

Calendar No. 553

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-282

A BILL TO AMEND TITLE 38, UNITED STATES CODE, TO IMPROVE SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE AND TO MODIFY THE PROVISION OF COMPENSATION AND PENSION TO SURVIVING SPOUSES OF VETERANS IN THE MONTHS OF THE DEATHS OF THE VETERANS, AND FOR OTHER PURPOSES

SEPTEMBER 2, 2010.—Ordered to be printed

Filed, under authority of the order of the Senate of August 5, 2010

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

R E P O R T

together with

SUPPLEMENTAL VIEWS

[To accompany S. 3765]

The Committee on Veterans' Affairs (hereinafter, "the Committee"), unanimously reports favorably an original bill to amend title 38, United States Code (hereinafter, "U.S.C."), to improve Servicemembers' Group Life Insurance (hereinafter, "SGLI") and Veterans' Group Life Insurance (hereinafter, "VGLI"), to modify the provision of compensation and pension to surviving spouses of veterans in the months of the deaths of the veterans, and for other purposes, and recommends that the bill do pass.

INTRODUCTION

On August 5, 2010, the Committee met in open session to consider a number of measures pending before the Committee, including an original measure proposed by Chairman Daniel K. Akaka to improve SGLI and VGLI, modify the provision of compensation and pension to surviving spouses of veterans in the months of the deaths of the veterans, and for other purposes.

COMMITTEE MEETING

The Committee met in open session on August 5, 2010, to consider, among other legislation, the original bill. The Committee voted, without dissent, to report favorably the original bill as amended during the markup.

SUMMARY OF ORIGINAL BILL AS REPORTED

The original bill as reported (hereinafter, “the Committee bill”), contains three titles and seven provisions that would improve SGLI and VGLI, modify the provision of compensation and pension to surviving spouses of veterans in the months of the deaths of the veterans, amend eligibility for a death benefit, expand housing opportunities, and revise the processing of applications for relief from adjudication of mental incompetence for certain purposes.

TITLE I—BENEFITS MATTERS

Section 101 would repeal the sunset on the 2-year extension of SGLI coverage for members of the Armed Forces separating from service while totally disabled.

Section 102 would authorize increases by individuals of VGLI coverage upon renewal.

Section 103 would modify the month of death benefit for surviving spouses of veterans who die while entitled to compensation or pension.

Section 104 would allow individuals who die while serving in the active military, naval, or air service to be eligible for presidential memorial certificates.

TITLE II—LOAN GUARANTY MATTERS

Section 201 would adjust requirements for property occupancy to include situations where the dependent child of a veteran occupies the property.

Section 202 would modify rules for covenants and liens created by public entities in response to disaster-relief assistance.

TITLE III—OTHER MATTERS

Section 301 would revise the processing of applications for relief from adjudication of mental incompetence for certain purposes.

BACKGROUND AND DISCUSSION

TITLE I—BENEFITS MATTERS

Sec. 101. Repeal of sunset on 2-year extension of Servicemembers’ Group Life Insurance coverage for members of Armed Forces separating from service while totally disabled.

Section 101 of the Committee bill would eliminate the expiration date for a potential two-year extension of SGLI coverage available to servicemembers who are totally disabled when they separate from service.

Background. The Department of Veterans Affairs (hereinafter, “VA”) offers a variety of life insurance options for servicemembers, veterans, and their families. Among these is the SGLI program, which offers low-cost group life insurance for servicemembers on

active duty, Ready Reservists, members of the National Guard, members of the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Public Health Service, cadets and midshipmen of the four service academies, and members of the Reserve Officer Training Corps. SGLI coverage is available in \$50,000 increments up to the maximum of \$400,000.

Public Law 93-289, the Veterans' Insurance Act of 1974, established a new program of post-separation insurance known as VGLI. VGLI provides for the post-service conversion of SGLI to a renewable term policy of insurance. Persons eligible for full-time coverage include former servicemembers who were insured full-time under SGLI and who were released from active duty or the Reserves, Ready Reservists who have part-time SGLI coverage and who incur certain disabilities during periods of active or inactive duty training, and members of the Individual Ready Reserve and Inactive National Guard. VGLI coverage is issued in multiples of \$10,000 up to a maximum of \$400,000. Under current law, VGLI, generally, must be applied for within one year and 120 days from discharge. However, servicemembers who are totally disabled at the time of discharge may have a longer period within which to convert their SGLI coverage to VGLI.

Public Law 109-233, the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, authorized VA to extend from one to two years, after separation from active duty service, the period within which totally disabled members may receive premium-free SGLI coverage and convert their coverage to a policy under the VGLI program. However, Public Law 109-233 mandated that on or after October 1, 2011, this two-year time period would be shortened to 18 months.

Committee Bill. Section 101 of the Committee bill would amend section 1968(a) of title 38 to eliminate the expiration date for a potential two-year extension of SGLI coverage available to servicemembers who are totally disabled when they separate from service.

It is the Committee's view that retaining the potential two-year extension would allow VA additional time to contact veterans who have little or no chance of obtaining commercial insurance and give them information to help them make informed decisions about their life insurance needs and options.

Sec. 102. Authorization for increases by individuals of Veterans' Group Life Insurance coverage upon renewal.

Section 102 would provide to VGLI participants who are under the age of 60 and insured for less than the current maximum authorized for SGLI the opportunity to obtain, without underwriting, an additional \$25,000 in coverage once every 5 years at the time of renewal.

