AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 218

109TH CONGRESS, 1st Session | SENATE | REPORT 109–139

VETERANS' BENEFITS IMPROVEMENT ACT OF 2005

SEPTEMBER 21, 2005.—Ordered to be printed

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

R E P O R T

[To accompany S. 1235]

The Committee on Veterans' Affairs (hereinafter, "Committee"), to which was referred the bill (S. 1235) to amend chapters 19 and 37 of title 38, United States Code, to extend the availability of $400,000 in coverage under the servicemembers' life insurance and veterans' group life insurance programs, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title, and recommends that the bill, as amended, do pass.

INTRODUCTION

On June 14, 2005, Committee Chairman Larry E. Craig introduced S. 1235, a bill to extend the availability of $400,000 in coverage under the Servicemembers' Group Life Insurance (hereinafter, "SGLI") and Veterans' Group Life Insurance (hereinafter, "VGLI") programs, and for other purposes. The bill was referred to the Committee on Veterans' Affairs.

On January 25, 2005, Senator Norm Coleman introduced S. 151, a bill to require an annual plan on outreach activities of the Department of Veterans Affairs (hereinafter, "VA"). Senator Mark L. Pryor is an original cosponsor of S. 151. Committee Members Lindsey Graham and Johnny Isakson, and Senators Jim Bunning, Tim Johnson, Byron L. Dorgan, Benjamin E. Nelson, Mary L. Landrieu, Rick Santorum, Bill Nelson, Trent Lott, Mike DeWine, Frank R. Lautenberg, and Susan M. Collins, were later added as cosponsors. The bill was referred to the Committee on Veterans' Affairs.

39–010

On February 17, 2005, Senator Rick Santorum introduced S. 423, a bill to make a stillborn child an insurable dependent for purposes of the SGLI program. Senator Mary L. Landrieu is an original cosponsor of S. 423. Senator Saxby Chambliss was later added as a cosponsor. The bill was referred to the Committee on Veterans' Affairs.

On March 8, 2005, Committee Ranking Minority Member Daniel K. Akaka introduced S. 552, a bill to make technical corrections to the Veterans Benefits Improvement Act of 2004. The bill was referred to the Committee on Veterans' Affairs.

On April 27, 2005, Ranking Minority Member Akaka introduced S. 917, a bill to make permanent the pilot program for direct housing loans for Native American veterans. The bill was referred to the Committee on Veterans' Affairs.

On June 16, 2005, Committee Member Ken Salazar introduced S. 1259, a bill to extend the requirement for reports from the Secretary of Veterans Affairs on the disposition of cases recommended to the Secretary for equitable relief due to administrative error, and for other purposes. The bill was referred to the Committee on Veterans' Affairs.

On June 20, 2005, Committee Member Patty Murray introduced S. 1271, a bill to provide improved benefits for veterans who are former prisoners of war. The bill was referred to the Committee on Veterans' Affairs.

COMMITTEE HEARING

On June 23, 2005, the Committee held a hearing on, among other bills, S. 1235, S. 151, S. 423, S. 552, S. 917, S. 1259, and S. 1271. Testimony was heard from: Senators Wayne Allard and Mark L. Pryor; The Honorable Daniel L. Cooper, Under Secretary for Benefits, U.S. Department of Veterans Affairs; Mr. Steve Smithson, Assistant Director, Veterans Affairs and Rehabilitation, The American Legion; Mr. Quentin Kinderman, Deputy Director, National Legislative Service, Veterans of Foreign Wars; Mr. Rick Surratt, Deputy National Legislative Director, Disabled American Veterans; Mr. Carl Blake, Associate National Legislative Director, Paralyzed Veterans of America; and Mr. Richard Jones, National Legislative Director, AMVETS.

COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on July 28, 2005, and voted by unanimous voice vote to report favorably S. 1235, as amended, to include provisions derived from S. 151, S. 423, S. 552, S. 917, S. 1259, S. 1271, and S. 1235, as introduced, and an amendment offered by Committee Member Barack Obama and agreed to by unanimous voice vote.

SUMMARY OF THE COMMITTEE BILL AS REPORTED

S. 1235, as reported (hereinafter, "the Committee bill"), contains various amendments to title 38, United States Code, and a free-standing provision, that would:

(a) Extend the availability of $400,000 in life insurance coverage under the SGLI and VGLI programs;

(b) Permit lesser amounts of SGLI coverage to be secured in increments of $50,000;

(c) Require the notification of the spouse of a servicemember when such member elects a reduced amount of SGLI coverage or names a beneficiary other than the member's spouse or child;

(d) Extend from one to two years after active duty separation the period within which a totally disabled veteran may receive premium-free insurance coverage and elect to convert coverage from SGLI to VGLI;

(e) Classify servicemembers' stillborn children as insurable dependents under the SGLI program;

(f) Permit the Secretary of Veterans Affairs to prescribe interest rate adjustment caps for purposes of certain adjustable rate mortgage (hereinafter, "ARM") loans guaranteed by VA;

(g) Make technical corrections to the Veterans Benefits Improvement Act of 2004 with respect to housing assistance for active duty servicemembers;

(h) Provide permanent authority for VA to make direct housing loans to Native American veterans to purchase, construct, or improve dwellings on trust land;

(i) Require an annual plan on the outreach activities of VA;

(j) Extend through December 31, 2009, the reporting requirement of equitable relief cases;

(k) Codify additional diseases which are presumed to be associated with prisoner-of-war status; and

(l) Require the Secretary of Veterans Affairs to develop and implement policy and training initiatives to standardize the assessment of post traumatic stress disorder (hereinafter, "PTSD") disability compensation claims.

DISCUSSION

Section 101: Group life insurance

Background

Instituted in 1965, SGLI is a VA-supervised life insurance program that provides group coverage for members on active duty in the uniformed services (Army, Navy, Air Force, Marine Corps, and Coast Guard), members of the Commissioned Corps of the United States Public Health Service and the National Oceanic and Atmospheric Administration, Reserve and National Guard members, Reserve Officer Training Corps members engaged in authorized training, service academy cadets and midshipmen, Ready Reserve and Retired Reserve members, and Individual Ready Reserve members who are subject to involuntary recall to active duty service. VA purchases a group policy on behalf of participating members from a commercial provider. The current provider is, and has been since 1965, The Prudential Insurance Company of America (hereinafter, "Prudential"). Prudential administers the SGLI program through its Office of Servicemembers' Group Life Insurance. VA's fiscal year 2006 budget submission projects that 2,436,000 individuals will be covered under SGLI during fiscal year 2006.

Full coverage under SGLI is provided automatically at the maximum coverage amount when an individual begins covered service. Partial coverage at prorated premium rates is available for Reserve and National Guard members for active and inactive duty training

periods. To be covered in an amount less than the maximum, or to decline coverage altogether, a member must make a written election to that effect. Coverage amounts may be reduced in multiples of $10,000. A member may also name, at any time, a beneficiary or beneficiaries of his or her choice. Following commercial insurance practice, decisions about coverage amounts and the naming of beneficiaries are made at the sole discretion of members insured under SGLI.

The Veterans' Insurance Act of 1974, Public Law 93–289, established a new program of post-separation insurance known as VGLI. Like SGLI, VGLI is supervised by VA but administered through Prudential. VGLI provides for the post-service conversion of SGLI to a renewable term policy of insurance. Persons eligible for full-time coverage include former servicemembers who were insured full time under SGLI and who were released from active duty or the Reserves, Ready Reservists who have part-time SGLI coverage and who incur certain disabilities during periods of active or inactive duty training, and members of the Individual Ready Reserve and Inactive National Guard. Like SGLI, VGLI is issued in multiples of $10,000 up to the maximum coverage amount, but in no case can VGLI coverage exceed the amount of SGLI coverage a member had in force at the time of separation from active duty service or the Reserves.

