

107TH CONGRESS
2D SESSION

S. 2237

AN ACT

To amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Veterans Benefits Improvement Act of 2002”.

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

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

TITLE I—COMPENSATION AND PENSION MATTERS

- Sec. 101. Clarification of entitlement to wartime disability compensation for women veterans who have service-connected mastectomies.
 Sec. 102. Compensation for hearing loss in paired organs.
 Sec. 103. Authority for presumption of service connection for hearing loss associated with particular military occupational specialties.
 Sec. 104. Modification of authorities on Medal of Honor Roll special pension.
 Sec. 105. Applicability of prohibition on assignment of veterans benefits to agreements on future receipt of certain benefits.
 Sec. 106. Extension of income verification authority.

TITLE II—EDUCATION MATTERS

- Sec. 201. Three-year increase in aggregate annual amount available for State approving agencies for administrative expenses.
 Sec. 202. Clarifying improvement of various education authorities.

TITLE III—HOUSING MATTERS

- Sec. 301. Authority to guarantee adjustable rate mortgages and hybrid adjustable rate mortgages.

TITLE IV—OTHER BENEFITS MATTERS

- Sec. 401. Treatment of duty of National Guard mobilized by States for homeland security activities as military service under Soldiers' and Sailors' Civil Relief Act of 1940.
 Sec. 402. Prohibition on certain additional benefits for persons committing capital crimes.
 Sec. 403. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.

TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

- Sec. 501. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.
 Sec. 502. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.
 Sec. 503. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.
 Sec. 504. Retroactive applicability of modifications of authority and requirements to assist claimants.

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

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

7 **TITLE I—COMPENSATION AND**
 8 **PENSION MATTERS**

9 **SEC. 101. CLARIFICATION OF ENTITLEMENT TO WARTIME**
 10 **DISABILITY COMPENSATION FOR WOMEN**
 11 **VETERANS WHO HAVE SERVICE-CONNECTED**
 12 **MASTECTOMIES.**

13 (a) IN GENERAL.—Section 1114(k) is amended by
 14 inserting “of half or more of the tissue” after “anatomical
 15 loss” the second place it appears.

16 (b) EFFECTIVE DATE.—The amendment made by
 17 subsection (a) shall take effect on the date of the enact-
 18 ment of this Act, and shall apply with respect to months
 19 that begin on or after that date.

20 **SEC. 102. COMPENSATION FOR HEARING LOSS IN PAIRED**
 21 **ORGANS.**

22 (a) HEARING LOSS REQUIRED FOR COMPENSA-
 23 TION.—Section 1160(a)(3) is amended—

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

1 (2) by striking “total deafness” the second
 2 place it appears and inserting “deafness”.

3 (b) EFFECTIVE DATE.—The amendments made by
 4 subsection (a) shall take effect on the date of the enact-
 5 ment of this Act, and shall apply with respect to months
 6 that begin on or after that date.

7 **SEC. 103. AUTHORITY FOR PRESUMPTION OF SERVICE CON-**
 8 **NECTION FOR HEARING LOSS ASSOCIATED**
 9 **WITH PARTICULAR MILITARY OCCUPA-**
 10 **TIONAL SPECIALTIES.**

11 (a) IN GENERAL.—(1) Subchapter II of chapter 11
 12 is amended by adding at the end the following new section:

13 **“§ 1119. Presumption of service connection for hear-**
 14 **ing loss associated with particular mili-**
 15 **tary occupational specialties**

16 “(a) For purposes of section 1110 of this title, and
 17 subject to section 1113 of this title, hearing loss, tinnitus,
 18 or both of a veteran who served on active military, naval,
 19 or air service during a period specified by the Secretary
 20 under subsection (b)(1) and was assigned during the pe-
 21 riod of such service to a military occupational specialty
 22 or equivalent described in subsection (b)(2) shall be con-
 23 sidered to have been incurred in or aggravated by such
 24 service, notwithstanding that there is no record of evidence

1 of such hearing loss or tinnitus, as the case may be, during
2 the period of such service.

