Public Law 107–330
107th Congress

An Act

Dec. 6, 2002
[S. 2237]

To amend title 38, United States Code, to improve authorities of the Department of Veterans Affairs relating to veterans' compensation, dependency and indemnity compensation, and pension benefits, education benefits, housing benefits, memorial affairs benefits, life insurance benefits, and certain other benefits for veterans, to improve the administration of benefits for veterans, to make improvements in procedures relating to judicial review of veterans' claims for benefits, and for other purposes.

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

Veterans Benefits Act of 2002.

38 USC 101 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans Benefits Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

Sec. 101. Retention of CHAMPVA for surviving spouses remarrying after age 55.
Sec. 102. Clarification of entitlement to special monthly compensation for women veterans who have service-connected loss of breast tissue.
Sec. 103. Specification of hearing loss required for compensation for hearing loss in paired organs.
Sec. 104. Assessment of acoustic trauma associated with military service from World War II to present.

TITLE II—MEMORIAL AFFAIRS

Sec. 201. Prohibition on certain additional benefits for persons committing capital crimes.
Sec. 202. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.
Sec. 203. Application of Department of Veterans Affairs benefit for Government markers for marked graves of veterans at private cemeteries to veterans dying on or after September 11, 2001.
Sec. 204. Authorization of placement of a memorial in Arlington National Cemetery honoring World War II veterans who fought in the Battle of the Bulge.

TITLE III—OTHER MATTERS

Sec. 301. Increase in aggregate annual amount available for State approving agencies for administrative expenses for fiscal years 2003 through 2007.
Sec. 302. Authority for Veterans' Mortgage Life Insurance to be carried beyond age 70.
Sec. 303. Authority to guarantee hybrid adjustable rate mortgages.
Sec. 304. Increase in amount payable as Medal of Honor special pension.
Sec. 305. Extension of protections under the Soldiers' and Sailors' Civil Relief Act of 1940 to National Guard members called to active duty under title 32, United States Code.
Sec. 306. Extension of income verification authority.
Sec. 307. Fee for loan assumption.
Sec. 308. Technical and clarifying amendments.

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Sec. 309. Codification of cost-of-living adjustment provided in Public Law 107–247.

TITLE IV—JUDICIAL MATTERS

Sec. 401. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.
Sec. 402. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.
Sec. 403. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

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

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

SEC. 101. RETENTION OF CHAMPVA FOR SURVIVING SPOUSES REMARRYING AFTER AGE 55.

(a) EXCEPTION TO TERMINATION OF BENEFITS UPON REMARRIAGE.—Paragraph (2) of section 103(d) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following:

"(B) The remarriage after age 55 of the surviving spouse of a veteran shall not bar the furnishing of benefits under section 1781 of this title to such person as the surviving spouse of the veteran.".

(b) APPLICATION FOR BENEFITS.—In the case of an individual who but for having remarried would be eligible for medical care under section 1781 of title 38, United States Code, and whose remarriage was before the date of the enactment of this Act and after the individual had attained age 55, the individual shall be eligible for such medical care by reason of the amendments made by subsection (a) only if an application for such medical care is received by the Secretary of Veterans Affairs during the 1-year period ending on the effective date specified in subsection (c). 38 USC 103 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 60 days after the date of the enactment of this Act. 38 USC 103 note.

SEC. 102. CLARIFICATION OF ENTITLEMENT TO SPECIAL MONTHLY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED LOSS OF BREAST TISSUE.

Section 1114(k) is amended by striking "one or both breasts (including loss by mastectomy)" and inserting "25 percent or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy) or has received radiation treatment of breast tissue".

SEC. 103. SPECIFICATION OF HEARING LOSS REQUIRED FOR COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

Section 1160(a)(3) is amended—

(1) by striking "total deafness" the first place it appears and inserting "deafness compensable to a degree of 10 percent or more"; and

(2) by striking "total deafness" the second place it appears and inserting "deafness".