Current law provides for a 120–day period after separation from active duty service or the Reserves for a member to receive premium-free SGLI coverage and elect to convert coverage to VGLI. Members who are totally disabled at the time of their separation from service have up to one year after separation to apply to receive premium-free SGLI coverage during that year and to convert their coverage to VGLI.

Taking advantage of the conversion option is especially critical for totally disabled veterans who, because of their disabilities, may not be insurable at competitive commercial rates after military service. Through a targeted outreach effort to this population, VA has learned that many totally disabled veterans do not convert their coverage to VGLI because they may have neglected post-separation financial planning due to the effects of their disabilities, or because they were simply unaware of the extension option. As Under Secretary for Benefits Daniel L. Cooper stated at the Committee's June 23, 2005, hearing: "Extending the SGLI post-service coverage period to two years would enable some totally disabled veterans who would be unable to obtain commercial life insurance to obtain VGLI. Extending the period would also allow VA to conduct additional outreach to totally disabled veterans and inform them about the opportunity to convert their SGLI to VGLI."

Maximum SGLI and VGLI coverage amounts are set in law and have increased over the years. Coverage amounts have increased to account for the effects of inflation and to provide members with insurance coverage that reflects a multiple of their earnings that is similar to what is recommended in the insurance industry. The original SGLI coverage amount was $10,000, but has since increased to $400,000. The latest increases for both SGLI and VGLI, from $250,000 of coverage to $400,000, occurred through the enactment of section 1012 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Re-

lief, 2005 (hereinafter, "Supplemental Appropriations Act"), and took effect on September 1, 2005. However, the increases in coverage amounts are temporary. Pursuant to subsection (i) of section 1012 of the Supplemental Appropriations Act, all amendments made by section 1012 will expire on September 30, 2005, and the law as it existed prior to the enactment of the Supplemental Appropriations Act will be revived. Thus, the new maximum coverage amounts, unless extended by another Act of Congress, will only be in effect for 30 days—from September 1, 2005, to September 30, 2005.

The Supplemental Appropriations Act made other SGLI program changes which will only be in effect for that same 30-day period. Those changes include allowing lesser amounts of SGLI and VGLI coverage to be elected in increments of $50,000 as opposed to $10,000; extending $150,000 in coverage on a premium-free basis, to insured and uninsured members who are deployed to designated combat zones; requiring the written consent of the spouses of married members before an election may be made to decline or reduce SGLI coverage; requiring that written notification be given to the designated beneficiaries or next-of-kin of non-married members who elect to decline or reduce SGLI coverage; and requiring the written notification to spouses of members who elect to name a beneficiary, or beneficiaries, of SGLI insurance proceeds.

The Supplemental Appropriations Act provisions requiring that certain notification of insurance decisions be given to spouses and other beneficiaries, and giving spouses the right to override some of those decisions by withholding written consent, was opposed by advocates in the veterans' community. Concern was expressed regarding any policy of notification at the Committee's June 23, 2005, hearing. As was stated by Rick Jones of AMVETS: "as an adult, the servicemember's decision regarding initial coverage, the amount of coverage and insurance beneficiary or beneficiaries should be the individual's alone, unless the person freely chooses to discuss the decision with family members or others."

Committee bill

Section 101 would make permanent the $400,000 coverage amounts for SGLI and VGLI, and would make permanent the requirement that lesser amounts of insurance coverage be elected in $50,000 increments. In addition, in an attempt to balance the longstanding rights of members to make unfettered insurance decisions with the rights of spouses to be informed of financial decisions that may impact on a family's future financial stability, section 101 would require the appropriate agency Secretary to make a good faith effort to notify the spouse of members who elect to reduce amounts of insurance coverage or name a beneficiary other than the member's spouse or child. Finally, section 101 would extend from one to two years, after separation from active duty service, the period within which totally disabled members may receive premium-free SGLI coverage and convert coverage to VGLI.

Section 101(d) would address effective-date issues caused by potential enactment dates and would harmonize the section 101 provisions with those of the Supplemental Appropriations Act. First, to promote consistency in statutes affecting SGLI that will ultimately be extended beyond September 30, 2005, the language of

section 101(d) stipulates that those elements of the Supplemental Appropriations Act that will not be extended, in whole, beyond the September 30, 2005, termination date would not be treated for any purposes as having gone into effect. The effective date of section 101(a) of the Committee bill would be September 1, 2005, and the effective date of sections 101(b) and (c) would be October 1, 2005. Should the provisions of section 101(a) be enacted after September 1, 2005, and before October 1, 2005, they would amend the law in effect on May 10, 2005, the day before the enactment of the Supplemental Appropriations Act.

Section 102: Treatment of stillborn children as insurable dependents under servicemembers' group life insurance program

Background

Section 4 of the Veterans' Survivor Benefits Improvements Act of 2001, Public Law 107–14, established a program of family insurance coverage under SGLI under which an SGLI-insured member's insurable dependents—defined as the member's spouse and children—could also be insured. A member's spouse may be insured in an amount up to $100,000. Coverage of a member's children is automatic and is in the amount of $10,000 for each child.

A case brought before the United States District Court for the Southern District of Indiana, *Warnock v. Office of Servicemembers' Group Life Insurance*, No. 1:03–cv–1329–DFH, 2004 U.S. Dist. LEXIS 8533, at 2 (S.D. Ind. April 28, 2004), raised an issue as to whether a member's stillborn child is covered as an insurable dependent under SGLI. The plaintiff, Michael Patrick Warnock, argued that the stillbirth of his child at 38 weeks gestational age should be covered under SGLI. The Court ruled, in dismissing Mr. Warnock's lawsuit for failure to state a claim upon which relief could be granted, that applicable statutes and the SGLI policy do not extend life insurance coverage to stillborn infants. Nevertheless, the Court stated that "Congress could write the statute, or an insurer could write a policy, to cover future stillbirths."

At the Committee's June 23, 2005, hearing, Under Secretary for Benefits Daniel L. Cooper testified that VA supported enacting legislation covering stillborn children as insurable dependents under SGLI as follows: "Insuring stillborn infants under SGLI would directly benefit those servicemembers and their families who tragically experience a stillbirth, by providing financial assistance at a time of need. This benefit would help defray medical care and burial or cremation costs incurred by a servicemember because of a stillbirth. A funeral for such a child can cost as much as $3,000."

Committee bill

Section 102 would cover a member's "stillborn child" as an insurable dependent under the SGLI program. The Committee does not expect the term "stillborn child" to cover the deaths of children at any gestational age or under every circumstance. Rather, the Committee would expect VA to issue regulations that would define the term consistent with the definition used for deaths that are to be reported as "fetal deaths" under Section 15 of the Model State Vital Statistics Act drafted by the Centers for Disease Control's National Center for Health Statistics. The Model Act requires fetal deaths

involving fetuses weighing 350 grams or more or, if weight is unknown, of 20 or more completed weeks of gestation to be reported to the State Office of Vital Statistics or as otherwise directed by the State Registrar. Furthermore, the Committee does not intend the definition to include induced terminations of pregnancy, except to save the life of the mother.

Section 201: Adjustable rate mortgages

Background

Section 405 of Public Law 108–454 authorized VA, through fiscal year 2008, to guarantee so-called "hybrid" ARM loans, which are loans that carry a fixed rate of interest for an initial period followed by annual interest rate adjustments thereafter. That statute also attempted to put into place interest rate cap protections similar to those in place for the Federal Housing Administration's (hereinafter, "FHA") hybrid ARM loan program. These interest rate caps are common in the commercial lending market and serve to protect borrowers against precipitous increases in interest rates.

