenses. Such payment shall be made out of the said trust fund, and in accord with the provisions of this section or section 8501 of this title. Persons under legal disability to sue in their own name may make claim for the proceeds of sale of such property at any time within five years after termination of such legal disability.

(f) Any such property, the sale of which is authorized under this subchapter and which remains unsold, may be used, destroyed, or otherwise disposed of in accordance with regulations promulgated by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1257, Sec. 5202; Pub. L. 94–581, title II, Sec. 208(a), Oct. 21, 1976, 90 Stat. 2860; Pub. L. 97–258, Sec. 3(k)(9), Sept. 13, 1982, 96 Stat. 1066; Pub. L. 99–576, title VII, Sec. 701(94), Oct. 28, 1986, 100 Stat. 3299; renumbered Sec. 8502 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, Sec. 14(f)(11), June 13, 1991, 105 Stat. 288; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 103–446, title XII, Sec. 1201(i)(11), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 107–135, title II, Sec. 208(e)(9), Jan. 23, 2002, 115 Stat. 2464.)

§ 8503. Notice of provisions of this subchapter

All persons having or bringing personal property on the premises of a Department facility shall be given reasonable notice of the provisions of this subchapter. In case of a mentally incompetent

person, notice hereof shall be given the guardian or other person having custody or control of such person or, if none, to such person's nearest relative if known. The admission to or continued maintenance in such facility after reasonable notice of the provisions of this subchapter shall constitute consent to the provisions hereof. The death of any person on any such facility or the leaving of property thereon shall be prima facie evidence of a valid agreement for the disposition of such property in accordance with the provisions of this subchapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1258, Sec. 5203; Pub. L. 99–576, title VII, Sec. 701(95), Oct. 28, 1986, 100 Stat. 3300; renumbered Sec. 8503, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

§ 8504. Disposition of other unclaimed property

Any other unclaimed property found on the premises under the control of the Department shall be stored by the officer in charge of such premises and may be sold, used, destroyed, or otherwise disposed of in accordance with regulations promulgated by the Secretary if the owner thereof fails to claim same within ninety days. If undisposed of, the same may be reclaimed by the owner, such person's personal representative or next of kin, upon payment of reasonable storage charges prescribed by regulations. If sold, the net proceeds thereof shall be credited to said post fund to be expended as other assets of such fund. The person who was entitled to such property, or such person's legal representative, or assignee, shall be paid the proceeds of sale thereof, less expenses if claim therefor be made within five years from the date of finding. If the owner shall have died intestate without creditors or next of kin surviving, such proceeds shall not be paid to such person's legal representative.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1258, Sec. 5204; Pub. L. 99–576, title VII, Sec. 701(96), Oct. 28, 1986, 100 Stat. 3300; renumbered Sec. 8504, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8505. Sale or other disposition of property

Any unclaimed personal property as described in section 8502 of this title of veterans who have heretofore died or who may hereafter die while maintained as such in a Department facility, and also any unclaimed property heretofore or hereafter found or situated in such facility, may be sold, used, destroyed, or otherwise disposed of in accordance with this subchapter, and subject to regulations promulgated by the Secretary pursuant hereto; and the net proceeds of sale thereof shall be credited and be subject to disbursement as provided in this subchapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1258, Sec. 5205; renumbered Sec. 8505 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8506. Notice of sale

At least ninety days before any sale pursuant to this subchapter, written or printed notice thereof describing the property to be sold shall be mailed to the owner of the property or, if deceased, to the owner's executor or administrator, or to the nearest kin, if

any such appear by the records of the Department. If none such appears from said records, similar notice shall be posted at the facility where the death occurred or property shall have been found (if in existence) and at the place where such property is situated at the time of such notice, and also at the place where probate notices are posted in the county wherein the sale is to be had. The person posting such notice shall make an affidavit setting forth the time and place of such posting and attaching thereto a copy of such notice, and such affidavit shall be prima facie evidence of such posting and admissible in evidence as proof of the same.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1258, Sec. 5206; Pub. L. 99–576, title VII, Sec. 701(97), Oct. 28, 1986, 100 Stat. 3300; renumbered Sec. 8506, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

§ 8507. Payment of small shipping charges

Upon receipt of a proper claim for such property under the provisions of this subchapter the Secretary is hereby authorized, in the Secretary's discretion and in accordance with regulations prescribed by the Secretary, to pay mailing or shipping charges not to exceed $25 in the case of each deceased veteran as hereinabove defined.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1259, Sec. 5207; Pub. L. 99–576, title VII, Sec. 701(98), Oct. 28, 1986, 100 Stat. 3300; renumbered Sec. 8507, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8508. Relinquishment of Federal jurisdiction

Subject to the provisions of this subchapter and to the extent necessary to effectuate the purposes of this subchapter, there is hereby relinquished to the respective State or dependency of the United States such jurisdiction pertaining to the administration of estates of decedents as may have been ceded to the United States by said State or dependency of the United States respecting the Federal reservation on which is situated any Department facility while such facility is operated by the Department; such jurisdiction with respect to any such property on any such reservation to be to the same extent as if such premises had not been ceded to the United States. Nothing in this section shall be construed to deprive any State or dependency of the United States of any jurisdiction which it now has nor to give any State, possession, or dependency of the United States authority over any Federal official as such on such premises or otherwise.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1259, Sec. 5208; renumbered Sec. 8508, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

§ 8509. Definitions

The term "facility" or "Department facility" as used in this subchapter means those facilities over which the Department has direct and exclusive administrative jurisdiction, including hospitals or other facilities on property owned or leased by the United States while operated by the Department.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1259, Sec. 5209; renumbered Sec. 8509, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

§ 8510. Finality of decisions

Decisions by the Secretary under this subchapter shall not be reviewable administratively by any other officer of the United States.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1259, Sec. 5210; renumbered Sec. 8510, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

SUBCHAPTER II—DEATH WHILE PATIENT OF DEPARTMENT FACILITY

§ 8520. Vesting of property left by decedents

(a) Whenever any veteran (admitted as a veteran), or a dependent or survivor of a veteran receiving care under the penultimate sentence of section 1781(b) of this title, shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Department, and shall not leave any surviving spouse, next of kin, or heirs entitled, under the laws of the decedent's domicile, to the decedent's personal property as to which such person dies intestate, all such property, including money and choses in action, owned by such person at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund (hereinafter in this subchapter referred to as the "Fund"), a trust fund prescribed by section 1321(a)(45) of title 31.

(b) The provisions of subsection (a) are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Department in a facility or hospital. The acceptance and the continued acceptance of care or treatment by any veteran (admitted as a veteran to a Department facility or hospital) shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at such person's death, of such assets in accordance with and subject to the provisions of this subchapter and regulations issued in accordance with this subchapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1259, Sec. 5220; Pub. L. 94–581, title II, Sec. 208(b), Oct. 21, 1976, 90 Stat. 2860; Pub. L. 97–258, Sec. 3(k)(9), Sept. 13, 1982, 96 Stat. 1066; Pub. L. 99–576, title VII, Sec. 701(99), Oct. 28, 1986, 100 Stat. 3300; renumbered Sec. 8520, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), 5(c)(1), Aug. 6, 1991, 105 Stat. 404, 406; Pub. L. 107–14, Sec. 8(a)(16), June 5, 2001, 115 Stat. 35; Pub. L. 107–135, title II, Sec. 208(e)(9), Jan. 23, 2002, 115 Stat. 2464.)