Background. Current law, section 1977(a)(1) of title 38, limits the amount of VGLI coverage a veteran may carry to the amount of SGLI coverage that continued in force after that veteran was separated from service. Through inquiries and responses to surveys conducted by VA, VGLI participants have expressed interest in increasing their coverage. Statistics indicate that 96 percent of VGLI-insured veterans have less than the current SGLI maximum of \$400,000 in coverage. Currently, veterans who separated from service when the maximum SGLI coverage was considerably less than

the current \$400,000 maximum, have no opportunity to increase their VGLI insurance coverage.

Committee Bill. Section 102 of the Committee bill would amend section 1977(a) of title 38 to allow VGLI participants who are under the age of 60 and insured for less than the current maximum authorized for SGLI the opportunity to obtain, without a health care examination, an additional \$25,000 in coverage once every 5 years at the time of renewal.

The Committee intends to allow VA to provide veterans an opportunity to purchase additional life insurance to protect and enhance the financial security of their families.

Sec. 103. Modification of month of death benefit for surviving spouses of veterans who die while entitled to compensation or pension.

Section 103 of the Committee bill would amend current law so as to clarify that a surviving spouse of a veteran who is receiving compensation or pension from VA is due the amount of benefits the veteran would have received for the month of the veteran's death if the veteran had lived, regardless of whether the surviving spouse is otherwise entitled to survivor benefits. Also, if at the time of death the veteran had a claim pending for compensation or pension that was subsequently granted, the surviving spouse would be eligible for any benefits or additional benefits due for the month of death as accrued benefits.

This section of the Committee bill would also prohibit VA from requesting that a surviving spouse who was a dependent for purposes of the veteran's compensation or pension award at the time of death return or repay the amount of a check or other payment issued to a deceased veteran if the funds are negotiated, deposited, or accessed by the surviving spouse. Such a benefit would be treated as the benefit due the surviving spouse for the month of death to the extent that it equals the amount payable as a month of death payment.

Background. VA has experienced considerable difficulty in administering month of death payments for surviving spouses because of the confusion in current law among various provisions and because certain automated procedures used by VA for termination and recovery of benefits paid to veterans for the months of their deaths are not consistent with current law. As a demonstration of the scope of this situation, Committee oversight led VA to pay over \$65 million to survivors who had been wrongfully denied benefits to which they were entitled for the month of death.

Under current law, veterans' benefits for a specific month are paid in the month following the month to which they are attributable. No benefits are owed to a veteran for the month in which a veteran dies. For example, if a veteran is receiving VA compensation or pension for the month of January, the check or payment for January would be provided in February. If a veteran receiving such benefits dies in February, no benefits for the month of death would be payable to the veteran, meaning that no benefits should be provided in March. However, if the veteran had a surviving spouse, the month of death provision in current law—section 5310 of title 38—provides that the amount of benefits that the veteran would

have received for February had the veteran not died is payable to the surviving spouse.

Section 5310 also provides that, if the benefit payable to a surviving spouse as dependency and indemnity compensation (hereinafter, "DIC") or death pension is less than the amount that the veteran would have received for that month but for the veteran's death, the greater benefit would be paid for the month of death.

This latter provision has caused considerable confusion because it is not fully consistent with other provisions of current law concerning effective dates for survivor benefits. Under section 5110(d) of title 38, the effective date of an award of death compensation, DIC, or death pension for which application is received within one year from the date of a veteran's death is the first day of the month in which the death occurred. Thus, if the veteran dies in February, the effective date of DIC or death pension would be February 1 if the surviving spouse applied for benefits within one year of the veteran's death. If the application for survivor benefits is received after the one-year period, the effective date is the date the application is received.

Under section 5111(a) of title 38, payment of VA benefits, including survivor benefits, is not made for the month of the effective date of the benefit, but is paid for the first calendar month following the month in which the award became effective. For example, the first month for which benefits would be paid to the surviving spouse of a veteran dying in February, which would mean a February 1 effective date, would be the calendar month of March and, as noted above, the check or payment for March would be issued at the beginning of April. Absent the month of death provision, the survivor would experience a gap in income with no benefit paid for either the deceased veteran or the surviving spouse in the month of March.

Although section 5111(c)(1) of title 38 appears to provide an exception for month of death payments when the DIC or death pension for the month of death would be greater than the amount that would have been paid to the deceased veteran for that month had the veteran lived, the language of paragraph (1) of that section does not clearly authorize a payment with a different effective date or a different commencement date than provided by sections 5110 or 5111(a). Because a surviving spouse eligible for benefits as the survivor of a veteran who died in February would not have those benefits commence until March and would receive the first DIC payment in April, it appears that there are no circumstances under which a surviving spouse could qualify for payments of both a month-of-death benefit for the month of February and a survivor benefit for the same month.

VA has information concerning the identity and status of any spouse receiving benefits as a dependent on the veteran's compensation or pension award, such as a veteran receiving additional compensation payable under section 1115 at the rate of 30 percent or higher or pension benefits for married veterans specified in section 1521. In cases involving such dependency relationships, VA has recently begun issuing month of death benefits to surviving spouses upon notification of the death of a veteran whose surviving spouse was a dependent on the veteran's compensation or pension award as of the date of death. In cases in which VA does not have

information concerning the existence, identity, or status of a surviving spouse, VA is not able to comply with the requirement for a month of death payment without obtaining additional information. In such cases, VA is now sending the veteran's estate a notice that includes information concerning the month of death payment and advises the estate concerning the procedures necessary in order for a payment to be made.