For VA hybrid ARM loans with an initial rate of interest fixed for less than five years, the initial and subsequent annual interest rate adjustments are limited to one percentage point. For hybrid ARM loans with an initial rate of interest fixed for five or more years, VA has the authority to set an appropriate interest rate cap for the initial interest rate adjustment (the current industry standard is a two percentage point cap), and annual adjustments thereafter are subject to a one percentage point cap. Finally, VA has the authority to prescribe the maximum number of percentage points above the initial fixed rate of interest that would limit, over the term of a mortgage, interest rate adjustments.

The annual rate cap of one percentage point that applies to hybrid ARM loans with an initial rate of interest fixed for five or more years is overly restrictive and is inconsistent with the terms offered on FHA-insured hybrid ARM loans. According to testimony submitted by the Mortgage Bankers Association at the Committee's hearing on June 23, 2005, VA and FHA loans with similar terms are typically pooled and sold in the secondary mortgage market as mortgage-backed securities. The Government National Mortgage Association guarantees the cash flow to the investors on pools of FHA and VA loans, lowering the risk of these pools to investors and, thus, lowering the cost of financing to mortgage lenders and home buyers. Therefore, in order to lower the cost of financing to veterans who wish to buy homes with a VA hybrid ARM loan, the terms on VA's guarantee of hybrid ARM loans necessarily must conform to the terms of hybrid ARM loans insured by FHA.

Committee bill

Section 201 would give VA the flexibility to prescribe an appropriate annual rate adjustment cap for VA hybrid ARM loans with an initial rate of interest fixed for five or more years.

Section 202: Technical corrections to Veterans Benefits Improvement Act of 2004

Background

A specially adapted housing grant of up to $50,000 is available to certain severely disabled veterans for costs associated with building, buying or remodeling adapted homes or paying indebtedness on homes already acquired. Section 401 of Public Law 108–183, the Veterans Benefits Act of 2003, extended the availability of specially adapted housing grants to servicemembers with severe disabilities who remain on active duty if their injuries occurred, or diseases were contracted, in the line of duty. It was intended that servicemembers receive the specially adapted housing grants in the same manner as veterans who were already authorized to receive such grants.

Due to a technical drafting error, section 401 of the Veterans Benefits Improvement Act of 2004, Public Law 108–454, repealed the authorization for severely disabled members of the Armed Forces to receive specially adapted housing grants from VA while still on active duty.

Committee bill

Section 202 would restore the authorization for certain severely disabled members of the Armed Forces to receive specially adapted housing grants from VA while still on active duty.

Section 203: Permanent authority for housing loans for Native American veterans

Background

Public Law 102–547 established a pilot program through which VA provides direct loans to Native American veterans residing on trust lands. The Native American Veteran Direct Loan Program provides loans for the purchase, construction, or improvement of dwellings on Native American trust lands, and for the refinancing of existing loans. A total of 470 loans have been made through this program since its inception through June 30, 2005. The authorization for the program will terminate on December 31, 2008.

The rate of home ownership for Native Americans is roughly half that of the general U.S. population. Lower Native American home ownership rates exist partially because mortgage lenders generally require as a condition of securing a loan that applicants own the parcel of land on which the home resides. Land ownership for many veterans in Indian Country, Alaska, and Hawaii is not possible because existing homes, or land available for new home construction, are located on trust lands. Most mortgage lenders decline loan applications from Native American veterans residing on trust lands because Federal law prohibits lenders from taking possession of those lands in the event of default. VA's direct loan program provides these veterans with another source of financing to avoid this problem.

Committee bill

Section 203 would permanently authorize the Native American Veteran Direct Loan Program.

Section 301: Annual plan on outreach activities

Background

VA has a statutory mandate to perform outreach activities to certain categories of veterans. For example, section 2022 of title 38, United States Code, requires VA's Mental Health and Readjustment Counseling Service to conduct joint outreach efforts to veterans at risk of homelessness. Sections 7722 and 7727 of title 38, United States Code, require the Veterans Benefits Administration to conduct outreach activities which include sending letters to separating servicemembers, distributing full information about veterans' benefits to veterans and their dependents, and outreach to assist claimants with the preparation and presentation of claims for benefits.

Section 805 of the Veterans Benefits Improvement Act of 2004, Public Law 108–454, requires VA to prepare and submit to Congress a report "setting forth a detailed description of (1) [VA] outreach efforts * * * to inform members of the uniformed services and veterans (and their family members and survivors) of the benefits and services to which they are entitled * * * and (2) the current level of awareness * * * of those benefits and services * * *." There is currently no statutory mandate for VA to formulate an annual plan to conduct its outreach activities.

Committee bill

Section 301 would require VA to prepare annually (and submit to Congress) a plan for the upcoming year's outreach activities. Such a plan would incorporate the recommendations of the report mandated by Public Law 108–454, and would be prepared after consultations with veterans' service organizations, State and local officials, and other interested groups and advocates.

Section 302: Extension of reporting requirements on equitable relief cases

Background

Section 503 of title 38, United States Code, authorizes the Secretary of Veterans Affairs to provide monetary relief to persons whom the Secretary determines were deprived of VA benefits by reason of administrative error by a Federal government employee. The Secretary may also provide relief which the Secretary determines is equitable to a VA beneficiary who has suffered loss as a consequence of an erroneous decision made by a Federal government employee. The Secretary is required to submit to Congress a report, no later than April 1 of each year, containing a statement as to the disposition of each case recommended to the Secretary for equitable relief during the preceding calendar year. The Secretary is not required to submit a report to Congress after December 31, 2004.

Committee bill

Section 302 would extend the equitable relief reporting requirement through December 31, 2009.

Section 303: Inclusion of additional diseases and conditions in diseases and disabilities presumed to be associated with prisoner of war status

Background

Section 1112(b) of title 38, United States Code, contains two lists of diseases that are presumed to be related to an individual's experience as a prisoner of war. The first presumptive list requires no minimum internment period and includes diseases associated with mental trauma, or acute physical trauma, which could plausibly be caused by even a single day of captivity. That list includes psychosis, any of the anxiety states, dysthymic disorder (or depressive neurosis), organic residuals of frostbite (if the Secretary determines that a veteran was interned in conditions consistent with the occurrence of frostbite), and post-traumatic osteoarthritis. The second list has a 30-day minimum internment requirement. The second list includes avitaminosis, beriberi, chronic dysentery, helminthiasis, malnutrition, pellagra, any other nutritional deficiency, cirrhosis of the liver, peripheral neuropathy, irritable bowel syndrome, and peptic ulcer disease.

VA's Workgroup on Medical Presumptive Conditions in Former POWs that has established procedures, guidelines, and standards to determine whether additional diseases should be added to a presumptive list. On June 28, 2005, VA issued a final rule, see 70 Fed. Reg. 37,040, which added two additional diseases to those presumed related to the prisoner-of-war experience: (1) atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure, and arrhythmia); (2) stroke and its complications.

Committee bill

Section 303 would codify the two diseases VA established through its final rule published on June 28, 2005, as presumptively related to the prisoner-of-war experience. These diseases would be included under the list requiring a minimum, 30-day internment period.

Section 304: Post traumatic stress disorder claims

Background

On May 19, 2005, the VA Inspector General released a report titled "Review of State Variances in VA Disability Compensation Payments." The Inspector General's report found that state variances in average levels of compensation are explained, in part, by variances in VA adjudications of PTSD claims. The review found that in 25 percent of the 2,100 PSTD cases reviewed, there were inconsistencies in the methods used by VA to develop and verify evidence of a claimed service-related stressor event that caused the claimed PTSD condition. The Inspector General report recommended that VA expand its national quality assurance program to ensure consistency and accuracy nationwide on PTSD claims development and rating. The Inspector General also identified the need to improve the quality of medical examinations that provide

the basis for accurate disability ratings, and to adequately train staff to improve the accuracy and timeliness of claims adjudication.

