Public Law 100-687
100th Congress

An Act

To amend title 38, United States Code, to establish certain procedures for the adjudication of claims for benefits under laws administered by the Veterans' Administration; to apply the provisions of section 553 of title 5, United States Code, to rulemaking procedures of the Veterans' Administration; to establish a Court of Veterans' Appeals and to provide for judicial review of certain final decisions of the Board of Veterans' Appeals; to provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under laws administered by the Veterans' Administration; to increase the rates of compensation payable to veterans with service-connected disabilities; and to make various improvements in veterans' health, rehabilitation, and memorial affairs programs; and for other purposes.

Nov. 18, 1988
[S. 11]

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

DIVISION A—VETERANS' JUDICIAL REVIEW

Veterans' Judicial Review Act.

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

38 USC 101 note.

(a) SHORT TITLE.—This division may be cited as the "Veterans' Judicial Review Act".

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

TITLE I—ADJUDICATIVE AND RULEMAKING AUTHORITY OF THE VETERANS' ADMINISTRATION

SEC. 101. DECISIONS BY ADMINISTRATOR.

(a) MATTERS TO BE DECIDED BY ADMINISTRATOR.—Subsection (a) of section 211 is amended to read as follows:

"(a)(1) The Administrator shall decide all questions of law and fact necessary to a decision by the Administrator under a law that affects the provision of benefits by the Administrator to veterans or the dependents or survivors of veterans. Subject to paragraph (2) of this subsection, the decision of the Administrator 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.

"(2) The second sentence of paragraph (1) of this subsection does not apply to—

"(A) matters subject to section 223 of this title;

"(B) matters covered by sections 775 and 784 of this title;

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

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"(D) matters covered by chapter 72 of this title.".

(b) CONFORMING AMENDMENT.—Section 4004(a) is amended by striking out "All questions on claims involving benefits under laws administered by the Veterans' Administration" and inserting in lieu thereof "All questions in a matter which under section 211(a) of this title is subject to decision by the Administrator".

SEC. 102. VETERANS' ADMINISTRATION RULEMAKING.

(a) APA PROCEDURES.—(1) Chapter 3 is amended by inserting after section 222 the following new section:

"§ 223. Rulemaking: procedures and judicial review

"(a) In applying section 552(a)(1) of title 5 to the Veterans' Administration, the Administrator 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.

"(b) 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 Administrator.

"(c) An action of the Administrator to which section 552(a)(1) or 553 of title 5 (or both) refers (other than an action relating to the adoption or revision of the schedule of ratings for disabilities adopted under section 355 of this title) 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.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 222 the following new item:

"223. Rulemaking: procedures and judicial review.".

(b) REPORT ON IMPLEMENTATION.—Not later than May 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the implementation of section 223(a) of title 38, United States Code, as added by subsection (a)(1). Such report shall set forth the actions the Administrator is taking to ensure that such section is carried out.

SEC. 103. VETERANS' ADMINISTRATION ADJUDICATION PROCEDURES.

(a) IN GENERAL.—(1) Chapter 51 is amended by adding at the end of subchapter I the following new sections:

"§ 3007. Burden of proof; benefit of the doubt

"(a) Except when otherwise provided by the Administrator in accordance with the provisions of this title, a person who submits a claim for benefits under a law administered by the Veterans' Administration shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Administrator shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 3006 of this title.

"(b) When, after consideration of all evidence and material of record in a case before the Veterans' Administration with respect to

benefits under laws administered by the Veterans' Administration, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of the matter, the benefit of the doubt in resolving each such issue shall be given to the claimant. Nothing in this subsection shall be construed as shifting from the claimant to the Administrator the burden specified in subsection (a) of this section.

"§ 3008. Reopening disallowed claims

"If new and material evidence is presented or secured with respect to a claim which has been disallowed, the Administrator shall reopen the claim and review the former disposition of the claim.".

"§ 3009. Independent medical opinions

"(a) When, in the judgment of the Administrator, expert medical opinion, in addition to that available within the Veterans' Administration, is warranted by the medical complexity or controversy involved in a case being considered by the Veterans' Administration, the Administrator may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Veterans' Administration.

"(b) The Administrator 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 Administrator 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 Administrator.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 3006 the following new items:

"3007. Burden of proof; benefit of the doubt.
"3008. Reopening disallowed claims.
"3009. Independent medical opinions.".

(b) CONFORMING AMENDMENTS.—Section 4009 is amended—

(1) in subsection (a), by striking out "is authorized to" and inserting in lieu thereof "may";

(2) in subsection (b)—

(A) by striking out "Such arrangement will" and inserting in lieu thereof "Any such arrangement shall"; and

(B) by striking out "any individual case will" and inserting in lieu thereof "an individual case shall"; and

(3) by adding at the end the following new subsection:

"(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.".

(c) TECHNICAL AMENDMENTS.—(1) The items relating to chapter 51 in the table of chapters before part I, and in the table of chapters at the beginning of part IV, are amended by striking out "Applications" and inserting in lieu thereof "Claims".

(2) The heading of chapter 51 is amended to read as follows:

"CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS".

(3) The item relating to subchapter I in the table of sections at the beginning of chapter 51 is amended by striking out "APPLICATIONS" and inserting in lieu thereof "CLAIMS".

(4) The heading of subchapter I of chapter 51 is amended to read as follows:

"SUBCHAPTER I—CLAIMS".

SEC. 104. ATTORNEYS FEES.

(a) REVISION OF ATTORNEY FEE LIMITATION.—Section 3404 of title 38, United States Code, is amended by striking out subsection (c) and inserting in lieu thereof the following:

"(c)(1) In connection with a proceeding before the Veterans' Administration with respect to benefits under laws administered by the Veterans' Administration, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which the Board of Veterans' Appeals first makes a final decision in the case. Such a fee may be charged, allowed, or paid in the case of services provided after such date only if an agent or attorney is retained with respect to such case before the end of the one-year period beginning on that date. The limitation in the preceding sentence does not apply to services provided with respect to proceedings before a court.

"(2) A person who, acting as agent or attorney in a case referred to in paragraph (1) of this subsection, represents a person before the Veterans' Administration or the Board of Veterans' Appeals after the Board first makes a final decision in the case shall file a copy of any fee agreement between them with the Board at such time as may be specified by the Board. The Board, upon its own motion or the request of either party, may review such a fee agreement and may order a reduction in the fee called for in the agreement if the Board finds that the fee is excessive or unreasonable. A finding or order of the Board under the preceding sentence may be reviewed by the United States Court of Veterans Appeals under section 4063(d) of this title.

"(d)(1) When a claimant and an attorney have entered into a fee agreement described in paragraph (2) of this subsection, the total fee payable to the 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) of this subsection is one under which (i) the amount of the fee payable to the attorney is to be paid to the attorney by the Administrator directly from any past-due benefits awarded on the basis of the claim, and (ii) the amount of the fee is contingent on whether or not the matter is resolved in a manner favorable to the claimant.

"(B) For purposes of subparagraph (A) of this paragraph, 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 Administrator, the Board of Veterans' Appeals, or the United States Court of Veterans Appeals, the Administrator may direct that payment of any attorneys' fee under a fee arrangement described in paragraph (1) of this subsection be made out of such past-due benefits. In no event may the Administrator

withhold for the purpose of such payment any portion of benefits payable for a period after the date of the final decision of the Administrator, the Board of Veterans' Appeals, or Court of Veterans Appeals making (or ordering the making of) the award.".

(b) VIOLATION TO BE A MISDEMEANOR.—Section 3405 of such title is amended by striking out "shall be fined not more than $500 or imprisoned at hard labor for not more than two years, or both" and inserting in lieu thereof "shall be fined as provided in title 18, or imprisoned not more than one year, or both".

