

# CRS Report for Congress

## Veterans' Benefits: Issues in the 110<sup>th</sup> Congress

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**Prepared for Members and  
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# Veterans' Benefits: Issues in the 110<sup>th</sup> Congress

## Summary

Congressional interest in benefits for veterans has increased with the ongoing wars in Iraq and Afghanistan. This report provides a general discussion of veterans' benefits issues that are part of the legislative agenda of the 110<sup>th</sup> Congress or are likely to be of legislative interest. Among those issues are disability compensation and pensions; education benefits; homelessness; life insurance; the status or eligibility of groups such as U.S. merchant seamen and World War II Filipino veterans for veterans' benefits; Reserve and National Guard eligibility for veterans' benefits; the U.S. Court of Appeals for Veterans Claims; and legal representation for veterans. For each issue, an overview is provided, along with summaries of pertinent pending legislation. In addition, an overview of the benefits and their eligibility requirements, demographics for both the veteran population and the benefit population, and summary data on the FY2008 budget for veterans' benefits are provided. Issues that are not addressed by this report are veterans' medical care and appropriations for the Department of Veterans Affairs. This report will be updated upon relevant legislative activity.

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# Veterans' Benefits: Issues in the 110<sup>th</sup> Congress

## Introduction

Congress has been involved with providing benefits to veterans since the earliest days of the nation, enacting the first veterans' pension law in 1789. As the nation grew and successive wars increased the number of veterans, the variety of benefits that were available to veterans — that is, disability compensation, education benefits, life insurance, etc. — continued to develop. In addition, some benefits were extended to veterans' dependents and survivors, such as educational assistance, dependency and indemnity compensation, and death pensions.

The ongoing wars in Iraq and Afghanistan have heightened congressional interest in veterans' benefits. This report<sup>1</sup> discusses veterans' benefits issues that are already part of the legislative agenda for the 110<sup>th</sup> Congress or are likely to be of interest to Congress. These issues include disability compensation and pensions, including the benefit claims backlog and the annual cost-of-living adjustment; education benefits; homelessness; life insurance; the status or eligibility of groups, such as U.S. merchant seamen and World War II Filipino veterans for veterans' benefits; Reserve and National Guard eligibility for veterans' benefits; the U.S. Court of Appeals for Veterans Claims; and legal representation for veterans. These benefits and issues fall under the jurisdiction of the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA). Also presented in this report are an overview of the benefits and their eligibility requirements, data on both the veteran population and the benefit population, and summary information on the FY2008 budget for veterans' benefits. Issues that are not covered in this report are veterans' medical care<sup>2</sup> and appropriations for the VA.<sup>3</sup>

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<sup>1</sup> Charmaine Mercer, a former specialist in education policy at CRS, was one of the original authors of this report.

<sup>2</sup> For information on veterans' medical care issues, see CRS Report RL33993, *Veterans' Health Care Issues*, by Sidath Viranga Panangala.

<sup>3</sup> For background information on appropriations for the Department of Veterans Affairs, see CRS Report RL34558, *Military Construction, Veterans Affairs, and Related Agencies: FY2009 Appropriations*, by Daniel H. Else, Christine Scott, and Sidath Viranga Panangala.

## Overview

### Benefits

Veterans and their spouses, dependents, or survivors may be eligible for a range of benefits, including compensation for service-connected disabilities, educational assistance, housing loans, life insurance, burial benefits, and a pension benefit for older or permanently disabled low-income veterans who served during a period of war. In its 562-page final report that was released on October 3, 2007, the Veterans Disability Benefits Commission urged the VA and the Department of Defense to develop uniform, consistent policies for rating veterans' disabilities.<sup>4</sup> The commission, which was established by Title XV of the National Defense Authorization Act for FY2004 (P.L. 108-136), was charged with evaluating the appropriateness of the benefits available to veterans and their survivors as a result of disability or death due to military service, the standards used to determine whether or not veterans are compensated, and the appropriate level of each benefit.

### Eligibility for Benefits

Eligibility for most VA benefits is primarily determined by the individual's active duty military service and the individual's being discharged under conditions other than dishonorable.<sup>5</sup> For certain benefits, such as the pension benefit, at least part of the active duty military service must have been during a period of war.<sup>6</sup> For many benefits, the eligibility requirements for members of the National Guard and Reserve called to active duty will be different from those of the regular armed forces. Certain civilian groups have also been recognized as being eligible for veterans benefits. The GI Bill Improvement Act of 1977 (P.L. 95-202) recognized the services of the Women's Air Forces Service Pilots (WASPs) — a civilian group that was attached to the U.S. Army Air Force during World War II — as active duty military service for benefits administered by the VA, and it provided a method for other civilian groups to apply to the Secretary of the Air Force for similar recognition. As of March 2007, a total of 38 civilian groups had received recognition.<sup>7</sup>

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<sup>4</sup> Links to the Veterans Disability Benefits Commission's final report, related documents, and to other information on the group are available on the Commission's website at [<http://www.vetscommission.org/>].

<sup>5</sup> Even if the condition of discharge generally bars an individual from benefits, certain exceptions may apply. See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, by Douglas Reid Weimer.

<sup>6</sup> Many wars have federally designated beginning and ending dates. For veterans benefits, the periods of war are defined in 38 U.S.C. § 101(11). For additional information, see CRS Report RS21405, *Periods of War*, by Barbara Salazar Torreon.

<sup>7</sup> For a list of civilian groups with recognition, see 38 CFR Chapter 1 § 3.7.

## Demographics

The VA is the major source, and in some cases the only source, for information on the total veteran population and beneficiaries of veterans' benefits. Estimates of the veteran population will be different from the population receiving benefits during a specific time period for several reasons, including not all veterans are receiving benefits in a given period of time; benefits may be, depending on the specific benefit, provided to veterans, surviving spouses, and children; and some veterans, surviving spouses, or children may receive more than one type of benefit in a given period of time.

**Veteran Population.** The VA estimates<sup>8</sup> the veteran population by various characteristics, including age, sex, state, and period of service. As of September 30, 2007, there were an estimated 23.5 million living veterans in the United States and Puerto Rico.

The five states with the largest estimated number of veterans (California, Florida, Texas, Pennsylvania, and New York) together accounted for 32.4% of the total estimated population of veterans. The five states with the smallest estimated number of veterans (Alaska, Vermont, Wyoming, North Dakota, and the District of Columbia) together accounted for 1.1% of the total estimated number of veterans.<sup>9</sup>

As of September 30, 2007, the majority of all veterans (64.0%) were age 55 or older, with 4.9% age 85 or older. Female veterans were 7.4% of the total veteran population and had an age distribution that was generally younger than for all veterans. As of September 30, 2007, only 31.1% of female veterans were age 55 or older. The majority (56.4%) of female veterans were under age 50.

**The Benefit Population.** The VA also provides data on the number of beneficiaries of veterans' benefits in FY2007. Disability compensation benefits were provided to 2,789,490 veterans, 332,837 survivors, and 1,163 children. In addition, 88,744 veterans were provided with a clothing allowance, and 1,534 veterans received Equal Access to Justice Act (EAJA) payments.<sup>10</sup> Pension benefits<sup>11</sup> were

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<sup>8</sup> The Department of Veterans Affairs' estimates (VetPop2004 Version 1.0, Office of the Actuary, Office of Policy, U.S. Department of Veterans Affairs, December 2004) are based on a model that uses detailed data on veterans from the decennial census through April 2000; actual Department of Defense (DOD) separations, including Reserve and National Guard forces with a federal activation, through September 2003; and projected DOD separations, including an estimate for an increased level of Reserve separations, through September 2009.