Committee bill

Section 304 would require VA to develop and implement policy and training initiatives to standardize the assessment of PTSD disability compensation claims.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (hereinafter, "CBO"), estimates that enactment of the Committee bill would, relative to current law, increase direct spending for veterans' programs by less than $500,000 in fiscal year 2006, but decrease such spending by less than $500,000 over the fiscal year 2006–2010 period. In addition, discretionary spending resulting from S. 1235 would be $95 million in fiscal year 2006 and approximately $200 million over the fiscal year 2006–2010 period, assuming appropriation of the necessary amounts. Enactment of the Committee bill would not affect the budget of state, local, or tribal governments.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 9, 2005.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1235, the Veterans Benefits Improvement Act of 2005.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1235—Veterans Benefits Improvement Act of 2005

Summary: S. 1235 would make changes to several veterans programs, primarily to the servicemembers' group life insurance and housing programs. CBO estimates that implementing this bill would cost $95 million in 2006 and about $200 million over the 2006–2010 period, assuming appropriation of the necessary amounts. In addition, CBO estimates that enacting this legislation would increase direct spending for veterans programs by less than $500,000 in 2006, but decrease such spending by less than $500,000 over the 2006–2010 period and by $2 million over the 2006–2015 period.

S. 1235 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA)

and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1235 is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense) and 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	95	64	34	7	1
Estimated Outlays	95	64	34	7	1
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	*	*	*	*	*
Estimated Outlays	*	*	*	*	*

Note: * = less than $500,000.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted early in fiscal year 2006 and that the necessary amounts will be appropriated for each year. Most of the legislation's budgetary effects would fall within the discretionary spending category, but there are also a few provisions that would affect direct spending.

CBO estimates that discretionary spending resulting from S. 1235 would total about $200 million over the 2006–2010 period, assuming appropriation of the necessary amounts. In addition, CBO estimates that enacting this legislation would increase direct spending for veterans programs by less than $500,000 in 2006, but lower such spending by less than $500,000 over the 2006–2010 period and by $2 million over the 2006–2015 period.

Spending subject to appropriation

Servicemembers' Group Life Insurance (SGLI) Coverage. Section 101 would make permanent the current authority that increased the maximum coverage under SGLI from $250,000 to $400,000 for all servicemembers, effective September 1, 2005. That authority is currently in place only through fiscal year 2005.

Under current law, the Department of Defense (DoD) is required to reimburse the Department of Veterans Affairs (VA) for the costs of benefit claims for deaths that exceed levels set by VA each year. VA calculates these levels based on mortality rates expected under peacetime conditions and refers to these costs as hazard costs. In 2004, DoD reimbursed VA $105 million to cover these costs.

For this estimate, CBO assumes that force levels in theater for Operation Enduring Freedom and Operation Iraqi Freedom for 2006 will remain at levels expected for 2005 (about 200,000 servicemembers) and then decline gradually over several years to about 50,000 by 2010. Based on that assumption regarding force levels, current death rates observed in those two operations, and information provided by DoD regarding the death rates for the remainder of the force, CBO estimates that DoD would need to reimburse VA for 640 claims in 2006. CBO also estimates that the number of claims exceeding VA levels would decline to about 40 by 2009 and that the number of claims for benefits would not exceed levels set by VA after 2009. Based on information from VA, CBO

assumes that DoD would be responsible for reimbursing VA for the maximum benefit amount of $400,000 per claim under this provision. Thus, CBO estimates that DoD would reimburse VA $95 million for hazard costs in 2006 and $199 million over the 2006–2009 period, subject to the availability of appropriated funds.

Native American Home Loan Program. Section 203 would permanently extend the Native American Veteran Housing Loan Pilot Program, which is scheduled to expire at the end of calendar year 2008. CBO estimates that VA's administrative expenses, a discretionary cost, would continue after 2008 under the bill. We estimate that those costs would average $650,000 a year over the 2009–2010 period, assuming the availability of appropriated funds. CBO estimates that enacting this provision also would decrease direct spending for veterans' housing programs by less than $500,000 a year over the 2009–2015 period, as discussed below under "Direct Spending."

Other Provisions. The following provisions would have an insignificant impact on spending subject to appropriation:

- Section 102 would add stillborn children to the list of insurable dependents under the SGLI program. Under current law, only servicemembers' spouses and dependent children are eligible to be insured. Based on information from VA, CBO estimates that implementing this provision would not affect federal costs since the SGLI program would absorb all costs associated with this provision by adjusting insurance premiums as necessary.
- Section 301 would require VA to prepare an annual plan for the outreach activities to identify veterans who are not registered with VA as well as inform veterans and their dependents of the available services and benefits through VA. Based on information from VA, CBO estimates that implementing this provision would cost less than $500,000 a year, subject to appropriation of the necessary amounts.

Direct Spending

CBO estimates that S. 1235 would increase direct spending for veterans programs by less than $500,000 in 2006, but lower direct spending for veterans programs by less than $500,000 over the 2006–2010 period and by $2 million over the 2006–2015 period.

Native American Home Loan Program. Section 203 would permanently extend the Native American Veteran Housing Loan Pilot Program. Under the program, which is scheduled to expire at the end of calendar year 2008, VA makes direct loans to veterans living on trust lands for the purchase, construction, or improvement of a home. In 1993, Public Law 102–389 provided appropriations of $4.5 million for the subsidy cost of these loans. Since the program's inception, VA has made almost 500 loans at an estimated subsidy cost of $2.2 million. Although the program initially incurred subsidy costs, it currently has a negative subsidy rate of 13.8 percent and an estimated annual loan level of about $2.5 million. Based on information from VA, CBO estimates that enacting S. 1235 would lower direct spending by less than $500,000 a year over the 2009–2015 period.

Specially Adapted Housing (SAH) Grants. VA currently administers two grant programs to assist severely disabled veterans in acquiring housing that is adapted to their disabilities, or in modi-

fying their existing housing. Section 202 would allow members of the armed forces who become severely disabled to receive these grants while still on active duty.

Based on information from VA and DoD, CBO estimates that each year about 20 servicemembers separate from the armed forces and qualify to receive an SAH grant. Under section 202, these members could receive SAH grants averaging $45,000, as much as six months earlier than under current law. Thus, about half of the recently separated veterans who would have received SAH grants in 2007 could receive those grants in 2006, increasing 2006 outlays by $450,000. Since the additional grants paid in 2007 and in subsequent years would be offset by an equivalent number of grants shifted back one year earlier, CBO estimates that enacting this proposal would not increase outlays after 2006.

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

• Section 201 would remove a requirement in current law that restricts the annual adjustments to interest rates on adjustable-rate mortgages to 1 percentage point, and give VA discretion in setting such requirements. Based on information from VA, CBO estimates that enacting this provision would not significantly affect default rates or direct spending for veterans' housing programs.

• Section 303 would add heart disease and stroke to the list of diseases currently presumed to be service-connected for certain veterans' who were prisoners-of-war (POWs). On October 7, 2004, VA issued a regulation amending Part 3 of title 38 of the Code of Federal Regulations to add these two diseases to the list for which entitlement to service-connection is presumed for former POWs. The regulation became permanent on June 28, 2005. Since the regulation has already taken effect, the provision would have no cost.

