

Calendar No. 591

105TH CONGRESS }
2d Session }

SENATE

{ REPORT
105-339

A BILL TO AMEND TITLE 38, UNITED STATES CODE, TO IMPROVE AUTHORITIES OF THE SECRETARY OF VETERANS AFFAIRS RELATING TO MEDAL OF HONOR SPECIAL PENSION, LIFE INSURANCE, AND BURIAL BENEFITS, AND FOR OTHER PURPOSES

SEPTEMBER 21, 1998.—Ordered to be printed

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

REPORT

[To accompany S. 730]

The Committee on Veterans' Affairs, to which was referred the bill (S. 730) to make retroactive the entitlement of certain Medal of Honor recipients to the special pension provided for persons entered and recorded on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll, having considered the same, reports favorably thereon with an amendment in the form of a substitute and an amendment to the title, and recommends that the bill, as amended, do pass.

COMMITTEE AMENDMENTS

The amendments are as follows:

Strike out all after the enacting clause as follows:

SECTION 1. RETROACTIVITY OF MEDAL OF HONOR SPECIAL PENSION.

[(a) ENTITLEMENT.—In the case of Vernon J. Baker, Edward A. Carter, Junior, and Charles L. Thomas, who were awarded the Medal of Honor pursuant to section 561 of Public Law 104-201 (110 Stat. 2529) and whose names have been entered and recorded on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll, the entitlement of those persons to the special pension provided under section 1562 of title 38, United States Code (and antecedent provisions of law), shall be effective as follows:

[(1) In the case of Vernon J. Baker, for months that begin after April 1945.

[(2) In the case of Edward A. Carter, Junior, for months that begin after March 1945.

[(3) In the case of Charles L. Thomas, for months that begin after December 1944.

[(b) AMOUNT.—The amount of the special pension payable under subsection (a) for a month beginning before the date of the enactment of this Act shall be the amount of the special pension provided by law for that month for persons entered and recorded on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll (or an antecedent Medal of Honor Roll required by law).

[(c) PAYMENT TO NEXT OF KIN.—In the case of a person referred to in subsection (a) who died before receiving full payment of the pension pursuant to this section, the Secretary of Veterans Affairs shall pay the total amount of the accrued pension, upon receipt of application for payment within one year after the date of the enactment of this Act, to the deceased person's spouse or, if there is no surviving spouse, then to the deceased person's children, per stripes, in equal shares.]

Insert in lieu thereof the following:

SECTION 1. INCREASE IN MEDAL OF HONOR SPECIAL PENSION.

(a) INCREASE.—Section 1562(a) of title 38, United States Code, is amended by striking out “\$400” and inserting in lieu thereof “\$600”.

(b) ANNUAL ADJUSTMENT.—That section is further amended—

(1) by inserting “(1)” before “The Secretary”; and

(2) by adding at the end the following:

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

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act and shall apply to months that begin on or after that date.

(2) The Secretary of Veterans Affairs shall not make any adjustment under section 1562(a)(2) of title 38, United States Code, as added by subsection (b), in 1998.

SEC. 2. ACCELERATED DEATH BENEFIT FOR SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE PARTICIPANTS.

(a) IN GENERAL.—(1) Subchapter III of chapter 19 of title 38, United States Code, is amended by adding at the end the following:

“§ 1980. Option to receive accelerated death benefit

“(a) For the purpose of this section, a person shall be considered to be terminally ill if the person has a medical prognosis such that the life expectancy of the person is less than a period prescribed in regulations by the Secretary. The maximum length of such period may not exceed 12 months.

“(b)(1) The Secretary shall prescribe regulations under which any terminally ill person insured under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance may elect to receive in a lump-sum payment a portion of the face value of the insurance as an accelerated death benefit reduced by an amount necessary to assure that there is no increase in the actuarial value of the benefit paid, as determined in regulations issued by the Secretary.

“(2) The Secretary shall prescribe by regulation the maximum amount of the accelerated death benefit available under this section that the Secretary finds to be administratively practicable and actuarially sound, but in no event shall the amount of the benefit exceed the amount equal to 50 percent of the face value of the person's insurance in force on the date the election of the person to receive the benefit is approved.

“(3) A person making an election under this section may elect to receive an amount that is less than the maximum prescribed by the Secretary under paragraph (2). The Secretary shall prescribe in regulations the increments in which a reduced amount under this paragraph may be elected.

“(c) The portion of the face value of insurance which is not paid in a lump sum as an accelerated death benefit under this section shall remain payable in accordance with the provisions of this chapter.

“(d) Deductions under section 1969 of this title and premiums under section 1977(c) of this title shall be reduced, in a manner consistent with the percentage reduction in the face value of the insurance as a result of payment of an accelerated death benefit under this section, effective with respect to any amounts which would otherwise become due on or after the date of payment under this section.

“(e) The regulations under this section shall include provisions regarding—

(1) the form and manner in which an application for an election under this section shall be made; and

“(2) the procedures under which any such application shall be considered.

“(f)(1) An election to receive a benefit under this section shall be irrevocable.

“(2) A person may not make more than one election under this section, even if the election of the person is to receive less than the maximum amount of the benefit available to the person under this section.

“(g) If a person insured under Servicemembers’ Group Life Insurance elects to receive a benefit under this section and the person’s Servicemembers’ Group Life Insurance is thereafter converted to Veterans’ Group Life Insurance as provided in section 1968(b) of this title, the amount of the benefit paid under this section shall reduce the amount of Veterans’ Group Life Insurance available to the person under section 1977(a) of this title.

“(h) Notwithstanding any other provision of law, the amount of the accelerated death benefit received by a person under this section shall not be considered income or resources for purposes of determining eligibility for or the amount of benefits under any Federal or federally-assisted program.”

“(2) The table of sections at the beginning of chapter 19, title 38, United States Code, is amended by inserting after the item relating to section 1979 the following: “1980. Option to receive accelerated death benefit.”