Deadlines.

SEC. 104. ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH MILITARY SERVICE FROM WORLD WAR II TO PRESENT.

Contracts.

(a) ASSESSMENT BY NATIONAL ACADEMY OF SCIENCES.—The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences for the Academy to perform the activities specified in this section. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(b) DUTIES UNDER AGREEMENT.—Under the agreement under subsection (a), the National Academy of Sciences shall do the following:

(1) Review and assess available data on hearing loss that could reasonably be expected to have been incurred by members of the Armed Forces during the period from the beginning of World War II to the date of the enactment of this Act.

(2) Identify the different sources of acoustic trauma that members of the Armed Forces could reasonably be expected to have been exposed to during the period from the beginning of World War II to the date of the enactment of this Act

(3) Determine how much exposure to each source of acoustic trauma identified under paragraph (2) is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level.

(4) Determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(A) immediate or delayed onset;

(B) cumulative;

(C) progressive; or

(D) any combination of subparagraph (A), (B), and (C).

(5) Identify age, occupational history, and other factors which contribute to an individual's noise-induced hearing loss.

(6) Identify—

(A) the period of time at which audiometric measures used by the Armed Forces became adequate to evaluate individual hearing threshold shift; and

(B) the period of time at which hearing conservation measures to prevent individual hearing threshold shift were available to members of the Armed Forces, shown separately for each of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and, for each such service, shown separately for members exposed to different sources of acoustic trauma identified under paragraph (2).

(c) REPORT.—Not later than 180 days after the date of the entry into the agreement referred to in subsection (a), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subsection (b).

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted

to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of decisions issued by the Secretary in each of fiscal years 2000, 2001, and 2002 on claims for disability compensation for hearing loss, tinnitus, or both.

(B) Of the decisions referred to in subparagraph (A)—

(i) the number in which compensation was awarded, and the number in which compensation was denied, set forth by fiscal year; and

(ii) the total amount of disability compensation paid on such claims during each such fiscal year.

(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department of Veterans Affairs health care facilities during fiscal years specified in subparagraph (A) for hearing-related disorders, set forth by the number of veterans per year.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

TITLE II—MEMORIAL AFFAIRS

SEC. 201. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.

(a) PRESIDENTIAL MEMORIAL CERTIFICATE.—Section 112 is amended by adding at the end the following new subsection:

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

(b) FLAG TO DRAPE CASKET.—Section 2301 is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

"(g) A flag may not be furnished under this section in the case of a person described in section 2411(b) of this title.".

(c) HEADSTONE OR MARKER FOR GRAVE.—Section 2306 is amended by adding at the end the following new subsection:

"(g)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

"(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

"(3) A marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

Applicability.
38 USC 112 note.

SEC. 202. PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES.

Section 2411(a)(2) is amended—

(1) by striking "The prohibition" and inserting "In the case of a person described in subsection (b)(1) or (b)(2), the prohibition"; and

(2) by striking "or finding under subsection (b)" and inserting "referred to in subsection (b)(1) or (b)(2), as the case may be,".

SEC. 203. APPLICATION OF DEPARTMENT OF VETERANS AFFAIRS BENEFIT FOR GOVERNMENT MARKERS FOR MARKED GRAVES OF VETERANS AT PRIVATE CEMETERIES TO VETERANS DYING ON OR AFTER SEPTEMBER 11, 2001.

(a) IN GENERAL.—Subsection (d) of section 502 of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107–103; 115 Stat. 995; 38 U.S.C. 2306 note) is amended by striking "the date of the enactment of this Act" and inserting "September 11, 2001".

38 USC 2306 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of such section 502.

38 USC 2409 note.

SEC. 204. AUTHORIZATION OF PLACEMENT OF A MEMORIAL IN ARLINGTON NATIONAL CEMETERY HONORING WORLD WAR II VETERANS WHO FOUGHT IN THE BATTLE OF THE BULGE.