• Section 304 would direct the Secretary of Veterans Affairs to develop and implement policy and training initiatives to standardize the assessment of disability claims for post traumatic stress disorder (PTSD). On May 19, 2005, the VA's Office of the Inspector General (IG) issued a report assessing the variance in veterans' disability compensation payments among states. In that report, the IG concluded that PTSD claims were being inconsistently rated. According to VA, the department is currently drafting regulations to standardize procedures for assessing compensation claims for PTSD. Since the department is already taking steps to standardize procedures for rating these claims, CBO estimates that enacting this provision would have no significant impact on direct spending for veterans' disability compensation.

Intergovernmental and private-sector impact: S. 1235 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimates: On May 5, 2005, CBO transmitted a cost estimate for H.R. 1773, the Native American Veteran Home Loan Act, as introduced on April 21, 2005. Section 203 of S. 1235 is similar to H.R. 1773, and the estimated costs and savings are identical.

On June 2, 2005, CBO transmitted a cost estimate for S. 1042, the National Defense Authorization Act for Fiscal Year 2006, as reported by the Senate Committee on Armed Services on May 17,

2005. Section 101 of S. 1235 is similar to section 641 of S. 1042 as both provisions would make permanent the authority to increase the maximum amount of SGLI coverage from $250,000 to $400,000. Section 641 of S. 1042 would also direct DoD to pay the cost of premium payments for up to $150,000 of SGLI coverage for servicemembers serving in an operation or area that DoD designates as a combat operation or a zone of combat, whereas S. 1235 would not. Differences in the estimated costs reflect differences in the two bills.

On July 15, 2005, CBO transmitted a cost estimate for H.R. 3200, the Servicemembers' Group Life Insurance Enhancement Act of 2005, as ordered reported by the House Committee on Veterans' Affairs on July 14, 2005. Section 101 of S. 1235 is similar to section 3 of H.R. 3200, and the estimated costs are identical.

Estimate prepared by: Federal Costs: Housing: Sunita D'Monte and Sarah T. Jennings. Life Insurance and Other Programs: Dwayne M. Wright. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Joshua Lee.

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

REGULATORY IMPACT STATEMENT

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

TABULATION OF VOTES CAST BY COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its July 28, 2005, meeting. On that date, the Committee, by unanimous voice vote, approved an amendment offered by Committee Member Obama to S. 1235, as amended. The Committee then, by unanimous voice vote, ordered S. 1235, as amended, a bill to amend title 38, United States Code, to extend the availability of $400,000 in life insurance coverage to servicemembers and veterans, to make a stillborn child an insurable dependent for purposes of the SGLI program, to make technical corrections to the Veterans Benefits Improvement Act of 2004, to make permanent a pilot program for direct housing loans for Native American veterans, and to require an annual plan on outreach activities of the Department of Veterans Affairs, and for other purposes, reported favorably to the Senate.

AGENCY REPORT

On June 23, 2005, VA's Under Secretary for Benefits, the Honorable Daniel L. Cooper, appeared before the Committee on Veterans' Affairs and submitted testimony on, among other things, S. 1235 as introduced, and also on the following additional bills from which

provisions in S. 1235, as amended, are derived: S. 151, S. 423, S. 552, S. 917, S. 1259, and S. 1271. Furthermore, in a letter from Secretary of Veterans Affairs, R. James Nicholson, to the Committee Chairman on July 28, 2005, additional views were provided with respect to, among other bills, S. 917, S. 1259, and S. 1271. Excerpts from the June 23, 2005, statement and the July 28, 2005, letter are reprinted below:

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

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

S. 151

S. 151, the "Veterans Benefits Outreach Act of 2005," would require the Secretary of Veterans Affairs to prepare each year a plan for VA outreach activities for the following year. This bill would require that each annual plan include VA's plans for efforts to identify veterans who are not enrolled or registered with VA for benefits or services, as well as VA's plans for informing veterans and their dependents of changes to VA benefit programs, including eligibility for medical and nursing care and services. The Secretary, in developing an annual plan, would also be required to consult with officials of recognized veterans service organizations, officials of State and local education and training programs, representatives of non-governmental organizations that carry out veterans outreach programs, representatives of State and local veterans employment organizations, businesses and professional organizations, and other individuals and organizations that assist veterans in adjusting to civilian life. Furthermore, S. 151 would require the Secretary to take into account lessons learned from implementation of prior annual plans. Finally, S. 151 would require the Secretary to incorporate the recommendations for improvement of veterans outreach and awareness activities included in the report submitted to Congress by the Secretary pursuant to section 805 of the Veterans Benefits Improvement Act of 2004.

VA supports enactment of S. 151. Some of the outreach VA performs would be more difficult to plan, because it is in reaction to changes in statute or regulation, Congressional or media interest, or other current events; we nevertheless support enactment of this bill. We believe that no one should be deprived of an available veterans benefit because he or she did not know that such a benefit was available. Costs would be negligible.

S. 423

S. 423 would amend section 1965 of title 38, United States Code, to make a stillborn child an insurable dependent for purposes of the Servicemembers' Group Life

Insurance (SGLI) program. The term "stillborn natural child" would not include any fetus or child extracted for purposes of an abortion.

VA supports enactment of S. 423. Insuring stillborn infants under SGLI would directly benefit those servicemembers and their families who tragically experience a stillbirth, by providing financial assistance at a time of need. This benefit would help defray medical care and burial or cremation costs incurred by a servicemember because of a stillbirth. A funeral for such a child can cost as much as $3000.

Private insurers do not generally insure stillborn children. In fact, private insurance coverage for a child typically does not begin until the fourteenth day after a live birth. Nevertheless, VA supports departing from the general industry practice on this issue because SGLI coverage for stillbirths would support servicemembers and their families, ease their suffering and distress during a family crisis, and improve morale.

The total cost to the SGLI program for adding stillborn coverage would be $4 million annually based on an estimate of 400 stillbirths per year with a benefit of $10,000 per stillbirth. The SGLI program would absorb all costs associated with implementation of S. 423. There would be no new cost to the Government.

S. 552

S. 552 would make a technical correction to section 2101 of title 38, United States Code, as amended by section 401 of the Veterans Benefits Improvement Act of 2004, Public Law 108–454, regarding eligibility for specially adapted housing benefits. VA favors enactment of S. 552.

Section 401 of Public Law 108–454 granted eligibility for the "full" $50,000 Specially Adapted Housing grant to veterans with a total and permanent service-connected disability as a result of the loss or loss-of-use of both upper extremities at or above the elbow. Unfortunately, section 401 also contained a technical drafting error that had the effect of repealing a recently enacted benefit.

Public Law 108–183, enacted December 16, 2003, granted eligibility for Specially Adapted Housing benefits to members of the Armed Forces who were still serving on active duty and who incurred qualifying disabilities in line of duty. That provision enabled severely-injured servicemembers awaiting medical discharge to receive a VA grant to adapt their homes to meet their special needs without having to wait for their discharges to become final. In amending section 2101 of title 38, United States Code, section 401 of Public Law 108–454 inadvertently deleted the language added by Public Law 108–183. S. 552 would restore the language added to section 2101 in 2003 retroactive to the enactment of Public Law 108 454.

Enactment of S. 552 would have no significant cost impact.

S. 917

S. 917 would make the Native American Direct Loan program permanent. This program began as a pilot program in October 1992. VA has made over 450 loans under this program to Native American veterans. This program is currently set to expire December 31, 2008. Discussion is ongoing within the executive branch regarding this bill. We will inform the Committee of our position as soon as possible.

S. 1235

Section 2 of S. 1235, the "Veterans' Benefits Improvement Act of 2005," would, effective October 1, 2005, make several changes to the SGLI and Veterans' Group Life Insurance (VGLI) programs. Section 2(a) would require the Secretary of Defense to make a good-faith effort to notify a servicemember's spouse whenever the servicemember reduces the amount of his or her SGLI coverage or designates someone other than his or her spouse as a beneficiary. If a servicemember marries or remarries after making such an election, the Secretary of Defense would not be required to provide the notification. Only elections made after marriage or remarriage would be subject to the notice requirement. Failure of the Secretary of Defense to provide timely notification would not affect the validity of any election by the servicemember.