§ 8521. Presumption of contract for disposition of personalty

The fact of death of a veteran (admitted as such), or a dependent or survivor of a veteran receiving care under the penultimate sentence of section 1781(b) of this title, in a facility or hospital, while being furnished care or treatment therein by the Department, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a valid contract for the disposition in accordance with this subchapter, but subject to its conditions, of all

property described in section 8520 of this title owned by said decedent at death and as to which such person dies intestate.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1260, Sec. 5221; Pub. L. 94–581, title II, Sec. 208(c), Oct. 21, 1976, 90 Stat. 2860; Pub. L. 99–576, title VII, Sec. 701(100), Oct. 28, 1986, 100 Stat. 3300; renumbered Sec. 8521 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), 5(c)(1), Aug. 6, 1991, 105 Stat. 404, 406; Pub. L. 107–135, title II, Sec. 208(e)(9), Jan. 23, 2002, 115 Stat. 2464.)

§ 8522. Sale of assets accruing to the Fund

Any assets heretofore or hereafter accruing to the benefit of the Fund, other than money, but including jewelry and other personal effects, may be sold at the times and places and in the manner prescribed by regulations issued by the Secretary. Upon receipt of the purchase price the Secretary is authorized to deliver at the place of sale, said property sold, and upon request to execute and deliver appropriate assignments or other conveyances thereof in the name of the United States, which shall pass to the purchaser such title as decedent had at date of death. The net proceeds after paying any proper sales expense as determined by the Secretary shall forthwith be paid to the Treasurer of the United States to the credit of the Fund; and may be disbursed as are other moneys in the Fund by the Division of Disbursements, Treasury Department, upon order of said Secretary. Articles of personal adornment which are obviously of sentimental value, shall be retained and not sold or otherwise disposed of until the expiration of five years from the date of death of the veteran, without a claim therefor, unless for sanitary or other proper reasons it is deemed unsafe to retain same, in which event they may be destroyed forthwith. Any other articles coming into possession of the Secretary or the Secretary's representative by virtue of this subchapter which, under regulations promulgated by the Secretary, are determined to be unsalable may be destroyed forthwith or at the time prescribed by regulations, or may be used for the purposes for which disbursements might properly be made from the Fund, or if not usable, otherwise disposed of in accordance with regulations.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1260, Sec. 5222; Pub. L. 99–576, title VII, Sec. 701(101), Oct. 28, 1986, 100 Stat. 3300; renumbered Sec. 8522, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8523. Disbursements from the Fund

Disbursements from the Fund shall be made by the Division of Disbursements, Treasury Department, upon the order and within the discretion of the Secretary for the benefit of members and patients while being supplied care or treatment by the Department in any facility or hospital. The authority contained in the preceding sentence is not limited to facilities or hospitals under direct administrative control of the Department. There shall be paid out of the assets of the decedent so far as may be the valid claims of creditors against the decedent's estate that would be legally payable therefrom in the absence of this subchapter and without the benefit of any exemption statute, and which may be presented to the Department within one year from the date of death, or within the time, to the person, and in the manner required or permitted by the law

of the State wherein administration, if any, is had upon the estate of the deceased veteran; and also the proper expenses and costs of administration, if any. If the decedent's estate is insolvent the distribution to creditors shall be in accordance with the laws of the decedent's domicile, and the preferences and priorities prescribed thereby shall govern, subject to any applicable law of the United States.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1260, Sec. 5223; Pub. L. 99–576, title VII, Sec. 701(102), Oct. 28, 1986, 100 Stat. 3300; renumbered Sec. 8523, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8524. Disposal of remaining assets

The remainder of such assets or their proceeds shall become assets of the United States as trustee for the Fund and disposed of in accordance with this subchapter. If there is administration upon the decedent's estate such assets, other than money, upon claim therefor within the time required by law, shall be delivered by the administrator of the estate to the Secretary or the Secretary's authorized representative, as upon final distribution; and upon the same claim there shall be paid to the Treasurer of the United States for credit to the Fund any such money, available for final distribution. In the absence of administration, any money, chose in action, or other property of the deceased veteran held by any person shall be paid or transferred to the Secretary upon demand by the Secretary or the Secretary's duly authorized representative, who shall deliver itemized receipt therefor. Such payment or transfer shall constitute a complete acquittance of the transferor with respect to any claims by any administrator, creditor, or next of kin of such decedent.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1261, Sec. 5224; Pub. L. 99–576, title VII, Sec. 701(103), Oct. 28, 1986, 100 Stat. 3300; renumbered Sec. 8524, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8525. Court actions

If necessary to obtain such assets the Secretary, through the Secretary's authorized attorneys, may bring and prosecute appropriate actions at law or other legal proceedings, the costs and expenses thereof to be paid as are other administrative expenses of the Department.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1261, Sec. 5225; Pub. L. 99–576, title VII, Sec. 701(104), Oct. 28, 1986, 100 Stat. 3301; renumbered Sec. 8525, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8526. Filing of claims for assets

Notwithstanding the crediting to said Fund of the assets, or proceeds thereof, of any decedent, whether upon determination by a court or the Department pursuant to the provisions of section 8520 of this title, any person claiming a right to such assets may within five years after the death of the decedent file a claim on behalf of such person and any other claiming with the Secretary. Upon receipt of due proof that any person was at date of death of the veteran entitled to the veteran's personal property, or a part

thereof, under the laws of the State of domicile of the decedent, the Secretary may pay out of the Fund, but not to exceed the net amount credited thereto from said decedent's estate less any necessary expenses, the amount to which such person, or persons, was or were so entitled, and upon similar claim any assets of the decedent which shall not have been disposed of shall be delivered in kind to the parties legally entitled thereto. If any person so entitled is under legal disability at the date of death of such decedent, such five-year period of limitation shall run from the termination or removal of legal disability. In the event of doubt as to entitlement, the Secretary may cause administration or other appropriate proceedings to be instituted in any court having jurisdiction. In determining questions of fact or law involved in the adjudication of claims made under this section, no judgment, decree, or order entered in any action at law, suit in equity, or other legal proceeding of any character purporting to determine entitlement to said assets or any part thereof, shall be binding upon the United States or the Secretary or determinative of any fact or question involving entitlement to any such property or the proceeds thereof, or any part of the Fund, unless the Secretary has been seasonably served with notice and permitted to become a party to such suit or proceeding if the Secretary makes a request therefor within thirty days after such notice. Notice may be served in person or by registered mail or by certified mail upon the Secretary, or upon the Secretary's authorized attorney in the State wherein the action or proceedings may be pending. Notice may be waived by the Secretary or by the Secretary's authorized attorney, in which event the finding, judgment, or decree shall have the same effect as if the Secretary were a party and served with notice. Any necessary court costs or expenses if authorized by the Secretary may be paid as are other administrative expenses of the Department.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1261, Sec. 5226; Pub. L. 86–507, Sec. 1(33), June 11, 1960, 74 Stat. 202; Pub. L. 99–576, title VII, Sec. 701(105), Oct. 28, 1986, 100 Stat. 3301; renumbered Sec. 8526 and amended Pub. L. 102–40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8527. Notice of provisions of subchapter