3 “(b)(1) A period referred to in subsection (a) is a
4 period, if any, that the Secretary determines in regulations
5 prescribed under this section—

6 “(A) during which audiometric measures were
7 consistently not adequate to assess individual hear-
8 ing threshold shift; or

9 “(B) with respect to service in a military occu-
10 pational specialty or equivalent described in para-
11 graph (2), during which hearing conservation meas-
12 ures to prevent individual hearing threshold shift
13 were unavailable or provided insufficient protection
14 for members assigned to such military occupational
15 specialty or equivalent.

16 “(2) A military occupational specialty or equivalent
17 referred to in subsection (a) is a military occupational spe-
18 cialty or equivalent, if any, that the Secretary determines
19 in regulations prescribed under this section in which indi-
20 viduals assigned to such military occupational specialty or
21 equivalent in the active military, naval, or air service are
22 or were likely to be exposed to a sufficiently high level
23 of acoustic trauma as to result in permanent hearing loss,
24 tinnitus, or both.

1 “(c) In making determinations for purposes of sub-
2 section (b), the Secretary shall take into account the re-
3 port submitted to the Secretary by the National Academy
4 of Sciences under section 103(c) of the Veterans Benefits
5 Improvement Act of 2002.

6 “(d)(1) Not later than 60 days after the date on
7 which the Secretary receives the report referred to in sub-
8 section (c), the Secretary shall determine whether or not
9 a presumption of service connection for hearing loss,
10 tinnitus, or both is warranted for the hearing loss,
11 tinnitus, or both, as the case may be, of individuals as-
12 signed to each military occupational specialty or equiva-
13 lent, and during each period, identified by the National
14 Academy of Sciences in such report as a military occupa-
15 tional specialty or equivalent in which individuals are or
16 were likely to be exposed during such period to a suffi-
17 ciently high level of acoustic trauma as to result in perma-
18 nent hearing loss, tinnitus, or both to a degree which
19 would be compensable as a service-connected disability
20 under the laws administered by the Secretary.

21 “(2) If the Secretary determines under paragraph (1)
22 that a presumption of service connection is warranted with
23 respect to any military occupational specialty or equivalent
24 described in that paragraph and hearing loss, tinnitus, or
25 both, the Secretary shall, not later than 60 days after the

1 date of the determination, issue proposed regulations set-
2 ting forth the Secretary's determination.

3 “(3) If the Secretary determines under paragraph (1)
4 that a presumption of service connection is not warranted
5 with respect to any military occupational specialty or
6 equivalent described in that paragraph and hearing loss,
7 tinnitus, or both, the Secretary shall, not later than 60
8 days after the date of the determination—

9 “(A) publish the determination in the Federal
10 Register; and

11 “(B) submit to the Committees on Veterans'
12 Affairs of the Senate and the House of Representa-
13 tives a report on the determination, including a jus-
14 tification for the determination.

15 “(e) Any regulations issued under subsection (d)(2)
16 shall take effect on the date provided for in such regula-
17 tions. No benefit may be paid under this section for any
18 month that begins before that date.”.

19 (2) The table of sections at the beginning of chapter
20 11 is amended by inserting after the item relating to sec-
21 tion 1118 the following new item:

“1119. Presumption of service connection for hearing loss associated with partic-
ular military occupational specialties.”.

22 (b) PRESUMPTION REBUTTABLE.—Section 1113 is
23 amended by striking “or 1118” each place it appears and
24 inserting “1118, or 1119”.

1 (c) ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED
2 WITH VARIOUS MILITARY OCCUPATIONAL SPECIAL-
3 TIES.—(1) The Secretary of Veterans Affairs shall seek
4 to enter into an agreement with the National Academy of
5 Sciences, or another appropriate scientific organization,
6 for the Academy to perform the activities specified in this
7 subsection. The Secretary shall seek to enter into the
8 agreement not later than 60 days after the date of the
9 enactment of this Act.