The Secretary of the Army is authorized to place in Arlington National Cemetery a memorial marker honoring veterans who fought in the battle in the European theater of operations during World War II known as the Battle of the Bulge.

TITLE III—OTHER MATTERS

SEC. 301. INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES FOR FISCAL YEARS 2003 THROUGH 2007.

The first sentence of section 3674(a)(4) is amended by inserting before the period at the end the following: ", for fiscal year 2003, $14,000,000, for fiscal year 2004, $18,000,000, for fiscal year 2005, $18,000,000, for fiscal year 2006, $19,000,000, and for fiscal year 2007, $19,000,000".

SEC. 302. AUTHORITY FOR VETERANS' MORTGAGE LIFE INSURANCE TO BE CARRIED BEYOND AGE 70.

Section 2106 is amended—

(1) in subsection (a), by inserting "age 69 or younger" after "any eligible veteran"; and

(2) in subsection (i), by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

SEC. 303. AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.

(a) TWO-YEAR DEMONSTRATION PROJECT TO GUARANTEE CERTAIN ADJUSTABLE RATE MORTGAGES.—Chapter 37 is amended by inserting after section 3707 the following new section:

"§ 3707A. Hybrid adjustable rate mortgages

"(a) The Secretary shall carry out a demonstration project under this section during fiscal years 2004 and 2005 for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the National Housing Act in accordance with the provisions of this section with respect to hybrid adjustable rate mortgages described in subsection (b).

"(b) Adjustable rate mortgages that are guaranteed under this section shall be adjustable rate mortgages (commonly referred to as 'hybrid adjustable rate mortgages') having interest rate adjustment provisions that—

"(1) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

"(2) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (1); and

"(3) comply in such initial adjustment, and any subsequent adjustment, with subsection (c).

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

"(1) correspond to a specified national interest rate index approved by the Secretary, information on which is readily accessible to mortgagors from generally available published sources;

"(2) be made by adjusting the monthly payment on an annual basis;

"(3) be limited, with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and

"(4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

"(d) The Secretary shall promulgate underwriting standards for loans guaranteed under this section, taking into account— Standards.

"(1) the status of the interest rate index referred to in subsection (c)(1) and available at the time an underwriting decision is made, regardless of the actual initial rate offered by the lender;

"(2) the maximum and likely amounts of increases in mortgage payments that the loans would require;

"(3) the underwriting standards applicable to adjustable rate mortgages insured under title II of the National Housing Act; and

"(4) such other factors as the Secretary finds appropriate.

"(e) The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage,

including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage term.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 37 is amended by inserting after the item relating to section 3707 the following new item:

"3707A. Hybrid adjustable rate mortgages.".

SEC. 304. INCREASE IN AMOUNT PAYABLE AS MEDAL OF HONOR SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking "$600" and inserting "$1,000, as adjusted from time to time under subsection (e)".

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following new subsection:

Effective date.

"(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).".

(c) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—That section is further amended by adding after subsection (e), as added by subsection (b) of this section, the following new subsection:

"(f)(1) The Secretary shall pay, in a lump sum, to each person who is in receipt of special pension payable under this section an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.

"(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension for such month under laws for eligibility for special pension (with the exception of the eligibility law requiring a person to have been awarded a Medal of Honor) in effect at the beginning of such month.".

38 USC 1562 note.

(d) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on September 1, 2003. No payment may be made pursuant to subsection (f) of section 1562 of title 38, United States Code, as added by subsection (c) of this section, before October 1, 2003.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (b) of this section, in 2003.

SEC. 305. EXTENSION OF PROTECTIONS UNDER THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO NATIONAL GUARD MEMBERS CALLED TO ACTIVE DUTY UNDER TITLE 32, UNITED STATES CODE.

Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking "and all" and inserting "all"; and

(B) by inserting before the period the following: ", and all members of the National Guard on service described in the following sentence"; and

(2) in the second sentence, by inserting before the period the following: ", and, in the case of a member of the National Guard, shall include service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds".

SEC. 306. EXTENSION OF INCOME VERIFICATION AUTHORITY.

Section 6103(l)(7)(D) of the Internal Revenue Code of 1986 is amended by striking "September 30, 2003" in the second sentence after clause (ix) and inserting "September 30, 2008". 26 USC 6103.

SEC. 307. FEE FOR LOAN ASSUMPTION.

38 USC 3729 note. Applicability.

(a) IN GENERAL.—For the period described in subsection (b), the Secretary of Veterans Affairs shall apply section 3729(b)(2)(I) of title 38, United States Code, by substituting "1.00" for "0.50" each place it appears.

(b) PERIOD DESCRIBED.—The period referred to in subsection (a) is the period that begins on the date that is 7 days after the date of the enactment of this Act and ends on September 30, 2003.

SEC. 308. TECHNICAL AND CLARIFYING AMENDMENTS.

(a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM ERA VETERANS FOR EDUCATION BENEFITS.—Section 3011(a)(1)(C)(ii) is amended by striking "on or".

(b) ACCELERATED PAYMENT OF ASSISTANCE FOR EDUCATION LEADING TO EMPLOYMENT IN HIGH TECHNOLOGY INDUSTRY.—(1) Subsection (b)(1) of section 3014A is amended by striking "employment in a high technology industry" and inserting "employment in a high technology occupation in a high technology industry".

(2)(A) The heading for section 3014A is amended to read as follows:

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

(B) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

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

(c) SOURCE OF FUNDS FOR INCREASED USAGE OF MONTGOMERY GI BILL ENTITLEMENT UNDER ENTITLEMENT TRANSFER AUTHORITY.—(1) Section 3035(b) is amended—

(A) in paragraph (1), by striking "paragraphs (2) and (3) of this subsection," and inserting "paragraphs (2), (3), and (4),"; and

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

"(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.".

Effective date. 38 USC 3035 note.

(2) The amendments made by this subsection shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107), to which such amendments relate.

(d) LICENSING OR CERTIFICATION TESTS.—Section 3689(c)(1)(B) is amended by striking "the test" and inserting "such test, or a test to certify or license in a similar or related occupation,".

(e) PERIOD OF ELIGIBILITY FOR SURVIVORS' AND DEPENDENTS' ASSISTANCE EDUCATION BENEFITS.—(1) Section 3512(a) is amended—

(A) in paragraph (3)—

(i) by striking "paragraph (4)" in the matter preceding subparagraph (A) and inserting "paragraph (4) or (5)"; and

(ii) by striking "subsection (d)" in subparagraph (C)(i) and inserting "subsection (d), or any date between the two dates described in subsection (d)";

(B) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

(C) by inserting after paragraph (3) the following new paragraph (4):

"(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person's entitlement shall be the date of the Secretary's decision that the parent has a service-connected total disability permanent in nature, or that the parent's death was service-connected, whichever is applicable;"; and

(D) in paragraph (6), as so redesignated, by striking "paragraph (4)" and inserting "paragraph (5)".

Effective date. 38 USC 3512 note.

(2) The amendments made by this subsection shall take effect November 1, 2000.

(f) LOAN FEES.—(1) Section 3703(e)(2)(A) is amended by striking "3729(b)" and inserting "3729(b)(2)(I)".

Effective date. 38 USC 3703 note.

(2) The amendment made by paragraph (1) shall take effect as if included in the enactment of section 402 of the Veterans Benefits and Health Care Improvement Act of 2000 (Public Law 106–419; 114 Stat. 1861).

(g) ADDITIONAL MISCELLANEOUS TECHNICAL AMENDMENTS TO TITLE 38, UNITED STATES CODE.—(1)(A) The tables of chapters preceding part I and at the beginning of part IV are each amended by striking "5101" in the item relating to chapter 51 and inserting "5100".

(B) The table of parts preceding part I is amended by striking "5101" in the item relating to part IV and inserting "5100".

(2) Section 107(d)(2) is amended by striking "the date of the enactment of this subsection" and inserting "November 1, 2000,".

(3) Section 1701(10)(A) is amended by striking "the date of the enactment of the Veterans' Millennium Health Care and Benefits Act" and inserting "November 30, 1999,".

(4) Section 1705(c)(1) is amended by striking "Effective on October 1, 1998, the Secretary" and inserting "The Secretary".

(5) Section 1707(a) is amended by inserting "(42 U.S.C. 14401 et seq.)" before the period at the end.

(6) Section 1710(e)(1)(D) is amended by striking "the date of the enactment of this subparagraph" and inserting "November 11, 1998".

(7) Section 1729B(b) is amended by striking "the date of the enactment of this section" and inserting "November 30, 1999,".

(8) Section 1781(d) is amended—

(A) in paragraph (1)(B)(i), by striking "as of the date" and all that follows through "of 2001" and inserting "as of June 5, 2001"; and

(B) in paragraph (4), by striking "paragraph" and inserting "subsection".

(9) Section 3018C(e)(2)(B) is amended by striking the comma after "April".

(10) Section 3031(a)(3) is amended by striking "the date of the enactment of this paragraph" and inserting "December 27, 2001".

(11) Section 3485(a)(4) is amended in subparagraphs (A), (C), and (F), by striking "the five-year period beginning on the date of the enactment of the Veterans Education and Benefits Expansion Act of 2001" and inserting "the period preceding December 27, 2006".

(12) Section 3734(b)(2) is amended—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively.

(13) Section 7315(a) is amended by inserting "Veterans Health" in the first sentence after "in the".

(h) PUBLIC LAW 107–103.—Effective as of December 27, 2001, and as if included therein as originally enacted, section 103(c) of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107–103; 115 Stat. 979) is amended by inserting closing quotation marks at the end of the text inserted by the amendment made by paragraph (2). Effective date. 38 USC 3103.

(i) PUBLIC LAW 102–86.—Section 403(e) of the Veterans' Benefits Programs Improvement Act of 1991 (Public Law 102–86; 105 Stat. 424) is amended by striking "section 321" and all that follows through "and 484)" and inserting "subchapter II of chapter 5 of title 40, United States Code, sections 541 through 555 and 1302 of title 40, United States Code". 38 USC 2400 note.

SEC. 309. CODIFICATION OF COST-OF-LIVING ADJUSTMENT PROVIDED IN PUBLIC LAW 107–247.

(a) VETERANS' DISABILITY COMPENSATION.—Section 1114 is amended—

(1) by striking "$103" in subsection (a) and inserting "$104";

(2) by striking "$199" in subsection (b) and inserting "$201";

(3) by striking "$306" in subsection (c) and inserting "$310";

(4) by striking "$439" in subsection (d) and inserting "$445";

(5) by striking "$625" in subsection (e) and inserting "$633";

(6) by striking "$790" in subsection (f) and inserting "$801";

(7) by striking "$995" in subsection (g) and inserting "$1,008";

(8) by striking "$1,155" in subsection (h) and inserting "$1,171";

(9) by striking "$1,299" in subsection (i) and inserting "$1,317";

(10) by striking "$2,163" in subsection (j) and inserting "$2,193";

(11) in subsection (k)—

(A) by striking "$80" both places it appears and inserting "$81"; and

(B) by striking "$2,691" and "$3,775" and inserting "$2,728" and "$3,827", respectively;

(12) by striking "$2,691" in subsection (l) and inserting "$2,728";

(13) by striking "$2,969" in subsection (m) and inserting "$3,010";

(14) by striking "$3,378" in subsection (n) and inserting "$3,425";

(15) by striking "$3,775" each place it appears in subsections (o) and (p) and inserting "$3,827";

(16) by striking "$1,621" and "$2,413" in subsection (r) and inserting "$1,643" and "$2,446", respectively; and

(17) by striking "$2,422" in subsection (s) and inserting "$2,455".