Committee Bill. Subsection (a) of section 103 of the Committee bill would amend subsection (a) of section 5310 of title 38 to clarify that a payment for the month of a veteran's death would be made to a surviving spouse of a veteran receiving compensation or pension under chapters 11 or 15 of title 38 or to a surviving spouse of a veteran who had a claim pending at the time of death that was subsequently granted.

Subsection (a) of section 103 of the Committee bill would further amend subsection (a) of section 5310(a) to specify that the amount of a payment for the month of a veteran's death is the amount that the veteran would have received for that month if the veteran had lived.

Subsection (a) of section 103 of the Committee bill would further amend subsection (a) of section 5310(a) to specify that any benefits payable for the month of death for a veteran who was not receiving those benefits as of the date of death would be paid as accrued benefits.

Subsection (a) of section 103 of the Committee bill would further amend subsection (b) of section 5310 of title 38 to clarify that, if a claim for entitlement to compensation or additional compensation under chapter 11 of title 38 or pension or additional pension under chapter 15 of title 38 was pending at the time of the veteran's death and the pending claim was subsequently granted, any additional benefits for the month of death would be paid as accrued benefits under section 5121 of title 38.

Subsection (b) of section 103 of the Committee bill would amend subsection (c) of section 5111 of title 38 to provide that month of death payments under section 5310 are exempt from the delayed commencement of benefits provision otherwise applicable under section 5111.

Subsection (c) of section 103 of the Committee bill would prohibit VA from requesting that a surviving spouse who was a dependent on a veteran's compensation or pension award as of the date of the veteran's death return a check or other payment issued to the veteran for the month of death, if the funds were negotiated, deposited, or accessed by the surviving spouse. In such cases, the payment made available to the surviving spouse would constitute the month of death payment to the extent that the payment equals the amount payable under section 5310. The Committee intends that this prohibition relating to claims for checks or payments will reduce the burden on the surviving spouse to return the funds to VA, only to be issued another payment in the same amount for the month of death benefit.

Subsection (d) of section 103 of the Committee bill would provide that the changes made by that section would apply in cases of deaths that occur on or after the date of enactment of this legislation.

The Committee expects that section 103 of the Committee bill, if enacted, will remove any confusion in current law and improve VA's ability to pay a surviving spouse the benefits due for the month of a veteran's death.

Sec. 104. Eligibility for presidential memorial certificates of individuals who die while serving in the active military, naval, or air service.

Section 104 would extend eligibility for presidential memorial certificates to the survivors of any servicemember who died in active military, naval or air service.

Background. Under current law, section 112 of title 38, eligibility for presidential memorial certificates is limited to survivors of veterans who were discharged from service under honorable conditions. Under the statutory definition of "veteran," for purposes of this section, an individual who died in active service, including an individual killed in action, technically is not a veteran because the individual was not "discharged or released" from service. Therefore, under current law, the survivors of such an individual are not eligible for a presidential memorial certificate for honoring the memory of the deceased individual.

Committee Bill. Section 104 of the Committee bill would allow the VA to provide presidential memorial certificates to the next of kin, relatives or friends of a servicemember who died in active military, naval or air service and to express the country's grateful recognition of the individual's sacrifice.

TITLE II—LOAN GUARANTY MATTERS

Sec. 201. Occupancy of property by dependent child of a veteran.

Section 201 would broaden the occupancy requirements necessary to qualify for VA home loans to include situations where a veteran's dependent child occupies or will occupy the property as a home.

Background. Current law, section 3704(c)(2) of title 38, states that, "[i]n any case in which a veteran is in active duty status as a member of the Armed Forces and is unable to occupy a property because of such status, the occupancy requirements [for purposes of obtaining a VA-backed home loan] shall be considered to be satisfied if the spouse of the veteran occupies the property as the spouse's home and the spouse makes the certification required by paragraph (1) of this subsection." The structure of the American family often involves single parents. Under current law, a single veteran with a dependent child would be disqualified from obtaining a VA-backed home loan if he or she is on active duty status because he or she does not have a spouse to satisfy occupancy requirements.

Committee Bill. Section 201 of the Committee bill would add to section 3704(c)(2) a provision allowing a veteran's dependent child who occupies or will occupy the property as a home to satisfy the occupancy requirements for purposes of qualifying for a VA-backed home loan. This would allow a single-parent veteran who returns to active duty to obtain a VA-guaranteed home loan if the veteran's child occupies the home. This requirement would be met if the veteran's attorney-in-fact or a legal guardian of the veteran's depend-

ent child makes the certification required by section 3704(c)(1) of title 38.

Sec. 202. Covenants and liens created by public entities in response to disaster-relief assistance.

Section 202 would authorize VA to allow superior liens created by public entities providing assistance in response to a major disaster to ensure that veterans may obtain such disaster relief.

Background. Under section 3703(d)(3) of title 38, any real estate housing loan, other than for repairs, alterations, or improvements, must be secured by a first lien on the realty. Currently, in determining whether a loan for the purchase or construction of a home is so secured, VA has the discretion to “disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner’s share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran’s realty is located.”

In an August 16, 2010, letter to Chairman Akaka, which provided VA’s views on the Committee bill, VA noted that, as part of State disaster relief programs, States may “opt to create covenants” so that grant recipients have to rebuild their homes in ways that meet program specifications. Under current law, VA does not have the authority to allow such superior liens created by public entities which in turn could keep a veteran home owner from taking disaster relief. Given the occurrence of natural disasters, such as Hurricane Katrina, providing VA with the authority to take a second-lien position to such covenants should allow veterans to accept disaster relief and reduce the likelihood of foreclosures and claims against a VA guaranty.