10 (2) Under the agreement under paragraph (1), the
11 National Academy of Sciences shall—

12 (A) review and assess available data on occupa-
13 tional hearing loss;

14 (B) from such data, identify the forms of
15 acoustic trauma that, if experienced by individuals in
16 the active military, naval, or air service, could cause
17 or contribute to hearing loss, hearing threshold shift,
18 or tinnitus in such individuals;

19 (C) in the case of each form of acoustic trauma
20 identified under subparagraph (B)—

21 (i) determine how much exposure to such
22 form of acoustic trauma is required to cause or
23 contribute to hearing loss, hearing threshold
24 shift, or tinnitus, as the case may be, and at
25 what noise level; and

1 (ii) determine whether or not such hearing
2 loss, hearing threshold shift, or tinnitus, as the
3 case may be, is—

4 (I) immediate or delayed onset;

5 (II) cumulative;

6 (III) progressive; or

7 (IV) any combination of subclauses

8 (I) through (III);

9 (D) review and assess the completeness and
10 adequacy of data of the Department of Veterans Af-
11 fairs and the Department of Defense on hearing
12 threshold shift in a representative sample of individ-
13 uals who were discharged or released from service in
14 the Armed Forces following World War II, the Ko-
15 rean conflict, and the Vietnam era, and in peacetime
16 during the period from the end of the Vietnam era
17 to the beginning of the Persian Gulf War, and dur-
18 ing the Persian Gulf War, with such sample to be
19 selected so as to reflect an appropriate distribution
20 of individuals among the various Armed Forces;

21 (E) identify each military occupational specialty
22 or equivalent, if any, in which individuals assigned
23 to such military occupational specialty or equivalent
24 in the active military, naval, or air service are or
25 were likely to be exposed to a sufficiently high level

1 of acoustic trauma as to result in permanent hearing
2 loss, tinnitus, or both to a degree which would be
3 compensable as a service-connected disability under
4 the laws administered by the Secretary of Veterans
5 Affairs; and

6 (F) assess when, if ever—

7 (i) audiometric measures became adequate
8 to evaluate individual hearing threshold shift;
9 and

10 (ii) hearing conservation measures to pre-
11 vent individual hearing threshold shift were
12 available and provided sufficient protection for
13 members assigned to each military occupational
14 specialty or equivalent identified under subpara-
15 graph (E).

16 (3) Not later than 180 days after the date of the
17 entry into the agreement referred to in paragraph (1), the
18 National Academy of Sciences shall submit to the Sec-
19 retary a report on the activities of the National Academy
20 of Sciences under the agreement, including the results of
21 the activities required by subparagraphs (A) through (F)
22 of paragraph (2).

23 (4) For purposes of paragraph (2)(D), the terms
24 “World War II”, “Korean conflict”, “Vietnam era”, and

1 “Persian Gulf War” have the meanings given such terms
2 in section 101 of title 38, United States Code.

3 (d) REPORT ON ADMINISTRATION OF BENEFITS FOR
4 HEARING LOSS AND TINNITUS.—(1) Not later than 180
5 days after the date of the enactment of this Act, the Sec-
6 retary of Veterans Affairs shall submit to the Committees
7 on Veterans’ Affairs of the Senate and the House of Rep-
8 resentatives a report on the claims submitted to the Sec-
9 retary for disability compensation or health care for hear-
10 ing loss or tinnitus.

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

13 (A) The number of claims submitted to the Sec-
14 retary in each of 1999, 2000, and 2001 for disability
15 compensation for hearing loss, tinnitus, or both.

16 (B) Of the claims referred to in subparagraph
17 (A)—

18 (i) the number of claims for which dis-
19 ability compensation was awarded, set forth by
20 year;

21 (ii) the number of claims assigned each
22 disability rating; and

23 (iii) the total amount of disability com-
24 pensation paid on such claims during each such
25 year.

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

5 (D) The total number of veterans who sought
6 treatment in Department health care facilities in
7 each of 1999, 2000, and 2001 for hearing-related
8 disorders, set forth by—

9 (i) the number of veterans per year; and

10 (ii) the military occupational specialties or
11 equivalents of such veterans during their active
12 military, naval, or air service.

13 (E) The health care furnished to veterans re-
14 ferred to in subparagraph (D) for hearing-related
15 disorders, including the number of veterans fur-
16 nished hearing aids and the cost of furnishing such
17 hearing aids.