TITLE II—BOARD OF VETERANS' APPEALS

SEC. 201. APPOINTMENT AND REMOVAL OF THE CHAIRMAN AND MEMBERS.

(a) IN GENERAL.—Subsection (b) of section 4001 is amended to read as follows:

"(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 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. President of U.S.

"(2)(A) The other members of the Board (including the Vice Chairman) shall be appointed by the Administrator, with the approval of the President, based upon recommendations of the Chairman. Each such member shall be appointed for a term of nine years.

"(B) A member of the Board (other than the Chairman) may be removed by the Administrator upon the recommendation of the Chairman. In the case of a removal that would be covered by section 7521 of title 5 in the case of an administrative law judge, a removal of a member of the Board under this paragraph 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 subparagraph. In such a removal action, a member shall have the rights set out in section 7513(b) of such title.

"(3) Members (including the Chairman) may be appointed under this subsection to more than one term.

"(4) The Administrator 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 Administrator.".

(b) SALARY OF CHAIRMAN.—(1) Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Chairman, Board of Veterans' Appeals.".

(2) The amendment made by paragraph (1) shall take effect when the President first appoints an individual as Chairman of the Board of Veterans' Appeals under section 4001(b)(1) of title 38, United States Code (as amended by subsection (a)). Effective date. 5 USC 5315 note.

(c) TRANSITION TO NEW BOARD.—(1) Appointments of members of the Board of Veterans' Appeals under subsection (b)(2) of section 38 USC 4001 note.

4001 of title 38, United States Code (as amended by subsection (a)), may not be made until a Chairman is appointed under subsection (b)(1) of that section.

(2) An individual who is serving as a member of the Board on the date of the enactment of this Act may continue to serve as a member until the earlier of—

(A) the date on which the individual's successor (as designated by the Administrator) is appointed under subsection (b)(2) of that section, or

(B) the end of the 180-day period beginning on the day after the date on which the Chairman is appointed under subsection (b)(1) of such section.

38 USC 4001 note.

(d) INITIAL TERMS OF OFFICE.—Notwithstanding the second sentence of section 4001(b)(2) of title 38, United States Code (as amended by subsection (a)), specifying the term for which members of the Board of Veterans' Appeals shall be appointed, of the members first appointed under that section—

(A) 22 shall be appointed for a term of three years;

(B) 22 shall be appointed for a term of six years; and

(C) 22 shall be appointed for a term of nine years,

as determined by the Administrator at the time of the initial appointments.

SEC. 202. DETERMINATIONS BY THE BOARD.

(a) MAJORITY VOTE IN SECTIONS.—Section 4003 is amended to read as follows:

"§ 4003. Determinations by the Board

"(a) Decisions by a section of the Board shall be made by a majority of the members of the section. The decision of the section is final unless the Chairman orders reconsideration of the case.

"(b) If the Chairman orders reconsideration in a case, the case shall upon reconsideration be heard by an expanded section of the Board. When a case is heard by an expanded section of the Board after such a motion for reconsideration, the decision of a majority of the members of the expanded section shall constitute the final decision of the Board.

"(c) Notwithstanding subsections (a) and (b) of this section, the Board on its own motion may correct an obvious error in the record.".

(b) RESOURCES TO DISPOSE OF APPEALS IN A TIMELY MANNER.—Section 4001(a) is amended—

(1) by inserting "and" after "Vice Chairman,";

(2) by striking out "necessary, and" and inserting in lieu thereof "necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have"; and

(3) by adding at the end the following new sentence: "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.".

SEC. 203. DECISIONS OF THE BOARD.

(a) DECISIONS BASED ON THE RECORD.—Section 4004(a) is amended by adding at the end the following new sentences: "The Board shall decide any such appeal only after affording the claimant an oppor-

tunity for a hearing. 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) CONFORMING AMENDMENT.—Section 4005(d)(5) is amended by striking out "will base its decision on the entire record and".

SEC. 204. REOPENING OF DISALLOWED CLAIMS.

Subsection (b) of section 4004 is amended to read as follows:

"(b) Except as provided in section 3008 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.".

SEC. 205. NOTICE AND CONTENT OF DECISIONS.

Section 4004 is amended by striking out subsection (d) and inserting in lieu thereof the following:

"(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) After reaching a decision in a case, the Board shall promptly mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address of the claimant and at the last known address of such representative (if any).".

SEC. 206. STATEMENT OF THE CASE.

(a) MATTERS TO BE INCLUDED.—Paragraph (1) of section 4005(d) is amended in the second sentence by striking out "will prepare" and all that follows and inserting in lieu thereof the following: "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.".

(b) PROHIBITION AGAINST PRESUMPTION OF AGREEMENT.—Paragraph (4) of such section is amended to read as follows:

"(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.".

SEC. 207. TRAVELING SECTIONS OF THE BOARD.

(a) IN GENERAL.—Chapter 71 is further amended by adding at the end the following new section:

"§ 4010. Traveling sections

"A claimant may request a hearing before a traveling section of the Board. Any such hearing shall be scheduled for hearing before such a section within the area served by a regional office of the Veterans' Administration in the order in which the requests for

hearing are received by the Veterans' Administration with respect to hearings in that area.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"4010. Traveling sections.".

SEC. 208. ANNUAL REPORT ON BOARD ACTIVITIES AND RESOURCES.

Section 4001 is amended by adding at the end the following new subsection:

"(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 Veterans' Administration that the Administrator 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; and

"(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.

"(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 4003(d) of this title.".

SEC. 209. LIMITATIONS ON AWARDING PERFORMANCE INCENTIVES TO BOARD MEMBERS.

Section 4001 (as amended by section 208) is further amended by adding at the end the following new subsection:

"(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 a temporary or 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.".

TITLE III—UNITED STATES COURT OF VETERANS APPEALS

SEC. 301. UNITED STATES COURT OF VETERANS APPEALS.

(a) ESTABLISHMENT OF COURT.—Part V is amended by inserting after chapter 71 the following new chapter:

"CHAPTER 72—UNITED STATES COURT OF VETERANS APPEALS

"SUBCHAPTER I—ORGANIZATION AND JURISDICTION

"Sec.
"4051. Status.
"4052. Jurisdiction; finality of decisions.
"4053. Composition.
"4054. Organization.
"4055. Offices.
"4056. Times and places of sessions.

"SUBCHAPTER II—PROCEDURE

"4061. Scope of review.
"4062. Fee for filing appeals.
"4063. Representation of parties; fee agreements.
"4064. Rules of practice and procedure.
"4065. Contempt authority; assistance to the Court.
"4066. Notice of appeal.
"4067. Decisions.
"4068. Availability of proceedings.
"4069. Publication of decisions.

"SUBCHAPTER III—MISCELLANEOUS PROVISIONS

"4081. Employees.
"4082. Budget and expenditures.
"4083. Disposition of fees.
"4084. Fee for transcript of record.
"4085. Practice fee.

"SUBCHAPTER IV—DECISIONS AND REVIEW

"4091. Date when United States Court of Veterans Appeals decision becomes final.
"4092. Review by United States Court of Appeals for the Federal Circuit.

"SUBCHAPTER I—ORGANIZATION AND JURISDICTION

"§ 4051. 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 Veterans Appeals.

"§ 4052. Jurisdiction; finality of decisions

"(a) The Court of Veterans Appeals shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Administrator 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 Administrator and the Board. The extent of the review shall be limited to the scope provided in section 4061 of this title. The Court may not review the schedule of ratings for disabilities adopted under section 355 of this title or any action of the Administrator in adopting or revising that schedule.

"(c) Decisions by the Court are subject to review as provided in section 4092 of this title.