The Secretary shall prescribe a form of application for hospital treatment and domiciliary care which shall include notice of the provisions of this subchapter.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1262, Sec. 5227; renumbered Sec. 8527, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

§ 8528. Investment of the Fund

Money in the Fund not required for current disbursements may be invested and reinvested by the Secretary of the Treasury in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1262, Sec. 5228; renumbered Sec. 8528, Pub. L. 102–40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

SERVICEMEMBERS CIVIL RELIEF ACT

For changes after the closing date of this compilation (February 1, 2006) to any section of the Servicemembers Civil Relief Act, see the United States Code reference for that section (50 U.S.C. App. 5xx) in the United States Code Classification Tables published by the Office of the Law Revision Counsel of the House of Representatives at **http://uscode.house.gov/classification/tables.shtml**.

SERVICEMEMBERS CIVIL RELIEF ACT [1]

[As Amended Through P.L. 110–389, Enacted October 10, 2008]

AN ACT to promote and strengthen the national defense by suspending enforcement of certain civil liabilities of certain persons serving in the Military and Naval Establishments, including the Coast Guard.

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

SECTION 1. [50 U.S.C. App. 501] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Servicemembers Civil Relief Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. [50 U.S.C. App. 501] Short title; table of contents.
Sec. 2. [50 U.S.C. App. 502] Purpose.

TITLE I—GENERAL PROVISIONS

Sec. 101. [50 U.S.C. App. 511] Definitions.
Sec. 102. [50 U.S.C. App. 512] Jurisdiction and applicability of act.
Sec. 103. [50 U.S.C. App. 513] Protection of persons secondarily liable.
Sec. 104. [50 U.S.C. App. 514] Extension of protections to citizens serving with allied forces.
Sec. 105. [50 U.S.C. App. 515] Notification of benefits.
Sec. 106. [50 U.S.C. App. 516] Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction.
Sec. 107. [50 U.S.C. App. 517] Waiver of rights pursuant to written agreement.
Sec. 108. [50 U.S.C. App. 518] Exercise of rights under Act not to affect certain future financial transactions.
Sec. 109. [50 U.S.C. App. 519] Legal representatives.

TITLE II—GENERAL RELIEF

Sec. 201. [50 U.S.C. App. 521] Protection of servicemembers against default judgments.
Sec. 202. [50 U.S.C. App. 522] Stay of proceedings when servicemember has notice.
Sec. 203. [50 U.S.C. App. 523] Fines and penalties under contracts.
Sec. 204. [50 U.S.C. App. 524] Stay or vacation of execution of judgments, attachments, and garnishments.
Sec. 205. [50 U.S.C. App. 525] Duration and term of stays; codefendants not in service.
Sec. 206. [50 U.S.C. App. 526] Statute of limitations.
Sec. 207. [50 U.S.C. App. 527] Maximum rate of interest on debts incurred before military service.

[1] Public Law 108–189 (enacted December 19, 2003; 117 Stat. 2835) restated, clarified, and revised this Act as then in existence. As part of that restatement, the short title of the Act was changed from the "Soldiers' and Sailors' Civil Relief Act of 1940" to the "Servicemembers Civil Relief Act".

TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

Sec. 301. [50 U.S.C. App. 531] Evictions and distress.
Sec. 302. [50 U.S.C. App. 532] Protection under installment contracts for purchase or lease.
Sec. 303. [50 U.S.C. App. 533] Mortgages and trust deeds.
Sec. 304. [50 U.S.C. App. 534] Settlement of stayed cases relating to personal property.
Sec. 305. [50 U.S.C. App. 535] Termination of residential or motor vehicle leases.
Sec. 305A. Termination or suspension of contracts for cellular telephone service.
Sec. 306. [50 U.S.C. App. 536] Protection of life insurance policy.
Sec. 307. [50 U.S.C. App. 537] Enforcement of storage liens.
Sec. 308. [50 U.S.C. App. 538] Extension of protections to dependents.

TITLE IV—LIFE INSURANCE

Sec. 401. [50 U.S.C. App. 541] Definitions.
Sec. 402. [50 U.S.C. App. 542] Insurance rights and protections.
Sec. 403. [50 U.S.C. App. 543] Application for insurance protection.
Sec. 404. [50 U.S.C. App. 544] Policies entitled to protection and lapse of policies.
Sec. 405. [50 U.S.C. App. 545] Policy restrictions.
Sec. 406. [50 U.S.C. App. 546] Deduction of unpaid premiums.
Sec. 407. [50 U.S.C. App. 547] Premiums and interest guaranteed by United States.
Sec. 408. [50 U.S.C. App. 548] Regulations.
Sec. 409. [50 U.S.C. App. 549] Review of findings of fact and conclusions of law.

TITLE V—TAXES AND PUBLIC LANDS

Sec. 501. [50 U.S.C. App. 561] Taxes respecting personal property, money, credits, and real property.
Sec. 502. [50 U.S.C. App. 562] Rights in public lands.
Sec. 503. [50 U.S.C. App. 563] Desert-land entries.
Sec. 504. [50 U.S.C. App. 564] Mining claims.
Sec. 505. [50 U.S.C. App. 565] Mineral permits and leases.
Sec. 506. [50 U.S.C. App. 566] Perfection or defense of rights.
Sec. 507. [50 U.S.C. App. 567] Distribution of information concerning benefits of title.
Sec. 508. [50 U.S.C. App. 568] Land rights of servicemembers.
Sec. 509. [50 U.S.C. App. 569] Regulations.
Sec. 510. [50 U.S.C. App. 570] Income taxes.
Sec. 511. [50 U.S.C. App. 571] Residence for tax purposes.

TITLE VI—ADMINISTRATIVE REMEDIES

Sec. 601. [50 U.S.C. App. 581] Inappropriate use of Act.
Sec. 602. [50 U.S.C. App. 582] Certificates of service; persons reported missing.
Sec. 603. [50 U.S.C. App. 583] Interlocutory orders.

TITLE VII—FURTHER RELIEF

Sec. 701. [50 U.S.C. App. 591] Anticipatory relief.
Sec. 702. [50 U.S.C. App. 592] Power of attorney.
Sec. 703. [50 U.S.C. App. 593] Professional liability protection.
Sec. 704. [50 U.S.C. App. 594] Health insurance reinstatement.
Sec. 705. [50 U.S.C. App. 595] Guarantee of residency for military personnel.
Sec. 706. [50 U.S.C. App. 596] Business or trade obligations.