Committee Bill. Section 202 of the Committee bill would amend section 3703(d) of title 38 so as to authorize VA to allow superior liens created by public entities that have provided or will provide assistance in response to a major disaster as declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

TITLE III—OTHER MATTERS

Sec. 301. Processing of applications for relief from adjudication of mental incompetence for certain purposes.

Background. Section 101(c)(2) of Public Law 110–180, the NICS Improvement Amendments Act of 2007, requires Federal agencies that make adjudications on persons related to their mental health to establish a program that permits such persons to apply for relief from the National Instant Criminal Background Check System (hereinafter, “NICS”) requirements pursuant to Public Law 103–159, the Brady Handgun Violence Prevention Act.

Federal agencies are required to process applications for relief within 365 days of their receipt. VA, as an agency that makes such mental health adjudications, provides notice to beneficiaries who are assigned fiduciaries that such a program of relief is available to them. According to information provided to the Committee by VA, 74 claims for relief had been filed as of March 2010; however,

none had been processed. Under current law, if a claim for relief has been pending for 365 days or more it is considered denied, even if it was never processed. Of the 74 claims for relief VA has received, more than 30 have been denied because VA took no action on them within the 365 day time-frame.

Committee Bill. Section 301 of the Committee bill would amend title 38 by adding a new section 5511, entitled “Processing of applications for relief from adjudication of mental incompetence for certain purposes.” This new section would require VA to adjudicate appeals for relief from the NICS requirements within 180 days of their receipt. Further, contrary to the de facto denial that exists under current law, the new section would provide that claims for relief not processed within the 180-day time frame will be deemed granted.

COMMITTEE BILL COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (hereinafter, “CBO”), estimates that enacting the original bill would, relative to current law, increase direct spending by less than \$500,000 over the 2011–2020 period and would not affect revenues. The bill contains no intergovernmental and private sector mandates as defined in the Unfunded Mandates Reform Act.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 27, 2010.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans’ Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for a bill to amend title 38, United States Code, to improve Servicemembers’ Group Life Insurance and Veterans’ Group Life Insurance and to modify the provision of compensation and pension to surviving spouses of veterans in the months of the deaths of the veterans, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

A bill to amend title 38, United States Code, to improve Servicemembers’ Group Life Insurance and Veterans’ Group Life Insurance and to modify the provision of compensation and pension to surviving spouses of veterans in the months of the deaths of the veterans, and for other purposes

This legislation would modify several veterans’ programs. CBO estimates that enacting the bill would increase direct spending by

less than \$500,000 over the 2011–2020 period and would not affect revenues. Because enacting the bill would affect direct spending, pay-as-you-go procedures apply.

Section 104 would expand the Veterans Administration’s (VA’s) Presidential Memorial Certificate program to include survivors of individuals who die while serving in the active military, naval, or air service. Through the Presidential Memorial Certificate program a relative or friend can request a certificate signed by the President that expresses the country’s recognition of a veteran’s service. Eligibility for a certificate is currently limited to survivors of veterans who were honorably discharged from military service. Based on information from VA, CBO expects fewer than 100 additional requests would be made each year under this provision; therefore, CBO estimates section 104 would increase direct spending by less than \$500,000 over the 2011–2020 period. Costs for the Presidential Memorial Certificates are paid out of the veterans’ burial account, which is a mandatory program.

Sections 101 and 102 would enhance the benefits available to veterans under the Servicemembers’ Group Life Insurance program. Based on information from VA, CBO anticipates that the premiums servicemembers pay would cover the cost of the enhanced benefits. Therefore, we estimate that those provisions would have no budgetary impact.

Section 103 would clarify that the surviving spouse of a veteran who was receiving disability compensation or a pension at the time of death would be entitled to a similar benefit for the month of the veteran’s death. Also, if a veteran’s claim for compensation or pension was pending at the time of death and the surviving spouse receives a benefit payment that is less than the amount the veteran would have received upon adjudication, then the surviving spouse would be entitled to receive the additional amount upon final adjudication. Information from VA indicates that surviving spouses are currently receiving such payments under other provisions of law; therefore, CBO estimates that this section of the legislation would have no cost.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Dwayne M. Wright. The estimate was approved by Theresa A. Gullo.

REGULATORY IMPACT STATEMENT

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

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in

person or by proxy by members of the Committee on Veterans' Affairs at its August 5, 2010, meeting. On that date, the Committee ordered the original bill, as amended, reported favorably to the Senate by voice vote with no dissent. One amendment was accepted by voice vote.

AGENCY REPORT

On August 16, 2010, the Secretary of Veterans Affairs submitted the views of the Department on the original bill. Below are excerpts from the Secretary's letter:

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, August 16, 2010.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to provide the Committee with the views of the Department of Veterans Affairs (VA) on S. ____, 111th Cong., a bill “[t]o amend title 38, United States Code, to improve Servicemembers’ Group Life Insurance and Veterans’ Group Life Insurance and to modify the provision of compensation and pension to surviving spouses of veterans in the months of the deaths of the veterans, and for other purposes.” For the reasons explained below, we support enactment of all sections of the bill.

SECTION 101

Section 101 would eliminate the expiration date for a potential two-year extension of Servicemembers’ Group Life Insurance (SGLI) coverage available to servicemembers who are totally disabled when they separate from service. Under current law, if a SGLI-insured Servicemember is totally disabled at the time of his or her separation from service, the member’s SGLI coverage can extend, at no cost to the member, for up to two years following separation from service. However, that potential two-year extension will shorten to 18 months effective for separations from service on or after October 1, 2011. This provision would permit the potential two-year extension indefinitely. VA supports enactment of this section.