"§ 4053. Composition

"(a) The Court of Veterans Appeals shall be composed of a chief judge and at least two and not more than six associate judges.

President of U.S.

"(b) 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) The term of office of the judges of the Court of Veterans Appeals shall be 15 years.

"(d) The chief judge is the head of the Court.

"(e)(1) The chief judge of the Court shall receive a salary at the same rate as is received by judges of the United States Courts of Appeals.

"(2) Each judge of the Court, other than the chief judge, shall receive a salary at the same rate as is received by judges of the United States district courts.

"(f)(1) A judge of the Court may be removed from office by the President on grounds of misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability which, in the opinion of the President, prevents the proper execution of the judge's duties. 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.

"§ 4054. Organization

"(a) The Court of Veterans Appeals 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.

"§ 4055. Offices

District of Columbia.

"The principal office of the Court of Veterans Appeals shall be in the District of Columbia, but the Court may sit at any place within the United States.

"§ 4056. Times and places of sessions

"The times and places of sessions of the Court of Veterans Appeals shall be prescribed by the chief judge.

"SUBCHAPTER II—PROCEDURE

"§ 4061. Scope of review

"(a) In any action brought under this chapter, the Court of Veterans Appeals, 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 Administrator;

"(2) compel action of the Administrator unlawfully withheld;

"(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 Administrator, 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 made in reaching a decision in a case before the Veterans' Administration with respect to benefits under laws administered by the Veterans' Administration, hold unlawful and set aside such finding if the finding is clearly erroneous.

"(b) In making the determinations under subsection (a) of this section, the Court shall take due account of the rule of prejudicial error.

"(c) In no event shall findings of fact made by the Administrator 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 Administrator, the Court shall review only questions raised as to compliance with and the validity of the regulation.

"§ 4062. Fee for filing appeals

"(a) The Court of Veterans Appeals 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.

"§ 4063. Representation of parties; fee agreements

"(a) The Administrator shall be represented before the Court of Veterans Appeals by the General Counsel of the Veterans' Administration.

"(b) Representation of appellants shall be in accordance with the rules of practice prescribed by the Court under section 4064 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 3404(c)(2) of this title, the Court may affirm 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.

"§ 4064. Rules of practice and procedure

"(a) The proceedings of the Court of Veterans Appeals 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 4066 of this title.

"§ 4065. 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.

"§ 4066. 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 that action must file a notice of appeal with the Court. Any such notice must be filed within 120 days after the date on which notice of the decision is mailed pursuant to section 4004(e) of this title.

"(b) The appellant shall also furnish the Administrator with a copy of such notice, but a failure to do so shall not constitute a failure of timely compliance with subsection (a) of this section.

"§ 4067. Decisions

"(a) A decision upon a proceeding before the Court of Veterans Appeals 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 except as provided in subsection (d) of this section.

"(b) The Court shall include in its decision a statement of its conclusions of law and determinations as to factual matters.

"(c) 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.

Reports.

"(d)(1) In the case of a proceeding determined by a single judge of the Court, the decision of the judge shall become the decision of the Court unless before the end of the 30-day period beginning on the date of the decision by the judge the Court, upon the motion of either party or on its own initiative, directs that the decision be reviewed by a panel of the Court. In such a case, the decision of the judge initially deciding the case shall not be a part of the record.

"(2) In the case of a proceeding determined by a panel of the Court, the decision of the panel shall become the decision of the Court unless before the end of the 30-day period beginning on the date of the decision by the panel the Court, upon the motion of either party or on its own initiative, directs that the decision be reviewed by an expanded panel of the Court (or the Court en banc). In such a case, the decision of the panel initially deciding the case shall not be a part of the record.

"(e) 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 Administrator shall preserve records so designated for not less than the period of time designated by the Administrator of the National Archives and Records Administration.

Records.
Historic preservation.

"§ 4068. Availability of proceedings

Records.

"(a) Except as provided in subsection (b) of this section, all decisions of the Court of Veterans Appeals 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.

Public information.

"(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.

Classified information.

"(2) After the decision of the Court in a proceeding becomes final, the Court shall 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 before the Court may, on its own motion, make such other disposition thereof as it considers advisable.

"§ 4069. Publication of decisions

Public information.

"(a) The Court of Veterans Appeals 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 Veterans Appeals 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.

"SUBCHAPTER III—MISCELLANEOUS PROVISIONS

"§ 4081. Employees

"The Court of Veterans Appeals may appoint such employees as may be necessary to execute the functions vested in the Court. Such appointments shall be made in accordance with the provisions of title 5 governing appointment in the competitive service, except that the Court may classify such positions based upon the classification of comparable positions in the judicial branch. The basic pay of such employees shall be fixed in accordance with subchapter III of chapter 53 of title 5.

"§ 4082. Budget and expenditures

"(a) The budget of the Court of Veterans Appeals 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 4085 of this title, all such expenditures shall be paid out of moneys appropriated for purposes of the Court.

"§ 4083. Disposition of fees

"Except for amounts received pursuant to section 4085 of this title, all fees received by the Court of Veterans Appeals shall be covered into the Treasury as miscellaneous receipts.

"§ 4084. Fee for transcript of record

"The Court of Veterans Appeals 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.

"§ 4085. Practice fee

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

"(b) Amounts received by the Court under subsection (a) of this section shall be available to the Court for the purposes of (1) employing independent counsel to pursue disciplinary matters, and (2) defraying administrative costs for the implementation of the standards of proficiency prescribed for practice before the Court.

"SUBCHAPTER IV—DECISIONS AND REVIEW

"§ 4091. Date when United States Court of Veterans Appeals decision becomes final

"(a) A decision of the United States Court of Veterans Appeals shall become final upon the expiration of the time allowed for filing, under section 4092 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 Veterans Appeals 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 Veterans Appeals 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 Veterans Appeals be affirmed or the appeal dismissed.

"(b)(1) If the Supreme Court directs that the decision of the Court of Veterans Appeals be modified or reversed, the decision of the Court of Veterans Appeals 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 Administrator 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 Veterans Appeals shall become final when so corrected.

"(2) If the decision of the Court of Veterans Appeals 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 Veterans Appeals 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 Veterans Appeals was rendered, unless within such 30 days either the Administrator

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 Veterans Appeals 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 Veterans Appeals 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 Veterans Appeals rendered upon such rehearing shall become final in the same manner as though no prior decision of the Court of Veterans Appeals 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.

"§ 4092. Review by United States Court of Appeals for the Federal Circuit

"(a) After a decision of the United States Court of Veterans Appeals is entered in a case, any party to the case may obtain a review of the decision with respect to the validity of any statute or regulation (other than a refusal to review the schedule of ratings for disabilities adopted under section 355 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 Veterans Appeals 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 Veterans Appeals, 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 Administrator 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 Veterans Appeals. 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 Veterans Appeals 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 Veterans Appeals.

"(c) The United States Courts 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 statute or 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 Veterans Appeals 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 Veterans Appeals is not in accordance with law, to modify or reverse the decision of the Court of Veterans Appeals or to remand the matter, as appropriate.

"(2) Rules for review of decisions of the Court of Veterans Appeals shall be those prescribed by the Supreme Court under section 2072 of title 28.".

(b) CLERICAL AMENDMENT.—The tables of chapters before part I and at the beginning of part V are each amended by inserting after the item relating to chapter 71 the following new item:

"72. Court of Veterans Appeals ..... 4051".

SEC. 302. INITIAL APPOINTMENT OF JUDGES TO COURT OF VETERANS APPEALS.