SEC. 2. [50 U.S.C. App. 502] PURPOSE.

The purposes of this Act are—

(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may ad-

versely affect the civil rights of servicemembers during their military service.

TITLE I—GENERAL PROVISIONS

SEC. 101. [50 U.S.C. App. 511] DEFINITIONS.

For the purposes of this Act:

(1) SERVICEMEMBER.—The term "servicemember" means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

(2) MILITARY SERVICE.—The term "military service" means—

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and

(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) PERIOD OF MILITARY SERVICE.—The term "period of military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) DEPENDENT.—The term "dependent", with respect to a servicemember, means—

(A) the servicemember's spouse;

(B) the servicemember's child (as defined in section 101(4) of title 38, United States Code); or

(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act.

(5) COURT.—The term "court" means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

(6) STATE.—The term "State" includes—

(A) a commonwealth, territory, or possession of the United States; and

(B) the District of Columbia.

(7) SECRETARY CONCERNED.—The term "Secretary concerned"—

(A) with respect to a member of the armed forces, has the meaning given that term in section 101(a)(9) of title 10, United States Code;

(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

(8) MOTOR VEHICLE.—The term "motor vehicle" has the meaning given that term in section 30102(a)(6) of title 49, United States Code.

(9) JUDGMENT.—The term "judgment" means any judgment, decree, order, or ruling, final or temporary.

SEC. 102. [50 U.S.C. App. 512] JURISDICTION AND APPLICABILITY OF ACT.

(a) JURISDICTION.—This Act applies to—

(1) the United States;

(2) each of the States, including the political subdivisions thereof; and

(3) all territory subject to the jurisdiction of the United States.

(b) APPLICABILITY TO PROCEEDINGS.—This Act applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act. This Act does not apply to criminal proceedings.

(c) COURT IN WHICH APPLICATION MAY BE MADE.—When under this Act any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

SEC. 103. [50 U.S.C. App. 513] PROTECTION OF PERSONS SECONDARILY LIABLE.

(a) EXTENSION OF PROTECTION WHEN ACTIONS STAYED, POSTPONED, OR SUSPENDED.—Whenever pursuant to this Act a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(b) VACATION OR SET-ASIDE OF JUDGMENTS.—When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this Act, the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

(c) BAIL BOND NOT TO BE ENFORCED DURING PERIOD OF MILITARY SERVICE.—A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal.

(d) WAIVER OF RIGHTS.—

(1) WAIVERS NOT PRECLUDED.—This Act does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

(2) WAIVER INVALIDATED UPON ENTRANCE TO MILITARY SERVICE.—If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in section 106.

SEC. 104. [50 U.S.C. App. 514] EXTENSION OF PROTECTIONS TO CITIZENS SERVING WITH ALLIED FORCES.

A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act if that service with the allied force is similar to military service as defined in this Act. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

SEC. 105. [50 U.S.C. App. 515] NOTIFICATION OF BENEFITS.

The Secretary concerned shall ensure that notice of the benefits accorded by this Act is provided in writing to persons in military service and to persons entering military service.

SEC. 106. [50 U.S.C. App. 516] EXTENSION OF RIGHTS AND PROTECTIONS TO RESERVES ORDERED TO REPORT FOR MILITARY SERVICE AND TO PERSONS ORDERED TO REPORT FOR INDUCTION.

(a) RESERVES ORDERED TO REPORT FOR MILITARY SERVICE.—A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this title and titles II and III during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

(b) PERSONS ORDERED TO REPORT FOR INDUCTION.—A person who has been ordered to report for induction under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) is entitled to the rights and protections provided a servicemember under this title and titles II and III during the period beginning on the date of re-

ceipt of the order for induction and ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

SEC. 107. [50 U.S.C. App. 517] WAIVER OF RIGHTS PURSUANT TO WRITTEN AGREEMENT.

(a) IN GENERAL.—A servicemember may waive any of the rights and protections provided by this Act. Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

(b) ACTIONS REQUIRING WAIVERS IN WRITING.—The requirement in subsection (a) for a written waiver applies to the following:

(1) The modification, termination, or cancellation of—

(A) a contract, lease, or bailment; or

(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that—

(A) is security for any obligation; or

(B) was purchased or received under a contract, lease, or bailment.

(c) PROMINENT DISPLAY OF CERTAIN CONTRACT RIGHTS WAIVERS.—Any waiver in writing of a right or protection provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.

(d) COVERAGE OF PERIODS AFTER ORDERS RECEIVED.—For the purposes of this section—

(1) a person to whom section 106 applies shall be considered to be a servicemember; and

(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 shall be considered to be a period of military service.

SEC. 108. [50 U.S.C. App. 518] EXERCISE OF RIGHTS UNDER ACT NOT TO AFFECT CERTAIN FUTURE FINANCIAL TRANSACTIONS.

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

(1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.

(2) With respect to a credit transaction between a creditor and the servicemember—

(A) a denial or revocation of credit by the creditor;

(B) a change by the creditor in the terms of an existing credit arrangement; or

(C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.

(3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.

(4) A refusal by an insurer to insure the servicemember.

(5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.

(6) A change in the terms offered or conditions required for the issuance of insurance.

SEC. 109. [50 U.S.C. App. 519] LEGAL REPRESENTATIVES.

(a) REPRESENTATIVE.—A legal representative of a servicemember for purposes of this Act is either of the following:

(1) An attorney acting on the behalf of a servicemember.

(2) An individual possessing a power of attorney.

(b) APPLICATION.—Whenever the term "servicemember" is used in this Act, such term shall be treated as including a reference to a legal representative of the servicemember.

TITLE II—GENERAL RELIEF

SEC. 201. [50 U.S.C. App. 521] PROTECTION OF SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS.

(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

(b) AFFIDAVIT REQUIREMENT.—

(1) PLAINTIFF TO FILE AFFIDAVIT.—In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) APPOINTMENT OF ATTORNEY TO REPRESENT DEFENDANT IN MILITARY SERVICE.—If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall

not waive any defense of the servicemember or otherwise bind the servicemember.

(3) DEFENDANT'S MILITARY STATUS NOT ASCERTAINED BY AFFIDAVIT.—If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act.

(4) SATISFACTION OF REQUIREMENT FOR AFFIDAVIT.—The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) PENALTY FOR MAKING OR USING FALSE AFFIDAVIT.—A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(d) STAY OF PROCEEDINGS.—In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) INAPPLICABILITY OF SECTION 202 PROCEDURES.—A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202.

(f) SECTION 202 PROTECTION.—If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202.

(g) VACATION OR SETTING ASIDE OF DEFAULT JUDGMENTS.—

(1) AUTHORITY FOR COURT TO VACATE OR SET ASIDE JUDGMENT.—If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the pur-

pose of allowing the servicemember to defend the action if it appears that—

(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

(B) the servicemember has a meritorious or legal defense to the action or some part of it.

(2) TIME FOR FILING APPLICATION.—An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) PROTECTION OF BONA FIDE PURCHASER.—If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

SEC. 202. [50 U.S.C. App. 522] STAY OF PROCEEDINGS WHEN SERVICEMEMBER HAS NOTICE.