18 **SEC. 104. MODIFICATION OF AUTHORITIES ON MEDAL OF**

19 **HONOR ROLL SPECIAL PENSION.**

20 (a) INCREASE IN AMOUNT.—Subsection (a) of section
21 1562 is amended by striking “\$600” and inserting
22 “\$1,000, as adjusted from time to time under subsection
23 (e)”.

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

1 “(e) Effective as of December 1 each year, the Sec-
2 retary shall increase the amount of monthly special pen-
3 sion payable under subsection (a) as of November 30 of
4 such year by the same percentage as the percentage by
5 which benefit amounts payable under title II of the Social
6 Security Act (42 U.S.C. 401 et seq.) are increased effec-
7 tive December 1 of such year as a result of a determina-
8 tion under section 215(i) of that Act (42 U.S.C. 415(i)).”.

9 (c) EFFECTIVE DATE.—(1) Except as provided in
10 paragraph (2), the amendments made by subsections (a)
11 and (b) shall take effect on the date of the enactment of
12 this Act, and shall apply with respect to months that begin
13 on or after that date.

14 (2) The Secretary of Veterans Affairs shall not make
15 any adjustment under subsection (e) of section 1562 of
16 title 38, United States Code, as added by subsection (b)
17 of this section, in 2002.

18 (d) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN
19 ACT OF VALOR AND COMMENCEMENT OF SPECIAL PEN-
20 SION.—(1) The Secretary of Veterans Affairs shall pay,
21 in a lump sum, to each person who is in receipt of special
22 pension payable under section 1562 of title 38, United
23 States Code, an amount equal to the total amount of spe-
24 cial pension that the person would have received during
25 the period beginning on the first day of the first month

1 beginning after the date of the act for which the person
 2 was awarded the Medal of Honor and ending on the last
 3 day of the month preceding the month in which the per-
 4 son's special pension in fact commenced.

5 (2) For each month of a period referred to in para-
 6 graph (1), the amount of special pension payable to a per-
 7 son shall be determined using the rate of special pension
 8 that was in effect for such month, and shall be payable
 9 only if the person would have been entitled to payment
 10 of special pension during such month under laws for eligi-
 11 bility for special pension in effect at the beginning of such
 12 month.

13 **SEC. 105. APPLICABILITY OF PROHIBITION ON ASSIGN-**
 14 **MENT OF VETERANS BENEFITS TO AGREE-**
 15 **MENTS ON FUTURE RECEIPT OF CERTAIN**
 16 **BENEFITS.**

17 (a) IN GENERAL.—Section 5301(a) is amended—

18 (1) by inserting “(1)” after “(a)”;

19 (2) by designating the last sentence as para-
 20 graph (2) and indenting such paragraph, as so des-
 21 ignated, two ems from the left margin; and

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

24 “(3)(A) For purposes of this subsection, in any case
 25 where a beneficiary entitled to compensation, pension, or

1 dependency and indemnity compensation enters into an
2 agreement with another person under which agreement
3 such other person acquires for consideration the right to
4 receive payment of such compensation, pension, or de-
5 pendency and indemnity compensation, as the case may
6 be, whether by payment from the beneficiary to such other
7 person, deposit into an account from which such other per-
8 son may make withdrawals, or otherwise, such agreement
9 shall be deemed to be an assignment and is prohibited.

10 “(B) Any agreement or arrangement for collateral for
11 security for an agreement that is prohibited under sub-
12 paragraph (A) is also prohibited.

13 “(C)(i) Any person who enters into an agreement
14 that is prohibited under subparagraph (A), or an agree-
15 ment or arrangement that is prohibited under subpara-
16 graph (B), shall be fined under title 18, imprisoned for
17 not more than one year, or both.

18 “(ii) This subparagraph does not apply to a bene-
19 ficiary with respect to compensation, pension, or depend-
20 ency and indemnity compensation to which the beneficiary
21 is entitled under a law administered by the Secretary.”.

22 (b) EFFECTIVE DATE.—Paragraph (3) of section
23 5301(a) of title 38, United States Code (as added by sub-
24 section (a) of this section), shall apply with respect to any
25 agreement or arrangement described in such paragraph

1 that is entered into on or after the date of the enactment
2 of this Act.