38 USC 4053 note.

(a) CHIEF JUDGE TO BE APPOINTED FIRST.—The President may not appoint an individual to be an associate judge of the United States Court of Veterans Appeals under section 4053(b) of title 38, United States Code, as added by section 301, until the chief judge of such Court has been appointed. The President shall, during the period beginning on January 21, 1989, and ending on April 1, 1989, nominate an individual for appointment to the position of chief judge of such Court.

President of U.S.

(b) JUDGES.—Subject to subsection (a), judges of the Court of Veterans Appeals may be appointed after February 1, 1989.

SEC. 303. FACILITY FOR PRINCIPAL OFFICE OF COURT.

38 USC 4055 note.

In the implementation of section 4055 of title 38, United States Code (as added by section 301), the principal office of the Court of Veterans Appeals shall initially be located, if practicable, in a facility existing on the date of the enactment of this Act that, as determined by the Administrative Office of the United States Courts, would facilitate maximum efficiency and economy in the operation of the Court. The Administrative Office of the United

States Courts shall take into consideration the convenience of the location of such facility to needed library resources, clerical and administrative support equipment and personnel, and other resources available for shared use by the Court and other courts or agencies of the Federal Government.

TITLE IV—EFFECTIVE DATES AND APPLICABILITY

38 USC 4051 note.

SEC. 401. EFFECTIVE DATES.

(a) GENERAL EFFECTIVE DATE.—Except as otherwise provided in this section, this division (and the amendments made by this Act) shall take effect on September 1, 1989.

(b) EFFECTIVE DATE FOR CERTAIN TRANSITION PROVISIONS.—The amendment made by section 201(a) shall take effect on February 1, 1989.

(c) DATE OF ENACTMENT.—Sections 201 (other than subsection (a)), 208, 209, 302, and 303, and the amendments made by those sections, shall take effect on the date of the enactment of this Act.

(d) BOARD OF VETERANS' APPEALS.—Sections 202 through 207 shall take effect on January 1, 1989.

(e) COMMENCEMENT OF OPERATION OF COURT OF VETERANS APPEALS.—Notwithstanding subsection (a), the United States Court of Veterans Appeals established pursuant to chapter 72 of title 38, United States Code (as added by section 301) shall not begin to operate until at least three judges have been appointed to the court.

38 USC 4051 note.

SEC. 402. APPLICABILITY TO CASES AFTER DATE OF ENACTMENT.

Chapter 72 of title 38, United States Code, as added by section 301, shall apply with respect to any case in which a notice of disagreement is filed under section 4005 of title 38, United States Code, on or after the date of the enactment of this Act.

38 USC 3404 note.

SEC. 403. APPLICABILITY TO ATTORNEYS FEES.

The amendment to section 3404(c) of title 38, United States Code, made by section 104(a) shall apply only with respect to services of agents and attorneys in cases in which a notice of disagreement is filed with the Veterans' Administration on or after the date of the enactment of this division.

Veterans' Benefits Improvement Act of 1988.

DIVISION B—VETERANS' BENEFITS IMPROVEMENT

SEC. 1001. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

38 USC 101 note.

(a) SHORT TITLE.—This division may be cited as the "Veterans' Benefits Improvement Act of 1988".

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

38 USC 101 note.

SEC. 1002. DEFINITION OF ADMINISTRATOR.

For purposes of this division, the term "Administrator" means the Administrator of Veterans' Affairs.

TITLE XI—COMPENSATION RATE INCREASES

SEC. 1101. DISABILITY COMPENSATION.

(a) IN GENERAL.—Section 314 is amended—

(1) by striking out "$71" in subsection (a) and inserting in lieu thereof "$73";

(2) by striking out "$133" in subsection (b) and inserting in lieu thereof "$138";

(3) by striking out "$202" in subsection (c) and inserting in lieu thereof "$210";

(4) by striking out "$289" in subsection (d) and inserting in lieu thereof "$300";

(5) by striking out "$410" in subsection (e) and inserting in lieu thereof "$426";

(6) by striking out "$516" in subsection (f) and inserting in lieu thereof "$537";

(7) by striking out "$652" in subsection (g) and inserting in lieu thereof "$678";

(8) by striking out "$754" in subsection (h) and inserting in lieu thereof "$784";

(9) by striking out "$849" in subsection (i) and inserting in lieu thereof "$883";

(10) by striking out "$1,411" in subsection (j) and inserting in lieu thereof "$1,468";

(11) by striking out "$1,754" and "$2,459" in subsection (k) and inserting in lieu thereof "$1,825" and "$2,559", respectively;

(12) by striking out "$1,754" in subsection (l) and inserting in lieu thereof "$1,825";

(13) by striking out "$1,933" in subsection (m) and inserting in lieu thereof "$2,012";

(14) by striking out "$2,199" in subsection (n) and inserting in lieu thereof "$2,289";

(15) by striking out "$2,459" each place it appears in subsections (o) and (p) and inserting in lieu thereof "$2,559";

(16) by striking out "$1,055" and "$1,572" in subsection (r) and inserting in lieu thereof "$1,098" and "$1,636", respectively; and

(17) by striking out "$1,579" in subsection (s) and inserting in lieu thereof "$1,643".

(b) SPECIAL RULE.—The Administrator may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code. 38 USC 314 note.

SEC. 1102. ADDITIONAL COMPENSATION FOR DEPENDENTS.

Section 315(1) is amended—

(1) by striking out "$85" in clause (A) and inserting in lieu thereof "$88";

(2) by striking out "$143" and "$45" in clause (B) and inserting in lieu thereof "$148" and "$46", respectively;

(3) by striking out "$59" and "$45" in clause (C) and inserting in lieu thereof "$61" and "$46", respectively;

(4) by striking out "$69" in clause (D) and inserting in lieu thereof "$71";

(5) by striking out "$155" in clause (E) and inserting in lieu thereof "$161"; and

(6) by striking out "$131" in clause (F) and inserting in lieu thereof "$136".

SEC. 1103. CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.

Section 362 is amended by striking out "$380" and inserting in lieu thereof "$395".

SEC. 1104. DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.

Section 411 is amended—

(1) by striking out the table in subsection (a) and inserting in lieu thereof the following:

"Pay grade	Monthly rate	Pay grade	Monthly rate
E-1	$539	W-4	$ 773
E-2	555	O-1	682
E-3	570	O-2	704
E-4	606	O-3	754
E-5	622	O-4	797
E-6	636	O-5	879
E-7	667	O-6	991
E-8	704	O-7	1,071
E-9	[1] 735	O-8	1,174
W-1	682	O-9	1,259
W-2	709	O-10	[2] 1,381
W-3	730		

"[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 402 of this title, the surviving spouse's rate shall be $794.

"[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 402 of this title, the surviving spouse's rate shall be $1,480.";

(2) by striking out "$60" in subsection (b) and inserting in lieu thereof "$62";

(3) by striking out "$155" in subsection (c) and inserting in lieu thereof "$161"; and

(4) by striking out "$76" in subsection (d) and inserting in lieu thereof "$79".

SEC. 1105. DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.

(a) DIC FOR ORPHAN CHILDREN.—Section 413(a) is amended—

(1) by striking out "$261" in clause (1) and inserting in lieu thereof "$271";

(2) by striking out "$376" in clause (2) and inserting in lieu thereof "$391";

(3) by striking out "$486" in clause (3) and inserting in lieu thereof "$505"; and

(4) by striking out "$486" and "$97" in clause (4) and inserting in lieu thereof "$505" and "$100", respectively.

(b) SUPPLEMENTAL DIC FOR DISABLED ADULT CHILDREN.—Section 414 is amended—

(1) by striking out "$155" in subsection (a) and inserting in lieu thereof "$161";

(2) by striking out "$261" in subsection (b) and inserting in lieu thereof "$271"; and

(3) by striking out "$133" in subsection (c) and inserting in lieu thereof "$138".