Because this bill would not extend the current law that goes into effect September 1, 2005, but instead defines a new program that would start when the current program expires on September 30, 2005, there are some potentially difficult administrative challenges that would unnecessarily burden both servicemembers and the Government. For example, married members who named a beneficiary other than a spouse or child under current law and whose spouses consented would once again have to fill out the paperwork required to designate the beneficiary, and the Government would have to notify the spouse. The Administration would like to work with Congress to ensure that these issues are addressed.

We note as well that, under 38 U.S.C. § 1968(a)(1), SGLI coverage terminates 120 days after separation or release from active duty or active duty for training, unless the servicemember is totally disabled on that date, in which event SGLI coverage terminates one year after separation or release from active duty or active duty for training. Also, section 1977(d) of title 38, United States Code, states that "any designation of beneficiary or beneficiaries for [SGLI] filed with a uniformed service until changed, shall be considered a designation of beneficiary or beneficiaries for [VGLI], but not for more than sixty days after the effective date of the insured's [VGLI]." It is unclear whether the notification provision of section 2, which refers to a "member" of a uniformed service, would apply to any change in beneficiary designation that a servicemember

would make within the 120-day period after discharge but prior to cessation of SGLI coverage or that a VGLI insured would make within the 60-day period referenced in section 1977(d). Also, if section 2(a) were applicable to VGLI beneficiary designations, it would be difficult to implement because the Office of Servicemembers' Group Life Insurance does not maintain data regarding a VGLI insured's marital status. We recommend that, if section 2(a) is enacted, it explain whether it is applicable to any change in beneficiary during these two periods of time.

Section 2(a) and (c) would increase the maximum amount of SGLI and VGLI to $400,000. These provisions would extend the increase to $400,000 made by section 1012 of Pub. L. No. 109–13, which will terminate on September 30, 2005. Section 2(a) would also permit a servicemember to elect an amount of SGLI less than the maximum available provided the amount of coverage on the member is evenly divisible by $50,000, rather than $10,000, as currently provided by law. VA supports enactment of these provisions because they provide the opportunity for servicemembers to increase insurance protection for their families. Permitting coverage in multiples of $50,000 would simplify the administration of the SGLI program and would align with the proposal by the Administration.

Section 2(b) would amend 38 U.S.C. § 1968(a)(1)(A) and (4) to extend from one year to two years the period in which a totally disabled SGLI insured can convert SGLI to VGLI. VA supports this provision because many totally disabled insureds cannot complete post-separation financial planning within one year due to the severity of their disabilities. Extending the SGLI post-service coverage period to two years would enable some totally disabled veterans who would be unable to obtain commercial life insurance to obtain VGLI. Extending the period would also allow VA to conduct additional outreach to totally disabled veterans and inform them about the opportunity to convert their SGLI to VGLI. There would be no cost to the Government; additional costs would be borne by the SGLI program.

Section 3 of S. 1235 contains a technical drafting error. As written, it would strike from section 3707(c)(4) of title 38, United States Code, language that does not appear in that provision. We believe section 3 was intended to amend section 3707A(c)(4) of title 38, United States Code, which pertains to Hybrid Adjustable Rate Mortgages (Hybrid ARMs).

Currently, section 3707A(c)(4) limits annual interest rate adjustments, after the first such adjustment, on Hybrid ARMs to one percentage point. Assuming that the amendment proposed by section 3 of the bill were made to section 3707A(c)(4) rather than section 3707(c)(4), the annual interest rate adjustment after the first adjustment on VA Hybrid ARMs could be for such percentage points as pre-

scribed by the Secretary. VA favors such an amendment to section 3707A.

Most hybrid ARMs insured by the Department of Housing and Urban Development currently allow subsequent annual interest rate adjustments in excess of one percentage point. Because VA Hybrid ARMs are limited to one percentage point, the Government National Mortgage Association (also known as "Ginnie Mae") has not been willing to pool VA Hybrid ARMs. That has limited the availability of VA Hybrid ARMs. VA believes that veterans using their earned housing loan entitlement should have access to the same financing alternatives, such as Hybrid ARMs, that are available under Federal Housing Administration and conventional loan programs.

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

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

LETTER FROM SECRETARY OF VETERANS AFFAIRS R. JAMES NICHOLSON

JULY 28, 2005.

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

DEAR MR. CHAIRMAN: As requested at the June 23, 2005, legislative hearing before the Senate Committee on Veterans' Affairs, I am pleased to provide the views of the Department of Veterans Affairs (VA) on those bills for which we did not previously submit comments, including S. 917, a bill to make permanent the pilot program for direct housing loans for Native American veterans, S. 1138, a bill to authorize placement in Arlington National Cemetery of a monument honoring veterans who fought in World War II as members of Army Ranger Battalions, S. 1252, the "Disabled Veterans Insurance Improvement Act of 2005," S. 1259, the "Veterans Employment and Transition Services Act," and S. 1271, the "Prisoner of War Benefits Act of 2005." VA's views on each of these bills are discussed below. To the extent that VA supports enactment of aspects of these bills that have cost implications, it is assumed that the costs would be accommodated within the scope of the President's budget request.

S. 917

This bill would make the Native American Direct Loan program permanent. Under this program, which was enacted as a pilot program in October 1992, VA has made over 450 loans to Native American veterans living on trust lands. This program is currently set to expire on December 31, 2008.

VA believes the Native American Direct Loan program has proven to be a viable benefit which provides financing to a unique class of veterans residing in areas where private funding is not generally available. VA looks forward to working with the Congress to extend this program. We are advised, however, that the Department of Justice has some constitutional concerns. We would be pleased to work with the Committee staff and the Department of Justice to address those issues and develop legislation that the Administration can support.

VA estimates that enactment of S. 917 would produce a first-year discretionary saving of $708 thousand and a 10-year discretionary saving of approximately $23 million.

S. 1259

Section 2 of S. 1259, the "Veterans Employment and Transition Services Act," would amend section 503(c) of title 38, United States Code, to extend from December 31, 2004, to December 31, 2009, the requirement that the Secretary of Veterans Affairs annually report to Congress on the disposition of cases recommended to the Secretary for equitable relief.

VA estimates that there would be no new cost to the Government associated with enactment of this provision. Accordingly, VA does not object to section 2 of S. 1259.

S. 1271

Section 2(a) of S. 1271, the "Prisoner of War Benefits Act of 2005," would amend section 1112 of title 38, United States Code, to eliminate the requirement currently in section 1112(b)(1)(B) that a veteran have been detained or interned as a prisoner of war (POW) for at least 30 days to be entitled to a presumption of service connection for the diseases listed in section 1112(b)(3). Section 2(a) would also add four diseases to the list of diseases in section 1112(b) that may be presumed to be service connected for former POWs. Those additional diseases are heart disease, stroke, diabetes (type 2), and osteoporosis.

Section 2(b) of S. 1271 would authorize the Secretary to establish a presumption of service connection for former POWs for any disease for which VA has determined, based on sound medical and scientific evidence, that "a positive association exists between the experience of being a [POW] and the occurrence of [the] disease in humans." Section 2(b) would also require VA to issue certain regulations and, in determining whether a positive association exists, to consider recommendations from the Advisory Committee on Former Prisoners of War and any other relevant scientific information.