Retaining the potential two-year extension would allow VA additional time to contact Veterans having little or no chance of obtaining commercial insurance and give them useful information to help them make informed decisions about their life insurance needs and options. It would also guarantee that those most in need will be covered by SGLI during their transition period, at no cost to them.

The SGLI premium rates charged to Servicemembers would cover the cost of indefinitely retaining the potential two-year period. Because the SGLI program would assume all costs associated with this provision, there would be no cost to the Government.

SECTION 102

Section 102 would provide to Veterans’ Group Life Insurance (VGLI) participants who are under the age of 60 and insured for less than the current maximum authorized for SGLI the opportunity to obtain, without underwriting (i.e., health questions), up to an additional \$25,000 in coverage once every 5 years at the time of renewal. Current law limits the amount of VGLI coverage a Vet-

eran may carry to the amount of SGLI coverage that continued in force after that Veteran was separated from service. VA supports enactment of this section.

Through inquiries and responses to surveys, VGLI participants have expressed interest in increasing their coverage. Statistics indicate that 96 percent of VGLI-insured Veterans have less than the current SGLI maximum of \$400,000 in coverage. Currently, Veterans who separated from service when the maximum SGLI coverage was considerably less than the current \$400,000 maximum have no opportunity to increase their VGLI insurance coverage. This provision would provide Veterans, including service-disabled Veterans, an opportunity to purchase additional life insurance to protect and enhance the financial security of their families.

Although there would be no cost to the Government associated with this provision, restricting eligibility to Veterans under the age of 60 and limiting the purchase amount to \$25,000 once every 5 years would minimize the cost to the program by limiting the degree of adverse selection. The currently strong financial position of the SGLI program makes this proposal to offer additional VGLI coverage more financially feasible.

SECTION 103

Section 103(a) would revise 38 U.S.C. § 5310, which authorizes a month-of-death benefit for the surviving spouse of certain Veterans, to simplify its administration and clarify the scope of its provisions. As amended, section 5310(a) would provide to the surviving spouse of a Veteran who was receiving VA compensation or pension at the time the Veteran died a benefit for the month of death in the amount of compensation or pension the Veteran would have received for that month but for his or her death. Section 5310(a), as amended, would also provide the month-of-death benefit to the surviving spouse of a Veteran who was not receiving VA compensation or pension at the time the Veteran died but who had a claim for compensation or pension “pending for the month of the veteran’s death for which benefits would have been payable” had the Veteran not died. For these surviving spouses, the benefit would be payable as an accrued benefit.

As amended, section 5310(b) would provide that, if, when a Veteran died, a claim for compensation, additional compensation, pension, or additional pension was pending and the month-of-death benefit paid to the surviving spouse is less than the amount the Veteran would have been entitled to pursuant to the adjudication of the pending claim but for his or her death, the difference in amounts would be treated as an accrued benefit. Section 103(b) of the draft bill would exempt month-of-death payments from the delayed commencement of payment provisions of 38 U.S.C. § 5111, and section 103(c) of the draft bill would make all these amendments applicable to deaths occurring on or after the date of enactment. VA supports enactment of section 103 of the bill.

Pursuant to 38 U.S.C. § 5110(d), a surviving spouse’s award of death compensation, dependency and indemnity compensation (DIC), or death pension may be made effective from the first day of the month of the Veteran’s death in certain circumstances. Section 5310(a) of title 38, United States Code, currently provides

that, if the surviving spouse is entitled under section 5110(d) to death compensation, DIC, or death pension for the month of the Veteran's death, the amount of the benefit for that month shall be not less than the amount of disability compensation or pension the Veteran would have received for that month but for his or her death. Section 5310(b)(1) currently provides a benefit for the month of a Veteran's death if the Veteran's surviving spouse is not entitled to death compensation, DIC, or death pension for the month of death, in the amount of compensation or pension the Veteran would have received but for the Veteran's death. The benefit provided by section 5310(b) is a one-time payment conditioned on the surviving spouse's nonentitlement to death benefits for the month of the Veteran's death.

The statutory scheme is ambiguous, however, as applied to circumstances in which the surviving spouse is entitled under section 5110(d) to death compensation, DIC, or death pension for the month of death in an amount greater than the amount of compensation or pension that would have been payable to the Veteran for that month. In that situation, section 5111(a) and (c) would appear to preclude payment of death compensation, DIC, or death pension under section 5110(d) for the month of death. The language of section 5310(b)(1) could be construed to preclude payment to the surviving spouse of the month-of-death payment authorized by section 5310(b)(1), because he or she is, in principle, "entitled to death benefits * * * for the month in which the veteran's death occurs," even though he or she is precluded from receiving those benefits.

We support section 103 because it would clarify the statutes to permit payment of the month-of-death benefit under section 5310(b) in such circumstances and would provide a month-of-death benefit for all surviving spouses of Veterans regardless of whether the surviving spouses are entitled to death compensation, DIC, or death pension for the month of death. Providing for a single type of month-of-death payment would make this payment easier for VA to administer.

The amendment to section 5310 would also remove the provision currently in subsection (b)(2) that provides that a check issued to a Veteran is negotiable by the surviving spouse and will be treated as payment to the spouse. Removing this provision would allow VA to request that all surviving spouses return the Veterans' checks, and then to issue new checks directly to the surviving spouses to pay the month-of-death benefit. This would improve VA's ability to track month-of-death payments and would alleviate administrative issues, including, in some instances, the month-of-death benefit being paid twice. Further, this amendment would address any difficulties that the surviving spouses are encountering when attempting to negotiate checks made out to deceased Veterans.