<sup>9</sup> According to 38 U.S.C. § 101(20), the District of Columbia and Puerto Rico are considered to be states for matters pertaining to veterans.

<sup>10</sup> Equal Access to Justice Act (EAJA) payments are awards from successful challenges of the Department of Veterans Affairs' policies, procedures, or regulations in the U.S. Court of Appeals for Veterans Claims under the Equal Access to Justice Act.

<sup>11</sup> Pension benefits may be awarded to very low-income veterans who served during periods of war and are either age 65 or are permanently and totally disabled (not service-connected)

(continued...)

provided to 325,378 veterans and 198,047 survivors. The caseload for readjustment benefits (including education and training, work-study, tuition assistance, and the all-volunteer force educational assistance programs) was 585,367.<sup>12</sup>

## Budget

The Administration's FY2008 budget request for the VA was \$83.9 billion. This would have been an increase of \$4.4 billion, or 5.5%, over the FY2007 appropriation (including the supplemental). The FY2008 Consolidated Appropriations Act (P.L. 110-161) provided \$87.6 billion in funding for the VA, with 50.8% of the funds for mandatory spending.<sup>13</sup>

One of the key issues for VA non-medical benefits in recent years has been the size of the disability claims workload and the average time (183 days in FY2007)<sup>14</sup> to process claims. The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28), provided additional funding to the VA in FY2007 for resources to address the large number of pending claims and shorten processing times. P.L. 110-28 provided the VA with \$60.75 million for hiring and training of additional claims processing personnel and \$20 million for information technology to support claims processing. The total VA FY2007 appropriation (including the supplemental funds provided by P.L. 110-28) was \$79.6 billion, with 51.9% of the funding for mandatory spending and 49.1% for discretionary spending.

## Issues in the 110<sup>th</sup> Congress

### Status or Eligibility

While former members of the U.S. armed forces and members of a number of civilian groups are eligible for benefits administered by the VA, other groups as well have requested status as veterans or advocated additional veterans' benefits from Congress.

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<sup>11</sup> (...continued)

and to their eligible surviving spouses and dependent children.

<sup>12</sup> Department of Veterans Affairs, *FY2009 Budget Submission, Benefits and Burial Programs and Departmental Administration*, Volume 3 of 4, pp. 2A-3 and 2B-13. [[http://www.va.gov/budget/summary/2009/Volume\\_3-Benefits\\_and\\_Burial\\_and\\_Dept\\_Admin.pdf](http://www.va.gov/budget/summary/2009/Volume_3-Benefits_and_Burial_and_Dept_Admin.pdf)].

<sup>13</sup> For more information on the VA budget, see CRS Report RL34558, *Military Construction, Veterans Affairs, and Related Agencies: FY2009 Appropriations*, by Daniel H. Else, Christine Scott, and Sidath Viranga Panangala.

<sup>14</sup> Department of Veterans Affairs, *FY2009 Budget Submission, Benefits and Burial Programs and Departmental Administration*, Volume 3 of 4, p. 4B-6. [[http://www.va.gov/budget/summary/2009/Volume\\_3-Benefits\\_and\\_Burial\\_and\\_Dept\\_Admin.pdf](http://www.va.gov/budget/summary/2009/Volume_3-Benefits_and_Burial_and_Dept_Admin.pdf)].

**U.S. Merchant Seamen.** Certain U.S. merchant seamen were recognized in 1988 as having active duty service for veterans benefits under P.L. 95-202. Merchant seamen who received recognition either (1) served aboard Army-owned vessels or certain merchant marine vessels in support of U.S. armed forces (vessels must have some part of a qualifying voyage in contested waters between December 7, 1941 and August 15, 1945); (2) were in a military invasion during World War II; or (3) were requisitioned by the U.S. Army for Operation Mulberry in the 1944 invasion of Normandy. U.S. merchant seamen who do not meet these criteria are not recognized as having active duty service for the full range of veterans' benefits.<sup>15</sup>

In the 110<sup>th</sup> Congress, H.R. 23 (sponsored by Representative Bob Filner) and S. 961 (sponsored by Senator E. Benjamin Nelson) would provide a monthly benefit of \$1,000 to qualified U.S. merchant seamen and their survivors. Under these bills, a qualified U.S. merchant seaman is one who served between December 7, 1941, and December 31, 1946, as a crew member aboard a vessel that (1) was operated by the now defunct War Shipping Administration or the Office of Defense Transportation; (2) did not operate on inland waters, the Great Lakes, or any U.S. lake, bay, or harbor; (3) was under contract to, was chartered to, or was the property of, the U.S. government; and (4) was serving the U.S. armed forces. In addition, the seaman had to be licensed to serve (or documented for service) as a crew member. The House passed H.R. 23 by a voice vote on July 30, 2007. As amended, H.R. 23 would establish the Merchant Mariner Equity Compensation Fund, which would provide a monthly payment of \$1,000 to each U.S. merchant seaman who met the previously stated qualifications, and would authorize appropriations to the fund for FY2008-FY2012.<sup>16</sup> H.R. 447 (sponsored by Representative Jeff Fortenberry) would provide that merchant seamen who received the Mariners Medal be provided VA health care on the same basis as recipients of the Purple Heart.

**Filipino Veterans.** Under current law, former members of the Regular or "Old" Philippine Scouts who fought during World War II are recognized for all benefits administered by the VA. Former members of the Commonwealth Army of the Philippines are recognized for many of the benefits administered by the VA. However, because of the economic differences between the United States and the Philippines, benefits for residents of the Philippines have a lower dollar value than those for U.S. residents. In addition, former members of two other Philippine groups that fought during World War II, the Recognized Guerilla Forces and the New Philippine Scouts, are recognized for only a limited number of benefits administered by the VA.<sup>17</sup>

In the 110<sup>th</sup> Congress, H.R. 760 (sponsored by Representative Bob Filner) and S. 57 (sponsored by Senator Daniel Inouye) would eliminate the distinction between

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<sup>15</sup> For more information on U.S. merchant seamen, see CRS Report RL33992, *Veterans Benefits: Merchant Seamen*, by Christine Scott and Douglas Reid Weimer.

<sup>16</sup> For more detailed information on this bill, see CRS Report RL33992, *Veterans Benefits: Merchant Seamen*, by Christine Scott and Douglas Reid Weimer.

<sup>17</sup> For more information on Filipino veterans, see CRS Report RL33876, *Overview of Filipino Veterans' Benefits*, by Sidath Viranga Panangala, Christine Scott, and Carol D. Davis.

the Regular or “Old” Philippine Scouts and the other three groups of veterans — Commonwealth Army of the Philippines, Recognized Guerrilla Forces, and New Philippine Scouts — and make them all fully eligible for VA benefits similar to those received by U.S. veterans. Hearings on these bills were held by the House Committee on Veterans’ Affairs on February 15, 2007, and by the Senate Committee on Veterans’ Affairs on April 11, 2007. On July 17, 2007, the House Committee on Veterans’ Affairs ordered H.R. 760 to be reported by a voice vote. S. 66 (sponsored by Senator Daniel Inouye) would require the Secretary of the Army to determine, based on the written application of any person who is a national of the Philippine Islands, whether or not the person performed any military service in the Philippine Islands in aid of the armed forces of the United States during World War II that would qualify the person to receive any U.S. veterans, military, or other benefits.