Just a few years ago, section 1112(b) limited the presumption of service connection for specified diseases associated with POW experience to veterans who were former POWs and were detained or interned for not less than 30 days. However, section 201 of the Veterans Benefits Act of 2003, Pub. L. No. 108 183, § 201, 117 Stat. 2651, 2656, eliminated the 30-day requirement for psychosis, any anxiety state, dysthymic disorder, organic residuals of frostbite, and post-traumatic osteoarthritis. In implementing that amendment in its regulations, VA noted that the diseases that remained subject to the 30–day requirement, such as diseases associated with malnutrition, are generally incurred over a prolonged period of internment. Interim Final Rule, Presumptions of Service Connection for Diseases Associated with Service Involving Detention or Internment as a Prisoner of War, 69 Fed. Reg. 60,083, 60,088 (2004). Nevertheless, because heart disease and stroke could be associated either with malnutrition during prolonged captivity or with stress due to torture or abuse, which can occur during brief periods of captivity, VA added heart disease and stroke to the regulatory list of diseases that do not require at least 30 days of detention or interment to be presumed incurred in service in a former POW. Id. This illustrates VA's belief that there should be no generally applicable minimum detention or internment requirement, but that such a requirement may be appropriate for certain diseases if the evidence indicates that they are associated only with prolonged captivity. Accordingly, VA supports elimination of the arbitrary 30-day minimum internment requirement, provided that VA retains authority to impose a minimum period of detention or internment for certain diseases if such minimum period is adequately supported by sound scientific or medical evidence.

Having determined that sound medical or scientific evidence supports an association between atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure, and arrhythmia) and POW internment and a positive association between stroke and its complications and POW internment, VA added those diseases to the regulatory list of diseases presumed service connected in a former POW. Id. at 60,085–87, 60,090. Therefore, VA supports section 2(a) of S. 1271 to the extent that it codifies VA's existing regulations concerning heart disease and stroke. However, VA is not aware of any sound scientific or medical evidence of a positive association between type 2 diabetes or osteoporosis and internment as a POW. Accordingly, at this time, VA opposes the provisions in section 2(a) of S. 1271 that would establish presumptive service connection for type 2 diabetes and osteoporosis.

Based on the amendments that would be made by section 2 of S. 1271, VA estimates that approximately 2,400 former POWs and 1,168 surviving spouses of former POWs

would be affected by this legislation and apply for benefits. Assuming a one hundred percent grant rate, we further estimate that benefit costs would be $6.5 million in the first year, $102.2 million for 5 years, and $223.1 million for ten years. Administrative costs are estimated to be an additional $765 thousand during the first year and $1.6 million for 5 years.

VA opposes the procedure in section 2(b) of S. 1271 for establishing presumptive service connection for diseases associated with POW internment. Regulatory procedures for identifying diseases associated with POW internment already exist. Pursuant to the Secretary's authority in section 501(a) of title 38, United States Code, to prescribe all rules and regulations necessary or appropriate to carry out the laws administered by VA, including 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, VA promulgated regulations establishing a new procedure for establishing POW presumptions. 69 Fed. Reg. 60,083. This procedure, which is codified at 38 C.F.R. § 1.18, is substantially similar to existing procedures for the herbicide, Gulf War, and radiation presumptions, with minor differences necessary to reflect considerations unique to former POWs. VA's establishment of presumptive service connection for heart disease and stroke, which was done under VA's regulatory procedure, demonstrates that the new procedure is effective.

The proposed amendments would require VA to issue various regulations in response to recommendations received from the Advisory Committee on Former Prisoners of War. Under 38 U.S.C. § 541(a)(2), the Committee comprises former POWs, disabled veterans, and health care professionals. Under current law, the Secretary must regularly consult with the Committee and seek its advice on the compensation, health care, and rehabilitation needs of former POWs. 38 U.S.C. § 541(b). Not later than July 1 of each odd-numbered year through 2009, the Committee must submit to the Secretary a report recommending, among other things, administrative and legislative action. 38 U.S.C. § 541(c)(1). The procedure outlined in section 2(b) of S. 1271 would require the Secretary to make a decision regarding the appropriateness for a presumption within 60 days of receiving a Committee recommendation, issue proposed regulations within 60 days following that decision, and issue a final rule within 90 days of issuing the proposed rule. This procedure is similar to the procedure that Congress established for herbicide and Gulf War presumptions, both of which generally concern VA rulemaking following the receipt of a report from the National Academy of Sciences. See 38 U.S.C. §§ 1116, 1118. However, unlike the herbicide and Gulf War procedures, S. 1271 would require strict guidelines for rulemaking in response to Committee recommendations, which do not provide a thorough scientific review and analysis upon which

to establish presumptions. Under current 38 CFR § 1.18, the Secretary may contract with the appropriate expert body, such as National Academy of Sciences' Institute of Medicine, for the necessary analysis of current science. We believe this regulation provides a more scientifically sound basis for creation of presumptions than that contemplated by S. 1271.

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

Sincerely yours,

R. JAMES NICOLSON.

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

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

* * * * * * *

TITLE 38, UNITED STATES CODE

* * * * * * *

PART I. GENERAL PROVISIONS

CHAPTER 1. GENERAL

* * * * * * *

§ 101. Definitions

For the purposes of this title—

(1) * * *

* * * * * * *

(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 [section 1965(10)(B)] *subparagraph (B) or (C) of section 1965(10)* of such chapter) and section 8502(b) of this title) a person who is unmarried and—

* * * * * * *

CHAPTER 5. AUTHORITY AND DUTIES OF THE SECRETARY

* * * * * * *

SUBCHAPTER II. SPECIFIED FUNCTIONS

521. Assistance to certain rehabilitation activities.
522. Studies of rehabilitation of disabled persons.
523. Coordination and promotion of other programs affecting veterans and their dependents.

523A. Annual plan on outreach activities.
525. Publication of laws relating to veterans.
527. Evaluation and data collection.
529. Annual report to Congress.
530. Annual report on program and expenditures for domestic response to weapons of mass destruction.
531. Requirement relating to naming of Department property.

* * * * * * *

Subchapter I—General Authorities

* * * * * * *

§ 503. Administrative error; equitable relief

* * * * * * *

(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, 2004] *December 31, 2009.*

* * * * * * *

§ 523A. Annual plan on outreach activities

(a) ANNUAL PLAN REQUIRED.—The Secretary shall prepare each year a plan for the outreach activities of the Department for the following year.

(b) ELEMENTS.—Each annual plan under subsection (a) shall include the following:

(1) Plans for efforts to identify veterans who are not enrolled or registered with the Department for benefits or services under the programs administered by the Secretary.

(2) Plans for informing veterans and their 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 an annual 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 non-governmental organizations that carry out veterans outreach programs.

(4) Representatives of State and local veterans employment organizations.

(5) Businesses and professional organizations.

(6) Other individuals and organizations that assist veterans in adjusting to civilian life.

(d) INCORPORATION OF ASSESSMENT OF PREVIOUS ANNUAL PLANS.—In developing an annual plan under subsection (a), the Secretary shall take into account the lessons learned from the implementation of previous annual plans under such subsection.

(e) INCORPORATION OF RECOMMENDATIONS TO IMPROVE OUTREACH AND AWARENESS.—In developing an annual plan under sub-

section (a), the Secretary shall incorporate the recommendations for the improvement of veterans outreach and awareness activities included in the report submitted to Congress by the Secretary pursuant to section 805 of the Veterans Benefits Improvement Act of 2004 (Public Law 108–454).

* * * * * * *

PART II. GENERAL BENEFITS

CHAPTER 11. COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

* * * * * * *

Subchapter II. Wartime Disability Compensation

* * * * * * *

§ 1112. Presumptions relating to certain diseases and disabilities

* * * * * * *

(b)(1) * * *

* * * * * * *

(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.