This amendment would help streamline VA's ability to automate payments through VA's electronic information system, VETSNET, without the manual processing necessary under the current statutory scheme. For all these reasons, we support section 103.

There would be no additional mandatory costs associated with the clarification that section 103 would make.

SECTION 104

Section 104 would extend eligibility for presidential memorial certificates to the next of kin, relatives, or friends of any Servicemember who dies while serving in active military, naval, or air service. Under current law, eligibility is limited to the next of kin, relatives, or friends of Veterans who were discharged under honorable conditions. VA supports enactment of this section.

Under the statutory definition of “veteran,” an individual who died in active service, including an individual killed in action, technically is not a “veteran” because the individual was not “discharged or released” from service. Therefore, under current law, the next of kin, relatives, or friends of such an individual are not eligible for a presidential memorial certificate for honoring the memory of the individual. This provision would allow VA to provide a presidential memorial certificate to the next of kin, relatives, or friends of such individuals, who have made the supreme sacrifice for our Country, and express our Country’s grateful recognition of the individual’s service in the Armed Forces.

We estimate that this eligibility expansion would result in benefit costs of \$9,000 in the first year and \$90,000 over 10 years.

SECTION 105

Section 105(a) would amend 38 U.S.C. § 5317 by changing the expiration date from September 30, 2011, to September 30, 2016, thereby extending for five years VA’s income verification authority under that provision. Currently, section 5317 and a counterpart provision at section 6103(l)(7)(D)(viii) of the Internal Revenue Code authorize VA to verify the eligibility of recipients of, or applicants for, VA need-based benefits and services using income data from the Internal Revenue Service and the Social Security Administration. The existing authority has been instrumental in correcting amounts of benefits payments and determining health care eligibility, copayment status, and enrollment priority assignment; however, this authority expires on September 30, 2011. Notably, there is no expiration date in the counterpart Internal Revenue Service provision. Expiration of this authority would interrupt the income verification process. VA supports enactment of this subsection.

VA estimates that enactment of section 105(a) would result in a cost to its mandatory compensation and pension programs of \$20.2 million during the first year but produce net savings of \$46.7 million over five years. Discretionary savings to the Veterans Health Administration are estimated to be \$40.5 million in the first year and \$139.1 million over five years.

Section 105(b) would amend 38 U.S.C. § 5317A and a counterpart provision in section 453(j)(11) of the Social Security Act (42 U.S.C. § 653(j)(11)), by extending the expiration date of those provisions until September 30, 2021. Currently, 38 U.S.C. § 5317A and section 453(j)(11) of the Social Security Act authorize VA to verify the eligibility of recipients of, or applicants for, certain VA need-based benefits and services, using income data from the U.S. Department of Health and Human Services. This authority expires on September 30, 2011. The existing authority is a major vehicle for ensuring program integrity. Expiration of this authority would result in an in-

crease of erroneous payments to applicants for need-based benefits and the under-charging of user fees.

VA estimates that enactment of section 105(b) would initially result in increased benefit costs of \$2 million during 2012 and \$3.4 million through 2014, followed by a net savings of \$869,000 in 2015 and an estimated total net benefit savings of \$17 million through 2020.

SECTION 201

Section 201 would amend 38 U.S.C. § 3704(c) to allow a Veteran’s dependent child to satisfy the occupancy requirements of VA home loans. Currently, only a Veteran or a Veteran’s spouse may satisfy the requirement, which means that a single parent on active duty may be prevented from obtaining a VA-guaranteed loan. The proposed change would make it easier for those serving in the Armed Forces to use their VA home loan benefit. VA supports enactment of this section.

VA estimates that enactment of section 201 would result in \$336,000 in savings during the first year, \$2.6 million in costs over five years, and \$8.9 million in costs over ten years.

SECTION 202

Section 202 would amend 38 U.S.C. § 3703(d) to allow the Secretary to guarantee a loan, regardless of whether such loan is subordinate to a superior lien created by a public entity that has provided or will provide assistance in response to a major disaster. VA determined this authority was necessary in the aftermath of Hurricanes Katrina and Rita, when States were developing grant assistance programs to help disaster victims. VA supports enactment of this section.

As part of State disaster relief programs, States may opt to create covenants ensuring that grant recipients rebuild their homes in accordance with program specifications. VA does not have authority to take a second-lien position to such liens, however, and as a result, some Veterans may be in jeopardy of not being able to obtain disaster relief. Moreover, if a Veteran is unable to obtain disaster relief, the loan holder may be in a position of having to foreclose the loan and file a claim against VA’s guaranty. By allowing the VA-guaranteed loan to take a subordinate position to a superior lien resulting from disaster assistance, Veterans’ homes are more likely to be repaired, thereby potentially reducing the likelihood of foreclosures and guaranty claims.

This section also would eliminate an anachronism from the text of the statute. Currently, the statute requires that, with respect to any superior lien “to be created after June 6, 1969,” the Secretary must have determined in advance that the interests of disregarding such a lien created by a covenant would not prejudice the interests of the Veteran borrower or the Government. Reference to June 6, 1969, in the future tense is no longer necessary.

VA has determined that there are no expected costs associated with enactment of this section.

* * * * *

VA appreciates the opportunity to provide our formal views and cost estimates on this legislation. Please have your staff contact Assistant Secretary Joan Evans with any additional questions.

Thank you for your tireless efforts in support of our Veterans, Servicemembers, and their families.