(b) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Section 1115(1) is amended—

(1) by striking "$124" in subparagraph (A) and inserting "$125";

(2) by striking "$213" in subparagraph (B) and inserting "$215";

(3) by striking "$84" in subparagraph (C) and inserting "$85";

(4) by striking "$100" in subparagraph (D) and inserting "$101";

(5) by striking "$234" in subparagraph (E) and inserting "$237"; and

(6) by striking "$196" in subparagraph (F) and inserting "$198".

(c) CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.—Section 1162 is amended by striking "$580" and inserting "$588".

(d) DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.—(1) Section 1311(a) is amended—

(A) by striking "$935" in paragraph (1) and inserting "$948"; and

(B) by striking "$202" in paragraph (2) and inserting "$204".

(2) The table in section 1311(a)(3) is amended to read as follows:

"Pay grade	Monthly rate	Pay grade	Monthly rate
E–1	$948	W–4	$1,134
E–2	948	O–1	1,001
E–3	948	O–2	1,035
E–4	948	O–3	1,107
E–5	948	O–4	1,171
E–6	948	O–5	1,289
E–7	980	O–6	1,453
E–8	1,035	O–7	1,570
E–9	[1]1,080	O–8	1,722
W–1	1,001	O–9	1,843
W–2	1,042	O–10	[2]2,021
W–3	1,072		

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $1,165.

"[2] If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $2,168.".

(3) Section 1311(b) is amended by striking "$234" and inserting "$237".

(4) Section 1311(c) is amended by striking "$234" and inserting "$237".

(5) Section 1311(d) is amended by striking "$112" and inserting "$113".

(e) DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.—(1) Section 1313(a) is amended—

(A) by striking "$397" in paragraph (1) and inserting "$402";

(B) by striking "$571" in paragraph (2) and inserting "$578";

(C) by striking "$742" in paragraph (3) and inserting "$752"; and

(D) by striking "$742" and "$143" in paragraph (4) and inserting "$752" and "$145", respectively.

(2) Section 1314 is amended—

(A) by striking "$234" in subsection (a) and inserting "$237";

(B) by striking "$397" in subsection (b) and inserting "$402"; and

(C) by striking "$199" in subsection (c) and inserting "$201".

TITLE IV—JUDICIAL MATTERS

SEC. 401. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.

38 USC 7261.

(a) STANDARD FOR REVERSAL.—Paragraph (4) of subsection (a) of section 7261 is amended—

(1) by inserting "adverse to the claimant" after "material fact"; and

(2) by inserting "or reverse" after "and set aside".

(b) REQUIREMENTS FOR REVIEW.—Subsection (b) of that section is amended to read as follows:

"(b) In making the determinations under subsection (a), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title and shall—

"(1) take due account of the Secretary's application of section 5107(b) of this title; and

"(2) take due account of the rule of prejudicial error.".

Effective date. 38 USC 7261 note.

(c) APPLICABILITY.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by this section shall apply with respect to any case pending for decision before the United States Court of Appeals for Veterans Claims other than a case in which a decision has been entered before the date of the enactment of this Act.

SEC. 402. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.

(a) REVIEW.—Section 7292(a) is amended by inserting "a decision of the Court on a rule of law or of" in the first sentence after "the validity of".

38 USC 7292 note.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.

SEC. 403. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

28 USC 2412 note.

The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.

Approved December 6, 2002.

LEGISLATIVE HISTORY—S. 2237:

SENATE REPORTS: No. 107–234 (Comm. on Veterans' Affairs).
CONGRESSIONAL RECORD, Vol. 148 (2002):
Sept. 26, considered and passed Senate.
Nov. 14, considered and passed House, amended.
Nov. 15, Senate concurred in House amendments.