SEC. 1106. EFFECTIVE DATE FOR RATE INCREASES. 38 USC 314 note.

The amendments made by this title shall take effect on December 1, 1988.

TITLE XII—AGENT ORANGE AND RELATED PROVISIONS

Vietnam.

SEC. 1201. FUNDING FOR AGENT ORANGE BLOOD TESTING.

Funds appropriated to the Veterans' Administration in Public Law 98-181 for medical and prosthetic research and obligated through the Centers for Disease Control for a contract for the conduct of an epidemiological study relating to exposure of veterans to the herbicide known as Agent Orange shall, upon the cancellation of that contract, be available for obligation until September 30, 1989, in the amounts of—

(1) $3,000,000 for payment of expenses of the Department of the Air Force in connection with blood tests of individuals who, while serving in the Air Force, participated in the spraying of Agent Orange in Vietnam during the Vietnam era; and

(2) $1,000,000 for payment of expenses of a survey of scientific evidence, studies, and literature relating to health effects of possible exposure to toxic chemicals contained in herbicides used in the Republic of Vietnam during the Vietnam era, which survey shall be conducted by an independent scientific entity under contract to the Veterans Administration pursuant to a law enacted after the date of the enactment of this Act.

SEC. 1202. EXTENSION OF HEALTH-CARE ELIGIBILITY BASED ON AGENT ORANGE OR IONIZING RADIATION EXPOSURE.

Section 610(e)(3) is amended by striking out "September 30, 1989" and inserting in lieu thereof "December 31, 1990".

SEC. 1203. TREATMENT FOR NEEDS-BASED BENEFITS PURPOSES OF AMOUNTS RECEIVED UNDER AGENT ORANGE LITIGATION SETTLEMENT.

Any payment received by any person pursuant to the settlement in the case of In re Agent Orange Product Liability Litigation in the United States District Court for the Eastern District of New York (MDL No. 381) shall be treated for purposes of laws administered by the Veterans' Administration as reimbursement for prior unreimbursed medical expenses, and no such payment shall be countable as income for any such purpose.

SEC. 1204. OUTREACH SERVICES. 38 USC 241 note.

(a) ONGOING OUTREACH PROGRAM.—The Administrator shall conduct an active, continuous outreach program for furnishing to veterans of active military, naval, or air service who served in the Republic of Vietnam during the Vietnam era information relating to—

(1) the health risks (if any) resulting from exposure during that service to dioxin or any other toxic agent in herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era, as such information on health risks becomes known; and

(2) services and benefits available to such veterans with respect to such health risks.

(b) INFORMATION IN AGENT ORANGE REGISTRY.—The Administrator shall take reasonable actions to organize and update the information contained in the Veterans' Administration Agent Orange Registry in a manner that enables the Administrator promptly to notify a veteran of any increased health risk for such veteran resulting from exposure of such veteran to dioxin or any other toxic agent referred to in subsection (a) during Vietnam-era service in the Republic of Vietnam whenever the Administrator determines, on the basis of physical examination or other pertinent information, that such veteran is subject to such an increased health risk.

SEC. 1205. RANCH HAND STUDY.

(a) ADVISORY COMMITTEE PERSONNEL AND SUPPORT.—(1) After February 28, 1989, not less than one-third of the total number of members of the Ranch Hand Advisory Committee shall be individuals selected by the Secretary of Health and Human Services from among scientists who are recommended by veterans' organizations for membership on the committee and are determined by the Secretary to be qualified for service on the committee.

(2) A scientist shall be considered to be qualified for service on the Ranch Hand Advisory Committee if (A) the scientist has earned a doctor of medicine degree or a doctorate or other advanced degree from an institution of higher education in a field relevant to the responsibilities of the Advisory Committee and has written one or more articles relevant to those responsibilities which have appeared in scientific publications following a peer-review process, or (B) the scientist has qualifications equivalent to those set forth in clause (A).

(b) CHAIRMAN.—After February 28, 1989, the Chairman of the Ranch Hand Advisory Committee may be an officer or employee of the Federal Government (other than by reason of service as a member of the Advisory Committee) only if the Secretary of Health and Human Services determines, after affirmatively seeking to recruit a chairman who is not an officer or employee of the Federal Government, that there is no individual qualified and available to serve as Chairman who is not an officer or employee of the Federal Government. The Secretary shall report any such determination to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

Reports.

(c) SCHEDULE OF REPORTS.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Veterans' Affairs and the Committees on Armed Services of the Senate and the House of Representatives a schedule of reports to be prepared by the Secretary of the Air Force or the Secretary of Defense on the progress and findings of the Ranch Hand Study.

(2) Each report referred to in paragraph (1) shall include the following:

(A) A discussion of the progress made in the Ranch Hand Study during the period covered by the report.

(B) A summary of the scientific activities conducted during that period and the findings resulting from those activities, to be prepared by the scientists conducting those activities.

(3) Such a report need not contain (A) a discussion of progress discussed in any other report prepared by the Department of Defense (under this section or otherwise) regarding the Ranch Hand Study, or (B) a scientific summary included in any other such report, unless modification of such discussion or summary is appropriate for completeness, accuracy, and currency.

(4) The Secretary of Defense shall submit to the committees referred to in paragraph (1) a copy of each report referred to that paragraph.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "Ranch Hand Advisory Committee" means the committee known as the "Advisory Committee on Special Studies Relating to the Possible Long-term Health Effects of Phenoxy Herbicides and Contaminants" established by the Secretary of Defense to monitor the conduct of the Ranch Hand Study.

(2) The term "Ranch Hand Study" means the special study conducted by the Secretary of the Air Force relating to the possible long-term health effects of phenoxy herbicides and contaminants on Air Force personnel who participated in Operation Ranch Hand in the Republic of Vietnam during the Vietnam era.

TITLE XIII—REHABILITATION PROVISIONS

SEC. 1301. TEMPORARY PROGRAMS OF TRIAL WORK PERIODS AND VOCATIONAL-REHABILITATION EVALUATIONS.

(a) THREE-YEAR EXTENSION.—Subsection (a)(2)(B) of section 363 is amended by striking out "January 31, 1989" and inserting in lieu thereof "January 31, 1992".

(b) VOLUNTARY PARTICIPATION.—Subsection (c) of such section is amended—

(1) by striking out paragraphs (2), (3), and (4);

(2) by striking out "(1)(A) Except as provided in paragraph (4) of this subsection, in" and inserting in lieu thereof "(1) In"; and

(3) in paragraph (1)—

(A) by redesignating clauses (i), (ii), and (iii) as clauses (A), (B), and (C), respectively; and

(B) by striking out subparagraph (B) and inserting in lieu thereof the following:

"(2) After providing the notice required under paragraph (1) of this subsection, the Administrator shall offer the veteran the opportunity for an evaluation under section 1506(a) of this title.".

SEC. 1302. FUNDING OF EDUCATIONAL AND VOCATIONAL COUNSELING SERVICES.

(a) IN GENERAL.—Subchapter II of chapter 36 is amended by adding at the end the following new section:

"§ 1797. Funding of contract educational and vocational counseling

"(a) Subject to subsection (b) of this section, educational or vocational counseling services obtained by the Veterans' Administration by contract and provided to an individual applying for or receiving benefits under section 524 or chapter 30, 32, 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 Veterans' Administration for payment of readjustment benefits.

"(b) Payments under this section shall not exceed $5,000,000 in any fiscal year.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 36 is amended by inserting after the item relating to section 1796 the following new item:

"1797. Funding of contract educational and vocational counseling.".

SEC. 1303. VOCATIONAL TRAINING FOR PENSION RECIPIENTS.

(a) ELIGIBILITY.—Subsection (a)(2) of section 524 is amended by striking out "who is awarded pension during the program period" and inserting in lieu thereof "is awarded pension during the program period, or a veteran who was awarded pension before the beginning of the program period,".

(b) EXTENSION OF PROGRAM PERIOD.—Subsections (a)(4) and (b)(4)(A) of such section are each amended by striking out "January 31, 1989" and inserting in lieu thereof "January 31, 1992".

(c) HEALTH-CARE ELIGIBILITY.—Section 525(b)(2) is amended by striking out "January 31, 1989" and inserting in lieu thereof "January 31, 1992".

TITLE XIV—MISCELLANEOUS BENEFIT PROVISIONS

SEC. 1401. LIFE INSURANCE PROGRAMS.

(a) AUTHORITY FOR PAYMENT OF INTEREST ON INSURANCE SETTLEMENTS.—(1) Subchapter I of chapter 19 is amended by adding at the end the following new section:

"§ 728. Authority for payment of interest on settlements

"(a) Subject to subsection (b) of this section, the Administrator 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 Administrator may pay interest under subsection (a) of this section only if the Administrator 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 Administrator for dividends held on credit or deposit in policyholders' accounts under the insurance program involved.".

(2) Subchapter II of chapter 19 is amended by adding at the end the following new section:

"§ 763. Authority for payment of interest on settlements

"(a) Subject to subsection (b) of this section, the Administrator 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 Administrator may pay interest under subsection (a) of this section only if the Administrator 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 Administrator for dividends held on credit or deposit in policyholders' accounts.".

(3) The amendments made by this subsection shall take effect with respect to insurance policies maturing after the date of the enactment of this Act. 38 USC 728 note.

(b) AUTHORITY TO ADJUST DISCOUNT RATES FOR ADVANCE PAYMENT OF PREMIUMS.—(1) Subchapter I of chapter 19, as amended by subsection (a)(1), is further amended by adding at the end the following new section:

"§ 729. Authority to adjust premium discount rates

"(a) Notwithstanding sections 702, 723, and 725 of this title and subject to subsection (b) of this section, the Administrator 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 Administrator may not set such rate at a rate lower than the rate authorized for the program of insurance involved under section 702, 723, or 725 of this title.

"(2) The Administrator may make an adjustment under subsection (a) of this section only if the Administrator determines that the adjustment is administratively and actuarially sound for the program of insurance involved.".

(2) The amendment made by paragraph (1) shall take effect with respect to premiums paid after the date of the enactment of this Act. 38 USC 729 note.

(c) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 19 is amended—

(1) by inserting after the item relating to section 727 the following new items:

"728. Authority for payment of interest on settlements.
"729. Authority to adjust premium discount rates.";

and

(2) by inserting after the item relating to section 762 the following new item:

"763. Authority for payment of interest on settlements.".

SEC. 1402. INCOME EXCLUSION FOR CASUALTY LOSS REIMBURSEMENTS.

(a) PARENTS DIC.—Clause (I) of section 415(f)(1) is amended to read as follows:

"(I) reimbursements of any kind for any casualty loss (as defined in regulations which the Administrator shall prescribe), but the amount excluded under this clause may not exceed the greater of the fair market value or the reasonable replacement Regulations.

value of the property involved at the time immediately preceding the loss;".

(b) PENSION.—Clause (5) of section 503(a) is amended to read as follows:

Regulations.

"(5) reimbursements of any kind for any casualty loss (as defined in regulations which the Administrator 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;".

SEC. 1403. RECODIFICATION OF PROVISIONS RELATING TO CERTAIN BENEFITS FOR SURVIVORS OF CERTAIN VETERANS.

(a) IN GENERAL.—(1) Subchapter II of chapter 13 is amended by adding at the end the following new section:

"§ 418. Benefits for survivors of certain veterans rated totally disabled at time of death

"(a) The Administrator 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 that either—

"(1) was continuously rated totally disabling for a period of 10 or more years immediately preceding death; or

"(2) if so rated for a lesser period, was so rated continuously for a period of not less than five years from the date of such veteran's discharge or other release from active duty.

"(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 two years 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 411(a) of this title.".

(2) The table of sections at the beginning of chapter 13 is amended by inserting after the item relating to section 417 the following new item:

"418. Benefits for survivors of certain veterans rated totally disabled at time of death.".

(b) CONFORMING AMENDMENTS.—Section 410 is amended by striking out subsection (b) and redesignating subsection (c) as subsection (b).

SEC. 1404. SPECIFICATION IN BUDGET SUBMISSIONS OF FUNDS FOR CERTAIN VETERANS BENEFITS. 38 USC 210 note.

(a) BUDGET INFORMATION.—In the documentation providing detailed information on the budgets for the Veterans' Administration and the Department of Labor that the Administrator and the Secretary of Labor, respectively, submit to the Congress in conjunction with the President's budget submission for each fiscal year pursuant to section 1105 of title 31, United States Code, the Administrator and the Secretary shall identify, to the maximum extent feasible, the estimated amount in each of the appropriation requests for Veterans' Administration accounts and Department of Labor accounts, respectively, that is to be obligated for the furnishing of each of the following services or benefits only to, or with respect to, veterans who performed active military, naval, or air service in combat with the enemy or in a theatre of combat operations during a period of war or other hostilities:

(1) Employment services and other employment benefits under programs administered by the Secretary of Labor.

(2) Compensation under chapter 11 of title 38, United States Code.

(3) Dependency and Indemnity Compensation under chapter 13 of such title.

(4) Pension under chapter 15 of such title.

(5) Inpatient hospital care under chapter 17 of such title.

(6) Outpatient medical care under chapter 17 of such title.

(7) Nursing home care under chapter 17 of such title.

(8) Domiciliary care under chapter 17 of such title.

(9) Readjustment counseling services under section 612A of such title.

(10) Insurance under chapter 19 of such title.

(11) Specially adapted housing for disabled veterans under chapter 21 of such title.

(12) Burial benefits under chapter 23 of such title.

(13) Educational assistance under chapters 30, 32, and 34 of such title and chapter 106 of title 10, United States Code.

(14) Vocational rehabilitation services under chapter 31 of title 38, United States Code.

(15) Survivors' and dependents' educational assistance under chapter 35 of such title.

(16) Home loan benefits under chapter 37 of such title.

(17) Automobiles and adaptive equipment under chapter 39 of such title.

(b) REPORT ON FEASIBILITY.—If the Administrator or the Secretary of Labor determines that, with respect to any services or benefits referred to in subsection (a), it is not feasible to identify an estimated dollar amount to be obligated for furnishing such services or benefits only to veterans described in that subsection for any fiscal year, the Administrator and the Secretary shall, with respect to an appropriation request for such fiscal year relating to such services or benefits, report to the Committees on Veterans' Affairs of the Senate and the House of Representatives the reasons for the infeasi-

bility. The report shall be submitted contemporaneously with the budget submission for such fiscal year. The report shall specify (1) the information, systems, equipment, or personnel that would be required in order for it to be feasible for the Administrator or the Secretary to identify such amount, and (2) the actions to be taken in order to ensure that it will be feasible to make such an estimate in connection with the submission of the budget request for the next fiscal year.

TITLE XV—HEALTH CARE

SEC. 1501. READJUSTMENT COUNSELING FACILITIES.

(a) RELOCATIONS FOR CIRCUMSTANCES BEYOND CONTROL OF VETERANS' ADMINISTRATION.—Section 612A(g)(1) is amended—

(1) in subparagraph (A), by striking out "The" and inserting in lieu thereof "Except as provided in subparagraph (C) of this paragraph, the"; and

(2) by adding at the end the following new subparagraph:

"(C) The Administrator may relocate a center in existence on January 1, 1988, without regard to the national plan (including any revision to such plan) if such relocation is to a new location away from a Veterans' Administration general health-care facility when such relocation is necessitated by circumstances beyond the control of the Veterans' Administration. Such a relocation may be carried out only after the end of the 30-day period beginning on the date on which the Administrator notifies the Committees on Veterans' Affairs of the Senate and the House of Representatives of the proposed relocation, of the circumstances making it necessary, and of the reason for the selection of the new site for the center.".

38 USC 612A note.

(b) AUTHORIZATION FOR RELOCATION OF CERTAIN FACILITIES.—The requirements of section 612A(g)(1) of title 38, United States Code, shall not apply with respect to the relocation of 17 Veterans' Administration Readjustment Counseling Service Vet Centers from their locations away from general Veterans' Administration health-care facilities to other such locations, as described in letters dated July 25, 1988, from the Chief Medical Director of the Veterans' Administration to the Chairmen of the Committees on Veterans' Affairs of the Senate and the House of Representatives.

SEC. 1502. CONTRACTS AND GRANTS FOR MEDICAL CARE FOR VETERANS IN THE PHILIPPINES.

(a) ONE-YEAR EXTENSION.—Subsections (a) and (b)(1) of section 632 are each amended by striking out "September 30, 1989" and inserting in lieu thereof "September 30, 1990".

(b) INCREASE IN ANNUAL AUTHORIZATION.—Subsection (b)(1) of such section is further amended by striking out "$500,000" and inserting in lieu thereof "$1,000,000,".

(c) REPORTS.—(1) Not later than February 1, 1989, and not later than February 1, 1990, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing detailed information describing the use of funds provided to the Republic of the Philippines under section 632(b) of title 38, United States Code, during the preceding fiscal year.

(2) Not later than May 1, 1989, the Administrator shall submit to those committees a report with respect to the furnishing of health-

care services to United States veterans in the Republic of the Philippines. That report shall include the following:

(A) Information for each of fiscal years 1986, 1987, and 1988 (shown in total and separately for veterans being furnished care or treatment for service-connected disabilities and veterans being furnished care or treatment for non-service-connected disabilities) as to—

(i) the number of United States veterans furnished care at Veterans' Administration expense pursuant to sections 624 and 632(a) of title 38, United States Code;

(ii) the numbers of inpatient days of care and outpatient visits so furnished for United States veterans; and

(iii) the amounts of such care and visits so furnished at the Veterans Memorial Medical Center or at other facilities in the Republic of the Philippines.

(B) An analysis comparing (i) the cost-effectiveness of furnishing care and treatment to such veterans through the Veterans Memorial Medical Center or other facilities in the Republic of the Philippines, and (ii) the quality of care available at the Center and such other facilities.

(C) A projection of the needs for care and treatment of United States veterans in the Republic of the Philippines during each of fiscal years 1990, 1991, 1992, and 1993.

(D) A projection of the needs of the Veterans Memorial Medical Center for each of those fiscal years for the replacement and upgrading of equipment and the rehabilitation of the physical plant and facilities in order to maintain the provision of an appropriate quality of care for United States veterans at the Veterans Memorial Medical Center.

(E) The plans of the Veterans' Administration for meeting the needs for care and treatment of United States veterans residing in the Philippines.

(F) Any planned administrative action, and any recommendation for legislation, that the Administrator considers appropriate.

(3) The report under paragraph (2) shall include any comment the Secretary of State may wish to make on the contents of the report.

SEC. 1503. TECHNICAL CORRECTIONS.

(a) CORRECTIONS NECESSITATED BY AMENDMENTS MADE BY PUBLIC LAW 100-322.—(1) Section 603(a)(2)(B) is amended—

(A) by striking out "612(a)(4)" and inserting in lieu thereof "paragraph (2), (3), or (4) of section 612(a)"; and

(B) by striking out "612(a)(5)" and inserting in lieu thereof "612(a)(5)(B)".

(2) Section 4114(a) is amended—

(A) in paragraph (1)—

(i) in clause (A), by inserting "pharmacists, occupational therapists," after "vocational nurses,"; and

(ii) in clause (B), by inserting "pharmacists and occupational therapists," after "vocational nurses,"; and

(B) in paragraph (3)(D), by striking out "the category" and all that follows through "vocational nurses" and inserting in lieu thereof "a category of personnel described in such section 4104(3)".

(3) Subsections (c) and (d) of section 4323 are each amended by striking out "section 4322(f)" and inserting in lieu thereof "section 4322(e)".

(4) Section 4324 is amended—

(A) in subsection (a)(2)—

(i) by striking out "completion" and all that follows through "quarter" and inserting in lieu thereof "participation in the program";

(ii) by inserting "or is payable" after "paid"; and

(iii) by inserting before the period at the end the following: ", 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"; and

(B) in subsection (b)—

(i) by striking out paragraph (1); and

(ii) by striking out "(2)".

38 USC 603 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a)(1) shall apply with respect to the furnishing of medical services by contract to veterans who apply to the Veterans' Administration for medical services after June 30, 1988.

38 USC 603 note.

(c) RATIFICATION.—Any action of the Administrator in contracting with facilities other than Veterans' Administration facilities for the furnishing of medical services (as defined in section 601(6) of title 38, United States Code), for the purpose described in section 612(a)(5)(B) of such title, to an individual described in paragraph (2) or (3) of section 612 of title 38, United States Code, who applied to the Veterans' Administration for such services during the period beginning on July 1, 1988, and ending on the date of enactment of this Act is hereby ratified.

SEC. 1504. LAND TRANSFER, RUTHERFORD, TENNESSEE.

(a) AUTHORITY.—Subject to subsections (b) and (c) and any conditions required by the Administrator under subsection (d), the Administrator shall transfer all right, title, and interest of the United States in and to a tract of land consisting of (not to exceed) seven acres, together with improvements thereon, in the Southeast corner of the Alvin C. York Veterans' Administration Medical Center in Rutherford County, Tennessee. Such transfer shall be made without consideration. Such transfer shall be made without regard to section 5022(a)(2)(A) of title 38, United States Code.

(b) PERMITTED USE.—The transfer under subsection (a) may be made only if it is subject to the condition that the property transferred be used by the State of Tennessee for a nursing care facility in accordance with the conditions and limitations applicable to State home facilities constructed with assistance under subchapter III of chapter 81 of title 38, United States Code, and that if such property is used at any time for any other purpose, all right, title, and interest in the property shall revert to the United States.

(c) AVAILABILITY OF RESOURCES.—The transfer under subsection (a) may be made only if the Administrator has determined that the State of Tennessee 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 title 38, United States Code and section 641 of such title) necessary to construct and operate a State home nursing facility.

(d) ADDITIONAL CONDITIONS.—The transfer under subsection (a) shall be made under such additional terms and conditions as the Administrator considers appropriate to protect the interests of the United States.

SEC. 1505. TRANSFERS OF EXCESS PROPERTIES FOR STATE HOME FACILITY USES.

Section 5022(a) is amended—

(1) in paragraph (2)(A), by striking out "The" and inserting in lieu thereof "Except as provided in paragraph (3) of this subsection, the"; and

(2) by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (B) of this paragraph, the Administrator 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 home nursing-home or domiciliary facility real property described in subparagraph (E) of the paragraph which the Administrator determines to be excess to the needs of the Veterans' Administration.

"(B) A transfer of real property may not be made under this paragraph unless—

"(i) the Administrator 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 641 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 Administrator 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 Reports.

"(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 Administrator 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 Veterans' Administration.".

SEC. 1506. CONVERSION OF NON-PHYSICIAN MEDICAL CENTER DIRECTORS TO SENIOR EXECUTIVE SERVICE.

(a) CONVERSION.—Section 4101(e) is amended by striking out "and persons appointed under section 4103(a)(8) of this title".

(b) CONFORMING AMENDMENTS.—(1) Section 4103(a) is amended—

(A) by striking out paragraph (8); and

(B) by redesignating paragraph (9) as paragraph (8).

(2) Section 4107(c) is amended to read as follows:

"(c) Notwithstanding the provisions of section 4101(e) of this title, any person appointed under section 4103 of this title who is not eligible for special pay under section 4118 of this title shall be deemed to be a career appointee for the purposes of sections 4507 and 5384 of title 5.".

38 USC 4103 note.

(c) APPLICABILITY TO CURRENT DIRECTORS.—(1) Except as provided in paragraph (2), each person who, on the day before the date of enactment of this Act, holds an appointment as a director under section 4103(a)(8) of title 38, United States Code, shall, on such date of enactment, become a career appointee in the Senior Executive Service established pursuant to chapter 31 of title 5, United States Code. The preceding sentence applies without regard to the provisions of subsections (b), (c), and (e) of section 3393 of title 5, United States Code, or any other provision of law. The provisions of section 3393(d) of such title shall not apply to a director who becomes a career appointee pursuant to this paragraph.

(2) Any person who, on the day before the date of the enactment of this Act, holds an appointment as such a director may, not later than 60 days after such enactment date, elect to retain the terms and conditions of that appointment for as long as that person continues to serve as such a director.

38 USC 4103 note.

(d) PRESERVATION OF PAY.—This section and the amendments made by this section shall not result in a reduction in the rate of pay payable to any person.

SEC. 1507. PROCUREMENT THROUGH LOCAL CONTRACTS.

38 USC 5025 note.

(a) EFFECTIVE DATES OF PROVISIONS ENACTED IN PUBLIC LAW 100-322.—Section 403(b)(1) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 545) is amended by striking out "Subsection (b)(1)" and inserting in lieu thereof "Subsections (a), (b)(1), and (b)(2)".

(b) TRANSITION TO CERTAIN REPORT REQUIREMENTS.—Section 5025(d) is amended—

(1) in paragraph (1), by inserting "(beginning in 1992)" after "of each year";

(2) in paragraph (2), by inserting "(beginning in 1993)" after "of each year"; and

(3) by adding at the end the following new paragraph:

"(3) Not later than February 1 of each year from 1989 through 1992, the Administrator 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. The first such report shall contain information showing the percentage (measured by cost) of the total of all health-care items procured by the Veterans' Administration during fiscal year 1988 that were procured through local contracts. The other reports under this paragraph shall contain information showing the percentage (measured by cost) of the total of all health-care items procured by the Veterans' Administration, and by each Veterans' Administration medical center, during the fiscal year covered by the report that were purchased through local contracts and, in the case of each medical center at which the percentage was greater than 20 percent, an explanation of the reasons why that occurred.".

(c) DEFINITION OF HEALTH-CARE ITEM.—Section 5025(e)(1) is amended—

(1) by striking out "65, 66, or 73" and inserting in lieu thereof "65 or 66"; and

(2) by inserting after the first sentence the following new sentence: "Effective December 1, 1992, such term also includes any item listed in, or (as determined by the Administrator) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73.".

SEC. 1508. STANDARDIZATION OF COVERAGE OF MEDICAL AND PHARMACEUTICAL ITEMS.

Section 402 of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 543) is amended in the first sentence by striking out "medical and pharmaceutical items" and inserting in lieu thereof "health-care items (as defined in section 5025(e)(1) of title 38, United States Code)". 38 USC 5025 note.

SEC. 1509. TECHNICAL CLARIFICATION OF PERIOD OF CLINICAL EVALUATION OF ALCOHOL AND DRUG ABUSE PROGRAM.

Section 620A(f)(1) (as amended by section 502 of the Veterans' Benefits and Programs Improvement Act of 1988) is amended by striking out "before October 1, 1997" and inserting in lieu thereof "during the period beginning on December 1, 1988, and ending on October 1, 1997".

TITLE XVI—CEMETERY AND MEMORIAL PROVISIONS

SEC. 1601. EXTENSION OF AUTHORIZATION OF APPROPRIATIONS FOR STATE CEMETERY GRANT PROGRAM.

Paragraph (2) of section 1008(a) is amended by striking out "four" the second place it appears and inserting in lieu thereof "nine".

SEC. 1602. PACIFIC WAR MEMORIAL AND OTHER HISTORICAL AND MEMORIAL SITES ON CORREGIDOR IN THE REPUBLIC OF THE PHILIPPINES. 36 USC 125b.

(a) OPERATION BY ABMC.—Subject to subsection (b) and to the agreement referred to in such subsection, the American Battle Monuments Commission shall restore, operate, and maintain the Pacific War Memorial and other historical and memorial sites on Corregidor in the Republic of the Philippines.

(b) CONDITION.—The Commission may carry out this section only after an agreement has been entered into between the Republic of the Philippines and the United States with respect to the restoration, operation, and maintenance of the Memorial and other historical and memorial sites referred to in subsection (a).

(c) PERSONNEL.—The Commission may employ personnel as may be necessary to carry out this section.

(d) USE OF OTHER AGENCIES.—Departments, agencies, and other instrumentalities of the United States are authorized to assist the Commission, on a reimbursable basis, in carrying out this section.

(e) FUNDING.—The American Battle Monuments Commission shall carry out this section with private funds except to the extent funds are appropriated pursuant to subsection (h).

(f) AUTHORITY TO SOLICIT FUNDS.—For the purpose of carrying out this section, the Commission may solicit and accept private contributions and shall deposit such contributions in the fund established by subsection (g).

(g) FUND.—(1) There is hereby established in the Treasury a fund which shall be available to the American Battle Monuments Commission only for carrying out this section. The fund shall consist of—

(A) amounts deposited into, and interest and proceeds credited to, the fund under paragraph (2); and

(B) obligations obtained under paragraph (3).

(2) The Chairman of the Commission shall deposit into the fund the amounts that are accepted under subsection (f). The Secretary of the Treasury shall credit to the fund the interest on, and the proceeds from sale or redemption of, obligations held in the fund.

(3) The Secretary of the Treasury shall invest any portion of the fund that, as determined by the Chairman of the Commission, is not required to meet current expenses. Each investment shall be made in an interest-bearing obligation of the United States or an obligation guaranteed as to principal and interest by the United States that, as determined by the Chairman of the Commission, has a maturity suitable for the fund.

(4) Amounts in the fund that are in excess of the costs of carrying out this section, as determined by the Chairman of the Commission, shall be deposited in the Treasury as miscellaneous receipts to reimburse the United States for funds appropriated pursuant to subsection (h).

(h) AUTHORIZATION OF FUNDING.—There are hereby authorized to be appropriated—

(1) $6,000,000 for site preparation, design, planning, construction, and associated administrative costs for the restoration of the Memorial and other historical and memorial sites referred to in subsection (a); and

(2) such sums as may be necessary for the operation and maintenance of such Memorial and other historical and memorial sites.

Approved November 18, 1988.

LEGISLATIVE HISTORY—S. 11 (H.R. 5288):

HOUSE REPORTS: No. 100-963, Pt. 1, accompanying H.R. 5288 (Comm. on Veterans' Affairs).

SENATE REPORTS: No. 100-418 (Comm. on Veterans' Affairs).

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 11, considered and passed Senate.

Oct. 3, H.R. 5288 considered and passed House; proceedings vacated and S. 11, amended, passed in lieu.

Oct, 18, Senate concurred in certain House amendment with an amendment and disagreed to another.

Oct, 19, House receded and concurred in Senate amendment with amendments.

Oct. 20, Senate concurred in House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988): Nov. 18, Presidential statement.