* * * * * * *

CHAPTER 19. INSURANCE

* * * * * * *

Subchapter III. Servicemembers' Group Life Insurance

§1965. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * * * *

(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.

* * * * * * *

§ 1967. Persons insured; amount.

(a)(1) * * *

* * * * * * *

(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.

(C) With respect to a policy of insurance covering an insured member, the Secretary concerned shall make a good-faith effort to notify the spouse of the member, at the last address of the spouse in the records of the Secretary concerned, if the member elects, prior to discharge from the military, naval, or air service, to—

(i) reduce amounts of insurance coverage of the member; or

(ii) name a beneficiary other than the member's spouse or child.

(D) The failure of the Secretary concerned to provide timely notification under subparagraph (C) shall not affect the validity of an election by a member.

(E) If an unmarried member marries after having made one or more elections to reduce or decline insurance coverage or to name beneficiaries, the Secretary concerned is not required to notify the spouse of such marriage of such elections. Elections made after such marriage are subject to the notice requirements under subparagraph (C).

(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, $250,000.]

(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 or spouse] *member, be evenly divisible by $50,000 and, in the case of a member's spouse,* be evenly divisible by $10,000.

* * * * * * *

(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 of [$250,000] *$400,000*, and at such other times pe-

riodically thereafter as the Secretary concerned considers appropriate, the Secretary concerned shall furnish to the member general information concerning life insurance. Such information shall include—

* * * * * * *

§ 1968. Duration and termination of coverage; conversion.

(a) * * *

* * * * * * *

(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—

(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 [one year] *2 years* after the date of separation or release from such active duty or active duty for training, or on the date the insured ceases to be totally disabled, whichever is the earlier date, but in no event before the end of the 120 days after such separation or release; or

* * * * * * *

(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 [one year] *2 years* after the date of separation or release from such assignment, or on the date the insured ceases to be totally disabled, whichever is the earlier date, but in no event before the end of 120 days after separation or release from such assignment.

* * * * * * *

§ 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 in excess of [$250,000] *$400,000* at any one time.

(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 for less than [$250,000]

$400,000 under Servicemembers' Group Life Insurance, and then only in an amount which, when added to the amount of Servicemembers' Group Life Insurance payable, does not exceed [$250,000] *$400,000.*

* * * * * * *

CHAPTER 21. SPECIALLY ADAPTED HOUSING FOR DISABLED VETERANS

§ 2101. Veterans eligible for assistance

(a) ACQUISITION OF HOUSING WITH SPECIAL FEATURES.—

(1) * * *

* * * * * * *

(3) The regulations prescribed under [subsection (c)] *subsection (d)* shall require that assistance under paragraph (1) may be provided to a veteran only if the Secretary finds that—

* * * * * * *

(c) ASSISTANCE TO MEMBERS OF THE ARMED FORCES.—

(1) The Secretary may provide assistance under subsection (a) to a member of the Armed Forces serving on active duty who is suffering from a disability described in subparagraph (A), (B), (C), or (D) of paragraph (2) of that subsection if such disability is the result of an injury incurred or disease contracted in or aggravated in the 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 that subsection to veterans eligible for assistance under that subsection and subject to the requirements of paragraph (3) of that subsection.

(2) The Secretary may provide assistance under subsection (b) to a member of the Armed Forces serving on active duty who is suffering from a disability described in subparagraph (A) or (B) of paragraph (2) of that subsection if such disability is the result of an injury incurred or disease contracted in or aggravated in the 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 that subsection to veterans eligible for assistance under that subsection and subject to the requirements of paragraph (3) of that subsection.

[(c)] *(d)* REGULATIONS. Assistance under this section shall be provided in accordance with such regulations as the Secretary may prescribe.

* * * * * * *

PART III. READJUSTMENT AND RELATED BENEFITS

* * * * * * *

CHAPTER 37. HOUSING AND SMALL BUSINESS LOANS

* * * * * * *

[Subchapter V. Native American Veteran Housing Loan Pilot Program]

Subchapter V.—Housing Loans for Native American Veterans

[3761. Pilot program.**]**

3761. Authority for housing loans for Native American veterans.

3762. Direct housing loans to Native American veterans.

3763. Native American Veteran Housing Loan Program Account.

3764. Definitions.

* * * * * * *

Subchapter I. General

* * * * * * *

§ 3707A. Hybrid adjustable rate mortgages

(a) * * *

* * * * * * *

(c) Interest rate adjustment provisions of a mortgage guaranteed under this section shall—

(1) * * *

* * * * * * *

(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 **[**1 percentage point**]** *such percentage as the Secretary may prescribe.*

* * * * * * *

[Subchapter V. Native American Veteran Housing Loan Pilot Program]

Subchapter V.—Housing Loans for Native American Veterans

[§ 3761. Pilot program.]

§ 3761. Authority for housing loans for Native American veterans

[(a) The Secretary shall establish and implement a pilot program under which the Secretary may 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 establish and implement the pilot program in accordance with the provisions of this subchapter.

[(b) In carrying out the pilot program under this subchapter, 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.

[(c) No loans may be made under this subchapter after December 31, 2008.**]**

(a) The Secretary shall make direct housing loans to Native American veterans in accordance with the provisions of this subchapter.

(b) The purpose of loans under this subchapter is to permit Native American veterans to purchase, construct, or improve dwellings on trust land.

§ 3762. Direct housing loans to Native American veterans

(a) The Secretary may make a direct housing loan to a Native American veteran *under this subchapter if*—

* * * * * * *

(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) * * *

* * * * * * *

(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 the pilot program established under this subchapter is implemented in a responsible and prudent manner].

* * * * * * *

(c)(1)(A) Except as provided in subparagraph (B), the principal amount of any direct housing loan made to a Native American under this section may not exceed $80,000.

(B) 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 carry out the pilot program under this subchapter in a manner that demonstrates the advisability of making direct housing loans to Native American veterans who are located in a variety of geographic areas and in geographic areas experiencing a variety of economic conditions.] *shall be such amount as the Secretary considers appropriate for the purpose of this subchapter*.

* * * * * * *

(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.]

* * * * * * *

(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 pilot program provided for under this subchapter and the availability of direct housing loans for Native American veterans who live on trust lands.] *of the availability of direct housing loans for Native American veterans under this subchapter*.

(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 the pilot program and in assisting such organizations and veterans in participating in the pilot program.] *under this subchapter*.

* * * * * * *

(E) Assisting tribal organizations and Native American veterans [in participating in the pilot program] *in participating in the making of direct loans under this subchapter*.

* * * * * * *

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

[(1) The Secretary's exercise during such fiscal year of the authority provided under subsection (c)(1)(B) to make loans exceeding the maximum loan amount.

[(2) The appraisals performed for the Secretary during such fiscal year under the authority of subsection (d)(2), including a description of—

[(A) the manner in which such appraisals were performed;

[(B) the qualifications of the appraisers who performed such appraisals; and

[(C) the actions taken by the Secretary with respect to such appraisals to protect the interests of veterans and the United States.

[(3) The outreach activities undertaken under subsection (i) during such fiscal year, including—

[(A) a description of such activities on a region-by-region basis; and

[(B) an assessment of the effectiveness of such activities in encouraging the participation of Native American veterans in the pilot program.

[(4) The pool of Native American veterans who are eligible for participation in the pilot program, including—

[(A) a description and analysis of the pool, including income demographics;

[(B) a description and assessment of the impediments, if any, to full participation in the pilot program of the Native American veterans in the pool; and

[(C) the impact of low-cost housing programs operated by the Department of Housing and Urban Development and other Federal or State agencies on the demand for direct loans under this section.

[(5) The Secretary's recommendations, if any, for additional legislation regarding the pilot program.]

* * * * * * *

○