3 (c) **OUTREACH.**—The Secretary of Veterans Affairs
4 shall, during the five-year period beginning on the date
5 of the enactment of this Act, carry out a program of out-
6 reach to inform veterans and other recipients or potential
7 recipients of compensation, pension, or dependency and in-
8 demnity compensation benefits under the laws adminis-
9 tered by the Secretary of the prohibition on the assign-
10 ment of such benefits under law. The program shall in-
11 clude information on various schemes to evade the prohibi-
12 tion, and means of avoiding such schemes.

13 **SEC. 106. EXTENSION OF INCOME VERIFICATION AUTHOR-**
14 **ITY.**

15 (a) **TITLE 38, UNITED STATES CODE.**—Section
16 5317(g) is amended by striking “September 30, 2008”
17 and inserting “September 30, 2011”.

18 (b) **INTERNAL REVENUE CODE.**—Section
19 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986
20 is amended by striking “September 30, 2003” and insert-
21 ing “September 30, 2011”.

1 **TITLE II—EDUCATION MATTERS**

2 **SEC. 201. THREE-YEAR INCREASE IN AGGREGATE ANNUAL**
3 **AMOUNT AVAILABLE FOR STATE APPROVING**
4 **AGENCIES FOR ADMINISTRATIVE EXPENSES.**

5 (a) INCREASE IN AMOUNT.—Section 3674(a)(4) is
6 amended in the first sentence by striking “fiscal years
7 2001 and 2002, \$14,000,000” and inserting “fiscal years
8 2003, 2004, and 2005, \$18,000,000”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall take effect on October 1, 2002.

11 **SEC. 202. CLARIFYING IMPROVEMENT OF VARIOUS EDU-**
12 **CATION AUTHORITIES.**

13 (a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM
14 ERA VETERANS.—Section 3011(a)(1)(C)(ii) is amended
15 by striking “on or”.

16 (b) ACCELERATED PAYMENT OF ASSISTANCE FOR
17 EDUCATION LEADING TO EMPLOYMENT IN HIGH TECH-
18 NOLOGY INDUSTRY.—(1) Subsection (b)(1) of section
19 3014A is amended by striking “employment in a high
20 technology industry” and inserting “employment in a high
21 technology occupation in a high technology industry”.

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

1 **“§ 3014A. Accelerated payment of basic educational**
 2 **assistance for education leading to em-**
 3 **ployment in high technology occupation**
 4 **in high technology industry”.**

5 (B) The table of sections at the beginning of chapter
 6 30 is amended by striking the item relating to section
 7 3014A and inserting the following new item:

“3014A. Accelerated payment of basic educational assistance for education lead-
 ing to employment in high technology occupation in high tech-
 nology industry.”.

8 (c) SOURCE OF FUNDS FOR INCREASED USAGE OF
 9 ENTITLEMENT UNDER ENTITLEMENT TRANSFER AU-
 10 THORITY.—Section 3035(b) is amended—

11 (1) in paragraph (1), by striking “paragraphs
 12 (2) and (3) of this subsection,” and inserting “para-
 13 graphs (2), (3), and (4),”; and

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

16 “(4) Payments attributable to the increased usage of
 17 benefits as a result of transfers of entitlement to basic
 18 educational assistance under section 3020 of this title
 19 shall be made from the Department of Defense Educations
 20 Benefits Fund established under section 2006 of title 10
 21 or from appropriations made to the Department of Trans-
 22 portation, as appropriate.”.

1 (d) LICENSING OR CERTIFICATION TESTS.—(1) Sec-
2 tion 3232(c)(1) is amended by striking “a licensing” and
3 inserting “a particular licensing”.

4 (2) Section 3689 is amended—

5 (A) in subsection (b)(1)(B), by inserting “and
6 with such other standards as the Secretary may pre-
7 scribe,” after “practices,”; and

8 (B) in subsection (c)(1)(A), by inserting “and
9 with such other standards as the Secretary may pre-
10 scribe,” after “practices,”.