(b) CONFORMING AMENDMENTS.—Section 1970(g) of title 38, United States Code, is amended in the first sentence—

(1) by striking out “Payments of benefits” and inserting in lieu thereof “Any payments”; and

(2) by inserting “an insured or” after “or on account of,”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 90 days after the date of enactment of this Act.

(d) REGULATIONS.—The Secretary of Veterans Affairs shall prescribe the regulations required by section 1980 of title 38, United States Code, as added by subsection (a), in accordance with the provisions of section 553 of title 5, United States Code.

SEC. 3. COMMEMORATION OF INDIVIDUALS WHOSE REMAINS ARE UNAVAILABLE FOR INTERMENT.

(a) HEADSTONES OR MARKERS FOR CERTAIN MEMBERS OF THE ARMED FORCES AND SPOUSES.—Subsection (b) of section 2306 of title 38, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking out “any veteran—” and inserting in lieu thereof “any veteran, any individual who dies in the active military, naval, or air service, and any spouse or surviving spouse (including an unremarried surviving spouse whose subsequent remarriage was terminated by death or divorce) of a veteran or any such individual—”; and

(2) in paragraph (2) by striking out “the veteran’s” and inserting in lieu thereof “the individual’s”.

(b) ALTERNATIVE COMMEMORATION FOR CERTAIN SPOUSES.—That section is further amended by adding at the end the following:

“(e) Where the Secretary has furnished a memorial headstone or marker under subsection (b) for purposes of commemorating a veteran, or has furnished a headstone or marker for the unmarked grave of a veteran under subsection (a), the Secretary shall, where feasible, add a memorial inscription to such headstone or marker in lieu of furnishing a memorial headstone or marker under subsection (b) for the veteran’s surviving spouse.”

(c) MEMORIAL AREAS.—Section 2403(b) of that title is amended to read as follows:

“(b) Under regulations prescribed by the Secretary, group memorials may be erected to honor the memory of groups of individuals referred to in subsection (a), and appropriate memorial headstones and markers may be erected to honor the memory of individuals referred to in subsection (a) and section 2306(b) of this title.”

(d) APPLICABILITY.—The amendments made by subsections (a) and (b) shall apply to deaths occurring after the date of enactment of this Act.

SEC. 4. FLEXIBILITY IN DOCKETING AND HEARING OF APPEALS BY BOARD OF VETERANS’ APPEALS.

(a) POSTPONEMENT TO AFFORD HEARING.—Subsection (a) of section 7107 of title 38, United States Code, is amended—

(1) in paragraph (1), by inserting “paragraph (2) and” after “Except as provided in”;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following new paragraph (2):

“(2) A case referred to in paragraph (1) may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.”

(b) SCHEDULING OF FIELD HEARINGS.—Subsection (d) of that section is amended—

(1) in paragraph (2), by striking out “in the order” and all that follows through the end and inserting in lieu thereof “in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area.”; and

(2) by striking out paragraph (3) and inserting in lieu thereof the following new paragraph (3):

“(3) A hearing to be held within an area served by a regional office of the Department may, for cause shown, be advanced on motion for an earlier hearing. Any such motion shall set forth succinctly the grounds upon which it is based and may not be granted unless the case involves interpretation of law of general application affecting other claims or for other sufficient cause shown.”

(c) APPLICABILITY.—The amendment made by subsection (b)(1) shall apply to requests for hearing received by the Department of Veterans Affairs on or after the date of enactment of this Act.

SEC. 5. COMMENCEMENT OF PERIOD FOR NOTICES OF APPEAL WITH COURT OF VETERANS APPEALS.

Section 7266(a)(1) of title 38, United States Code, is amended by striking out “notice of the decision is mailed pursuant to section 7104(e) of this title” and inserting in lieu thereof “a copy of the decision is mailed or sent to the claimant’s authorized representative, or mailed to the claimant if the claimant has no authorized representative, pursuant to section 7104(e) of this title”.

SEC. 6. ASSESSMENT OF EFFECTIVENESS OF INSURANCE AND SURVIVOR BENEFITS PROGRAMS FOR SURVIVORS OF VETERANS WITH SERVICE-CONNECTED DISABILITIES.

(a) REPORT ON ASSESSMENT.—Not later than May 1, 1999, the Secretary of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the Senate and the House of Representatives a report containing an assessment of the adequacy of the insurance and survivor benefits programs of the Department of Veterans Affairs (including the payment of dependency and indemnity compensation under chapter 13 of title 38, United States Code) in meeting the needs of survivors of veterans with service-connected disabilities, including survivors of catastrophically disabled veterans who cared for such veterans at great personal sacrifice.

(b) REPORT ELEMENTS.—The report on the assessment under subsection (a) shall include the following:

(1) An identification of the characteristics that make a disabled veteran catastrophically disabled.

(2) A statement of the number of veterans with service-connected disabilities who participate in insurance programs administered by the Department.

(3) A statement of the number of survivors of veterans with service-connected disabilities who receive dependency and indemnity compensation under chapter 13 of title 38, United States Code.

(4) An assessment of the participation of veterans with service-connected disabilities in the insurance programs administered by the Department on the effectiveness and administration of such programs.

(5) Data on veterans with service-connected disabilities that are relevant to the insurance programs administered by the Department, and an assessment how such data might be used to better determine the cost above standard premium rates of insuring veterans with service-connected disabilities under such programs.

(6) An analysis of various methods of accounting and providing for the additional cost of insuring the lives of veterans with service-connected disabilities under the insurance programs administered by the Department.

(7) An assessment of the adequacy of the current insurance programs and dependency and indemnity compensation programs of the Department in meeting the needs of survivors of severely-disabled or catastrophically-disabled veterans.

(8) An analysis of various methods of meeting the transitional financial needs of survivors of veterans with service-connected disabilities immediately after the deaths of such veterans.

(9) Such recommendations as the Secretary considers appropriate regarding means of improving the benefits available to survivors of veterans with service-connected disabilities under programs administered by the Department.

SEC. 7. ANNUAL REPORTS ON FUNDING REQUIREMENTS OF DEPARTMENT OF VETERANS AFFAIRS FOR PARTICIPATION IN PROGRAMS TO RESPOND TO POTENTIAL ATTACKS WITH WEAPONS OF MASS DESTRUCTION.

The Secretary of Veterans Affairs shall include with the documents in support of each budget submitted to Congress under section 1105 of title 31, United States Code, for a fiscal year after fiscal year 1999 a specific request for funds estimated to be required by the Department of Veterans Affairs for the fiscal year covered by the budget concerned in order to carry out its responsibilities under Federal programs to respond to potential terrorist attacks on the United States with weapons of mass destruction.

Amend the title so as to read:

A Bill to amend title 38, United States Code, to improve authorities of the Secretary of Veterans Affairs relating to Medal of Honor special pension, life insurance, and burial benefits, and for other purposes.

INTRODUCTION

On May 8, 1997, Senator Dirk Kempthorne introduced S. 730 with the cosponsorship of Committee Member Larry E. Craig, Senator Robert G. Torricelli, Senator Craig Thomas, and Senator Mike Enzi. As introduced, S. 730 would have made retroactive the entitlement of three Medal of Honor recipients to the special pension provided for persons entered and recorded on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll.

On March 11, 1998, the Chairman of the Committee, Senator Arlen Specter, introduced S. 1743 at the request of the Administration. S. 1743 would have authorized memorialization of deceased spouses and surviving spouses of veterans and deceased members of the Armed Forces whose remains are not available for interment.

On March 11, 1998, Committee Chairman Specter also introduced S. 1745 at the request of the Administration. S. 1745 would have amended title 38, United States Code, to provide flexibility in the order in which the Board of Veterans' Appeals (BVA) of the Department of Veterans Affairs (VA), hears and considers appeals.

On May 21, 1998, Committee Chairman Specter introduced S. 2108, the "Servicemembers' and Veterans' Group Life Insurance Accelerated Death Benefits Act," at the request of the Administration. S. 2108 would have provided that, upon application, terminally ill persons insured under Servicemembers' Group Life Insurance and Veterans' Group Life Insurance policies be paid accelerated death benefits.

On July 25, 1997, the Committee held a hearing to receive testimony on pending legislation, including S. 730. The Committee received testimony from Senator Daniel K. Inouye, Senator Barbara Boxer, Representative Bob Filner, and Representative Benjamin A. Gilman, and received testimony for the record from Representative Sue W. Kelly. The Committee also received testimony from Stephen L. Lemons, Ed.D., VA Acting Under Secretary for Benefits; Thomas L. Garthwaite, M.D., VA Deputy Under Secretary for Health; and from representatives of The American Legion, Veterans of Foreign Wars, Disabled American Veterans, and Vietnam Veterans of America. Testimony was also submitted for the hearing record by the Office of Veterans Affairs, Philippine Embassy; Paralyzed Veterans of America; AMVETS; the American Coalition for Filipino Veterans; the Coordinating Council of Leaders of Veterans Organizations in Southern California; Filipino War Veterans, Incor-

porated; the National Coalition for Homeless Veterans; and LA Vets.

On October 7, 1997, the Committee met in open session and voted unanimously to report, among other things, S. 730, as amended. S. 730, as amended, would have made retroactive the entitlement of three Medal of Honor recipients to the special pension provided for persons entered and recorded on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll. In addition, S. 730, as amended, would have, effective January 1, 1998, increased the special pension from \$400 to \$600 per month and effective January 1 in years thereafter, increased the special pension by an amount equal to the percentage increase in the annual cost-of-living as computed under 38 U.S.C. §5312(a).

On November 18, 1997, the President signed Public Law 105–85, the “National Defense Authorization Act for Fiscal Year 1998.” Section 577 of Public Law 105–85 made retroactive the entitlement of three Medal of Honor recipients to the special pension provided for persons entered and recorded on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll as specified in S. 730, as introduced.

COMMITTEE MEETING

On July 28, 1998, the Committee met in open session and voted unanimously to report S. 730, as further amended with an amendment in the nature of a substitute. S. 730, as further amended, includes provisions from S. 730, as approved by the Committee on October 7, 1997; S. 1743; S. 1745; S. 2108, as amended; an original provision relating to the commencement of the time period within which persons must file a notice of appeal in order to obtain review by the Court of Veterans Appeals (CVA) of a Board of Veterans’ Appeals decision; an original provision directing that VA provide to Congress an assessment of the effectiveness of insurance and benefits programs for the survivors of veterans with service-connected disabilities; and an original provision requiring that VA include in its proposed annual budget for fiscal year 1999, and each year thereafter, a separate line item specifying funding requested for VA participation in Federal programs to respond to potential terrorist attacks in the United States with weapons of mass destruction.

SUMMARY OF S. 730 AS REPORTED

S. 730 as reported (hereinafter referred to as the “Committee bill”) contains freestanding provisions and amendments to title 38, United States Code, that would:

1. Increase the special pension provided for persons entered and recorded on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll from \$400 to \$600 per month, and increase the special pension annually thereafter by an amount equal to the percentage increase in the annual cost-of-living as computed under 38 U.S.C. §5312(a)(section 1).

2. Provide for the payment, upon application of the insured, of accelerated death benefits to terminally ill persons insured under Servicemembers’ Group Life Insurance and Veterans’ Group Life Insurance policies (section 2).

3. Authorize the memorialization of deceased spouses of veterans and deceased members of the Armed Forces whose remains are not available for interment (section 3).

4. Provide flexibility in the order in which the Board of Veterans' Appeals hears and considers appeals (section 4).

5. Clarify the commencement of the time period within which persons must file a notice of appeal in order to obtain review by the Court of Veterans Appeals (section 5).

6. Direct VA to provide to Congress an assessment of the effectiveness of insurance and benefits programs for the survivors of veterans with service-connected disabilities (section 6).

7. Require VA to include in its proposed annual budget for fiscal year 1999, and each year thereafter, a separate line item specifying funding requested for VA participation in Federal programs to respond to potential terrorist attacks in the United States with weapons of mass destruction (section 7).

DISCUSSION

The Committee bill, which is derived from S. 730, as amended, S. 1743, S. 1745, S. 2108, as amended, and three original provisions, would make various changes in law as outlined below.

Section 1. Increase in Medal of Honor Special Pension. Medal of Honor recipients who survive their act of gallantry receive a special pension of \$400 per month. The pension was set at \$200 per month until December 1993, the effective date of the current benefit. See 38 U.S.C. §§ 1560–1562.

S. 730, as introduced, would have granted, retroactively, the special pension afforded to Medal of Honor recipients to three men who received the Medal in January 1997: Mr. Vernon J. Baker; Mr. Edward A. Carter (deceased); and Mr. Charles L. Thomas (deceased). In all three cases, the recipients survived the act of gallantry which gave rise to the award, and accrued pension would have been computed from the date of each man's act of valor (April 1945, March 1945, and December 1944, respectively). In the case of Mr. Baker, a lump sum pension payment would have been made to Mr. Baker; in the cases of Messrs. Carter and Thomas, it would have been made to their survivors.

The substance of S. 730, as introduced, was approved by the Congress as section 577 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, 111 Stat. 1629. Accordingly, the provisions of S. 730, as amended and approved unanimously by the Committee on October 7, 1997, relating to retroactive pension payments to Messrs. Baker, Carter and Thomas, did not require further consideration. However, provisions of the bill, as amended and approved in October 1997, that would have increased and indexed the pension remained to be considered by the Congress.

Section 1 of the Committee bill sets forth those provisions; that is, it provides that the special pension afforded to Medal of Honor recipients shall be increased from \$400 per month to \$600 per month. Further, it provides that, in future years, the pension shall be automatically increased to reflect increases in the cost of living.

Section 2. Accelerated Death Benefit for Servicemembers' Group Life Insurance and Veterans' Group Life Insurance Participants. Prior to enactment, in 1996, of Public Law 104–275, 110 Stat.

3322, Veterans' Group Life Insurance (VGLI) policies could be converted to individual commercial life insurance policies, but only after such policies had been held by the insured for 5 years. Servicemembers' Group Life Insurance (SGLI) policies could not be converted to individual commercial life insurance policies at all, prior to enactment of Public Law 104-275. As a consequence, service personnel and veterans who might have chosen to convert to commercial policies with features not available in VGLI or SGLI policies—e.g., the cash value accumulation features found in “whole life” policies or assignability provisions that allow terminally ill persons to viaticate or “cash out” policies prior to death—found that options available to other consumers were restricted or foreclosed to them. Public Law 104-275 remedied that inequity by removing restrictions on the conversion of SGLI and VGLI policies to individual commercial life insurance policies.

Commercial policies may be viaticated in many States; that is, many States allow persons who are terminally ill to assign ownership of the policy (and the entitlement to the policy's death benefit) to a commercial entity in exchange for a cash settlement “up front.” When the Committee considered VA-requested legislation that ultimately become part of Public Law 104-275, it requested that VA consider proposing legislation to authorize the inclusion of an accelerated death benefit feature in SGLI and VGLI policies. The Committee reasoned that if it is appropriate to allow terminally ill servicemembers and veterans to “cash out” their SGLI or VGLI policies through use of a commercial policy middle person, they ought to be able to do so directly as well. S. 2108, which was introduced by Chairman Specter at the request of the VA and from which section 2 of the Committee bill is derived, authorizes such an accelerated death benefit feature.

Section 2 of the Committee bill authorizes VA to promulgate regulations allowing SGLI- or VGLI-insured persons having a life expectancy of 12 months or less to elect to receive a portion of the benefit due at death. That benefit could not exceed 50% of the death benefit due, less the “present value” adjustment necessary to assure that there is no increase in the actuarial value of the total benefit paid. Sums not received by the insured on an accelerated basis would remain payable to the insured beneficiaries at the death of the insured. Sums received by the terminally ill veteran would not, under the Committee bill, be taken into account in determining eligibility for VA pension or any other “means-tested” Federal or federally-assisted benefits program.

Section 3. Commemoration of Individuals Whose Remains Are Unavailable for Interment. VA is authorized to place memorial markers in national cemeteries to commemorate veterans whose remains were lost or buried at sea, donated to science, cremated and scattered as ashes, or were otherwise unavailable. 38 U.S.C. §2306(b). VA is not authorized, however, to memorialize a veteran's spouse who predeceases the veteran and whose remains are not available.

Section 3 of the Committee bill authorizes VA to furnish a memorial marker for a living veteran's deceased spouse whose remains are unavailable for interment. In addition, section 3 codifies authority consistent with VA's practice of memorializing the deceased

spouse of a veteran who predeceased the spouse and whose remains were unavailable for burial.

Section 4. Flexibility in Docketing and Hearing of Appeals by Board of Veterans' Appeals. The Board of Veterans' Appeals is required by statute to consider and decide appeals "in regular order according to its place upon the docket." 38 U.S.C. §7107(a). Each appellant having an appeal pending at BVA is entitled to a hearing, at BVA headquarters or, at the appellant's option, in the area served by the VA regional office where the claim under appeal was adjudicated. See 38 U.S.C. §§7107(b), 7107(d). So-called travel board hearings—hearings away from BVA offices in Washington, DC—must be held in the order in which requests for hearings at the field site were received. 38 U.S.C. §7107(d)(2).

Application of these rules can result in unnecessary delays in the issuance of decisions by BVA in cases where an appeal is ripe for adjudication. For example, if an appellant has requested a travel board hearing, decisions on all appeals filed after that appeal must await the travel board hearing even if there has already been a hearing on the later-filed cases. Further, because travel board hearings must be scheduled in order of request, a hearing on an earlier-filed appeal may have to await the later-filed appeal's hearing—even though the decision on the earlier-filed appeal has to precede the decision on the later-filed appeal.

Section 4 of the Committee bill affords BVA flexibility in scheduling hearings, and in considering and deciding appeals, so that these anomalous and unintended delays may be avoided. First, section 4 would authorize BVA to postpone consideration and disposition of a pending appeal in order to afford the appellant a hearing. Thus, BVA would be permitted to dispose of later-filed appeals ready for consideration that would otherwise remain on the docket pending a decision on an earlier-filed appeal awaiting a hearing.

Second, BVA would be authorized to schedule travel board hearings on the basis of the pending appeals' relative places on the BVA docket rather than on the basis of the order in which requests for a hearing were received. Thus, appeals could be docketed for travel board hearings in the order in which they would be decided rather than the order in which requests for hearings had been received. Finally, section 4 would otherwise authorize the advancement of a travel board hearing at the request of the appellant, but only if the appeal involves an interpretation of law of general application affecting other claims or for other good cause shown.

Section 5. Commencement of Period for Notices of Appeal with Court of Veterans Appeals. Under current law, final decisions rendered by BVA will be reviewed by the Court of Veterans Appeals if the person adversely affected by the BVA decision files a notice of appeal with CVA "within 120 days after the date on which notice of the decision is mailed pursuant to [38 U.S.C. §7104(e)]." 38 U.S.C. §7266(a)(1)(emphasis added). As section 7266(a)(1) currently reads, it suggests that section 7104(e) requires that all BVA decisions be "mailed." Section 7104(e), however, no longer specifies such a requirement; Public Law 104-275 modified section 7104(e) to authorize BVA, in cases where a claimant has an authorized representative, to send a copy of its decision to the authorized rep-

representative by means other than the mail, e.g., by hand-delivering the decision to the representative.

When Public Law 104–275 modified section 7104 to authorize delivery of a BVA decision by means other than the mail, it did not include a necessary conforming amendment to section 7266(a)(1). Section 5 of the Committee bill remedies this oversight by specifying that, in cases where a claimant has an authorized representative, CVA review will be proper when a notice of appeal is filed within 120 days after the date the decision is mailed or sent to the claimant’s authorized representative. Section 5 does not modify current law with respect to cases where the person adversely affected by the BVA decision has no authorized representative. In such cases, the 120-day period will continue to commence at the date of mailing.

Section 6. Assessment of Effectiveness of Insurance and Survivor Benefits Programs for Survivors of Veterans with Service-Connected Disabilities. VA administers two programs which are designed to assist the survivors of veterans who either die in service or who die after service due to service-connected causes. First, it operates life insurance programs under which servicemembers and veterans can procure up to \$200,000 in life insurance coverage at a competitive cost—even though they might be uninsurable under commercial life insurance policy underwriting standards due to active duty service or service-connected disability. Such policies protect the spouses and children of servicemembers and veterans in the same way that commercial policies protect the beneficiaries of other insured persons. Second, VA operates the Dependency and Indemnity Compensation (DIC) program for the benefit of the surviving spouses, dependent children and, in some cases, parents of servicemembers and veterans who have died in service, or who have died after service due to an injury or illness incurred in service or after having suffered long-term, total disability due to a service-connected cause. DIC recipients receive a monthly payment, currently set at \$850 per month. In addition, DIC recipients receive additional allowances of \$104 to \$215 per month to provide for dependent children and to account for a surviving spouse’s special aid and attendance and housebound needs.

In 1992, Public Law 102–568 addressed both programs: it increased maximum life insurance benefits from \$100,000 to \$200,000; and it eliminated for newly eligible DIC recipients the benefits system formerly in place which tied the level of monthly benefit to the deceased servicemember’s or veteran’s military pay grade.

Notwithstanding the reforms enacted in 1992, the Committee remains concerned about the welfare of the surviving spouses of catastrophically disabled veterans who, during the veteran’s lifetime, were required to care for the veteran’s daily needs. Such a surviving spouse may have forfeited significant educational or career opportunities which would have placed the survivor in better financial position but for his or her responsibility to care for a catastrophically disabled veteran. When such a veteran (who would have been receiving significant compensation benefits) passes away, the surviving spouse may incur a drastic reduction in monthly income, even after receipt of DIC benefits. This situation is ag-

gravated further in cases where the veteran had not been afforded the opportunity to purchase adequate levels of life insurance coverage.

Section 6 of the Committee bill directs that VA develop and report to the Committee data necessary to facilitate a Committee assessment of the efficacy of VA life insurance and DIC programs in meeting the needs of the survivors of service-connected veterans. It directs, further, that VA provide its own assessment of these programs' efficacy. Finally, it directs that VA analyze various methods—including methods other than the insurance and DIC benefits currently in force—in meeting the transitional needs of a veteran's survivor particularly during the period immediately following the veteran's death, and that it furnish to the Committee recommendations on how such benefits might be improved.

Section 7. Annual Reports on Funding Requirements of Department of Veterans Affairs for Participation in Programs to Respond to Potential Attacks with Weapons of Mass Destruction. Recent events have highlighted the need for domestic preparations for acts of terrorism within the United States. The Committee believes that VA's national health care infrastructure is uniquely situated to assist in a national emergency medical effort in the event of terrorist use of weapons of mass destruction within our borders. The Committee believes, as well, that VA's unique capability to assist the victims of such weapons is adversely affected by current funding levels.

Section 7 of the Committee bill requires that VA include in its annual budget submission to the Congress a separate line item specifying the level of funding sought to support VA participation in Federal programs to respond to terrorist attacks in the United States with weapons of mass destruction. In addition, a separate line item should be included in the annual budget submission specifying funding provided to VA by the Department of Health and Human Services to support VA's participation in such programs. Such a requirement would be operative, initially, with respect to the Administration's proposed fiscal year 1999 budget and with respect to all fiscal years thereafter.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs resulting from the enactment of the Committee bill, as compared to costs under current law and as scored against the current CBO baseline for the first 5 years following enactment, would have negligible effect on direct spending during fiscal years 1999 through 2003. According to CBO, S. 730 would not have a significant budgetary impact. The bill would not affect the budgets of State, local, or tribal governments.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 11, 1998.

Hon. ARLEN SPECTER,
Chairman, Committee on Veterans' Affairs
United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 730, a bill to amend title 38, United States Code, to improve authorities of the Secretary of Veterans Affairs relating to Medal of Honor special pension, life insurance, and burial benefits, and for other purposes.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

S. 730—A bill to amend title 38, United States Code, to improve authorities of the Secretary of Veterans Affairs relating to Medal of Honor special pension, life insurance, and burial benefits, and for other purposes

Summary: S. 730 would affect several veterans' programs, including pension, insurance benefits, burial benefits, and the Board of Veterans' Appeals. CBO estimates that S. 730 would not have a significant budgetary impact. Because it would affect direct spending, pay-as-you-go procedures would apply, but any such effects would be negligible. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: S. 730 would raise both direct spending and spending subject to appropriation by less than \$500,000 a year. The costs of this legislation fall within budget function 700 (veterans' affairs).

Direct Spending.—The bill would raise direct spending through changes to three programs.

Medal of Honor Pension. Section 1 would increase the special pension paid to recipients of the Congressional Medal of Honor. It would increase the monthly payments during 1999 from \$400 a month to \$600 a month and increase payments thereafter by annual cost-of-living adjustments. Data from VA indicate that 151 veterans currently receive the special pension.

Thus, CBO estimates that this provision would increase spending by less than \$400,000 a year over the 1999–2003 period.

Memorial Headstones and Markers. Section 3 would authorize VA to furnish memorial headstones and markers, under certain circumstances, on behalf of spouses who predecease the veterans. VA currently provides fewer than 1,000 headstones or markers each year to memorialize eligible veterans whose remains were not recovered or identified, or were buried at sea, donated to science, or cremated and scattered. The bill would authorize memorial headstones or markers on behalf of predeceasing spouses who meet those conditions. The bill would also codify VA's practice that

spouses who die after the veteran be memorialized with an inscription on the veteran's marker or headstone.

Data from VA indicate that fewer than 500 spouses would become eligible for memorialization under the bill. Because each marker or headstone would cost about \$90, CBO estimates that implementing this provision would cost less than \$100,000 a year over the 1999–2003 period.

Servicemembers' Group Life Insurance. Section 2 would require VA to prescribe regulations under which any terminally ill person insured under either the Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI) could elect to receive a lump-sum payment in advance. Any remaining portion would be paid upon the death of the individual.

The bill would prohibit any advance payment from exceeding 50 percent of the face value of the person's insurance in force on the date of such election, and it would also prohibit an increase in the actuarial value of the total benefit. Under the bill, the election to receive an early benefit would be irrevocable.

The SGLI and VGLI provide low-cost group life insurance to persons on active duty in the military service, ready reservists, members of the Commissioned Corps of the National Oceanic and Atmospheric Administration, cadets and midshipmen of the four service academies, and members of the Reserve Officer Training Corps. These insurance programs are supervised by VA and administered, under a contractual agreement, by the Prudential Insurance Company. VA collects premiums and then disburses those funds to Prudential for the payment of claims and administrative costs. Any changes in premium income are offset by the changes in VA's outlays to Prudential. Therefore, CBO estimates that this provision would not have a net impact on direct spending.

Spending subject to appropriation.—The bill also contains provisions that could affect spending subject to appropriation, but any such effects would be insignificant.

Board of Veterans' Appeals. The bill would provide the Board of Veterans' Appeals with flexibility over the order in which it hears and considers cases. The bill would enable the board to consider and decide an appeal later than its normal place on the docket if a delay is needed to provide a field hearing for the appellant.

Assessment of Insurance and Survivor Benefits Programs. The bill would require VA to report on its assessment of the adequacy of the insurance and survivor benefits programs in meeting the needs of survivors of veterans with service-connected disabilities. The report would be due no later than May 1, 1999.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. S. 730 would not affect governmental receipts. CBO estimates that enactment of this bill would result in additional direct spending outlays of less than \$500,000 a year.

Intergovernmental and private-sector impact: S. 730 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Charles Riemann; Impact on State, local, and tribal governments: Marc Nicole; Impact on the private sector: Rachel Schmidt.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its July 28, 1998, meeting. On that date, the Committee, by unanimous voice vote, ordered S. 730, as amended, reported favorably to the Senate.

AGENCY REPORT

On July 25, 1997, the Committee held a hearing to receive testimony on pending legislation, including S. 730. The Committee received testimony from Stephen L. Lemons, Ed.D., VA Acting Under Secretary for Benefits, and from Thomas L. Garthwaite, M.D., VA Deputy Under Secretary for Health. An excerpt from that testimony is reprinted below:

STATEMENT OF DR. STEPHEN L. LEMONS, ACTING UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS, JULY 25, 1997

Mr. Chairman and Members of the Committee:

I am pleased to be here this morning to discuss those items on your agenda that would impact the Veterans Benefits Administration, the National Cemetery System, and the Board of Veterans' Appeals. Your letter of invitation asked that we address each of the following bills and draft proposals: S. 987 (VA requested draft legislation proposing a compensation cost-of-living-adjustment and other program improvements); S. 464; S. 623; S. 714; S. 730; Committee Print (to increase the Medal of Honor pension); S. 813; S. 986 (VA requested draft legislation proposing home loan program improvements); Committee Print (to make technical amendments to Public Law 104-275); and Committee Print (codification of FY 1997 cost-of-living adjustment legislation, Pub. L. No. 104-263).

* * * * *

S. 730—Retroactive award of Medal of Honor pension

Mr. Chairman, S. 730 would authorize retroactive payment of the special Medal of Honor pension provided under section 1562 of title 38, United States Code (and antecedent provisions of law), to three named individuals, Mr. Vernon J. Baker, effective for months that begin after April 1945; Mr. Edward A. Carter, Jr., for months that begin after March 1945; and Mr. Charles L. Thomas, for months that begin after December 1944; or to certain survivors of these individuals. Each of these individuals was awarded the Medal of Honor by the President on January 13, 1997. In addition, four individuals who were killed in action during World War II were also awarded the Medal of Honor. Of the three individuals covered by S. 730, only Mr. Vernon J. Baker is living. Mr. Carter died in 1963; Mr. Thomas died in 1980.

S. 730 would provide for the payment of benefits beginning from the dates on which the actions upon which the awards of the Medal of Honor were based rather than for periods of time after which the individuals' names were recorded on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll, subject to any existing age requirements, as required under applicable law.

Under the law as it has existed in its various forms since 1916, the earliest date any of these three individuals could, in theory, have been eligible for the special pension, would have been November 1, 1964, even if each had been awarded the Medal of Honor during World War II or soon thereafter. Mr. Carter died in 1963 at age 46. At the time of his death, the law required an individual to have attained age 55 in order to be eligible for the special pension. In 1964 the age requirement was reduced to age 40 by Pub. L. No. 88-651, effective October 13, 1964. Mr. Thomas survived until 1980. Thus, at the time of the enactment of Pub. L. No. 88-651, he would have met the minimum age requirement. Therefore, but for the fact that the Medal of Honor was not awarded until January 13 of this year, Mr. Thomas apparently would have been eligible for the special pension beginning on November 1, 1964, until his death on February 15, 1980. Had his medal been timely awarded, Mr. Baker, too, would have become eligible for the special pension on November 1, 1964. In no case, however, would any of the three named individuals have been eligible for the special pension prior to that date. For this reason, VA cannot support enactment of S. 730, as introduced.

However, simple fairness demands that those who have been deprived of their special pensions for a time due to an unjustifiable delay in recognizing their acts of valor be made whole. For that reason, the Department would favor retroactive payment to Mr. Baker in an amount equal to the Medal of Honor pension foregone during the period November 1, 1964, to September 30, 1996, after which he began receiving this benefit, and to the surviving spouse or

children, if any, of Mr. Thomas for the period November 1, 1964, to the date of his death in 1980, during which he would have been entitled to the special pension but for the delay in the issuance of his medal. The costs associated with the enactment of either S. 730, as introduced, or this modified proposal, would be less than \$500,000 annually. These costs would be subject to the pay-as-you go provisions of OBRA 1990.

Committee print—Increase the Medal of Honor pension

This draft bill would amend section 5312 of title 38, United States Code, to provide for automatic cost-of-living adjustments in the rate of the special pension paid to recipients of the Medal of Honor under section 1562 of title 38, United States Code, by linking future increases to annual cost-of-living adjustments in Social Security in the same fashion as non-service-connected disability pension.

The Medal of Honor pension was last increased in 1993 by Pub. L. No. 103-161 from \$200 per month to \$400 per month. The rate had been increased to \$200 from \$100 in 1978, effective January 1, 1979, by Pub. L. No. 95-479. In 1961, the rate of pension was increased by Pub. L. No. 87-139 to \$100 from its original rate of \$10 per month, as established by the Act of April 27, 1916.

VA opposes the enactment of this proposal on the basis that linkage of this special pension to cost-of-living adjustments in Social Security implies that this benefit is intended in some fashion as a subsistence benefit. That is not the purpose of this honorarium. Rather, the special pension was intended by Congress to serve as a "recognition of superior claims on the gratitude of the country." and to "reward * * * in a modest way startling deeds of individual daring and audacious heroism in the face of mortal danger when war is on." S. Rep. No. 240, 64th Cong., 1st Sess. 2, 8 (1916). It is a benefit that is payable "in addition to all other payments under laws of the United States." 38 U.S.C. §1562(b). Furthermore, as evinced by the rate increases enacted in 1978 and 1993, the periodic increases Congress has deemed to be appropriate for this benefit have not been limited by, or directly linked to, cost-of-living adjustments in other Government benefits which are intended as income-maintenance benefits. The costs associated with the enactment of this proposal would be less than \$500,000 annually. These costs would be subject to the pay-as-you-go provisions of OBRA 1990.

* * * * *

Thank you, again, Mr. Chairman, for seeking our views on each of the measures on today's agenda. We will be pleased to respond to questions you or other Members of the Committee may have regarding this testimony.

CHANGES IN EXISTING LAW MADE BY S. 730 AS REPORTED

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

TITLE 38, UNITED STATES CODE

* * * * *

PART II—GENERAL BENEFITS

**CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED
DISABILITY OR DEATH OR FOR SERVICE**

* * * * *

**SUBCHAPTER IV—ARMY, NAVY, AIR FORCE, AND COAST
GUARD MEDAL OF HONOR ROLL**

* * * * *

§ 1562. Special provisions relating to pension

(a) (1) The Secretary shall pay monthly to each person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll, and a copy of whose certificate has been delivered to the Secretary under subsection (c) of section 1561 of this title, a special pension at the rate of ~~[\$400]~~ \$600, beginning as of the date of application therefor under section 1560 of this title.

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

* * * * *

CHAPTER 19—INSURANCE

* * * * *

SUBCHAPTER III—SERVICEMEN'S GROUP LIFE INSURANCE

1965. * * *

* * * * *

1980. *Option to receive accelerated death benefit.*

* * * * *

SUBCHAPTER III—SERVICEMEN'S GROUP LIFE INSURANCE

* * * * *

§ 1970. Beneficiaries; payment of insurance

(a) * * *

* * * * *

(g) **[Payments of benefits]** *Any payments due or to become due under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 1969(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.) (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.*

* * * * *

§ 1980. Option to receive accelerated death benefit

(a) *For the purpose of this section, a person shall be considered to be terminally ill if the person has a medical prognosis such that the life expectancy of the person is less than a period prescribed in regulations by the Secretary. The maximum length of such period may not exceed 12 months.*

(b)(1) *The Secretary shall prescribe regulations under which any terminally ill person insured under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance may elect to receive in a lump-sum payment a portion of the face value of the insurance as an accelerated death benefit reduced by an amount necessary to assure that there is no increase in the actuarial value of the benefit paid, as determined in regulations issued by the Secretary.*

(2) *The Secretary shall prescribe by regulation the maximum amount of the accelerated death benefit available under this section that the Secretary finds to be administratively practicable and actuarially sound, but in no event shall the amount of the benefit exceed the amount equal to 50 percent of the face value of the person's insurance in force on the date the election of the person to receive the benefit is approved.*

(3) *A person making an election under this section may elect to receive an amount that is less than the maximum prescribed by the Secretary under paragraph (2). The Secretary shall prescribe in regulations the increments in which a reduced amount under this paragraph may be elected.*

(c) *The portion of the face value of insurance which is not paid in a lump sum as an accelerated death benefit under this section shall remain payable in accordance with the provisions of this chapter.*

(d) *Deductions under section 1969 of this title and premiums under section 1977(c) of this title shall be reduced, in a manner consistent with the percentage reduction in the face value of the insurance as a result of payment of an accelerated death benefit under this section, effective with respect to any amounts which would oth-*

erwise become due on or after the date of payment under this section.

(e) The regulations under this section shall include provisions regarding—

(1) the form and manner in which an application for an election under this section shall be made; and

(2) the procedures under which any such application shall be considered.

(f)(1) An election to receive a benefit under this section shall be irrevocable.

(2) A person may not make more than one election under this section, even if the election of the person is to receive less than the maximum amount of the benefit available to the person under this section.

(g) If a person insured under Servicemembers' Group Life Insurance elects to receive a benefit under this section and the person's Servicemembers' Group Life Insurance is thereafter converted to Veterans' Group Life Insurance as provided in section 1968(b) of this title, the amount of the benefit paid under this section shall reduce the amount of Veterans' Group Life Insurance available to the person under section 1977(a) of this title.

(h) Notwithstanding any other provision of law, the amount of the accelerated death benefit received by a person under this section shall not be considered income or resources for purposes of determining eligibility for or the amount of benefits under any Federal or federally-assisted program.

* * * * *

CHAPTER 23—BURIAL BENEFITS

* * * * *

§ 2306. Headstones, markers, and burial receptacles

(a) * * *

(b) The Secretary shall furnish, when requested, an appropriate memorial headstone or marker for the purpose of commemorating **[any veteran—]** any veteran, any individual who dies in the active military, naval, or air service, and any spouse or surviving spouse (including an unremarried surviving spouse whose subsequent remarriage was terminated by death or divorce) of a veteran or any such individual—

(1) * * *

(2) whose remains were buried at sea, whether by **[the veteran's]** the individual's own choice or otherwise,

* * * * *

(e) Where the Secretary has furnished a memorial headstone or marker under subsection (b) for purposes of commemorating a veteran, or has furnished a headstone or marker for the unmarked grave of a veteran under subsection (a), the Secretary shall, where feasible, add a memorial inscription to such headstone or marker in lieu of furnishing a memorial headstone or marker under subsection (b) for the veteran's surviving spouse.

* * * * *

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

* * * * *

§ 2403. Memorial areas

(a) * * *

[(b) Under regulations prescribed by the Secretary, appropriate memorials or markers shall be erected to honor the memory of those individuals, or group of individuals, referred to in subsection (a) of this section.] (b) *Under regulations prescribed by the Secretary, group memorials may be erected to honor the memory of groups of individuals referred to in subsection (a), and appropriate memorial headstones and markers may be erected to honor the memory of individuals referred to in subsection (a) and section 2306(b) of this title.*

* * * * *

PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 71—BOARD OF VETERANS' APPEALS

* * * * *

§ 7107. Appeals: dockets; hearings

(a)(1) Except as provided in *paragraph (2) and* subsection (f), each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket.

(2) *A case referred to in paragraph (1) may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.*

[(2)] (3) A case referred to in paragraph (1) may, for cause shown, be advanced on motion for earlier consideration and determination. Any such motion shall set forth succinctly the grounds upon which it is based and may not be granted unless the case involves interpretation of law of general application affecting other claims or for other sufficient cause shown.

(b) * * *

* * * * *

(d)(1) * * *

(2) A hearing to be held within an area served by a regional office of the Department shall (except as provided in paragraph (3)) be scheduled to be held [in the order in which requests for hearings within that area are received by the Department.] *in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area.*

[(3) In a case in which the Secretary is aware that the appellant is seriously ill or is under severe financial hardship, a hearing may be scheduled at a time earlier than would be provided for under paragraph (2).] (3) *A hearing to be held within an area served by a regional office of the Department may, for cause shown, be ad-*

vanced on motion for an earlier hearing. Any such motion shall set forth succinctly the grounds upon which it is based and may not be granted unless the case involves interpretation of law of general application affecting other claims or for other sufficient cause shown.

* * * * *

CHAPTER 72—UNITED STATES COURT OF VETERANS APPEALS

* * * * *

SUBCHAPTER II—PROCEDURE

* * * * *

§ 7266. Notice of appeal

(a)(1) In order to obtain review by the Court of Veterans Appeals of a final decision of the Board of Veterans' Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which [notice of the decision is mailed pursuant to section 7104(e) of this title] *a copy of the decision is mailed or sent to the claimant's authorized representative, or mailed to the claimant if the claimant has no authorized representative, pursuant to section 7104(e) of this title.*

* * * * *