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

Sincerely,

ERIC K. SHINSEKI.

* * * * *

SUPPLEMENTAL VIEWS OF HON. RICHARD BURR, RANKING
MEMBER

Although I am pleased that my amendment was accepted to strengthen VA beneficiaries' due process rights in connection with the requirements of the Brady Handgun Violence Prevention Act of 1993 (that amendment is now section 301 of the original bill), I want to stress that the longer-term solution to the problem is enactment of S. 669, the Veterans 2nd Amendment Protection Act. During the first session of the 111th Congress, the Committee unanimously approved S. 669. That bill, which I authored, would require a finding by a judicial authority that VA beneficiaries who have been adjudicated as "mental defective" are, in fact, dangerous to themselves or others before their names could be sent to the National Instant Criminal Background Check System. As of the writing of this report, S. 669 remains pending before the Senate, but I believe it stands as the Committee's preferred solution to address needed improvements to VA beneficiaries' due process rights (for more on S. 669, see Senate Report 111-27). Absent movement on that legislation, however, I offered my amendment at the August 5, 2010, markup in an effort to advance improvements needed to the existing system of due process available to certain VA beneficiaries.

* * * * *

CHANGES IN EXISTING LAW

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

Title 38. Veterans' Benefits

Part I. General Provisions

Chapter 1. General

* * * * *

SEC. 112. PRESIDENTIAL MEMORIAL CERTIFICATE PROGRAM

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

(a)(1) At the request of the President, the Secretary may conduct a program for honoring the memory of covered individuals by preparing and sending to eligible recipients a certificate bearing the signature of the President and expressing the country's recognition of the covered individual's service in the Armed Forces.

(2) The award of a certificate to one eligible recipient shall not preclude authorization of another certificate if a request is received from some other eligible recipient.

(b) For purposes of this section, a covered individual is any of the following:

(1) A deceased veteran discharged under honorable conditions.

(2) An individual who dies while serving in the active military, naval, or air service.

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

(d) [(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.

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Part II. General Benefits

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Chapter 19. Insurance

* * * * *

Subchapter III. Servicemembers' Group Life Insurance

* * * * *

SEC. 1968. DURATION AND TERMINATION OF COVERAGE; CONVERSION

(a) * * *

(1) * * *

(A) * * *

(i) * * *

[(ii) The date that is—

[(I) two years after the date of separation or release from such active duty or active duty for training, in the case of such a separation or release during the period beginning on the date that is one year before the date of the enactment of Veterans' Housing Opportunity and Benefits Improvement Act of 2006 and ending on September 30, 2011; and

[(II) 18 months after the date of separation or release from such active duty or active duty for training, in the case of such a separation or release on or after October 1, 2011.]

(ii) The date that is 2 years after the date of separation or release from such active duty or active duty for training, in the case of such a separation or release occurring on or after June 15, 2005.

* * * * *
(4) * * *

(A) * * *

[(B) The date that is—

[(i) two years after the date of separation or release from such assignment, in the case of such a separation or release during the period beginning on the date that is one year before the date of the enactment of Veterans' Housing Opportunity and Benefits Improvement Act of 2006 and ending on September 30, 2011; and

[(ii) 18 months after the date of separation or release from such assignment, in the case of such a separation or release on or after October 1, 2011.]

(B) The date that is 2 years after the date of separation or release from such assignment, in the case of such a separation or release occurring on or after June 15, 2005.

* * * * *

SEC. 1977. VETERANS' GROUP LIFE INSURANCE

(a)(1) Veterans' Group Life Insurance shall be issued in the amounts specified in section 1967(a) of this title. [In the case of any individual, the amount of Veterans' Group Life Insurance may not exceed the amount of Servicemembers' Group Life Insurance coverage continued in force after the expiration of the period of duty or travel under section 1967(b) or 1968(a) of this title.] No person may carry a combined amount of Servicemembers' Group Life Insurance and Veterans' Group Life Insurance at any one time in excess of the maximum amount for Servicemembers' Group Life Insurance in effect under section 1967(a)(3)(A)(i) of this title.

(2) * * *

(3) *Subject to the second sentence of paragraph (1), a veteran who has not attained the age of 60 years and is insured under Veterans' Group Life Insurance for an amount less than the maximum amount of Servicemembers' Group Life Insurance in effect under section 1967(a)(3)(A)(i) of this title at the time of renewal of Veterans' Group Life Insurance under this section may increase the amount of the veteran's coverage under Veterans' Group Life Insurance by not more than \$25,000 at the time of renewal.*

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Part III. Readjustment and Related Benefits

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Chapter 37. Housing and Small Business Loans

Subchapter I. General

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SEC. 3703. BASIC PROVISIONS RELATING TO LOAN GUARANTY AND INSURANCE

* * * * *

(d)(1) * * *

* * * * *

[(3) Any real estate housing loan (other than for repairs, alterations, or improvements) shall be secured by a first lien on the realty. In determining whether a loan for the purchase or construction of a home is so secured, the Secretary may disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Secretary determines that the interests of the veteran borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien to be created after June 6, 1969, the Secretary's determination must have been made prior to the recordation of the covenant.]

(3)(A) Any real estate housing loan (other than for repairs, alterations, or improvements) shall be secured by a first lien on the real-

ty. In determining whether a loan is so secured, the Secretary may either disregard or allow for subordination to a superior lien created by a duly recorded covenant running with the realty in favor of—

(i) a public entity that has provided or will provide assistance in response to a major disaster as declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170); or

(ii) a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services, or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Secretary determines that the interests of the veteran borrower and of the Government will not be prejudiced by the operation of such covenant.

(B) With respect to any superior lien described in subparagraph (A) created after June 6, 1969, the Secretary's determination under clause (ii) of such subparagraph shall have been made prior to the recordation of the covenant.

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SEC. 3704. RESTRICTIONS ON LOANS

* * * * *

(c)(1) * * *

* * * * *

[(2) In any case in which a veteran is in active duty status as a member of the Armed Forces and is unable to occupy a property because of such status, the occupancy requirements of—

[(A) paragraph (1) of this subsection;

[(B) paragraphs (1) through (5) and paragraph (7) of section 3710(a) of this title;

[(C) section 3712(a)(5)(A)(i) of this title; and

[(D) section 3712(e)(5) of this title;

shall be considered to be satisfied if the spouse of the veteran occupies the property as the spouse's home and the spouse makes the certification required by paragraph (1) of this subsection.]

(2) In any case in which a veteran is in active duty status as a member of the Armed Forces and is unable to occupy a property because of such status, the occupancy requirements of this chapter shall be considered to be satisfied if—

(A) the veteran's spouse occupies or intends to occupy the property as a home and the spouse makes the certification required by paragraph (1) of this subsection; or

(B) the veteran's dependent child occupies or will occupy the property as a home and the veteran's attorney-in-fact or a legal guardian of the veteran's dependent child makes the certification required by paragraph (1) of this subsection.

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Part IV. General Administrative Provisions

Chapter 51. Claims, Effective Dates, And Payments

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Subchapter II. Effective Dates

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SEC. 5111. COMMENCEMENT OF PERIOD OF PAYMENT

* * * * *

(c)(1) This section shall [apply to payments made pursuant to section 5310 of this title only if the monthly amount of dependency and indemnity compensation or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received, but for such veteran's death, for the month in which such veteran's death occurred] *not apply to payments made pursuant to section 5310 of this title.*

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Chapter 53. Special Provisions Relating to Benefits

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SEC. 5310. PAYMENT OF BENEFITS FOR MONTH OF DEATH

[(a) If, in accordance with the provisions of section 5110(d) of this title, a surviving spouse is entitled to death benefits under chapter 11, 13, or 15 of this title for the month in which a veteran's death occurs, the amount of such death benefits for that month shall be not less than the amount of benefits the veteran would have received under chapter 11 or 15 of this title for that month but for the death of the veteran.

[(b)(1) If the surviving spouse of a veteran who was in receipt of compensation or pension at the time of death is not entitled to death benefits under chapter 11, 13, or 15 of this title for the month in which the veteran's death occurs, that surviving spouse shall be entitled to a benefit for that month in the amount of benefits the veteran would have received under chapter 11 or 15 of this title for that month but for the death of the veteran.

[(2) If (notwithstanding section 5112(b)(1) of this title) a check or other payment is issued to, and in the name of, the deceased veteran as a benefit payment under chapter 11 or 15 of this title for the month in which death occurs, that check or other payment (A) shall be treated for all purposes as being payable to the surviving spouse, and (B) if that check or other payment is negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (1). However, if such check or other payment is in an amount less than the amount of the benefit under paragraph (1), the unpaid amount shall be treated in the same manner as an accrued benefit under section 5121 of this title.]

(a) IN GENERAL.—(1) A surviving spouse of a veteran is entitled to a benefit for the month of the veteran's death if at the time of the veteran's death—

(A) the veteran was receiving compensation or pension under chapter 11 or 15 of this title; or

(B) the veteran was not receiving compensation or pension under chapter 11 or 15 of this title but the veteran had a claim pending for the month of the veteran's death for which benefits would have been payable under chapter 11 or 15 of this title had the veteran not died.

(2) The amount of benefit under paragraph (1) is the amount that the veteran would have received under chapter 11 or 15 of this title for the month of the veteran's death had the veteran not died.

(3) Any benefits payable under this section on behalf of a veteran who was not in receipt of such benefits as of the month of the veteran's death shall be paid to the surviving spouse as accrued benefits.

(b) CLAIMS PENDING ADJUDICATION.—If a claim for entitlement to compensation or additional compensation under chapter 11 of this title or pension or additional pension under chapter 15 of this title is pending at the time of a veteran's death and the check or other payment issued to the veteran's surviving spouse under subsection (a) is less than the amount of the benefit the veteran would have been entitled to for the month of death pursuant to the adjudication of the pending claim, an amount equal to the difference between the amount to which the veteran would have been entitled to receive under chapter 11 or 15 of this title for the month of the veteran's death had the veteran not died and the amount of the check or other payment issued to the surviving spouse shall be treated in the same manner as an accrued benefit under section 5121 of this title.

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Chapter 55. Minors, Incompetents, and Other Wards

Sec.

5501. Commitment actions.

* * * * *

5510. Annual report.

5511. Processing of applications for relief from adjudication of mental incompetence for certain purposes.

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SEC. 5511. PROCESSING OF APPLICATIONS FOR RELIEF FROM ADJUDICATION OF MENTAL INCOMPETENCE FOR CERTAIN PURPOSES

Notwithstanding clause (ii) of section 101(c)(2)(A) of the NICS Improvement Amendments Act of 2007 (Public Law 110–180; 18 U.S.C. 922 note), each application for relief submitted to the Secretary under the program required by clause (i) of such section shall be processed by the Secretary not later than 180 days after the receipt of the application. If the Secretary fails to resolve such application for relief within 180 days for any reason, including a lack of appropriated funds, the Secretary shall be deemed to have granted such application for relief.