11 (3) Section 3689(c)(1)(B) is amended by striking
12 “the test” and inserting “such test, or a test to certify
13 or license in a similar or related occupation,”.

14 (e) PERIOD OF ELIGIBILITY FOR SURVIVORS’ AND
15 DEPENDENTS’ ASSISTANCE.—Section 3512(a) is
16 amended—

17 (1) in paragraph (3), by striking “paragraph
18 (4)” in the matter preceding subparagraph (A) and
19 inserting “paragraph (4) or (5)”;

20 (2) by redesignating paragraphs (4), (5), (6),
21 and (7) as paragraphs (5), (6), (7), and (8), respec-
22 tively;

23 (3) by inserting after paragraph (3) the fol-
24 lowing new paragraph (4):

1 “(4) if the person otherwise eligible under para-
 2 graph (3) fails to elect a beginning date of entitle-
 3 ment in accordance with that paragraph, the begin-
 4 ning date of the person’s entitlement shall be the
 5 date of the Secretary’s decision that the parent has
 6 a service-connected total disability permanent in na-
 7 ture, or that the parent’s death was service-con-
 8 nected, whichever is applicable;” and

9 (4) in paragraph (6), as so redesignated, by
 10 striking “paragraph (4)” and inserting “paragraph
 11 (5)”.

12 **TITLE III—HOUSING MATTERS**

13 **SEC. 301. AUTHORITY TO GUARANTEE ADJUSTABLE RATE** 14 **MORTGAGES AND HYBRID ADJUSTABLE RATE** 15 **MORTGAGES.**

16 (a) **THREE-YEAR EXTENSION OF AUTHORITY TO**
 17 **GUARANTEE ADJUSTABLE RATE MORTGAGES.**—Sub-
 18 section (a) of section 3707 is amended by striking “during
 19 fiscal years 1993, 1994, and 1995” and inserting
 20 “through fiscal year 2005”.

21 (b) **AUTHORITY TO GUARANTEE HYBRID ADJUST-**
 22 **ABLE RATE MORTGAGES.**—That section is further
 23 amended—

24 (1) in subsection (b), by striking “Interest rate
 25 adjustment provisions” and inserting “Except as

1 provided in subsection (c)(1), interest rate adjust-
2 ment provisions”;

3 (2) by redesignating subsections (c) and (d) as
4 subsections (d) and (e), respectively; and

5 (3) by inserting after subsection (b) the fol-
6 lowing new subsection (c):

7 “(c) Adjustable rate mortgages that are guaranteed
8 under this section shall include adjustable rate mortgages
9 (commonly referred to as ‘hybrid adjustable rate mort-
10 gages’) having interest rate adjustment provisions that—

11 “(1) are not subject to subsection (b)(1);

12 “(2) specify an initial rate of interest that is
13 fixed for a period of not less than the first three
14 years of the mortgage term;

15 “(3) provide for an initial adjustment in the
16 rate of interest by the mortgagee at the end of the
17 period described in paragraph (2); and

18 “(4) comply in such initial adjustment, and any
19 subsequent adjustment, with paragraphs (2) through
20 (4) of subsection (b).”.

21 (c) IMPLEMENTATION OF AUTHORITY TO GUAR-
22 ANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—The
23 Secretary of Veterans Affairs shall exercise the authority
24 under section 3707 of title 38, United States Code, as
25 amended by this section, to guarantee adjustable rate

1 mortgages described in subsection (c) of such section
 2 3707, as so amended, in advance of any rulemaking other-
 3 wise required to implement such authority.

4 **TITLE IV—OTHER BENEFITS**
 5 **MATTERS**

6 **SEC. 401. TREATMENT OF DUTY OF NATIONAL GUARD MO-**
 7 **BILIZED BY STATES FOR HOMELAND SECU-**
 8 **RITY ACTIVITIES AS MILITARY SERVICE**
 9 **UNDER SOLDIERS' AND SAILORS' CIVIL RE-**
 10 **LIEF ACT OF 1940.**

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

13 (1) in the first sentence—

14 (A) by striking “and all” and inserting
 15 “all”; and

16 (B) by inserting before the period the fol-
 17 lowing: “, and all members of the National
 18 Guard on service described in the following sen-
 19 tence”; and

20 (2) in the second sentence, by inserting before
 21 the period the following: “, and shall include service
 22 in the National Guard, pursuant to a call or order
 23 to duty by the Governor of a State, upon the request
 24 of a Federal law enforcement agency and with the
 25 concurrence of the Secretary of Defense, to perform

1 full-time duty under section 502(f) of title 32,
2 United States Code, for purposes of carrying out
3 homeland security activities”.