S. 1315 (sponsored by Senator Daniel Akaka) would expand eligibility for VA benefits for members of the organized military forces (including Recognized Guerilla Forces) of the Commonwealth of the Philippines and the Philippine Scouts, including provisions for dependency and indemnity compensation (DIC) and pensions for individuals living outside of the United States. S. 1315, which was reported by the Senate Committee on Veterans’ Affairs (S.Rept. 110-148) on August 29, 2007, was passed by the Senate on a 96-1 vote on April 24, 2008.

## **Reserve and National Guard<sup>18</sup>**

Reservists called to active duty may, depending on the length of active military service and discharge conditions (other than dishonorable), qualify for the full range of benefits administered by the VA. Reservists who are not called to active duty (i.e., not activated) may qualify for some benefits administered by the VA. National Guard members establish eligibility for benefits by being called to *federal* service during a period of war or a national emergency. More specifically:

- Reservists and Guard members are eligible for disability compensation for service-connected disabilities — disabilities that are incurred or aggravated during active duty (or active-duty training) — and for certain other conditions incurred during inactive-duty training.
- Reservists and Guard members may be eligible for educational benefits. The determination of eligibility is made by either the Department of Defense or the Department of Homeland Security if the Reservist or Guard member is activated, or by the Reserve component if the Reservist or Guard member is not activated.
- Reservists and Guard members may be eligible for VA home loans if they have served at least six years, are activated for at least 90 days, or have service-connected disabilities. Reservists or Guard

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<sup>18</sup> Reservists are members of the reserve elements of the Army, Navy, Air Force, Marine Corps, and Coast Guard. National Guard are members of the Army National Guard and the Air National Guard.

members who are not eligible for the VA home loan benefit may be eligible for Federal Housing Administration (FHA) loans on favorable terms.

- Reservists and Guard members are eligible for VA life insurance.
- Reservists are eligible for VA burial flags if they served their initial obligation, were discharged for service-connected disabilities, or died while they were members of the reserves.

H.R. 2259 (sponsored by Representative Peter Welch) would require the Secretary of Defense and the Secretary of Veterans Affairs to prepare a plan within 180 days of enactment that would maximize participation in the Benefits at Delivery Discharge Program by members of the Reserve. Hearings were held on H.R. 2259 by the House Committee on Veterans' Affairs' Subcommittee on Economic Opportunity on June 21, 2007. H.R. 3798 (sponsored by Representative Robin Hayes) would expand the employment protections of the Uniformed Services Employment and Reemployment Rights Act (USERRA) to members of the National Guard who are called to duty for required drills and training under Section 502(f) of Title 32 of the *U.S. Code*. The House Committee on Veterans' Affairs's Subcommittee on Economic Opportunity held a hearing on H.R. 3798 on April 16, 2008. H.R. 4247 (sponsored by Representative Adam Smith) would provide additional transition benefits for members of the Reserve, including a year of transitional mental health care, more educational assistance, a provision to maintain the pay of federal employees called to duty as members of the Reserve,<sup>19</sup> and aid to state and local governments that continue to pay employees called to duty as members of the Reserve.

## Disability Compensation and Pension Benefits

**Disability Compensation.** A veteran disabled because of an injury or disease that was incurred, or aggravated, during active military service may be entitled to a monthly *disability compensation benefit*. The veteran must have been discharged, or separated from service, under conditions other than dishonorable. The following groups of veterans qualify for disability compensation because their disabilities are presumed to be service-connected: former prisoners of war; veterans exposed to herbicides during military operations in Vietnam; veterans exposed to ionizing radiation; and certain Gulf War veterans.

The monthly disability compensation benefit is not subject to federal income taxes, and the amount varies based on the level of disability and the number of dependents. The FY2008 National Defense Authorization Act (P.L. 110-181)

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<sup>19</sup> In general, federal civilian employees called to active duty in Reserve components do not receive their civilian pay. A federal civilian employee called to active duty can receive, for a limited time (15 days), both civilian and military pay. Under certain circumstances, a federal employee may, for a limited time, receive "gap" pay (the difference between the employee's federal civilian pay and military pay).

eliminated the offset of VA disability compensation benefits from any disability severance pay received from the military.

To receive benefits, a veteran must file a claim for benefits and have the VA evaluate his or her disability to assign a rating for the disability of between 0% to 100% (in 10% increments).<sup>20</sup>

One bill pending in the 110<sup>th</sup> Congress would change the manner in which disabled veterans could qualify to receive Social Security Disability Insurance (SSDI) benefits. H.R. 2943 (introduced by Representative John Sarbanes) would let veterans with service-connected disabilities who are rated and certified by the VA as totally disabled to be eligible for SSDI benefits without having to be evaluated by the Social Security Administration (SSA) if they meet the other requirements for SSDI benefits. Currently, SSA evaluates all applicants (veterans and non-veterans) to determine their eligibility for SSDI benefits.<sup>21</sup>

**Claims Pending.** The inventory of claims pending for disability compensation and pensions has been a long-standing concern for veterans service organizations, the VA, and Congress.<sup>22</sup> According to the Government Accountability Office (GAO), despite taking steps to improve its disability claims process, VA continues to face challenges in reducing the number of claims pending and speeding up the process of deciding claims.<sup>23</sup>

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<sup>20</sup> For more information on the VA's disability rating system, see CRS Report RL33991, *Disability Evaluation of Military Servicemembers*, by Christine Scott, Sidath Viranga Panangala, and Charles A. Henning.

<sup>21</sup> For more information on the Social Security Disability Insurance (SSDI) program, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by Scott Szymendera.

<sup>22</sup> See, for instance: (1) House Committee on Veterans' Affairs, Press Release, *VA's Claims Processing System is in Need of 21<sup>st</sup> Century Reform: House Veterans' Affairs Subcommittee Works to Improve VA's Claims Processing System and Eliminate Backlog*, Feb. 14, 2008 [<http://veterans.house.gov/news/PRArticle.aspx?NewsID=205>]; (2) Government Accountability Office (GAO), *Veterans' Disability Benefits: Claims Processing Challenges Persist, while VA Continues to Take Steps to Address Them*, Statement of Daniel Bertoni, GAO Director of Education, Workforce, and Income Security, Testimony Before the Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans' Affairs, GAO-08-473T, Feb. 14, 2008 [<http://www.gao.gov/new.items/d08473t.pdf>]; (3) GAO, *Veterans' Disability Benefits: Processing of Claims Continues to Present Challenges*, Statement of Daniel Bertoni, GAO Acting Director of Education, Workforce, and Income Security Issues, Testimony before the Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans' Affairs, GAO-07-562T, Mar. 13, 2007 [<http://www.gao.gov/new.items/d07562t.pdf>]; (4) John L. Davis, *VA Vows to End Claims Backlog: Automation, Teamwork and More Staff are Key To Reducing the 650,000 VA Compensation Claims Clogging the System*, VFW Magazine, Jun. 1, 2002.

<sup>23</sup> Government Accountability Office (GAO), *Veterans' Disability Benefits: Claims Processing Challenges Persist, while VA Continues to Take Steps to Address Them*, Statement of Daniel Bertoni, GAO Director of Education, Workforce, and Income Security,

(continued...)

In the 110<sup>th</sup> Congress, hearings have been held by both the House and Senate Veterans' Affairs Committees on the VA's disability claims processing system and the timeliness of claims processing.<sup>24</sup> During these hearings, the VA has outlined steps that it has taken, or plans to take in the future, to improve the timeliness of claims processing. Other witnesses provided testimony in the hearings on their perceptions of the expected impact of the VA's steps to improve claims processing and on additional measures or reforms that they believe are needed to improve the VA's claims processing.

To address this issue, legislation has been introduced in the 110<sup>th</sup> Congress that would have an impact on disability determinations by the VA. Each chamber has its version of the Wounded Warrior Assistance Act of 2007 — H.R. 1538 in the House (introduced by Representative Ike Skelton) and S. 1283 in the Senate (introduced by Senator Mark Pryor). Both bills contain provisions that address disability evaluation, including a mandate for a joint Department of Defense (DOD)-VA study and report to Congress on the disability evaluation systems used by each department, recommendations for improvement, and the feasibility of consolidating the two systems. The House passed H.R. 1538 on a 426-0 vote on March 28, 2007, and the Senate passed it by unanimous consent on July 25, 2007. On November 7, 2007, the VA and the DOD announced a pilot program for a single physical to be used by the DOD for fitness for duty purposes and by the VA for disability evaluation and rating purposes. The one-year pilot program is to be conducted at the three military medical centers in the Washington, DC area: the Walter Reed Army Medical Center, the National Naval Medical Center, and the Air Force's Malcolm Grow Medical Center at Andrews Air Force Base. On November 29, 2007, the VA announced that the pilot program had started that week.

H.R. 653 (sponsored by Representative Thomas Reynolds) would have the Secretary of Veterans Affairs accept (if there is no clear and convincing evidence to the contrary) that an injury or disease is service-connected based on the sworn affidavit of a veteran who served in combat on or before July 27, 1953 (prior to or

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<sup>23</sup> (...continued)

Testimony Before the Subcommittee on Disability Assistance and Memorial Affairs, Committee on Veterans' Affairs, House of Representatives; GAO-8-473T, Feb. 14, 2008 [<http://www.gao.gov/new.items/d08473t.pdf>].

<sup>24</sup> (1) U.S. Congress, Senate Committee on Veterans' Affairs, *Review of Veterans' Disability Compensation: Undue Delay in Claims Processing*, Hearings, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 9, 2008, available online at [[http://veterans.senate.gov/public/index.cfm?pageid=16&release\\_id=11731&view=all](http://veterans.senate.gov/public/index.cfm?pageid=16&release_id=11731&view=all)]. (2) U.S. Congress, House Committee on Veterans' Affairs, *Examining the U.S. Department of Veterans Affairs' Claims Processing System*, Hearings, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 14, 2008, available online at [<http://veterans.house.gov/hearings/hearing.aspx?NewsID=189>]. (3) U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, *Personal Costs of the U.S. Department of Veterans Affairs Claims Backlog*, Field Hearings, Serial No. 110-51, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., October 9, 2007, available at [<http://veterans.house.gov/hearings/transcript.aspx?newsid=131>]. (4) U.S. Congress, Senate Committee on Veterans' Affairs, *VA Claims Adjudication Process*, Hearings, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., March 7, 2007, available at [[http://veterans.senate.gov/public/index.cfm?pageid=16&release\\_id=10805&view=all](http://veterans.senate.gov/public/index.cfm?pageid=16&release_id=10805&view=all)].

during the Korean War). H.R. 797 (sponsored by Representative Tammy Baldwin) and S. 1163 (introduced by Senator Daniel Akaka) would expand disability compensation for veterans who are visually impaired in both eyes by using a standard definition of blindness used by other federal agencies, including the Social Security Administration. The House passed H.R. 797 on a 424-0 vote on March 21, 2007, and the Senate Committee on Veterans' Affairs reported S. 1163 (S.Rept. 110-143) on August 3, 2007. On November 2, 2007, the Senate deleted the language of H.R. 797, replaced it with the text of S. 1163, as amended, and passed H.R. 797 by unanimous consent. On December 11, 2007, the House agreed to the Senate amendment with additional House amendments. The Senate agreed to the House amendments on December 17, 2007, and H.R. 797 became P.L. 110-157 on December 26, 2007.

**Cost-of-Living Adjustment.** Under current law, certain benefits for veterans, survivors, and dependents — disability compensation, pension, dependency and indemnity compensation, and the clothing allowance — are not automatically adjusted for inflation. Each year legislation has been introduced and enacted to provide an annual veterans' cost-of-living (or inflation) adjustment (COLA) equal to the COLA provided to Social Security recipients.

In the second session of the 110<sup>th</sup> Congress in 2008, H.R. 5826 (sponsored by Representative Ciro Rodriguez) and S. 2617 (sponsored by Senator Daniel Akaka) would provide a veterans' COLA equal to the COLA for Social Security benefits effective December 1, 2008. H.R. 5826, which was reported by the House Committee on Veterans' Affairs (H.Rept. 110-643) on May 15, 2008, was passed by the House on a 417-0 vote on May 21, 2008. The Senate Committee on Veterans' Affairs ordered S. 2617 to be reported by a voice vote on June 26, 2008.

During the first session of the 110<sup>th</sup> Congress, H.R. 1284 (sponsored by Representative John Hall), which was passed by the House on a 418-0 vote on March 21, 2007, and by the Senate by unanimous consent on October 18, 2007, became P.L. 110-111 on November 5, 2007. That COLA, which became effective December 1, 2007, matched the 2.3% Social Security COLA for 2008. The bill's companion measure in the Senate was S. 423 (sponsored by Senator Daniel Akaka), which was reported by the Senate Committee on Veterans' Affairs (S.Rept. 110-135) on July 24, 2007. Also introduced during the first session were S. 161 (sponsored by Senator John Thune) and H.R. 402 (sponsored by Representative Joe Knollenberg), which would create an annual automatic veterans' COLA based on the Social Security adjustment.

**Pension Benefits.** A veteran of limited means who has wartime service (i.e., part of his or her military service occurred during a period of war) and is either age 65 or older or is permanently and totally disabled (not service-connected) may be eligible for a monthly pension benefit. However, the pension benefit was designed to provide monthly income to very-low income veterans who served during times of war, so the veteran's gross income can reduce the maximum benefit. The pension benefit is higher if the veteran is housebound or requires aid and attendance.<sup>25</sup>

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<sup>25</sup> "Aid and attendance" is an additional benefit paid to veterans, their spouses, surviving (continued...)

Legislation has been introduced in the 110<sup>th</sup> Congress that would alter the amount of, or eligibility for, the pension benefits. H.R. 1272 (sponsored by Representative Shelley Berkley) would increase the maximum annual pension benefit amount. H.R. 1900 (sponsored by Representative Nick Rahall) would expand eligibility for the pension benefit to veterans who received an expeditionary medal during a period of service that was not a period of war. H.R. 1901 (sponsored by Representative Nick Rahall) would expand eligibility for the pension benefit to veterans who served during specific periods of time in the Republic of Korea, Lebanon, Granada, or Panama. The House Committee on Veterans' Affairs's Subcommittee on Disability Assistance and Memorial Affairs held a hearing on H.R. 1900 and H.R. 1901 on July 31, 2007. S. 2025 (sponsored by Senator Daniel Akaka) would provide an additional monthly pension amount for veterans 65 or older who are eligible for the pension benefit because of age and are also permanently and totally disabled, or who are housebound due to disabilities but do not qualify for aid and attendance. S. 1315 (sponsored by Senator Daniel Akaka) would clarify that a veteran who qualifies for the pension benefit based on age is not eligible for an additional payment because the veteran is housebound or requires aid and attendance. S. 1315, which was reported by the Senate Committee on Veterans' Affairs (S.Rept. 110-148) on August 29, 2007, was passed by the Senate on a 96-1 vote on April 24, 2008.

## Education

Congressional interest in the education benefits afforded to military personnel greatly increased after the terrorist attacks of September 11, 2001, and the U.S. military became involved in Iraq and Afghanistan, which resulted in increasing numbers of military personnel and reservists being called to active duty.

Veterans' and servicemembers' education benefits were significantly expanded on June 30, 2008, when President George W. Bush signed the Supplemental Appropriations Act, 2008 (P.L. 110-252) into law. Title V of the law, the Post-9/11 Veterans Educational Assistance Act of 2008, extends education benefits to veterans and servicemembers who have served on active duty in the armed forces (including members of reserve components under a call or order to active duty) for at least 90 days after September 10, 2001.<sup>26</sup> Under this program, individuals with at least 36 months of active duty service after that date are eligible for 36 months of educational assistance benefits consisting of:

- tuition and fees (limited to tuition charged at the most expensive public institution in the state in which the veteran or servicemember is enrolled);

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<sup>25</sup> (...continued)

spouses, and parents. This allowance is paid in all compensation, dependency indemnity compensation, and pension programs. The payment is based on the need for aid and attendance of another person, or by a specific disability.

<sup>26</sup> For more information on the new veterans' education benefits, see CRS Report RS22929, *A Brief Overview of the Post-9/11 Veterans Educational Assistance Act of 2008*, by Shannon S. Loane.

- a monthly housing allowance (based on average housing prices in the area in which the veteran or servicemember is enrolled); and
- a \$1,000 annual stipend for books and required educational expenses.

Provisions for funds for tutorial assistance, licensing, and certification tests are also included. Benefit eligibility for individuals who serve fewer than 36 months on active duty would be calculated as a percentage of the total maximum benefits. In addition, the law includes provisions allowing servicemembers who have served at least six years on active duty and who agree to serve at least four more years to transfer their education benefits to their dependents. The effective date for the new benefits is August 1, 2009.

The expanded veterans' education benefits in P.L. 110-252 are substantially similar to provisions in S. 22 (sponsored by Senator Jim Webb) and its companion bill, H.R. 5740 (sponsored by Representative Harry Mitchell). The benefits were included in an amendment to the war supplemental bill, H.R. 2642 (sponsored by Representative Chet Edwards), which the House passed on a 256-166 vote on May 15, 2008. On May 22, the Senate passed an amendment to H.R. 2642 that also included expanded veterans' education benefits on a 75-22 vote. In a 416-12 vote on June 19, the House approved revisions to the Senate-passed version of H.R. 2642, which reflected compromises on enhanced veterans' education benefits and other domestic issues. The Senate passed the compromise legislation on June 26 by a 92-6 vote.<sup>27</sup>

The Post-9/11 Educational Assistance program is the latest of several federal veterans' educational assistance programs that have been enacted since 1944. The Servicemen's Readjustment Act of 1944 (P.L. 78-346), more commonly referred to as the GI Bill of Rights, provided support, including education benefits, to veterans of World War II. After the original GI Bill expired in 1956, other laws and programs enacted for similar purposes included the Korean Conflict GI Bill (Veterans' Readjustment Assistance Act of 1952, P.L. 82-550), the Vietnam-Era GI Bill (P.L. 89-358), the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP, P.L. 94-502), the current Montgomery GI Bill (MGIB, P.L. 98-525), and the Reserve Educational Assistance Program (REAP, P.L. 108-375).<sup>28</sup>

In addition to the newly-enacted Post-9/11 Veterans' Educational Assistance program, the following educational assistance programs are available to veterans and servicemembers:

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<sup>27</sup> For more information on the war supplemental appropriations, see CRS Report RL34451, *Second FY2008 Supplemental Appropriations for Military Operations, International Affairs, and Other Purposes*, by Stephen Daggett, Susan B. Epstein, Rhoda Margesson, Curt Tarnoff, Pat Towell, Catherine Dale, and Shannon S. Loane.

<sup>28</sup> For more information about the various federal education benefits available to veterans and military personnel, see CRS Report RL34549, *A Brief History of Veterans' Education Benefits and Their Value*, by David P. Smole and Shannon S. Loane.

- MGIB-Active Duty (MGIB-AD) — for individuals who are on active duty or following separation from active duty;
- MGIB-Selected Reserves (MGIB-SR) — for members of the selected reserves; and
- MGIB-Reserve Educational Assistance Program (REAP) — for members of reserve components who are called or ordered to active duty in response to a war or national emergency as declared by the President or Congress.

Maximum monthly benefit amounts for full-time enrollment in eligible programs in 2008 range from a high of \$1,101.00 for active duty members (MGIB-AD) who enlist for three years or more; to \$880.80 for individuals in the selected reserves (REAP) who are called to active duty and who serve more than two consecutive years on active duty; to \$317.00 for members of the selected reserves (MGIB-SR) who are not serving on active duty, as of October 1, 2007. P.L. 110-252 increased the maximum rate for MGIB-AD to \$1,321 for the period covering August 1, 2008, through September 30, 2009. Since REAP benefits are based on a percentage of MGIB-AD benefits, the maximum reimbursement rate for REAP will increase to \$1,056.80 as of August 1, 2008.<sup>29</sup>

While servicemembers are required to elect to participate in the MGIB program at the time of their enlistment and to agree to make 12 months of payments into the program, no such requirements apply to the Post-9/11 program. Individuals may be able to receive benefits under multiple veterans' educational assistance programs, but not at the same time.

Other bills that specifically address the MGIB education benefits have also been introduced in the 110<sup>th</sup> Congress. H.R. 5684 (sponsored by Representative Stephanie Herseth Sandlin) would increase the amount of the benefit and the time limit for using the benefits, among other provisions. Hearings were held on H.R. 5684 by the House Committee on Veterans' Affairs's Subcommittee on Economic Opportunity on April 16, 2008, and the full committee ordered the bill to be reported on April 30 by a voice vote. H.R. 3882 (sponsored by Representative Tim Walz) would change the length of service requirement needed to receive education benefits for servicemembers serving on active duty. On November 7, 2007, the House Committee on Veterans' Affairs ordered H.R. 3882 to be reported by a voice vote.

## Homelessness

The ongoing wars in Iraq and Afghanistan have resulted in heightened congressional attention to the issue of homeless veterans. The VA estimates that

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<sup>29</sup> The benefit amounts shown for each program are for full-time institutional training. The amounts are less for individuals who attend school less than full-time and who served less than the aforementioned number of years. Links to the latest education benefits payment rate schedules for each of these three programs are available at [[http://www.gibill.va.gov/GI\\_Bill\\_Info/rates.htm](http://www.gibill.va.gov/GI_Bill_Info/rates.htm)].

approximately 154,000 veterans are homeless on any given night.<sup>30</sup> According to two studies that have attempted to capture the characteristics of the homeless, veterans make up between 19% and 23% of the adult homeless population.<sup>31</sup> Studies indicate that both male and female veterans are more likely to be homeless than their nonveteran counterparts.<sup>32</sup> Among the explanations for the over representation of veterans among the homeless are mental health diagnoses, including post-traumatic stress disorder, addictions to alcohol and other substances, and physical health problems.<sup>33</sup>

Multiple programs exist to serve homeless veterans. The primary programs are the VA's Homeless Providers Grant and Per Diem Program, the Domiciliary Care for Homeless Veterans program, the Health Care for Homeless Veterans program, and the Compensated Work Therapy Program. The Department of Labor also has a program for homeless veterans called the Homeless Veterans Reintegration Program. In FY2007, an estimated \$266 million was provided for these five programs to assist homeless veterans.<sup>34</sup>

In addition, a collaboration between the VA and the Department of Housing and Urban Development (HUD), called HUD VA Supported Housing (HUD-VASH), provides permanent housing and supportive services to homeless veterans with chronic mental illnesses or chronic substance abuse disorders. Homeless veterans receive Section 8 vouchers from HUD and supportive services through VA medical centers. Initially, the program provided about 1,700 Section 8 vouchers for homeless veterans in 1992. According to the VA, most of those vouchers are still being used by veterans. No other vouchers were funded until the December 26, 2007 enactment of the FY2008 Consolidated Appropriations Act (P.L. 110-161), in which Congress appropriated \$75 million for additional Section 8 vouchers for homeless veterans.

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<sup>30</sup> John H. Kuhn and John Nakashima, *The Fourteenth Annual Progress Report on Public Law 105-114: Services for Homeless Veterans Assessment and Coordination*, U.S. Department of Veterans Affairs, February 28, 2008.

<sup>31</sup> The estimate of 19% included only the sheltered homeless population, while the estimate of 23% included the unsheltered and sheltered populations. See U.S. Department of Housing and Urban Development, *The Annual Homeless Assessment Report to Congress*, February 28, 2007, p. 32, available at [<http://www.huduser.org/Publications/pdf/ahar.pdf>], and Martha R. Burt, Laudan Y. Aron, et al., *Homelessness: Programs and the People They Serve*, Urban Institute, December 1999, p. 18, available at [<http://www.urban.org/UploadedPDF/homelessness.pdf>].

<sup>32</sup> See Robert Rosenheck, Linda Frisman, and An-Me Chung, "The Proportion of Veterans Among Homeless Men," *American Journal of Public Health* 84, no. 3 (March 1994), p. 466, available at [<http://www.ajph.org/cgi/reprint/84/3/466>]; and Gail Gamache, Robert Rosenheck, and Richard Tessler, "Overrepresentation of Women Veterans Among Homeless Women," *American Journal of Public Health* 93, no. 7 (July 2003), p. 1134, available at [<http://www.ajph.org/cgi/content/full/93/7/1132>].

<sup>33</sup> Testimony of Cheryl Beversdorf, Director, National Coalition for Homeless Veterans, before the House Appropriations Committee, Subcommittee on Military Construction and Veterans Affairs, *FY2008 Appropriations*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., March 8, 2007.

<sup>34</sup> For more information on programs for homeless veterans, see CRS Report RL34024, *Veterans and Homelessness*, by Libby Perl.

Legislation in the 110<sup>th</sup> Congress includes S. 1233 (sponsored by Senator Daniel Akaka), which was reported by the Senate Committee on Veterans' Affairs (S.Rept. 110-147) on August 29, 2007. The bill would address the per diem portion of the Homeless Providers Grant and Per Diem Program by removing the legal requirement that per diem payments to service providers be offset by the receipt of other sources of funding. It would also create a demonstration program to identify members of the armed services who are at risk of homelessness upon leaving active duty and to provide counseling and supportive services for these individuals. Similar to H.R. 2874 (described below), the bill would reauthorize the demonstration program for veterans leaving prison and enhance the ability of domiciliary care programs to serve female veterans. The bill would also create a program to provide supportive services for homeless veterans and their families who are living in permanent housing.

H.R. 2874 (sponsored by Representative Michael Michaud), which was passed by the House on a voice vote on July 30, 2007, contains provisions that would create a new program to provide supportive services to low-income veterans and their families, enhance the ability of domiciliary care programs to serve female veterans, and reauthorize a demonstration program to assist veterans who are transitioning from prison and other institutions to non-institutional settings.<sup>35</sup>

## Life Insurance

The VA administers several life insurance programs for veterans. Three programs are closed for enrollment, but still have active policies: United States Government Life Insurance (a World War I program); National Service Life Insurance (a World War II program); and Veterans Special Life Insurance (a Korean War program). The following current programs are open for enrollment.

**Servicemembers' Group Life Insurance (SGLI)<sup>36</sup> and Family Servicemembers' Group Life Insurance (FSGLI).** SGLI coverage is available to eligible servicemembers in \$50,000 increments up to \$400,000. Spouses and dependent children are eligible for FSGLI if the servicemember is insured under SGLI. Under FSGLI, spouse coverage can be elected in \$10,000 increments up to \$100,000 but cannot exceed the servicemember's SGLI coverage amount. Dependent children coverage under FSGLI is \$10,000 and is automatic for servicemembers with SGLI coverage.

**Traumatic Servicemembers' Group Life Insurance (TSGLI).** TSGLI became effective December 1, 2005, and all servicemembers with SGLI coverage are automatically covered by TSGLI. For specified traumatic injuries, TSGLI provides a benefit that ranges from \$25,000 to \$100,000, depending on the type and severity of the traumatic injury. TSGLI benefits are also retroactive to October 7, 2001, for

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<sup>35</sup> For descriptions of additional bills pertaining to homeless veterans that have been introduced in the 110<sup>th</sup> Congress, see CRS Report RL30442, *Homelessness: Targeted Federal Programs and Recent Legislation*, by Libby Perl, coordinator, Adrienne L. Fernandes, Gail McCallion, Garrine P. Laney, Ramya Sundararaman, and Barbara English.

<sup>36</sup> For more information on SGLI, see CRS Report RL32769, *Military Death Benefits: Status and Proposals*, by David F. Burrelli and Jennifer R. Corwell.

traumatic injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom. The servicemember applies to his or her uniformed service for a TSGLI benefit. The uniformed service determines whether the servicemember is eligible for it, and, if so, the amount that he or she should receive. Then the uniformed service notifies the VA to pay the TSGLI benefit to the servicemember.

**Veterans' Group Life Insurance (VGLI).** VGLI coverage is available in \$10,000 increments up to \$400,000, but it cannot exceed the level of SGLI coverage that the member had in force at the time of separation from service. Upon separation from service, an SGLI member can convert his or her coverage to a commercial plan offered by participating commercial insurance companies or to a renewable VGLI policy.

**Service-Disabled Veterans Insurance (S-DVI).** S-DVI coverage is available in \$1,000 increments up to \$10,000 for veterans who do not have dishonorable discharges, were released from active duty after April 25, 1951, and received new service-connected disability ratings within two years of applying for S-DVI coverage. In addition, supplemental coverage of \$20,000 is available for S-DVI policy holders who are under age 65, are eligible for waivers of S-DVI premiums due to total disability, and apply for the supplemental coverage within one year of being notified that the premium waiver has been granted.

In the 110<sup>th</sup> Congress, H.R. 585 (sponsored by Representative Stephanie Herseth Sandlin) and S. 225 (sponsored by Senator Larry Craig) would expand retroactive TSGLI coverage by eliminating the requirement that the traumatic injury be incurred in Operation Enduring Freedom or Operation Iraqi Freedom. A hearing on H.R. 585 was held by the House Committee on Veterans' Affairs' Subcommittee on Disability Assistance and Memorial Affairs on June 19, 2007. S. 643 (sponsored by Senator Daniel Akaka) and H.R. 2026 (sponsored by Representative Walter Jones, Jr.) would increase the supplemental S-DVI benefit from \$20,000 to \$40,000. H.R. 2697 (sponsored by Representative Doug Lamborn) and S. 1265 (sponsored by Senator Larry Craig) would expand eligibility for veterans' mortgage life insurance to include members of the armed services who are receiving specially adapted housing assistance from the VA. The House Veterans' Affairs Committee's Subcommittee on Disability Assistance and Memorial Affairs held a hearing on H.R. 2697 on July 31, 2007.

S. 1315 (sponsored by Senator Daniel Akaka) would make several changes to the insurance programs administered by the VA, including

- (1) creating a new level-premium term life insurance program for disabled veterans (who may switch coverage from S-DVI) that has a maximum value of \$50,000 and can be taken in \$10,000 increments (veterans age 70 and older have a maximum value of 20% of the maximum value in place before turning age 70);
- (2) expanding SGLI to include certain members of the Ready Reserve;
- (3) increasing the amount of S-DVI supplemental coverage from \$20,000 to \$30,000;
- (4) expanding eligibility for retroactive TSGLI coverage; and
- (5) providing for the designation of a fiduciary under TSGLI.

S. 1315, which was reported by the Senate Committee on Veterans' Affairs (S.Rept. 110-148) on August 29, 2007, was passed by the Senate on a 96-1 vote on April 24, 2008.

H.R. 1585 (sponsored by Representative Ike Skeleton), which contained a provision that would have provided for the designation of a fiduciary or trustee for benefits under TSGLI for servicemembers who are medically incapacitated, was vetoed by President George W. Bush on December 28, 2007. This provision, however, was subsequently included in H.R. 4986 (sponsored by Representative Ike Skelton), which was passed by the House on a 369-46 vote on January 16, 2008, and by the Senate on a 91-3 vote on January 22, 2008. H.R. 4986 became P.L. 110-181 on January 28, 2008.

## Legal Representation for Veterans

Since the American Civil War, Congress has regulated the representation of veterans before the VA and its predecessors. This regulation has continued to evolve over the years, with Congress establishing various standards for representation, criteria and guidelines for fees, and limitation on when a veteran may engage the services of an attorney (on a fee basis) to represent him or her in the appeals process.

The VA claims appeal process is a detailed multistep procedure.<sup>37</sup> A recently enacted law — the Veterans Benefits, Health Care, and Information Technology Act of 2006<sup>38</sup> (“act”) — has modified attorney participation in appeals. The Secretary of Veterans Affairs (“Secretary”) is required to provide additional qualifications and standards for agents<sup>39</sup> and attorneys who represent veterans before the VA. These standards deal with (1) training and character and (2) fee criteria and limitations. The Secretary is authorized to charge and collect fees from the agents or attorneys to be used for administrative expenses for veterans' benefits programs. The following grounds for suspension of agents and attorneys are provided in the act: presenting frivolous claims, prior suspensions, charging excessive or unreasonable fees, or failure to comply with the Secretary's regulations.

A significant change that the act made in the role of attorneys in the appeal process is *when in the appeal process an attorney may commence services for fees*. Previously, an attorney could not represent a veteran for a fee until the Board of Veterans Appeals (BVA) made a final decision.<sup>40</sup> This had the effect of excluding an attorney from the process until all of the administrative appeals had been exhausted. The act now permits an attorney to enter the appeal process at a much earlier date — after the veteran has received a decision on his or her claim from the

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<sup>37</sup> See CRS Report RL33704, *Veterans Affairs: The Appeal Process for Veterans' Claims*, by Douglas Reid Weimer.

<sup>38</sup> P.L. 109-461, Title I.

<sup>39</sup> “Agents” or representatives of various veterans' service organizations may represent a veteran in his/her appeal process. See CRS Report RL33704, *Veterans Affairs: The Appeal Process for Veterans' Claims*, by Douglas Reid Weimer.

<sup>40</sup> *Id.* at 3. See Figure I. Appeal Process.

VA and decides to appeal this initial decision administratively through the filing of a Notice of Disagreement (NOD).<sup>41</sup> *An attorney may now provide representation for a fee after the NOD is filed.* The act requires the Secretary to provide Congress with an evaluation of the effect of the new system of representation. The act also modified the requirements to file attorney fee agreements so as to reflect the earlier point when an attorney or agent can enter the appeal process. The Secretary is also authorized to review a fee agreement, and the Secretary may order a reduction in an agreed upon fee if the Secretary finds the fee excessive or unreasonable. The Secretary's decision may be reviewed by the BVA, which is authorized to make the final review of the issue.<sup>42</sup>

This change in the veterans' appeal procedure has been somewhat controversial. While veterans' groups such as the National Organization of Veterans Advocates (NOVA) and the Paralyzed Veterans of America (PVA) have supported the change, other groups — most notably, the Disabled American Veterans (DAV) — have vigorously opposed the legislative change, continue to oppose implementation of the law, and are seeking a repeal of the law.<sup>43</sup> Opposition to the change may be summarized into three broad categories. First, representatives of veterans' groups have been the exclusive representatives of veterans in the VA administrative appeal process and are reluctant to change this arrangement. Second, there is a belief that any benefits should belong exclusively to the veteran and should not be shared or paid to a legal representative. Third, there may be a reluctance to have previous work done by veteran representatives reviewed by attorneys.

H.R. 1318 (introduced by Representative Ron Lewis) would repeal the authority for certain agent or attorney representation in veterans' benefit cases before the VA. In effect, the bill would return to the procedure that existed before P.L. 109-461 became law and permit representation only after the BVA renders a final decision in the case.

## **U.S. Court of Appeals for Veterans Claims**

Sometimes a veteran may not agree with the VA's initial decision concerning an award or the amount of the benefit.<sup>44</sup> Within the VA, there is an extensive appeal/review process that concludes with the decision of the Board of Veterans Appeals (BVA).<sup>45</sup> Final decisions of the BVA may be appealed to the U.S. Court of Appeals for Veterans Claims (CAVC).<sup>46</sup> The CAVC is an independent court,

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<sup>41</sup> Id.

<sup>42</sup> 38 U.S.C. § 7104.

<sup>43</sup> See [[http://www.dav.org/voters/claims\\_process.html](http://www.dav.org/voters/claims_process.html)].

<sup>44</sup> See CRS Report RL33704, *Veterans Affairs: The Appeal Process for Veterans' Claims*, by Douglas Reid Weimer.

<sup>45</sup> See CRS Report RL33704, *Veterans Affairs: The Appeal Process for Veterans' Claims*, by Douglas Reid Weimer.

<sup>46</sup> See CRS Report RS22561, *Veterans Affairs: The U.S. Court of Appeals for Veterans* (continued...)

separate and apart from the VA. The CAVC does not hold trials, hear witness testimony, or receive new evidence.<sup>47</sup> In deciding a case, the CAVC considers the BVA decision, the briefs submitted by the parties, and the record that was considered by the VA and made available to the BVA.<sup>48</sup>

The veteran who is appealing to the CAVC may represent himself or herself or may be represented by an attorney or an authorized representative.<sup>49</sup> VA's Office of General Counsel represents the Secretary of Veterans Affairs and the VA before the CAVC.<sup>50</sup> Following a final decision of the CAVC, that decision may be appealed to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit")<sup>51</sup> by either the veteran or the VA. Appeals to the Federal Circuit are required to be filed within 60 days of the final CAVC decision.<sup>52</sup> Following a final decision by the Federal Circuit, either the veteran or the VA may petition the U.S. Supreme Court for certiorari, or review, of that decision within 90 days of the Federal Circuit's final action.<sup>53</sup>

Congress has been concerned about the CAVC's backlog of cases and the overall length of time needed to process an appeal through the VA and then through the CAVC.<sup>54</sup> An additional, related concern is the hardship experienced by those veterans who are not receiving any benefits while their appeals are pending. In response to these concerns, the Senate Committee on Veterans' Affairs held a hearing on the CAVC and the backlog on July 13, 2006.<sup>55</sup> It was reported at this hearing that there was a backlog of more than 5,800 cases. Among the issues discussed was the possible recall of retired CAVC judges to help reduce the backlog.<sup>56</sup> Following the hearing, two retired judges were recalled to process or decide more cases through the system. After the recall term of these two judges ended, two other retired judges were recalled. At the present time, two judges are serving in recall status. With more

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<sup>46</sup> (...continued)

*Claims — Judicial Review of VA Decision Making*, by Douglas Reid Weimer.

<sup>47</sup> 38 U.S.C. § 7261.

<sup>48</sup> See CRS Report RS22561, *Veterans Affairs: The U.S. Court of Appeals for Veterans Claims — Judicial Review of VA Decision Making*, by Douglas Reid Weimer.

<sup>49</sup> Representation before the court is governed by U.S. Vet. App. R. 46.

<sup>50</sup> 38 U.S.C. § 7263(a).

<sup>51</sup> *Id.* § 7292.

<sup>52</sup> 28 U.S.C. § 2107.

<sup>53</sup> 38 U.S.C. § 7292(c). A petition for certiorari requests the Supreme Court to review the decision of the lower court. The Court has broad discretion in deciding which cases it chooses to review.

<sup>54</sup> As all claims and appeals are different, it has not been possible to determine the "average" length of an appeal through the VA and CAVC process.

<sup>55</sup> U.S. Congress, Senate Committee on Veterans' Affairs, *Battling the Backlog Part II: Challenges Facing the U.S. Court of Appeals for Veterans Claims*, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 13, 2006, S.Hrg. 109-694, available at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_senate\\_hearings&docid=f:29716.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_senate_hearings&docid=f:29716.pdf)].

<sup>56</sup> *Id.* The judges would be "recalled" to serve on the court in their retirement.

appeals being filed each month, it is anticipated that the CAVC will continue to have a heavy workload.

S. 1289 (introduced by Senator Larry Craig) would amend Title 38 of the *U.S. Code* to modify the salary and the terms of the judges of the CAVC. The bill would also modify the recall provisions for retired CAVC judges and other matters relating to the CAVC.

S. 1315 (introduced by Senator Daniel Akaka), whose Title V is substantially similar to S. 1289,<sup>57</sup> would make the following changes concerning the CAVC:

- Eliminate the restriction on the number of days per year that a retired CAVC judge may voluntarily serve in recall status;
- Modify the retirement pay structure for future CAVC judges;
- Exempt retired CAVC judges from involuntary recall after they had served a total of five years of recall service;<sup>58</sup>
- Modify the CAVC's authority to impose certain registration fees;<sup>59</sup>
- Require the court to submit an annual report summarizing its workload to the Senate and House Committees on Veterans' Affairs;<sup>60</sup> and
- Require the General Services Administration (GSA) to provide Congress with a report on the expansion of the CAVC's office space.<sup>61</sup>

S. 1315, which was reported by the Senate Committee on Veterans' Affairs (S.Rept. 110-148) on August 29, 2007, was passed by the Senate on a 96-1 vote on April 24, 2008.

S. 2640 (introduced by Senator Richard Burr) contains provisions similar to those in S. 1289 and S. 1315. Title V of S. 2640 deals with the recall of CAVC judges and their pay structure;<sup>62</sup> discretion in the imposition of practice and

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<sup>57</sup> U.S. Congress. Senate Committee on Veterans' Affairs, *Veterans Benefits Enhancement Act of 2007*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., August 29, 2007, S.Rept. 110-148, available at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_reports&docid=f:sr148.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_reports&docid=f:sr148.110.pdf)].

<sup>58</sup> S. 1315, § 501.

<sup>59</sup> *Id.* § 502.

<sup>60</sup> *Id.* § 503.

<sup>61</sup> *Id.* § 504.

<sup>62</sup> S. 2640, § 501.

registration fees;<sup>63</sup> an annual report on the CAVC's workload to Congress;<sup>64</sup> and a report to Congress by the GSA on the expansion of facilities for the CAVC.<sup>65</sup>

H.R. 4084 (introduced by Representative John Hall) contains some provisions similar to those in S. 1315. H.R. 4084 would require the CAVC to submit an annual report summarizing its workload to Senate and House Committees on Veterans' Affairs<sup>66</sup> and would also require the General Services Administration to provide Congress with a report on the expansion of the CAVC's office space.<sup>67</sup> The House Committee on Veterans' Affairs' Subcommittee on Disability Assistance and Memorial Affairs held hearings on H.R. 4084 on November 8, 2007.

S. 2091 (introduced by Senator Daniel Akaka) would amend Title 38 of the *U.S. Code* to increase the number of the CAVC's active judges from seven to nine.

S. 2737 (introduced by Senator Daniel Akaka), the proposed "Veterans' Rating Schedule Review Act," would amend Title 38 of the *U.S. Code* to grant jurisdiction to the CAVC to review compliance of ratings for disabilities under the schedule of 38 U.S.C. § 1151 with the statutory requirements applicable to entitlement to disability compensation.

H.R. 5892 (introduced by Representative John Hall) would amend Title 38 of the *U.S. Code* to require an annual report on the workload of the CAVC.<sup>68</sup> The bill would also modify the CAVC's jurisdiction and the finality of its decisions.<sup>69</sup> On April 30, 2008, the House Committee on Veterans' Affairs ordered H.R. 5892 to be reported by a voice vote.

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<sup>63</sup> *Id.* § 502.

<sup>64</sup> *Id.* § 503.

<sup>65</sup> *Id.* § 504.

<sup>66</sup> H.R. 4084, § 4.

<sup>67</sup> *Id.* § 5.

<sup>68</sup> H.R. 5892, § 201.

<sup>69</sup> *Id.* § 202.