(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section—

(1) is in military service or is within 90 days after termination of or release from military service; and

(2) has received notice of the action or proceeding.

(b) STAY OF PROCEEDINGS.—

(1) AUTHORITY FOR STAY.—At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2) CONDITIONS FOR STAY.—An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

(c) APPLICATION NOT A WAIVER OF DEFENSES.—An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

(d) ADDITIONAL STAY.—

(1) APPLICATION.—A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such

an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

(2) APPOINTMENT OF COUNSEL WHEN ADDITIONAL STAY REFUSED.—If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e) COORDINATION WITH SECTION 201.—A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201.

(f) INAPPLICABILITY TO SECTION 301.—The protections of this section do not apply to section 301.

SEC. 203. [50 U.S.C. App. 523] FINES AND PENALTIES UNDER CONTRACTS.

(a) PROHIBITION OF PENALTIES.—When an action for compliance with the terms of a contract is stayed pursuant to this Act, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(b) REDUCTION OR WAIVER OF FINES OR PENALTIES.—If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if—

(1) the servicemember was in military service at the time the fine or penalty was incurred; and

(2) the ability of the servicemember to perform the obligation was materially affected by such military service.

SEC. 204. [50 U.S.C. App. 524] STAY OR VACATION OF EXECUTION OF JUDGMENTS, ATTACHMENTS, AND GARNISHMENTS.

(a) COURT ACTION UPON MATERIAL AFFECT DETERMINATION.—If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember—

(1) stay the execution of any judgment or order entered against the servicemember; and

(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) APPLICABILITY.—This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

SEC. 205. [50 U.S.C. App. 525] DURATION AND TERM OF STAYS; CODEFENDANTS NOT IN SERVICE.

(a) PERIOD OF STAY.—A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) CODEFENDANTS.—If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act, the plaintiff may proceed against those other defendants with the approval of the court.

(c) INAPPLICABILITY OF SECTION.—This section does not apply to sections 202 and 701.

SEC. 206. [50 U.S.C. App. 526] STATUTE OF LIMITATIONS.

(a) TOLLING OF STATUTES OF LIMITATION DURING MILITARY SERVICE.—The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) REDEMPTION OF REAL PROPERTY.—A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) INAPPLICABILITY TO INTERNAL REVENUE LAWS.—This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

SEC. 207. [50 U.S.C. App. 527] MAXIMUM RATE OF INTEREST ON DEBTS INCURRED BEFORE MILITARY SERVICE.

(a) INTEREST RATE LIMITATION.—

(1) LIMITATION TO 6 PERCENT.—An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent—

(A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

(B) during the period of military service, in the case of any other obligation or liability.

(2) FORGIVENESS OF INTEREST IN EXCESS OF 6 PERCENT.—Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) PREVENTION OF ACCELERATION OF PRINCIPAL.—The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) IMPLEMENTATION OF LIMITATION.—

(1) WRITTEN NOTICE TO CREDITOR.—In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military

orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) LIMITATION EFFECTIVE AS OF DATE OF ORDER TO ACTIVE DUTY.—Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

(c) CREDITOR PROTECTION.—A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

(d) DEFINITIONS.—In this section:

(1) INTEREST.—The term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

(2) OBLIGATION OR LIABILITY.—The term "obligation or liability" includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

(e) PENALTY.—Whoever knowingly violates subsection (a) shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

(f) PRESERVATION OF OTHER REMEDIES.—The penalties provided under subsection (e) are in addition to and do not preclude any other remedy available under law to a person claiming relief under this section, including any award for consequential or punitive damages.

TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

SEC. 301. [50 U.S.C. App. 531] EVICTIONS AND DISTRESS.

(a) COURT-ORDERED EVICTION.—

(1) IN GENERAL.—Except by court order, a landlord (or another person with paramount title) may not—

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises—

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed $2,400, as adjusted under paragraph (2) for years after 2003; or

(B) subject such premises to a distress during the period of military service.

(2) HOUSING PRICE INFLATION ADJUSTMENT.—(A) For calendar years beginning with 2004, the amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

(B) For purposes of this paragraph—

(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which—

(I) the CPI housing component for November of the preceding calendar year, exceeds

(II) the CPI housing component for November of 1984.

(ii) The term "CPI housing component" means the index published by the Bureau of Labor Statistics of the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

(3) PUBLICATION OF HOUSING PRICE INFLATION ADJUSTMENT.—The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

(b) STAY OF EXECUTION.—

(1) COURT AUTHORITY.—Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service—

(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

(B) adjust the obligation under the lease to preserve the interests of all parties.

(2) RELIEF TO LANDLORD.—If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

(c) PENALTIES.—

(1) MISDEMEANOR.—Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

(d) RENT ALLOTMENT FROM PAY OF SERVICEMEMBER.—To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

(e) LIMITATION OF APPLICABILITY.—Section 202 is not applicable to this section.

SEC. 302. [50 U.S.C. App. 532] PROTECTION UNDER INSTALLMENT CONTRACTS FOR PURCHASE OR LEASE.

(a) PROTECTION UPON BREACH OF CONTRACT.—

(1) PROTECTION AFTER ENTERING MILITARY SERVICE.—After a servicemember enters military service, a contract by the servicemember for—

(A) the purchase of real or personal property (including a motor vehicle); or

(B) the lease or bailment of such property,

may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

(2) APPLICABILITY.—This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

(b) PENALTIES.—

(1) MISDEMEANOR.—A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act, or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(c) AUTHORITY OF COURT.—In a hearing based on this section, the court—

(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

(3) may make other disposition as is equitable to preserve the interests of all parties.

SEC. 303. [50 U.S.C. App. 533] MORTGAGES AND TRUST DEEDS.

(a) MORTGAGE AS SECURITY.—This section applies only to an obligation on real or personal property owned by a servicemember that—

(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

(b) STAY OF PROCEEDINGS AND ADJUSTMENT OF OBLIGATION.—In an action filed during, or within 9 months[1] after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service—

(1) stay the proceedings for a period of time as justice and equity require, or

(2) adjust the obligation to preserve the interests of all parties.

(c) SALE OR FORECLOSURE.—A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 9 months[1] after, the period of the servicemember's military service except—

(1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or

(2) if made pursuant to an agreement as provided in section 107.

(d) PENALTIES.—

(1) MISDEMEANOR.—A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.

SEC. 304. [50 U.S.C. App. 534] SETTLEMENT OF STAYED CASES RELATING TO PERSONAL PROPERTY.

(a) APPRAISAL OF PROPERTY.—When a stay is granted pursuant to this Act in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

(b) EQUITY PAYMENT.—Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

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[1] Section 2203(a) of Public Law 110–289 provides for amendments to subsections (b) and (c) by striking "90 days" and inserting "9 months". Subsection (c) of such section provides:

(c) EFFECTIVE DATE; SUNSET.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) SUNSET.—The amendments made by subsection (a) shall expire on December 31, 2010. Effective January 1, 2011, the provisions of subsections (b) and (c) of section 303 of the Servicemembers Civil Relief Act, as in effect on the day before the date of the enactment of this Act, are hereby revived.

SEC. 305. [50 U.S.C. App. 535] TERMINATION OF RESIDENTIAL OR MOTOR VEHICLE LEASES.

(a) TERMINATION BY LESSEE.—

(1) IN GENERAL.—The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after—

(A) the lessee's entry into military service; or

(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) JOINT LEASES.—A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) COVERED LEASES.—This section applies to the following leases:

(1) LEASES OF PREMISES.—A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if—

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(2) LEASES OF MOTOR VEHICLES.—A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if—

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders—

(i) for a change of permanent station—

(I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or

(ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.

(c) MANNER OF TERMINATION.—

(1) IN GENERAL.—Termination of a lease under subsection (a) is made—

(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) DELIVERY OF NOTICE.—Delivery of notice under paragraph (1)(A) may be accomplished—

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) EFFECTIVE DATE OF LEASE TERMINATION.—

(1) LEASE OF PREMISES.—In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) LEASE OF MOTOR VEHICLES.—In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) ARREARAGES AND OTHER OBLIGATIONS AND LIABILITIES.—Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of the lease of a motor vehicle, the lessor may not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) RENT PAID IN ADVANCE.—Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) RELIEF TO LESSOR.—Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) PENALTIES.—

(1) MISDEMEANOR.—Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

(i) DEFINITIONS.—

(1) MILITARY ORDERS.—The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS.—The term "continental United States" means the 48 contiguous States and the District of Columbia.

SEC. 305A. [50 U.S.C. App. 535a] TERMINATION OR SUSPENSION OF CONTRACTS FOR CELLULAR TELEPHONE SERVICE.

(a) IN GENERAL.—A servicemember who receives orders to deploy outside of the continental United States for not less than 90 days or for a permanent change of duty station within the United States may request the termination or suspension of any contract for cellular telephone service entered into by the servicemember before the date of the commencement of such deployment or permanent change if the servicemember's ability to satisfy the contract or to utilize the service will be materially affected by such deployment or permanent change. The request shall include a copy of the servicemember's military orders.

(b) RELIEF.—Upon receiving the request of a servicemember under subsection (a), the cellular telephone service contractor concerned shall—

(1) grant the requested relief without imposition of an early termination fee for termination of the contract or a reactivation fee for suspension of the contract; or

(2) in the case that such servicemember is deployed outside the continental United States as described in subsection (a), permit the servicemember to suspend the contract at no charge until the end of the deployment without requiring, whether as a condition of suspension or otherwise, that the contract be extended.

(c) CELLULAR TELEPHONE SERVICE DEFINED.—In this section, the term "cellular telephone service" has the meaning given the term "commercial mobile service" in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)).

SEC. 306. [50 U.S.C. App. 536] PROTECTION OF LIFE INSURANCE POLICY.

(a) ASSIGNMENT OF POLICY PROTECTED.—If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

(b) EXCEPTION.—The prohibition in subsection (a) shall not apply—

(1) if the assignee has the written consent of the insured made during the period described in subsection (a);

(2) when the premiums on the policy are due and unpaid; or

(3) upon the death of the insured.

(c) ORDER REFUSED BECAUSE OF MATERIAL AFFECT.—A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

(d) TREATMENT OF GUARANTEED PREMIUMS.—For purposes of this subsection, premiums guaranteed under the provisions of title IV of this Act shall not be considered due and unpaid.

(e) PENALTIES.—

(1) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

SEC. 307. [50 U.S.C. App. 537] ENFORCEMENT OF STORAGE LIENS.

(a) LIENS.—

(1) LIMITATION ON FORECLOSURE OR ENFORCEMENT.—A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

(2) LIEN DEFINED.—For the purposes of paragraph (1), the term "lien" includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

(b) STAY OF PROCEEDINGS.—In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service—

(1) stay the proceeding for a period of time as justice and equity require; or

(2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of section 303.

(c) PENALTIES.—

(1) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

SEC. 308. [50 U.S.C. App. 538] EXTENSION OF PROTECTIONS TO DEPENDENTS.

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

TITLE IV—LIFE INSURANCE

SEC. 401. [50 U.S.C. App. 541] DEFINITIONS.

For the purposes of this title:

(1) POLICY.—The term "policy" means any individual contract for whole, endowment, universal, or term life insurance (other than group term life insurance coverage), including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which—

(A) provides that the insurer may not—

(i) decrease the amount of coverage or require the payment of an additional amount as premiums if the insured engages in military service (except increases in premiums in individual term insurance based upon age); or

(ii) limit or restrict coverage for any activity required by military service; and

(B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title.

(2) PREMIUM.—The term "premium" means the amount specified in an insurance policy to be paid to keep the policy in force.

(3) INSURED.—The term "insured" means a servicemember whose life is insured under a policy.

(4) INSURER.—The term "insurer" includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

SEC. 402. [50 U.S.C. App. 542] INSURANCE RIGHTS AND PROTECTIONS.

(a) RIGHTS AND PROTECTIONS.—The rights and protections under this title apply to the insured when—

(1) the insured,

(2) the insured's legal representative, or

(3) the insured's beneficiary in the case of an insured who is outside a State,

applies in writing for protection under this title, unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title.

(b) NOTIFICATION AND APPLICATION.—The Secretary of Veterans Affairs shall notify the Secretary concerned of the procedures to be used to apply for the protections provided under this title. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

(c) LIMITATION ON AMOUNT.—The total amount of life insurance coverage protection provided by this title for a servicemember may not exceed $250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

SEC. 403. [50 U.S.C. App. 543] APPLICATION FOR INSURANCE PROTECTION.

(a) APPLICATION PROCEDURE.—An application for protection under this title shall—

(1) be in writing and signed by the insured, the insured's legal representative, or the insured's beneficiary, as the case may be;

(2) identify the policy and the insurer; and

(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title.

(b) ADDITIONAL REQUIREMENTS.—The Secretary of Veterans Affairs may require additional information from the applicant, the insured and the insurer to determine if the policy is entitled to protection under this title.

(c) NOTICE TO THE SECRETARY BY THE INSURER.—Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

(d) POLICY MODIFICATION.—Upon application for protection under this title, the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title full force and effect.

SEC. 404. [50 U.S.C. App. 544] POLICIES ENTITLED TO PROTECTION AND LAPSE OF POLICIES.

(a) DETERMINATION.—The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title and shall notify the insured and the insurer of that determination.

(b) LAPSE PROTECTION.—A policy that the Secretary determines is entitled to protection under this title shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date on which the application for protection is received by the Secretary.

(c) TIME APPLICATION.—The protection provided by this title applies during the insured's period of military service and for a period of two years thereafter.

SEC. 405. [50 U.S.C. App. 545] POLICY RESTRICTIONS.

(a) DIVIDENDS.—While a policy is protected under this title, a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

(b) SPECIFIC RESTRICTIONS.—While a policy is protected under this title, cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title.

SEC. 406. [50 U.S.C. App. 546] DEDUCTION OF UNPAID PREMIUMS.

(a) SETTLEMENT OF PROCEEDS.—If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title, the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title, together with interest due at the rate fixed in the policy for policy loans.

(b) INTEREST RATE.—If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

(c) REPORTING REQUIREMENT.—The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

SEC. 407. [50 U.S.C. App. 547] PREMIUMS AND INTEREST GUARANTEED BY UNITED STATES.

(a) GUARANTEE OF PREMIUMS AND INTEREST BY THE UNITED STATES.—

(1) GUARANTEE.—Payment of premiums, and interest on premiums at the rate specified in section 406, which become due on a policy under the protection of this title is guaranteed by the United States. If the amount guaranteed is not paid to the insurer before the period of insurance protection under this title expires, the amount due shall be treated by the insurer as a policy loan on the policy.

(2) POLICY TERMINATION.—If, at the expiration of insurance protection under this title, the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

(b) RECOVERY FROM INSURED OF AMOUNTS PAID BY THE UNITED STATES.—

(1) DEBT PAYABLE TO THE UNITED STATES.—The amount paid by the United States to an insurer under this title shall be a debt payable to the United States by the insured on whose policy payment was made.

(2) COLLECTION.—Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

(3) DEBT NOT DISCHARGEABLE IN BANKRUPTCY.—Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

(c) CREDITING OF AMOUNTS RECOVERED.—Any amounts received by the United States as repayment of debts incurred by an insured under this title shall be credited to the appropriation for the payment of claims under this title.

SEC. 408. [50 U.S.C. App. 548] REGULATIONS.

The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title.

SEC. 409. [50 U.S.C. App. 549] REVIEW OF FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title are subject to review on appeal to the Board of Veterans' Appeals pursuant to chapter 71 of title 38, United States Code, and to judicial review only as provided in chapter 72 of such title.

TITLE V—TAXES AND PUBLIC LANDS

SEC. 501. [50 U.S.C. App. 561] TAXES RESPECTING PERSONAL PROPERTY, MONEY, CREDITS, AND REAL PROPERTY.

(a) APPLICATION.—This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's—

(1) personal property (including motor vehicles); or

(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees—

(A) before the servicemember's entry into military service; and

(B) during the time the tax or assessment remains unpaid.

(b) SALE OF PROPERTY.—

(1) LIMITATION ON SALE OF PROPERTY TO ENFORCE TAX ASSESSMENT.—Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

(2) STAY OF COURT PROCEEDINGS.—A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after

the termination of, or release of the servicemember from, military service.

(c) REDEMPTION.—When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

(d) INTEREST ON TAX OR ASSESSMENT.—Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

(e) JOINT OWNERSHIP APPLICATION.—This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

SEC. 502. [50 U.S.C. App. 562] RIGHTS IN PUBLIC LANDS.

(a) RIGHTS NOT FORFEITED.—The rights of a servicemember to lands owned or controlled by the United States, and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

(b) TEMPORARY SUSPENSION OF PERMITS OR LICENSES.—If a permittee or licensee under the Act of June 28, 1934 (43 U.S.C. 315 et seq.), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

(c) REGULATIONS.—Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

SEC. 503. [50 U.S.C. App. 563] DESERT-LAND ENTRIES.

(a) DESERT-LAND RIGHTS NOT FORFEITED.—A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman's successor in interest into military service shall not be subject to contest or cancellation—

(1) for failure to expend any required amount per acre per year in improvements upon the claim;

(2) for failure to effect the reclamation of the claim during the period the entryman or the entryman's successor in interest is in the military service, or for 180 days after termination of or release from military service; or

(3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

(b) SERVICE-RELATED DISABILITY.—If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

(c) FILING REQUIREMENT.—In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

SEC. 504. [50 U.S.C. App. 564] MINING CLAIMS.

(a) REQUIREMENTS SUSPENDED.—The provisions of section 2324 of the Revised Statutes of the United States (30 U.S.C. 28) specified in subsection (b) shall not apply to a servicemember's claims or interests in claims, regularly located and recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

(b) REQUIREMENTS.—The provisions in section 2324 of the Revised Statutes that shall not apply under subsection (a) are those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than $100 worth of labor shall be performed or improvements made during each year.

(c) PERIOD OF PROTECTION FROM FORFEITURE.—A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

(d) FILING REQUIREMENT.—In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

SEC. 505. [50 U.S.C. App. 565] MINERAL PERMITS AND LEASES.

(a) SUSPENSION DURING MILITARY SERVICE.—A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

(b) NOTIFICATION.—In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military service has begun and of the desire to hold the claim under this section.

(c) CONTRACT MODIFICATION.—This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

SEC. 506. [50 U.S.C. App. 566] PERFECTION OR DEFENSE OF RIGHTS.

(a) RIGHT TO TAKE ACTION NOT AFFECTED.—This title shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

(b) AFFIDAVITS AND PROOFS.—

(1) IN GENERAL.—A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under section 1044a of title 10, United States Code, or any superior commissioned officer.

(2) LEGAL STATUS OF AFFIDAVITS.—Such affidavits shall be binding in law and subject to the same penalties as prescribed by section 1001 of title 18, United State Code.

SEC. 507. [50 U.S.C. App. 567] DISTRIBUTION OF INFORMATION CONCERNING BENEFITS OF TITLE.

(a) DISTRIBUTION OF INFORMATION BY SECRETARY CONCERNED.—The Secretary concerned shall issue to servicemembers information explaining the provisions of this title.

(b) APPLICATION FORMS.—The Secretary concerned shall provide application forms to servicemembers requesting relief under this title.

(c) INFORMATION FROM SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title (other than sections 501, 510, and 511) and related application forms.

SEC. 508. [50 U.S.C. App. 568] LAND RIGHTS OF SERVICEMEMBERS.

(a) NO AGE LIMITATIONS.—Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

(b) RESIDENCY REQUIREMENT.—Any requirement related to the establishment of a residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

(c) ENTRY APPLICATIONS.—Applications for entry may be verified before a person authorized to administer oaths under section 1044a of title 10, United States Code, or under the laws of the State where the land is situated.

SEC. 509. [50 U.S.C. App. 569] REGULATIONS.

The Secretary of the Interior may issue regulations necessary to carry out this title (other than sections 501, 510, and 511).

SEC. 510. [50 U.S.C. App. 570] INCOME TAXES.

(a) DEFERRAL OF TAX.—Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

(b) ACCRUAL OF INTEREST OR PENALTY.—No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

(c) STATUTE OF LIMITATIONS.—The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

(d) APPLICATION LIMITATION.—This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986.

SEC. 511. [50 U.S.C. App. 571] RESIDENCE FOR TAX PURPOSES.

(a) RESIDENCE OR DOMICILE.—A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(b) MILITARY SERVICE COMPENSATION.—Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) PERSONAL PROPERTY.—

(1) RELIEF FROM PERSONAL PROPERTY TAXES.—The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) EXCEPTION FOR PROPERTY WITHIN MEMBER'S DOMICILE OR RESIDENCE.—This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

(3) EXCEPTION FOR PROPERTY USED IN TRADE OR BUSINESS.—This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) RELATIONSHIP TO LAW OF STATE OF DOMICILE.—Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(d) INCREASE OF TAX LIABILITY.—A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(e) FEDERAL INDIAN RESERVATIONS.—An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(f) DEFINITIONS.—For purposes of this section:

(1) PERSONAL PROPERTY.—The term "personal property" means intangible and tangible property (including motor vehicles).

(2) TAXATION.—The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) TAX JURISDICTION.—The term "tax jurisdiction" means a State or a political subdivision of a State.

TITLE VI—ADMINISTRATIVE REMEDIES

SEC. 601. [50 U.S.C. App. 581] INAPPROPRIATE USE OF ACT.

If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

SEC. 602. [50 U.S.C. App. 582] CERTIFICATES OF SERVICE; PERSONS REPORTED MISSING.

(a) PRIMA FACIE EVIDENCE.—In any proceeding under this Act, a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

(1) That a person named is, is not, has been, or has not been in military service.

(2) The time and the place the person entered military service.

(3) The person's residence at the time the person entered military service.

(4) The rank, branch, and unit of military service of the person upon entry.

(5) The inclusive dates of the person's military service.

(6) The monthly pay received by the person at the date of the certificate's issuance.

(7) The time and place of the person's termination of or release from military service, or the person's death during military service.

(b) CERTIFICATES.—The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

(c) TREATMENT OF SERVICEMEMBERS IN MISSING STATUS.—A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

SEC. 603. [50 U.S.C. App. 583] INTERLOCUTORY ORDERS.

An interlocutory order issued by a court under this Act may be revoked, modified, or extended by that court upon its own motion or otherwise, upon notification to affected parties as required by the court.

TITLE VII—FURTHER RELIEF

SEC. 701. [50 U.S.C. App. 591] ANTICIPATORY RELIEF.

(a) APPLICATION FOR RELIEF.—A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief—

(1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or

(2) from a tax or assessment falling due before or during the servicemember's military service.

(b) TAX LIABILITY OR ASSESSMENT.—In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

(1) STAY OF ENFORCEMENT OF REAL ESTATE CONTRACTS.—

(A) In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation—

(i) during the servicemember's period of military service; and

(ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

(B) Any stay under this paragraph shall be—

(i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

(ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in

the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

(2) STAY OF ENFORCEMENT OF OTHER CONTRACTS.—

(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement—

(i) during the servicemember's military service; and

(ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

(B) Any stay under this paragraph shall be—

(i) for a period of time equal to the period of the servicemember's military service or any part of such period; and

(ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

(c) AFFECT OF STAY ON FINE OR PENALTY.—When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

SEC. 702. [50 U.S.C. App. 592] POWER OF ATTORNEY.

(a) AUTOMATIC EXTENSION.—A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney—

(1) was duly executed by the servicemember—

(A) while in military service; or

(B) before entry into military service but after the servicemember—

(i) received a call or order to report for military service; or

(ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;

(2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and

(3) expires by its terms after the servicemember entered a missing status.

(b) LIMITATION ON POWER OF ATTORNEY EXTENSION.—A power of attorney executed by a servicemember may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

SEC. 703. [50 U.S.C. App. 593] PROFESSIONAL LIABILITY PROTECTION.

(a) APPLICABILITY.—This section applies to a servicemember who—

(1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10, United States Code, or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections; and

(2) immediately before receiving the order to active duty—

(A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and

(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

(b) SUSPENSION OF COVERAGE.—

(1) SUSPENSION.—Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember by the insurance carrier.

(2) PREMIUMS FOR SUSPENDED CONTRACTS.—A professional liability insurance carrier—

(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

(3) NONLIABILITY OF CARRIER DURING SUSPENSION.—A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

(4) CERTAIN CLAIMS CONSIDERED TO ARISE BEFORE SUSPENSION.—For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

(c) REINSTATEMENT OF COVERAGE.—

(1) REINSTATEMENT REQUIRED.—Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

(2) TIME AND PREMIUM FOR REINSTATEMENT.—The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

(3) PERIOD OF REINSTATED COVERAGE.—The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

(d) INCREASE IN PREMIUM.—

(1) LIMITATION ON PREMIUM INCREASES.—An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

(2) EXCEPTION.—Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

(e) CONTINUATION OF COVERAGE OF UNAFFECTED PERSONS.—This section does not—

(1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or

(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

(f) STAY OF CIVIL OR ADMINISTRATIVE ACTIONS.—

(1) STAY OF ACTIONS.—A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if—

(A) the action was commenced during the period of the suspension;

(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

(2) DATE OF COMMENCEMENT OF ACTION.—Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

(g) EFFECT OF SUSPENSION UPON LIMITATIONS PERIOD.—In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

(h) DEATH DURING PERIOD OF SUSPENSION.—If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension—

(1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and

(2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

(i) DEFINITIONS.—For purposes of this section:

(1) ACTIVE DUTY.—The term "active duty" has the meaning given that term in section 101(d)(1) of title 10, United States Code.

(2) PROFESSION.—The term "profession" includes occupation.

(3) PROFESSIONAL.—The term "professional" includes occupational.

SEC. 704. [50 U.S.C. App. 594] HEALTH INSURANCE REINSTATEMENT.

(a) REINSTATEMENT OF HEALTH INSURANCE.—A servicemember who, by reason of military service as defined in section 703(a)(1), is entitled to the rights and protections of this Act shall also be entitled upon termination or release from such service to reinstatement of any health insurance that—

(1) was in effect on the day before such service commenced; and

(2) was terminated effective on a date during the period of such service.

(b) NO EXCLUSION OR WAITING PERIOD.—The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person

who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if—

(1) the condition arose before or during the period of such service;

(2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and

(3) in a case in which the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code).

(c) EXCEPTIONS.—Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code.

(d) TIME FOR APPLYING FOR REINSTATEMENT.—An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

(e) LIMITATION ON PREMIUM INCREASES.—

(1) PREMIUM PROTECTION.—The amount of the premium for health insurance coverage that was terminated by a servicemember and required to be reinstated under subsection (a) may not be increased, for the balance of the period for which coverage would have been continued had the coverage not been terminated, to an amount greater than the amount chargeable for such coverage before the termination.

(2) INCREASES OF GENERAL APPLICABILITY NOT PRECLUDED.—Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by the carrier of the health care insurance for the same health insurance coverage for persons similarly covered by such insurance during the period between the termination and the reinstatement.

SEC. 705. [50 U.S.C. App. 595] GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL.

For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(2) be deemed to have acquired a residence or domicile in any other State; or

(3) be deemed to have become a resident in or a resident of any other State.

SEC. 706. [50 U.S.C. App. 596] BUSINESS OR TRADE OBLIGATIONS.

(a) AVAILABILITY OF NON-BUSINESS ASSETS TO SATISFY OBLIGATIONS.—If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally

liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

(b) RELIEF TO OBLIGORS.—Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.