4 **SEC. 402. PROHIBITION ON CERTAIN ADDITIONAL BENE-**
5 **FITS FOR PERSONS COMMITTING CAPITAL**
6 **CRIMES.**

7 (a) **PRESIDENTIAL MEMORIAL CERTIFICATE.**—Sec-
8 tion 112 is amended by adding at the end the following
9 new subsection:

10 “(c) A certificate may not be furnished under the pro-
11 gram under subsection (a) on behalf of a deceased person
12 described in section 2411(b) of this title.”.

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

15 (1) by redesignating subsection (g) as sub-
16 section (h); and

17 (2) by inserting after subsection (f) the fol-
18 lowing new subsection (g):

19 “(g) A flag may not be furnished under this section
20 on behalf of a deceased person described in section
21 2411(b) of this title.”.

22 (c) **HEADSTONE OR MARKER FOR GRAVE.**—Section
23 2306 is amended by adding at the end the following new
24 subsection:

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

4 “(2) A memorial headstone or marker may not be
 5 furnished under subsection (b) for the purpose of com-
 6 memorating a person described in section 2411(b) of this
 7 title.

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

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

14 **SEC. 403. PROCEDURES FOR DISQUALIFICATION OF PER-**
 15 **SONS COMMITTING CAPITAL CRIMES FOR IN-**
 16 **TERMENT OR MEMORIALIZATION IN NA-**
 17 **TIONAL CEMETERIES.**

18 Section 2411(a)(2) is amended—

19 (1) by striking “The prohibition” and inserting
 20 “In the case of a person described in subsection
 21 (b)(1) or (b)(2), the prohibition”; and

22 (2) by striking “or finding under subsection
 23 (b)” and inserting “referred to in subsection (b)(1)
 24 or (b)(2), as the case may be,”.

1 **TITLE V—JUDICIAL, PROCE-**
 2 **DURAL, AND ADMINISTRA-**
 3 **TIVE MATTERS**

4 **SEC. 501. STANDARD FOR REVERSAL BY COURT OF AP-**
 5 **PEALS FOR VETERANS CLAIMS OF ERRO-**
 6 **NEOUS FINDING OF FACT BY BOARD OF VET-**
 7 **ERANS' APPEALS.**

8 (a) STANDARD FOR REVERSAL.—Paragraph (4) of
 9 subsection (a) of section 7261 is amended by striking “if
 10 the finding is clearly erroneous” and inserting “if the find-
 11 ing is adverse to the claimant and the Court determines
 12 that the finding is unsupported by substantial evidence of
 13 record, taking into account the Secretary’s application of
 14 section 5107(b) of this title”.

15 (b) SCOPE OF AUTHORITY.—That subsection is fur-
 16 ther amended—

17 (1) in the matter preceding paragraph (1), by
 18 striking “this chapter” and inserting “section
 19 7252(a) of this title”; and

20 (2) in paragraph (4), as amended by subsection
 21 (a) of this section, by inserting “or reverse” after
 22 “set aside”.

23 (c) MATTERS RELATING TO FINDINGS OF MATERIAL
 24 FACT.—That section is further amended by adding at the
 25 end the following new subsection:

1 “(e)(1) In making a determination on a finding of
2 material fact under subsection (a)(4), the Court shall re-
3 view the record of proceedings before the Secretary and
4 the Board of Veterans’ Appeals pursuant to section
5 7252(b) of this title.

6 “(2) A determination on a finding of material fact
7 under subsection (a)(4) shall specify the evidence or mate-
8 rial on which the Court relied in making such determina-
9 tion.”.

10 (d) APPLICABILITY.—(1) Except as provided in para-
11 graph (2), the amendments made by this section shall take
12 effect on the date of the enactment of this Act.

13 (2) The amendments made by subsections (a) and
14 (b)(2) shall apply with respect to any appeal filed with
15 the United States Court of Appeals for Veterans Claims—

16 (A) on or after the date of the enactment of
17 this Act; or

18 (B) before the date of the enactment of this
19 Act, but in which a final decision has not been made
20 under section 7291 of title 38, United States Code,
21 as of that date.

1 **SEC. 502. REVIEW BY COURT OF APPEALS FOR THE FED-**
2 **ERAL CIRCUIT OF DECISIONS OF LAW OF**
3 **COURT OF APPEALS FOR VETERANS CLAIMS.**

4 (a) REVIEW.—(1) Subsection (a) of section 7292 is
5 amended in the first sentence by inserting after “the valid-
6 ity of” the following: “a decision of the Court on a rule
7 of law or of”.

8 (2) Subsection (c) of that section is amended—

9 (A) in the first sentence, by inserting after “the
10 validity of” the following: “a decision of the Court
11 of Appeals for Veterans Claims on a rule of law or
12 of”; and

13 (B) in the second sentence, by striking “such
14 court” and inserting “the Court of Appeals for the
15 Federal Circuit”.

16 (b) APPLICABILITY.—The amendments made by sub-
17 section (a) shall take effect on the date of the enactment
18 of this Act, and shall apply with respect to any appeal—

19 (1) filed with the United States Court of Ap-
20 peals for the Federal Circuit on or after the date of
21 the enactment of this Act; or

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

1 **SEC. 503. AUTHORITY OF COURT OF APPEALS FOR VET-**
2 **ERANS CLAIMS TO AWARD FEES UNDER**
3 **EQUAL ACCESS TO JUSTICE ACT FOR NON-AT-**
4 **TORNEY PRACTITIONERS.**

5 The authority of the United States Court of Appeals
6 for Veterans Claims to award reasonable fees and ex-
7 penses of attorneys under section 2412(d) of title 28,
8 United States Code, shall include authority to award fees
9 and expenses, in an amount determined appropriate by the
10 United States Court of Appeals for Veterans Claims, of
11 individuals admitted to practice before the Court as non-
12 attorney practitioners under subsection (b) or (c) of Rule
13 46 of the Rules of Practice and Procedure of the United
14 States Court of Appeals for Veterans Claims.

15 **SEC. 504. RETROACTIVE APPLICABILITY OF MODIFICA-**
16 **TIONS OF AUTHORITY AND REQUIREMENTS**
17 **TO ASSIST CLAIMANTS.**

18 (a) **RETROACTIVE APPLICABILITY.**—Except as spe-
19 cifically provided otherwise, the provisions of sections
20 5102, 5103, 5103A, and 5126 of title 38, United States
21 Code, as amended by section 3 of the Veterans Claims
22 Assistance Act of 2000 (Public Law 106–475; 114 Stat.
23 2096), apply to any claim—

- 24 (1) filed on or after November 9, 2000; or
25 (2) filed before November 9, 2000, and not
26 final as of that date.

1 (b) READJUDICATION OF CERTAIN CLAIMS.—If the
2 United States Court of Appeals for Veterans Claims, the
3 United States Court of Appeals for the Federal Circuit,
4 or the Supreme Court renders a decision during the period
5 beginning on April 24, 2002, and ending on the date of
6 the enactment of this Act holding that section 3(a) of the
7 Veterans Claims Assistance Act of 2000 is not applicable
8 to a case covered by the decision because such section 3(a)
9 was not intended to be given retroactive effect, the Sec-
10 retary of Veterans Affairs shall, upon request of the claim-
11 ant or on the Secretary’s own motion, order the claim re-
12 adjudicated under chapter 51 of such title, as amended
13 by the Veterans Claims Assistance Act of 2000, as if
14 Board of Veterans’ Appeals most recent denial of the
15 claim concerned had not occurred.

Passed the Senate September 26, 2002.

Attest:

Secretary.

107TH CONGRESS
2D SESSION

S. 2237

AN ACT

To amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes.