



# **Veterans' Benefits: Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (P.L. 112-154)**

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## Summary

Congress has in the past enacted legislation providing authority for the Department of Veterans Affairs (VA) to treat certain veterans for specific medical conditions resulting from their exposure to certain toxic substances or environmental hazards while on active military duty.

In the 1980s, officials at Camp Lejeune became aware of the presence of volatile organic compounds (VOCs) in drinking water samples. Camp Lejeune was placed on the National Priorities List by the Environmental Protection Agency in 1989, and the Agency for Toxic Substances and Disease Registry continues to monitor samples from the water table.

The Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (H.R. 1627, P.L. 112-154, enacted on August 6, 2012) provides authority for the VA to provide medical services for 15 specific illnesses to certain veterans as well as their eligible family members, who were stationed at Camp Lejeune, North Carolina, from January 1, 1957, to December 31, 1987.

In addition to providing the VA authority to provide medical services associated with these specific illnesses to veterans and their families stationed at Camp Lejeune during this time period, P.L. 112-154 makes a number of changes to other VA programs, including housing and other benefit programs. Some of these changes affect VA administration and expand congressional oversight of the VA through increased reporting to Congress, while other changes made by P.L. 112-154 would impact the larger population of veterans. That is, the changes would impact all veterans utilizing these programs, not just veterans stationed at Camp Lejeune during the above specified period.

This report provides information on the various provisions of P.L. 112-154 by program, benefit, or topic, rather than by each legislative provision. However, for each change in a program, benefit, etc., the section number of P.L. 112-154 is provided.

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## Introduction

The Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (H.R. 1627, P.L. 112-154, enacted on August 6, 2012) is an “omnibus” bill containing a number of provisions impacting various veterans programs. P.L. 112-154 reflects a compromise agreement by the House and Senate Committees on Veterans Affairs on provisions contained within several bills (H.R. 1627; S. 277; S. 914; S. 951; H.R. 802; H.R. 1484; H.R. 2074; H.R. 2032; H.R. 2349; H.R. 2433; and H.R. 4299) reported during the 112<sup>th</sup> Congress, and several free-standing provisions.

This report provides information on the various provisions of P.L. 112-154 by program, benefit, or topic, rather than by each legislative provision. However, for each change in a program, benefit, etc., the section number of P.L. 112-154 is provided.

## Health Care<sup>1</sup>

### Medical Care for Camp Lejeune Veterans and Family Members

The Department of Veterans Affairs (VA), through the Veterans Health Administration (VHA), operates the nation's largest integrated direct health care delivery system. Veterans' medical care is a discretionary program, and eligibility for VA medical care is based on an array of factors including (but not limited to) veteran status,<sup>2</sup> presence of service-connected disabilities<sup>3</sup> or exposures, income,<sup>4</sup> status as a former prisoner of war (POW) or Purple Heart or Medal of Honor recipient.

From time to time, Congress has passed legislation providing special treatment authority for certain groups of veterans. In 1981, Congress enacted the Veterans' Health Care, Training, and Small Business Loan Act of 1981 (P.L. 97-72), which provided special authority to allow the VA to treat some veterans for disorders that may have been related to their exposure to Agent Orange and ionizing radiation, even though according to the Institutes of Medicine (IOM)<sup>5</sup> there was no

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<sup>1</sup> All health care sections of this report were authored by Sidath Viranga Panangala, Specialist in Veterans Policy, ext. 7-0623.

<sup>2</sup> Veteran's status is generally established by active-duty service in the U.S. Armed Forces and an other than dishonorable discharge or release from active military service. Generally, persons enlisting in one of the Armed Forces after September 7, 1980, and officers commissioned after October 16, 1981, must have completed two years of active duty or the full period of their initial service obligation to be eligible for VA health care benefits. Servicemembers discharged at any time because of service-connected disabilities are not held to this requirement.

<sup>3</sup> A service-connected disability is a disability that was incurred or aggravated in the line of duty in the U.S. Armed Forces (38 U.S.C. §101 (16)). The VA determines whether veterans have service-connected disabilities, and for those with such disabilities, assigns ratings from 0% to 100% based on the severity of the disability. Percentages are assigned in increments of 10 (38 C.F.R. §§4.1-4.31).

<sup>4</sup> Veterans with no service-connected conditions and who are Medicaid eligible, or who have an income below a certain VA means-test threshold and below a median income threshold for the geographic area in which they live, are also eligible to enroll in the VA health care system.

<sup>5</sup> National Academy of Sciences, Institute of Medicine, *Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam*, Washington, DC, 1994, p.50.

definitive scientific evidence showing that the disorders treated were related to the exposure. In 1993, Congress passed P.L. 103-210 to provide additional authority for the VA to provide health care for Persian Gulf War veterans, for medical conditions possibly related to exposure to toxic substances or environmental hazards during their active duty service in the Southwest Asia theater of operations during the Persian Gulf War.<sup>6</sup>

In the early 1980s, two water-supply systems at Camp Lejeune, North Carolina were found to be contaminated with the industrial solvents trichloroethylene (TCE) and perchloroethylene (PCE). P.L. 112-154, among other things, addressed the chemical exposure at Camp Lejeune, North Carolina by providing eligibility for VA health care services for certain veterans.<sup>7</sup>

**Section 102** of P.L. 112-154 provides eligibility to VA provided hospital care, medical services, and nursing home care to certain veterans and their eligible family members who were stationed at Camp Lejeune, North Carolina, from January 1, 1957 to December 31, 1987, during which time the well water was contaminated. These veterans are eligible to receive medical care for the following fifteen illnesses or conditions: esophageal cancer; lung cancer; breast cancer; bladder cancer; kidney cancer; leukemia; multiple myeloma; myelodysplastic syndromes; renal toxicity; hepatic steatosis; female infertility; miscarriage; scleroderma; neurobehavioral effects; and non-Hodgkin's lymphoma, although the law acknowledges that there is insufficient medical evidence to conclude that any particular illnesses are attributable to military service during that period.<sup>8</sup> The VA will be the final payer to other third-party health insurance plans for eligible family members.<sup>9</sup>

## Contracts for Nursing Home Care

The State Veterans' Home (SVH) program is a federal-state partnership to build, modify or acquire nursing home, domiciliary, and adult day health care facilities. In addition to providing grants to states for construction, the VA also provides a fixed per diem to states for each veteran who receives care in a state veterans' home. Although the VA sets basic eligibility criteria for access to nursing home care, state law governs the management and admission criteria for these SVHs. Also, state laws allow an individual SVH to exercise its prerogative on admitting veterans.<sup>10</sup>

Under the Veterans Millennium Health Care and Benefits Act (P.L. 106-117), the VA was only required to pay the full cost of care for veterans who had a service-connected disability rated at 70% or more, or whose need for nursing home care was related directly to a service-connected condition, if the veterans were receiving care in a VA Community Living Center (formerly known as a VA Nursing Home) or in a VA contracted private nursing home. However, VA was not

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<sup>6</sup> U.S. Congress, House Committee on Veterans' Affairs, *Priority VA Health Care for Persian Gulf War Veterans*, report to accompany H.R. 2535, 103<sup>rd</sup> Cong., July 29, 1993, H.Rept. 103-198.

<sup>7</sup> National Research Council of the National Academies, *Contaminated Water Supplies at Camp Lejeune: Assessing Potential Health Effects*, Public Summary and Context, Washington, DC, 2009; available at [http://dels.nas.edu/resources/static-assets/materials-based-on-reports/reports-in-brief/camp\\_lejeune\\_final.pdf](http://dels.nas.edu/resources/static-assets/materials-based-on-reports/reports-in-brief/camp_lejeune_final.pdf).

<sup>8</sup> P.L. 112-154, 126 Stat 1167.

<sup>9</sup> Under P.L. 112-154, the VA is required to develop regulations to implement this provision for family members who resided at Camp Lejeune.

<sup>10</sup> Department of Veterans Affairs, Office of Inspector General, *Audit of Veterans Health Administration's State Home Per Diem Program*, 10-01529-108, March 2, 2011, p. 16.

authorized to pay the full cost of care if these same veterans received care in a SVH. The Veterans Benefits, Health Care, and Information Technology Act of 2006 (P.L. 109-461) equalized the cost of nursing home care for these veterans regardless of the setting, and included a provision, effective March 21, 2007, for the VA to use higher per diem rates when reimbursing SVHs for providing care to veterans who had a 70% service-connected disability or individual unemployability. P.L. 109-461 also stipulated that SVHs reimbursed at the higher per diem rates were not eligible to receive funding from other federal sources such as Medicare or Medicaid.<sup>11</sup> However, after the VA implemented this new reimbursement methodology, some state veterans' nursing homes reported that they were receiving smaller reimbursements that were not covering the actual cost of care.<sup>12</sup>

**Section 105** of P.L. 112-154 requires the VA to enter into contracts with SVHs to provide nursing home care to veterans who need nursing home care for a service-connected condition or have a service-connected disability rating of 70% or greater. The reimbursement methodology will be developed in consultation with SVHs. Also, this provision requires the VA, at the request of any SVH, to enter into a contract or agreement with that SVH that would replicate the reimbursement methodology that was in effect on the day before enactment of P.L. 112-154.

## Reporting and Tracking Sexual Assault Incidents

In June 2011, the Government Accountability Office (GAO) found about 300 sexual assault incidents were reported to the VA police from January 2007 through July 2010—“including alleged incidents that involved rape, inappropriate touching, forceful medical examinations, forced or inappropriate oral sex, and other types of sexual assault incidents.”<sup>13</sup> GAO also stated that many of the sexual assault incidents reported to the VA police were not reported to VA leadership officials and/or the VA Office of the Inspector General (OIG), as required by VA regulation due to the lack of a centralized VA management reporting system.<sup>14</sup>

**Section 106** of P.L. 112-154 requires the VA to establish a comprehensive policy on the reporting and tracking of sexual assault and other safety incidents at VA medical facilities and requires a report on this policy 60 days after initial implementation and annually thereafter. Furthermore, this provision stipulates that in developing this comprehensive policy and related risk assessment tools, the VA should consider the effects on veterans' use of mental health and substance abuse treatments and the ability of the VA to refer veterans to such services. This provision also requires the VA to submit an interim report to Congress on the progress of developing this comprehensive policy within 30 days of the enactment of P.L. 112-154.

<sup>11</sup> U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Health, *Legislative Hearing on H.R.4241*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 3, 2010, p. 40; and Department of Veterans Affairs, Office of Inspector General, *Audit of Veterans Health Administration's State Home Per Diem Program*, 10-01529-108, March 2, 2011, p. 1.

<sup>12</sup> U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Health, *Legislative Hearing on H.R.4241*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 3, 2010, p. 40.

<sup>13</sup> U.S. Government Accountability Office, *VA Health Care: Actions Needed to Prevent Sexual Assaults and Other Safety Incidents*, GAO-11-530, June 2011, p. 9.

<sup>14</sup> *Ibid.*, and U.S. Congress, House Committee on Veterans' Affairs, *Veterans Sexual Assault Prevention and Health Care Enhancement Act*, Report to accompany H.R. 2074, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., October 5, 2011, H.Rept. 112-235, p. 7.

## Services for Veterans with Traumatic Brain Injury (TBI)

Traumatic brain injury (TBI) has become known as a “signature wound” of Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF), because servicemembers in these operations have experienced TBI in greater numbers than those serving in past conflicts.<sup>15</sup> Three factors contribute to the increase in TBI. First, the number of blast injuries caused by improvised explosive devices (IEDs), rocket-propelled grenades, and land mines has increased; it has been reported that the primary mechanism of injury in OIF is a blast injury. Second, injuries that would have been fatal in the past may not be fatal now, due to advances in protective equipment, combat medicine, and air evacuation. Third, health care professionals are more alert to the possibility of TBI and may therefore be more likely to diagnose TBI accurately. The total number of veterans who have experienced TBI is not known, in part because TBI is difficult to identify, and in part because some veterans may not have accessed VA health care services.<sup>16</sup>

Current law requires the VA to provide comprehensive care to veterans with TBI in accord with individualized rehabilitation plans.<sup>17</sup> However, concerns were raised that the VA has interpreted the statute as limited only to those services that restore function, and that by limiting rehabilitative care, individuals with TBI may risk losing out on therapies that might prove vital in maintaining physical, cognitive, and other progress.<sup>18</sup>

**Section 107** of P.L. 112-154 requires the VA to provide rehabilitative care to veterans with TBI with the goal of maximizing their independence and improving their behavioral and mental health functioning. Furthermore, this provision requires the inclusion of rehabilitative services within the VA’s comprehensive programs of long-term care for veterans with TBI in both VA and non-VA facilities.

## Teleconsultation and Telemedicine

According to the *2001 Telemedicine Report to Congress*,<sup>19</sup> telemedicine is referred to as the “use of electronic communication and information technologies for medical diagnostic, monitoring, and therapeutic purposes when distance and/or time separates the participants.”<sup>20</sup>

*Telehealth*, a broader concept than telemedicine, is defined as the “use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and

<sup>15</sup> Committee on the Initial Assessment of Readjustment Needs of Military Personnel, Veterans, and Their Families, Board on the Health of Selected Populations, Institute of Medicine. “SUMMARY.” *Returning Home from Iraq and Afghanistan: Preliminary Assessment of Readjustment Needs of Veterans, Servicemembers, and Their Families*. Washington, DC: The National Academies Press, 2010.

<sup>16</sup> This information was adapted from CRS Report R40941, *Traumatic Brain Injury Among Veterans*, by Erin Bagalman. For more information on TBI and VA’s services for veterans with TBI, see the above mentioned CRS report.

<sup>17</sup> 38 U.S.C. §§1710 C and D.

<sup>18</sup> U.S. Congress, House Committee on Veterans’ Affairs, *Veterans Sexual Assault Prevention and Health Care Enhancement Act*, Report to accompany H.R. 2074, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 5, 2011, H.Rept. 112-235, p. 9. and U.S. Congress, Senate Committee on Veterans’ Affairs, *Veterans Programs Improvement Act of 2011*, Report to accompany S. 914, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 11, 2011, S.Rept. 112-88, p. 11.

<sup>19</sup> An interagency report mandated by the Healthcare Research and Quality Act of 1999 (P.L. 106-129).

<sup>20</sup> U.S. Department of Health and Human Services, Health Resources and Services Administration, Office for the Advancement of Telehealth, *2001 Telemedicine Report to Congress*, January 2001, p. 13.



professional health-related education, public health and health administration.”<sup>21</sup> According to an evidence synthesis prepared by the Agency for Healthcare Research and Quality (AHRQ), “telehealth indicates care beyond that provided in medical encounters (e.g., health education, health-related Web sites, etc.).”<sup>22</sup>

According to a paper published by the VA’s National Center for Posttraumatic Stress Disorder (PTSD), the term *telemental health* “typically refers to behavioral health services that are provided using communication technology.”<sup>23</sup> These services include clinical assessment, individual and group psychotherapy, psycho-educational interventions, cognitive testing, and general psychiatry. In other words, the term *telemental health* describes the overall situation in which a clinician uses various technologies to deliver mental health care to a patient who is miles away.<sup>24</sup> Within the Department of Defense (DOD) *telemental health* is generally referred to as *telebehavioral health*.<sup>25</sup>

The VA has undertaken telehealth activities since 1977, and is generally recognized in published literature as a national leader in telehealth development and usage.<sup>26</sup> Telehealth is frequently used in the delivery of health care to veteran patients, and is frequently used to deliver care to veterans living in rural and remote areas for whom travel to VA hospitals may be difficult. Research has shown that telehealth offers a number of potential benefits as an alternative to in-person treatment. Moreover, some studies have demonstrated that telehealth can be a cost-effective method of delivering care within the VA health care system.<sup>27</sup>

**Section 108** of P.L. 112-154 requires VA to carry out a teleconsultation<sup>28</sup> program of remote mental health and TBI assessments in VA facilities that are unable to provide such assessments without utilizing contract or fee-basis care.<sup>29</sup> Also, the VA is required to offer training opportunities in telemedicine<sup>30</sup> to medical residents in VA facilities that have and utilize telemedicine, consistent with medical residency program requirements established by the Accreditation Council for Graduate Medical Education.

<sup>21</sup> Ibid.

<sup>22</sup> Agency for Healthcare Research and Quality (AHRQ), Evidence Report/Technology Assessment No. 24, *Telemedicine for the Medicare Population* (AHRQ Publication No. 01-E012), p.11.

<sup>23</sup> Leslie Morland et al., “PTSD and Telemental Health,” VA National Center for PTSD, 2007, <http://www.ptsd.va.gov/professional/pages/ptsd-telemental.asp>.

<sup>24</sup> Ibid.

<sup>25</sup> <http://www.army.mil/article/33282/commentary-tele-behavioral-healthcare-to-help-where-needed/>.

<sup>26</sup> Peter W. Tuerk et al., “Toward the Development of National Telehealth Services: The Role of Veterans Health Administration and Future Directions for Research,” *Telemedicine and e-HEALTH*, vol. 16, no. 1 (January/February 2010), p. 116.

<sup>27</sup> Peter W. Tuerk et al., “A Pilot Study of Prolonged Exposure Therapy for Posttraumatic Stress Disorder Delivered via Telehealth Technology,” *Journal of Traumatic Stress*, vol. 23, no. 1 (February 2010), p. 117; Daniel F. Gros et al., “Telehealth Technologies for the Delivery of Mental Health Services,” *Forum*, November 2010, p. 6.

<sup>28</sup> P.L. 112-154 defines “teleconsultation” as the use by a health care specialist of telecommunications to assist another health care provider in rendering a diagnosis or treatment.

<sup>29</sup> Under certain circumstances, the VA may reimburse non-VA providers for health care services rendered to VA-enrolled veterans on a fee-for-service basis, commonly referred to as fee basis care. Current law authorizes the VA to use fee basis care under the following circumstances: (1) when a clinical service cannot be provided at a VA medical center (VAMC); (2) when a veteran is unable to access VA health care facilities due to geographic limitations; or (3) in emergencies when delays could lead to life-threatening situations (38 U.S.C. §§1703,1725, and 1728).

<sup>30</sup> P.L. 112-154 defines “telemedicine” as the use of telecommunications by a health care provider to assist in the diagnosis or treatment of a patient’s medical condition.

## Copayments For Telehealth And Telemedicine Services

Currently, veterans enrolled in the VA health care system do not pay any copayments for treatment related to a service-connected condition or illness. Those veterans with service-connected conditions rated at 50% or more disabled are not charged any copayments, including treatment for a nonservice-connected condition or illness. Also, veterans are not charged copayments for the following outpatient services: publicly announced VA health fairs; screenings and immunizations; smoking and weight loss counseling; telephone care; laboratory services; flat film radiology; electrocardiograms; counseling and care for military sexual trauma (MST); readjustment counseling and related mental health services; and hospice care. Veterans with no service-connected conditions and veterans receiving care for nonservice-connected conditions or illnesses are generally required to pay copayments of \$15 for primary care visits and \$50 for specialty care visits. Veterans do not receive more than one outpatient copayment charge per day. That is, if the veteran has a primary care visit and a specialty care visit on the same day, the veteran only pays for the specialty care visit.

**Section 103** of P.L. 112-154 authorizes VA to waive collections of copayments from veterans for any telehealth or telemedicine consultations.

## Service Dogs on VA Property

The Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 (P.L. 107-135) authorized the VA to provide service dogs to veterans that are hearing or mobility impaired. The Consolidated Appropriations Act, 2010 (P.L. 111-117) included a provision allowing the VA to provide service dogs to aid veterans with mental illnesses, including post-traumatic stress disorder (PTSD). Furthermore, the National Defense Authorization Act for FY2010 (P.L. 111-84) authorized the VA to conduct a three-year research study to assess the benefits, feasibility, and advisability of using service dogs to treat or rehabilitate veterans with physical or mental injuries or disabilities, including PTSD.

**Section 109** of P.L. 112-154 stipulates that a service dog that has been trained by an accredited entity may have access to any VA facility or to any facility or any property that receives funding from the VA.

## Rural Health Resource Centers

In 2006, Congress mandated the establishment of an Office of Rural Health (ORH) within the Veterans Health Administration (VHA).<sup>31</sup> The purpose of this office was to assist the VHA with the collection of data on rural veterans and the “development of strategies that may ultimately help reduce the [disparities in service] between rural and non-rural veterans.”<sup>32</sup> The VHA established the ORH in March 2006. At the beginning of FY2009, the VA opened three Veterans Rural Health Resource Centers (VRHRCs) “to develop special practices and products for use by

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<sup>31</sup> The Office of Rural Health was established by the Veterans Benefits, Health Care, and Information Technology Act of 2006 (P.L. 109-461).

<sup>32</sup> U.S. Congress, Senate Committee on Veterans Affairs, *The Veterans' Choice Of Representation and Benefits Enhancement Act of 2006*, report to accompany S. 2694, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 109-297.

facilities and networks across the country.”<sup>33</sup> The Eastern Center is located in Togus, ME, with satellite offices at White River Junction, VT, and Gainesville, FL. The Central Center is located in Iowa City, IA; and the Western Center is located in Salt Lake City, UT. These Centers serve as field-based clinical laboratories experimenting with new outreach and care models.<sup>34</sup>

**Section 110** of P.L. 112-154 recognizes that there are VRHRCs that serve as satellite offices of the ORH and requires them to perform one or more of the following functions: 1) improve the ORH’s understanding of the challenges faced by veterans living in rural areas; 2) identify disparities in the availability of health care to veterans living in rural areas; 3) formulate practices or programs to enhance the delivery of health care to veterans living in rural areas; and 4) develop special practices and products for the benefit of veterans living in rural areas and implement such practices and products throughout the VA.

## Veterans Affairs Medical Care Collections Fund (MCCF)

The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), enacted into law in 1986, gave the VHA the authority to bill some veterans and most health care insurers for nonservice-connected care provided to veterans enrolled in the VA health care system, to help defray the cost of delivering medical services to veterans.<sup>35</sup> This law also established means testing for veterans seeking care for nonservice-connected conditions. However, P.L. 99-272 did not provide the VA with specific authority to retain the third-party payments it collected, and the VA was required to deposit these third-party collections into the General Fund of the U.S. Treasury.

The Balanced Budget Act of 1997 (P.L. 105-33) gave the VHA the authority to retain these funds in the VA’s Medical Care Collections Fund (MCCF), a special fund account. The VA can use the MCCF to provide medical services for veterans without fiscal year limitations.<sup>36</sup> To increase the VA’s third-party collections, P.L. 105-33 also gave the VA the authority to change its basis of billing insurers from “reasonable costs” to “reasonable charges.” This change in billing was intended to enhance VA collections since reasonable charges result in higher payments than reasonable costs.<sup>37</sup> In FY2004, the Administration’s budget requested the consolidation of several existing medical collections accounts into one MCCF. Specifically, the conferees of the Consolidated Appropriations Act of 2004, in H.Rept. 108-401, recommended that collections from the following former funds - the Health Services Improvement Fund, the Veterans Extended Care Revolving Fund, the Special Therapeutic and Rehabilitation Activities Fund, the Medical Facilities Revolving Fund, and the Parking Revolving Fund - should instead be deposited in MCCF. The conference report for the Consolidated Appropriations Act of 2005 (P.L. 108-447; H.Rept. 108-792) provided the VA with permanent authority to deposit funds from these five

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<sup>33</sup> U.S. Congress, Senate Committee on Veterans’ Affairs, *Caring for Veterans in Rural Areas*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., February 26, 2009, S. Hrg. 111-133, p. 11.

<sup>34</sup> Ibid.

<sup>35</sup> Title XIX of P.L. 99-272, Veterans’ Health-Care Amendments of 1986; 100 Stat. 372, 373, 383.

<sup>36</sup> For a detailed history of funding for VHA from FY1995 to FY2004, see CRS Report RL32732, *Veterans’ Medical Care Funding: FY1995-FY2004*, by Sidath Viranga Panangala.

<sup>37</sup> U.S. Government Accountability Office (GAO), *VA Health Care: Third-Party Charges Based on Sound Methodology: Implementation Challenges Remain*, GAO/HEHS-99-124, June 1999.

<sup>37</sup> Ibid.

accounts into the MCCF. The funds deposited into the MCCF are available for medical services for veterans, could be spent in any particular fiscal year, and are available until expended.

**Section 111** of P.L. 112-154 requires the VA to develop and implement a plan to ensure the identification and collection of billable third-party revenue to be deposited in the MCCF. It also requires the following elements to be included in the plan: an effective process to identify billable fee claims, effective and practicable policies and procedures to ensure billing and collection using current authorities; training of employees responsible for billing or collection of funds to enable them to comply with the provisions of this section; fee revenue goals for the VA; and an effective monitoring system to ensure that the VA meets the fee revenue goals.

## **Beneficiary Travel to Vet Centers**

Currently, the VA provides beneficiary travel payments to eligible veterans and family caregivers traveling to and from VA medical centers.<sup>38</sup>

**Section 104** of P.L. 112-154 requires the VA to commence a three-year initiative to assess the feasibility and advisability of treating Vet Centers as VA facilities for the purpose of beneficiary travel reimbursement. This reimbursement authority will be valid for three years, and it will be limited only to veterans who live in highly rural areas and travel to and from their nearest Vet Centers.<sup>39</sup> The VA Secretary is required to issue a report to Congress within 180 days of enactment (August 6, 2012) on the beneficiaries of the initiative and an analysis of the initiative.

## **Reimbursement Rate for Ambulance Services**

Currently, VA is authorized to provide eligible veterans and other beneficiaries mileage reimbursement, special mode (ambulance, wheelchair, van, etc.) transport when medically indicated, and common carrier (plane, bus, etc.) transport when traveling to and from VA or VA authorized health care. For reimbursement of ambulance and common carrier expenses, pre-authorization from the VA is required except in cases of medical emergency where delay would be hazardous to life or health.

Previous payment authorities resulted in VA reimbursement for ambulance services based on a contracted rate or, in situations where there was no contract, the providers' billed charges. As a result, in certain cases, VA was paying a higher rate than that allowed by Medicare for similar ambulance services. To address this situation, in its FY2012 budget submission to Congress, VA proposed legislative language to use the local prevailing Medicare ambulance rates to reimburse ambulance providers; which would have resulted in cost savings for the VA.

The Vow to Hire Heroes Act of 2011 (Title II of P.L. 112-56) provided VA with the authority to pay the lesser of the actual amount charged by the ambulance provider or the applicable Medicare

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<sup>38</sup> For more information, see CRS Report R41626, *Veterans Affairs Beneficiary Travel Program: Questions and Answers*, by Carol D. Davis.

<sup>39</sup> Vet Centers are a nation-wide system of community-based programs separate from VA medical centers (VAMCs). Client services provided by Vet Centers include psychological counseling and psychotherapy (individual and group); screening for, and treatment of, mental health issues; substance abuse screening and counseling; employment/educational counseling; and bereavement counseling, among other services.

rate for ambulance services, unless VA has entered into a contract for such transportation with the provider. However, as written this change in law did not have the desired effect because it applied only to situations where VA pays for ambulance service before determining the eligibility of the Veteran for such transport. This situation seldom arises; VA in almost all instances determines the veteran's eligibility prior to authorizing payment for or reimbursement to the veteran for ambulance services and special mode transportation.

**Section 704** of P.L. 112-154 makes a technical correction to 38 U.S.C. §111 that would authorize VA to reimburse ambulance providers for authorized ambulance transportation at the lesser of the actual charge or the appropriate local prevailing Medicare ambulance rate when the VA has not entered into a contract with the ambulance provider. Where VA has entered into a contract with an ambulance provider the contracted rate would apply. The new reimbursement methodology will apply to all ambulance transportation situations except when transport is provided in relation to unauthorized non-VA emergency care of nonservice-connected conditions that VA approves for payment.

## Change in Collection and Verification of Veteran's Income

The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), enacted into law in 1986, established means testing for veterans seeking care for nonservice-connected conditions. Currently, veterans report their household income from the previous calendar<sup>40</sup> year to the VA to determine if they are eligible for health care based on income, and whether they are to be billed for certain copayments.

**Section 705** of P.L. 112-154 authorizes the VA to use the veteran's household income for the most recent year to determine his or her eligibility for VA health care.

## Housing<sup>41</sup>

### Specially Adapted Housing Program

P.L. 112-154 makes a number of changes to the VA's Specially Adapted Housing (SAH) Program, which provides grants to veterans and servicemembers with certain service-connected disabilities to assist them in purchasing or remodeling homes to fit their needs. Within the SAH Program are two separate grant programs for veterans and active duty servicemembers. The first, sometimes referred to as the Specially Adapted Housing Grant (or §2101(a) grant, after the section of the U.S. Code), is generally targeted to veterans with mobility impairments, while the second, sometimes referred to as the Special Housing Adaptation Grant (or §2101(b) grant), aids veterans who are blind or who have lost the use of their hands. The §2101(b) grants may also be used to

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<sup>40</sup> Use of the calendar year for income calculations facilitates income verification with the Internal Revenue Service.

<sup>41</sup> All housing sections of this report were authored by Libby Perl, Specialist in Housing Policy, ext. 7-7806. For more information about VA Housing programs, including Specially Adapted Housing Grants and the VA Loan Guaranty program, see CRS Report R42504, *VA Housing: Guaranteed Loans, Direct Loans, and Specially Adapted Housing Grants*, by Libby Perl.

adapt the home of a family member with whom a veteran is living indefinitely. The dollar limit for the §2101(a) grant is higher than for the §2101(b) grant, and both types of adapted housing grants are available to veterans with severe burn injuries.

**Section 202** of P.L. 112-154 adds to the qualifying disabilities for §2101(a) grants to cover veterans or servicemembers who have lost use of one or more lower extremities where the loss so affects balance and propulsion as to require the aid of braces, crutches, canes, or a wheelchair for ambulating. The disability must have occurred on or after September 11, 2001, and veterans or servicemembers must be approved for assistance under this provision by the end of FY2013.

**Section 203** of P.L. 112-154 also changes the §2101(b) measure of blindness from 5/200 visual acuity in both eyes to 20/200 vision in the better eye with the use of a corrective lens. The new standard is in line with the VA visual impairment standard for disability compensation, which was changed from 5/200 to 20/200 as part of the Dr. James Allen Veteran Vision Equity Act (P.L. 110-157).

**Section 204** of P.L. 112-154 also increases the maximum amount of assistance for §2101(a) grants to \$63,780 (the previous statutory limit was \$60,000) and for §2101(b) grants to \$12,756 (the previous statutory limit was \$12,000). The new law continues to require the VA Secretary to annually adjust the statutory award limits based on a cost-of-construction index. P.L. 112-154 brings the statutory limit up to the level of the most recently adjusted limits; for FY2012, the adjusted limits were \$63,780 and \$12,756. The increased statutory grant limits take effect one year after the enactment of P.L. 112-154.

A separate provision in the SAH law allows veterans to use §2101(a) or §2101(b) grants to modify the homes of family members with whom they are living temporarily. This provision is sometimes referred to as the Temporary Residence Adaptation (TRA) grant. **Section 205** of P.L. 112-154 makes the following changes to the TRA grant: (1) Increases the maximum §2101(a) TRA grant from \$14,000 to \$28,000 and the maximum §2101(b) grant from \$2,000 to \$5,000. The new, higher limits took effect upon the law's enactment; (2) Provides that the maximum TRA grants be increased using the same cost-of-construction index used to increase the maximum grants for a veteran's or servicemember's own home. Prior to the enactment of P.L. 112-154, the TRA grants were not subject to annual adjustment; and (3) Extends the authority for TRA grants from December 31, 2012, to December 31, 2022.

As previously discussed, the SAH law limits the total amount of grant funding for which a veteran or servicemember can qualify in making adaptations to his or her own home, or to the home of a family member. **Section 701** of P.L. 112-154 creates an exception to these limits in cases where a previously-adapted home is "substantially damaged in a natural or other disaster." **Section 701** of P.L. 112-154: (1) provides that where a damaged home was being used and occupied by a disabled veteran or servicemember, he or she may receive funds to acquire another suitable home; (2) makes assistance available as if a veteran or servicemember had not already received assistance, and the assistance does not count toward a veteran's maximum benefit; and (3) sets the maximum benefit at the lesser of: (1) the cost (as determined by VA) to repair or replace the property that is in excess of any insurance coverage; or (2) the statutory grant maximums for §2101(a), §2101(b), or the TRA grants.

## Loan Guaranty Program

The VA Loan Guaranty Program is a mortgage insurance program through which eligible veterans enter into mortgages with private lenders, and the VA guarantees that it will pay lenders a portion of losses that may be suffered as a result of borrower default. Unlike the Federal Housing Administration (FHA) loan insurance program, the VA guarantees only a portion of the loan, which varies depending on the amount of the loan. For a property to be eligible for the loan guaranty, a veteran must occupy the property as his or her home. To participate, veterans pay a one-time fee based on such factors as the amount of the down payment (if any), whether the borrower had active duty service or was a reservist, and whether the borrower is accessing the guaranty for the first time or entering into a subsequent loan. Fees may be waived for veterans receiving compensation for a service-connected disability and for certain surviving spouses.

**Section 206** of P.L. 112-154 amends the definition of *veteran* for loan guaranty eligibility to include the surviving spouses of veterans who die *while receiving* compensation (or who were eligible to receive compensation) for a service-connected disability rated totally disabling. Previously, only surviving spouses of veterans who *died from* their service-connected disabilities were eligible for the loan guaranty. The disability must meet one of the following three duration requirements: (1) it was continuously rated totally disabling for 10 or more years immediately preceding death; (2) it was continuously rated totally disabling for at least five years from the date of discharge from active duty; or (3) it was continuously rated totally disabling for not less than one year immediately preceding death, and the veteran had been a prisoner of war and died after September 30, 1999. Surviving spouses who qualify for the loan guaranty based on this provision will not be required to pay the guaranteed loan fee.

**Section 207** of P.L. 112-154 amends the housing occupancy requirement to qualify for the loan guaranty. An exception to the requirement that a veteran occupy the house as a home already exists for veterans called away for active duty—in such cases, their spouses may satisfy the requirement by occupying the property as a home. P.L. 112-154 changes the law to also allow the dependent child of a veteran who is called away for active duty to satisfy the occupancy requirement.

**Sections 208 and 209** of P.L. 112-154 make permanent the programs for guaranteeing adjustable rate and hybrid adjustable rate mortgages. The VA began guaranteeing adjustable rate mortgages as a demonstration as part of P.L. 102-547, enacted in 1992.

**Section 210** of P.L. 112-154 modifies the section of the law describing when veterans with service-connected disabilities may have the loan guaranty fee waived. Before the enactment of P.L. 112-154, the disability determination was made as part of a “pre-discharge examination and rating.” The new law establishes that eligibility to receive disability compensation be based on “a pre-discharge examination and rating or ... a pre-discharge review of existing medical evidence (including service medical and treatment records)....” The intent of the change is to avoid long waits for an examination to occur when existing medical records could be used to make the determination.

**Section 702** of P.L. 112-154 addresses guaranteed loan fees that veterans must pay, the maximum guaranty amount, and guaranteed loan sales securities that are bundled and sold to investors. Specifically, **Section 702** does the following: (1) extends the date for which current loan fees are in effect for loans to purchase or construct dwelling units (governed by 38 U.S.C. §3710(a)), from October 1, 2016 to October 1, 2017; (2) reinstates the higher maximum loan guaranty amount for

housing in certain high-cost areas that was put in place through December 31, 2011 by P.L. 110-389. Prior to the enactment of P.L. 110-389, the limit at which the VA would guaranty 25% of the loan was the limit set in the Freddie Mac statute. The Freddie Mac statute sets the conforming loan limit at \$417,000 for single-family homes. However, for certain high-cost areas, the loan limit may be as high as 115% of the area median home price, though it may not exceed 150% of the conforming loan limit (or \$625,500). P.L. 110-389 temporarily increased the maximum guaranty amount through 2011 (it did not make the change in statute), and then P.L. 112-154 again increased the limit through 2014. The two laws set the maximum guaranty amount at 25% of the higher of (1) the Freddie Mac conforming loan limit or (2) 125% of the area median home price, but no higher than 175% of the limit determined under the Freddie Mac statute. According to guidance issued by the VA, this means that in certain high-cost areas, the VA can guarantee loans up to a maximum of 175% of \$625,500, or \$1,094,625.<sup>42</sup> The higher maximum limits at which the VA will guaranty 25% of the loan will be in effect through December 31, 2014; and (3) extends the VA's authority to bundle and sell vendee loans, which are direct loans that the VA enters into when it sells property that it has acquired after veteran default on a mortgage. The authority had expired on December 31, 2011, and P.L. 112-154 extends the authority through December 31, 2016.

## Homelessness<sup>43</sup>

### Enhanced Use Leases

Prior to the enactment of P.L. 112-154, the VA used the Enhanced Use Lease (EUL) process to lease unused VA property to another party as long as the property was used in a way that (1) furthered the mission of the VA and enhanced the use of the property, or (2) resulted in the improvement of medical care and services to veterans in the geographic area. The VA was to charge "fair consideration" for the lease, which could include in-kind payment such as goods and services that benefit the VA, as well as improvements to, and maintenance of, VA facilities. While many of the lessees that entered into EULs with the VA did so to provide housing to homeless veterans, EULs were also used for non-housing related purposes. As of December 31, 2011, EULs had been entered into for the purpose of providing child development centers, parking facilities, golf courses, senior housing, assisted living facilities, and nursing homes.<sup>44</sup>

**Section 211** of P.L. 112-154 changes the EUL program so that properties that are the subject of EULs may only be used for one purpose: "supportive housing." "Supportive housing" is defined as housing combined with supportive services for veterans or their families who are homeless or at risk of homelessness. Among the types of housing that qualify are transitional, permanent, and single room occupancy (SRO) housing, congregate living, independent living, or assisted living. In addition: (1) leases that were entered into prior to January 1, 2012, will be subject to the law as

<sup>42</sup> U.S. Department of Veterans Affairs, *VA Circular 26-08-19, Implementation of Loan Guaranty Provisions of P.L. 110-389*, October 16, 2008, p. 2, [http://www.benefits.va.gov/homeloans/docs/26\\_08\\_19.pdf](http://www.benefits.va.gov/homeloans/docs/26_08_19.pdf).

<sup>43</sup> All homelessness sections of this report were authored by Libby Perl, Specialist in Housing Policy, ext. 7-7806. For more information about programs for homeless veterans, see CRS Report RL34024, *Veterans and Homelessness*, by Libby Perl.

<sup>44</sup> U.S. Department of Veterans Affairs, *FY2013 Annual Budget Submission, Volume IV: Construction and Long-Range Capital Plan*, Appendix D, [http://www.va.gov/budget/docs/summary/Fy2013\\_Volume\\_IV-Construction\\_Long\\_Range\\_Capital\\_Plan.pdf](http://www.va.gov/budget/docs/summary/Fy2013_Volume_IV-Construction_Long_Range_Capital_Plan.pdf).



it existed previously; (2) while the VA does not have to receive consideration for an EUL, if it does receive consideration, it may only be “cash at fair value,” and not in-kind payment; and (3) each year, the VA is to release a report about the consideration received for EULs. In addition, the first annual report released should address recommendations made as part of a VA Inspector General’s report released on February 9, 2012.

## Homeless Providers Grant and Per Diem Program

Also called the Comprehensive Service Programs, the Grant and Per Diem program authorizes the VA to make grants to public entities or private nonprofit organizations to provide services and transitional housing to homeless veterans. The grant portion of the program provides capital grants for the purchase, rehabilitation, or conversion of facilities so that they are suitable for use as either service centers or transitional housing facilities. The per diem portion of the program reimburses grant recipients for the costs of providing housing and supportive services to homeless veterans. Grantees are reimbursed for the cost of care provided, not to exceed the current per diem rate for domiciliary care. The per diem rate increases periodically and is currently \$38.90 per day.<sup>45</sup>

**Section 301** of P.L. 112-154 allows grants to be used for the *construction* of service centers and transitional housing (in addition to the acquisition and rehabilitation of existing property).

**Section 301** also allows grantees to use Low Income Housing Tax Credits (LIHTCs) in conjunction with VA Grant and Per Diem funding. P.L. 112-154 changes the law to specify that grantees may receive funds from other public and private sources, as long as the project will be operated by a private nonprofit organization. The definition of private nonprofit organization is expanded to include for-profit limited partnerships or limited liability companies where the sole general partner or manager is a private nonprofit organization. This is the ownership structure used in LIHTC-financed developments.

**Section 305** of P.L. 112-154 authorizes the VA Grant and Per Diem program at \$250 million for FY2013 and \$150 million for each subsequent fiscal year. Previous law provided that the program would be authorized at \$150 million in FY2013 and each fiscal year thereafter.

In 2001, Congress created a Grant and Per Diem program to target homeless veterans with special needs—women, women with children, the frail elderly, veterans with terminal illnesses, and those with chronic mental illnesses. **Section 303** of P.L. 112-154: (1) expands eligibility for the program to include male veterans with dependent children; (2) eliminates the requirement that grantees already be Grant and Per Diem providers as long as they are eligible to be Grant and Per Diem providers; (3) allows grantees to use funds to provide services to dependents of homeless veterans; and (4) extends the authorization level (\$5 million per fiscal year) for the Special Needs grant through FY2013.

## Health Care for Homeless Veterans

Health Care for Homeless Veterans (HCHV) is a program through which VA medical center staff conduct outreach to homeless veterans, provide care and treatment for medical, psychiatric, and

<sup>45</sup> VA Grant and Per Diem Program, Provider Website, [http://www.va.gov/HOMELESS/GPD\\_ProviderWebsite.asp](http://www.va.gov/HOMELESS/GPD_ProviderWebsite.asp).

substance use disorders, and refer veterans to other needed supportive services. Prior to the enactment of P.L. 112-154, only veterans with serious mental illnesses were eligible to participate in the program. **Section 302** of P.L. 112-154 amends the statute to make homeless veterans eligible for the HCHV program, whether mentally ill or not.

## **HUD-VASH**

HUD-VASH is a collaborative program between the VA (Veterans Affairs Supportive Housing) and the Department of Housing and Urban Development (HUD) through which local Public Housing Authorities (PHAs) distribute and administer Section 8 housing choice vouchers for homeless veterans while local VA medical centers provide case management and clinical services to participating veterans.

**Section 304** of P.L. 112-154 requires the VA to consider entering into contracts with other entities, such as state or local government agencies or nonprofit organizations, to help veterans find suitable housing and to connect veterans with other services for which they might be eligible. The contract between the VA and the outside service provider may occur in circumstances where (1) there is a shortage of affordable rental housing and a veteran needs more assistance than the VA can provide, (2) a veteran does not live near a local VA facility and it is impractical for the VA to provide assistance, or (3) veterans in the area have lower than average success in obtaining housing when compared to veterans participating in HUD-VASH overall.

## **Other Homeless Provisions**

**Section 305** of P.L. 112-154 extends the authorization for two other programs that serve homeless veterans: the Homeless Veterans Reintegration Program (HVRP) and Supportive Services for Veteran Families (SSVF). The HVRP, administered through the Department of Labor, helps homeless veterans find employment. P.L. 112-154 extends the authorization for HVRP through FY2013 at \$50 million per year. The SSVF program assists very low-income veterans and their families who either are making the transition from homelessness to housing or who are moving from one location to another. P.L. 112-154 authorizes the SSVF program for FY2013 at \$300 million; the authorization level for the SSVF program in FY2012 was \$100 million.

## **Education<sup>46</sup>**

### **Increased Entitlement When Combining DEA Benefits with Other GI Bill Benefits**

The Survivors' and Dependents' Educational Assistance Program (DEA; Title 38 U.S.C., Chapter 35) provides educational assistance to the dependents of servicemembers who were disabled,

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<sup>46</sup> All education related sections of this report were authored by Cassandra Dortch, Analyst in Education Policy, ext. 7-0376.

delayed,<sup>47</sup> or died as a result of military service.<sup>48</sup> DEA participants are entitled to 45 months (or the equivalent in part-time attendance) of benefits.

**Section 401** of P.L. 112-154 allows DEA-eligible individuals who are also eligible for another GI Bill program to combine benefit programs to receive up to 81 months of entitlement, instead of the previous cap of 48 months. The amendment takes effect October 1, 2013, and applies only to entitlement that was not exhausted before that date.

## **Post-9/11 GI Bill and DEA Annual Reports to Congress**

The Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill; Title 38 U.S.C., Chapter 33) provides educational assistance to eligible servicemembers and veterans who served on active duty after September 10, 2001, and to their eligible family members. The All-Volunteer Force Educational Assistance Program (MGIB-AD; Title 38 U.S.C., Chapter 30) primarily provides educational assistance to eligible members of the Armed Forces who entered active duty for the first time after June 30, 1985.

**Section 402** of P.L. 112-154 requires the Secretary of Defense to report to Congress on the Post-9/11 GI Bill and requires the VA Secretary to report to Congress on the Post-9/11 GI Bill and the DEA. The reports are due annually, starting no later than November 13, 2013, through January 1, 2021. The Defense report must include information on: the extent to which Post-9/11 GI Bill benefit levels affect recruitment to, and retention in, the Armed Forces; the extent to which the benefits help meet the cost of pursuing a program of education; the necessity of the benefits for future recruitment to active duty service; the results from and efforts to inform members of the Armed Forces of the active duty eligibility requirements; and recommendations for administrative and legislative changes. The VA report must include information on: the extent to which Post-9/11 GI Bill and DEA benefits are used; program expenditures; student outcome measures; and recommendations for administrative and legislative changes. Finally, Section 402 repeals the requirement for biennial reports of similar content from the Secretary of Defense and the VA Secretary on the MGIB-AD.

## **Benefits<sup>49</sup>**

### **Automatic Waiver of Agency of Original Jurisdiction Review of New Evidence During Appeal Process<sup>50</sup>**

When a claimant appeals a decision on a claim for benefits, the claimant is allowed to submit additional evidence to support his or her claim. Currently, the Board of Veterans' Appeals (BVA)

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<sup>47</sup> A servicemember is delayed if the person is listed as missing in action, captured in the line of duty, or forcibly detained as a result of active duty service.

<sup>48</sup> For more information on DEA and other GI Bills, see CRS Report R42785, *GI Bills Enacted Prior to 2008 and Related Veterans' Educational Assistance Programs: A Primer*, by Cassandra Dortch.

<sup>49</sup> This section of this report has several authors, and the authors for each sub-section are contained in the footnote for each sub-section title.

<sup>50</sup> This section was authored by Daniel T. Shedd, Legislative Attorney, ext. 7-8441.

must send that evidence to the agency of original jurisdiction (the local VA office that reached the initial decision on the claim) for initial review unless the claimant waives his or her right to have this review.<sup>51</sup> This may delay the BVA from reaching a decision on an appeal as it waits for the local VA office to review the newly submitted evidence.<sup>52</sup>

Under **Section 501** of P.L. 112-154, the local VA office's initial review of newly submitted evidence will be automatically waived unless the claimant requests that the local VA office review the evidence. If no such request is made, the BVA will provide the initial review of the newly submitted evidence. This provision will go into effect 180 days after the August 6, 2012 date of the law's enactment.<sup>53</sup>

## Authority for Certain Persons to Sign Claims on Behalf of Claimants<sup>54</sup>

Prior to the enactment of P.L. 112-154, the VA lacked specific authority to authorize court-appointed representatives or caregivers to sign applications on behalf of claimants to permit an adjudication on a claim for benefits to proceed.<sup>55</sup> **Section 502** of P.L. 112-154 provides specific authority to the VA to allow a "court-appointed representative, a person who is responsible for the care of the individual, including a spouse or other relative, or an attorney in fact or agent authorized to act on behalf of the individual under a durable power of attorney" to sign an application for a claim on behalf of the claimant.<sup>56</sup>

## Changes to Duty to Assist Requirement<sup>57</sup>

Prior to enactment of P.L. 112-154, the VA's duty to assist<sup>58</sup> claimants obligated the VA to take "reasonable efforts" to gather all private medical records that a claimant identified and authorized the VA to obtain. **Section 505** of P.L. 112-154 permits the VA to waive its duty to assist requirement when the Secretary already has enough evidence to award the maximum benefit permitted under the law. It also provides for the Secretary to publish regulations to "encourage claimants to submit relevant private medical records... to the Secretary if such submission does not burden the claimant."<sup>59</sup> The purpose of this section is to prevent the VA from expending

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<sup>51</sup> 38 C.F.R. §20.1304(c).

<sup>52</sup> For more information on the appeal process for veterans' claims, please see CRS Report R42609, *Overview of the Appeal Process for Veterans' Claims*, by Daniel T. Shedd.

<sup>53</sup> P.L. 112-154, §501.

<sup>54</sup> This section was authored by Daniel T. Shedd, Legislative Attorney, ext. 7-8441.

<sup>55</sup> See Joint Explanatory Statement for Certain Provisions Contained in the Amendment to H.R. 1627, as Amended, Senate Committee on Veterans' Affairs and House Committee on Veterans' Affairs, at 26, [hereinafter Joint Explanatory Statement], available at <http://veterans.house.gov/sites/repUBLICANS.veterans.house.gov/files/documents/JES%20HR%201627%20FINAL.pdf>.

<sup>56</sup> P.L. 112-154, §502.

<sup>57</sup> This section was authored by Daniel T. Shedd, Legislative Attorney, ext. 7-8441.

<sup>58</sup> Under 38 U.S.C. §5103A, the VA has a "duty to assist" claimants in obtaining medical records that will provide evidence to help substantiate their claims.

<sup>59</sup> P.L. 112-154, §505.

unnecessary time and resources to locate private medical records that would be unlikely to change the amount of benefits that may be awarded.<sup>60</sup>

## **Modification of Month of Death Benefit for Surviving Spouses of Veterans<sup>61</sup>**

**Section 507** of P.L. 112-154 clarifies that if a veteran who is receiving compensation or a pension from the VA dies, the surviving spouse is due the amount of benefits that the veteran would have received for the entire month in which the veteran died. Furthermore, if a veteran has a claim for compensation pending at the time of his or her death and that claim is subsequently granted, the surviving spouse is eligible to receive those additional benefits for the month in which the veteran died.<sup>62</sup>

## **Electronic Notice to Claimants<sup>63</sup>**

The Veterans Claims Assistance Act of 2000 (VCAA; P.L. 106-475) required the VA to notify claimants in writing of evidence that is needed to substantiate their claims, including how the VA can assist them in gathering the required information. The written VCAA notice, provided only after a claim is filed, in addition to providing information specific to that claim, contains basic information about disability compensation, such as how a rating is determined. Because a veteran can file more than one claim for disability, the written notice (containing basic information) is sent to the veteran even if the veteran has just received the same information because he or she filed a previous claim.

**Section 504** of P.L. 112-154 removes the requirement that the VCAA notice be sent only after a claim is filed, allowing the VA to print the notice on claims forms; removes the requirement that the VA send the notice on a subsequent claim if an issue was covered under a previous claim and notice was sent within the previous year; allows the VA to provide notification by the most efficient means available including electronic communications; and allows the VA to waive the VCAA notification requirements when, at the time the decision to waive the notification is made based on the evidence available, it has been determined that the VA will grant the highest evaluation assignable at the earliest possible effective date to the veteran.

## **Fully Developed Claims—Effective Date<sup>64</sup>**

The VA has developed the Fully Developed Claim (FDC) process as the result of authority granted in P.L. 110-389 for a pilot program to expeditiously process disability claims. Generally the effective date of a claim is the date the VA receives the claim application. Also, generally a

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<sup>60</sup> See Joint Explanatory Statement, at 29-30, available at <http://veterans.house.gov/sites/replicans.veterans.house.gov/files/documents/JES%20HR%201627%20FINAL.pdf>.

<sup>61</sup> This section was authored by Daniel T. Shedd, Legislative Attorney, ext. 7-8441.

<sup>62</sup> P.L. 112-154, §507.

<sup>63</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

<sup>64</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

claim expires after one year (a veteran generally has one year to provide the evidence necessary to support the claim).

**Section 506** of P.L. 112-154 provides that, for FDC disability claims that are original claims, the effective date can be up to one year before the VA receives the claim application. As a result, veterans can file a notice under the FDC process that they will be filing a claim, and thereby establish an effective date for their claim while the veteran develops the evidence to support the claim (prior to submission). However, this change in effective date for original FDC disability claims is only available for three years (for original claims received before August 7, 2015).

## **Survivor Benefits—Dependency & Indemnity Compensation and Social Security<sup>65</sup>**

Under current law, the VA Secretary and the Social Security Commissioner are required to use joint application forms for VA survivor benefits and Social Security. When the joint application form is filed with either the VA or the Social Security Administration (SSA), it is considered an application for survivor benefits with both agencies (VA and SSA).

**Section 503** of P.L. 112-154 permits, rather than requires, the Secretary of the VA and the Social Security Commissioner to develop the joint form to apply for survivor benefits with both agencies (VA and SSA). Section 503 also requires that any document filed with either agency indicating an intent to apply for survivor benefits is to be considered an application for survivor benefits with both agencies (VA and SSA).

## **Improved Disability Pension Program<sup>66</sup>**

The Improved Disability Pension program<sup>67</sup> provides a monthly cash benefit to low-income elderly or totally disabled (nonservice-connected conditions) veterans with active military service during a period of war.<sup>68</sup>

**Section 508** of P.L. 112-154 increases the maximum annual benefit under the Improved Disability Pension program for a married couple when both of them: (1) are veterans; and (2) require regular aid and attendance. The maximum annual benefit is increased from \$30,480 to \$32,433.

The maximum cash benefit amount for both the Improved Disability Pension and the Improved Death Pension are reduced by income received by the veteran or surviving spouse. One of the exclusions for calculating income for benefit purposes is reimbursements of any kind for a casualty loss (as determined in regulations) up to the greater of fair market value or replacement value of the property.

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<sup>65</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

<sup>66</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

<sup>67</sup> For more information on the Improved Disability Pension program, see CRS Report RS22804, *Veterans' Benefits: Pension Benefit Programs*, by Christine Scott and Carol D. Davis.

<sup>68</sup> For more information on periods of war, see CRS Report RS21405, *U.S. Periods of War and Dates of Current Conflicts*, by Barbara Salazar Torreon.

**Section 509** of P.L. 112-154 expands this exclusion to include reimbursements for expenses for replacement or repair of equipment, vehicles, items, money, or property as a result of any accident, theft or loss, or casualty loss, up to the greater of fair market value or replacement value.

## **Automobile and Adaptive Equipment Grants<sup>69</sup>**

Disabled veterans and servicemembers may be eligible for financial assistance from the VA to purchase an automobile or adaptive equipment.<sup>70</sup>

**Section 701** of P.L. 112-154 allows the VA Secretary to provide assistance to a veteran for the purchase of a second automobile (or other conveyance) if the Secretary determines that there is evidence that the first automobile, purchased with VA assistance was: (1) destroyed due to a natural or other disaster, and not through the fault of the veteran; and (2) the veteran is not compensated for the loss from insurance.

## **Vocational Rehabilitation and Employment<sup>71</sup>**

The VA's Vocational Rehabilitation and Employment (VR&E) Program provides employment-related services for veterans with a service-connected disability and an employment handicap. In cases where employment is not a viable outcome, the VR&E program provides or coordinates independent living (IL) services to help veterans live independently in their communities.

**Section 701** of P.L. 112-154 expands specific provisions of the VR&E program for veterans affected by natural or other disasters, as identified by the VA Secretary. Under current law, veterans enrolled in a VR&E employment program may receive a subsistence allowance for the duration of the program as well as for two months after the completion of the program. **Section 701(b)** extends the allowance for an additional two months (for a total of four months beyond the completion of the program) for veterans who are displaced as the result of a natural or other disaster.

Current law limits annual participation in IL services to 2,700 veterans. **Section 701(c)** waives this limit in the case of a veteran who "has been displaced as the result of, or has otherwise been adversely affected in the areas covered by, a natural or other disaster."

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<sup>69</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

<sup>70</sup> For more information see CRS Report RL34626, *Veterans' Benefits: Benefits Available for Disabled Veterans*, by Christine Scott, Carol D. Davis, and Libby Perl.

<sup>71</sup> This section was authored by Benjamin Collins, Analyst in Labor Policy, Ext. 7-7382.

## Memorial, Burial, and Cemetery

### Prohibition on Disruptions of Funerals of Members or Former Members of the Armed Forces<sup>72</sup>

Prior to the enactment of P.L. 112-154, the law restricted public demonstrations and protests at veterans' funerals by requiring demonstrators to stay a certain distance away from the cemetery and from roads leading to the cemetery during the period beginning an hour before the service and extending until an hour after the conclusion of the service.<sup>73</sup> **Section 601** of P.L. 112-154 increases the time, place, and manner restrictions imposed on demonstrations that take place during funerals of servicemembers and veterans. **Section 601** amends 38 U.S.C. §2413, which imposes restrictions on demonstrations that occur at Arlington National Cemetery (ANC) and cemeteries under the control of the VA's National Cemetery Administration (NCA), and also amends 18 U.S.C. §1388, which imposes restrictions on demonstrations that occur at funerals held in places other than ANC or an NCA-controlled cemetery. Under **Section 601**, demonstrations are restricted "during the period beginning 120 minutes before and ending 120 minutes after" a funeral.<sup>74</sup> The minimum distance from a funeral for which demonstrations may occur during this time period has also been increased.<sup>75</sup> Statutory damages for violations of these restrictions range from \$25,000 to \$50,000.<sup>76</sup>

### Arlington National Cemetery

#### Gravesite Reservations<sup>77</sup>

**Section 602** of P.L. 112-154 codifies current regulations that prohibit the reservation of gravesites at Arlington National Cemetery prior to the death of an individual. The act permits the President to waive the prohibition "as the President considers appropriate."<sup>78</sup> If the President exercises this authority, the President must notify the Committee on Veterans' Affairs and the Committee on Armed Services of both the Senate and the House of Representatives.<sup>79</sup>

#### Monuments<sup>80</sup>

The Secretary of the Army is allowed to set aside areas, and establish monuments or markers, in Arlington National Cemetery to honor veterans and servicemembers missing in action or those whose remains are not available.

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<sup>72</sup> This section was authored by Daniel T. Shedd, Legislative Attorney, ext. 7-8441.

<sup>73</sup> 38 U.S.C. §2413; 18 U.S.C. §1388.

<sup>74</sup> P.L. 112-154, §601.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> This section was authored by Daniel T. Shedd, Legislative Attorney, ext. 7-8441.

<sup>78</sup> P.L. 112-154, §602.

<sup>79</sup> *Id.*

<sup>80</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.



**Section 604** of P.L. 112-154 establishes requirements for establishing monuments at Arlington National Cemetery. A monument in memory of a particular individual, group of individuals, or military event cannot be established until 25 years after the last day of service of the individual or group of individuals, or the last day of the military event. The Secretary of the Army can waive the 25-year requirement after public and congressional notification. **Section 604** provides that a monument, sponsored by a nongovernmental entity and paid for from public sources, may be established in Arlington National Cemetery after the nongovernmental entity provides an independent study of other locations and the Secretary of the Army consults with the Commission of Fine Arts and the Advisory Committee on Arlington National Cemetery. **Section 604** also mandates that the Secretary of the Army provide notice to the appropriate congressional committees of any monument proposed to be placed in Arlington National Cemetery. The monument would not be placed if Congress passed, within 60 days, a joint resolution of disapproval of the monument.

## **Presidential Memorial Certificates<sup>81</sup>**

The VA, upon request, prepares and sends a certificate with the President's signature to the eligible survivor of a deceased veteran who was discharged under honorable conditions. An eligible survivor may be the next of kin, a relative, a friend, or an authorized representative acting on behalf of the eligible relative or friend. Because of the requirement that the veteran be discharged under honorable conditions, military personnel who die during active military service were not eligible for the certificate.

**Section 603** of P.L. 112-154 expands eligibility for the Presidential Memorial Certificate to persons who die in active military, naval, or air service.

## **Other**

### **Mortgage and Foreclosure Protection<sup>82</sup>**

The Servicemembers Civil Relief Act (SCRA) provides protections for servicemembers in the event that their military service impedes their ability to meet financial obligations incurred before entry into active military service. The SCRA does not require forgiving of all debts or the extinguishment of contractual obligations on behalf of servicemembers who have been called up for active duty, nor is absolute immunity from civil lawsuits provided. Instead, the act suspends civil claims against servicemembers and protects them from default judgments. The SCRA includes provisions that prohibit the eviction of military members and their dependents from rental or mortgaged property; create a 6% cap on interest on debts incurred before an individual entered active duty military service; protect against the cancellation of life insurance or the non-reinstatement of health insurance policies; allow some professionals to suspend malpractice or liability insurance while on active duty; and proscribe taxation in multiple jurisdictions and forced property sales to pay overdue taxes.

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<sup>81</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

<sup>82</sup> This section was authored by R. Chuck Mason, Legislative Attorney, ext. 7-9294.

The SCRA has been amended since its passage in 2003, and proposed changes continue to be introduced in Congress. Most recently, **Section 710** of P.L. 112-154 extended protections related to mortgages and foreclosures until December 31, 2014. Specifically, **Section 710** amended Section 303 of the SCRA (50 U.S.C. App. 533) addressing mortgages and trust deeds. This section covers servicemembers who, prior to active military service, entered into a property transaction subject to a mortgage, a trust deed, or other security loan. As amended, if the servicemember is unable to make payments on the loan due to military service, the provision prevents the vendor from exercising any right or option under the contract to rescind or terminate, to resume possession of the property for nonpayment of any installment due, or to breach the terms, except by action in a court of competent jurisdiction, until one year after the term of active duty terminates.<sup>83</sup> A sale, foreclosure, or seizure of property during a servicemember's period of military service, and for one year after, is prohibited unless under a court order issued prior to foreclosure on the property, or if made pursuant to an agreement under Section 107 of the act. Additionally, **Section 701** requires the Comptroller General of the United States to submit a report to Congress addressing the protections afforded under Section 303 of the SCRA within 540 days after the date of enactment.

### **Assessment of Veterans Benefit Administration Employees<sup>84</sup>**

**Section 703** of P.L. 112-154 requires the Secretary of the VA to, within 180 days of enactment, report to the House and Senate Committees on Veterans Affairs on a plan to: (1) evaluate the skills and capabilities of employees (and managers) at the Veterans Benefits Administration (VBA) who process disability compensation and pension benefit claims; (2) provide training for those employees whose skills and capabilities are deemed unsatisfactory; (3) re-evaluate employees who receive the training; and (4) take appropriate personnel actions if employees' skills and capabilities are still deemed unsatisfactory after additional training and re-evaluation.

### **Penalties for Misrepresentation of Status for Purposes of the "Veterans First" Contracting Program<sup>85</sup>**

Section 502 of the Veterans Benefits, Health Care, and Information Technology Act of 2006<sup>86</sup> granted the VA special authority to conduct competitions in which only small businesses owned by service-disabled and other veterans may compete (i.e., set-asides), and to make noncompetitive (or sole-source) awards to such firms.<sup>87</sup> Eligibility for these contracting

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<sup>83</sup> P.L. 112-154 (August 6, 2012). The one-year provision on the prohibition of foreclosure against a servicemember is set to expire on December 31, 2014; at that point, the period prohibiting foreclosure will revert to 90 days.

<sup>84</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

<sup>85</sup> This section was authored by Kate M. Manuel, Legislative Attorney, ext. 7-4477.

<sup>86</sup> P.L. 109-461, 120 Stat. 3431-35 (December 22, 2006) (codified, as amended, at 38 U.S.C. §8127).

<sup>87</sup> The VA's authority under the 2006 act differs from the authority that other agencies have under the Veterans Benefits Act (VBA) of 2003. The VBA authorizes any federal agency to set aside a contract for a competition in which only service-disabled veteran-owned small businesses may compete whenever the contracting officer reasonably expects that offers will be received from at least two responsible small businesses, and the award will be made at fair market price. 15 U.S.C. §657f(b). It also authorizes non-competitive (or sole-source) awards to service-disabled veteran-owned small businesses when (1) the contracting officer does not reasonably expect that two or more service- (continued...)

preferences is limited to firms and firm owners listed in a database maintained by the VA,<sup>88</sup> and firms or owners that misrepresent their status in order to qualify for preferences under the 2006 act are subject to debarment, or exclusion from government contracting for a specified period of time.<sup>89</sup> Specifically, Section 502 provided that any firm determined to have “misrepresented [its] status” as a veteran-owned or service-disabled veteran-owned small business for purposes of the VA’s “Veterans First” contracting program “shall be debarred from contracting with the Department for a reasonable period of time, as determined by the Secretary.” Such debarments—prescribed by law—are known as statutory debarments and, unlike administrative debarments under the Federal Acquisition Regulation (FAR), are imposed for purposes of punishment.<sup>90</sup>

**Section 706** of P.L. 112-154 amends Section 502 to clarify that debarment is to be imposed only in cases where status has been “willfully and intentionally” misrepresented. Prior law would appear to have authorized debarment for inadvertent or unintentional misrepresentation of status, although it is unclear how often this occurred.<sup>91</sup> Section 706 further amends Section 502 to prescribe that the period of any debarment shall be “not less than five years,” as opposed to a “reasonable period of time, as determined by the Secretary.” In addition, Section 706 prescribes time frames within which debarment actions are to be commenced and completed, as well as establishes how “principals” of debarred firms are to be treated. Specifically, it requires that the VA begin a debarment action not later than 30 days after determining that a concern willfully and intentionally misrepresented its status, and complete the debarment action within 90 days after this determination. Section 706 also provides that the debarment of a firm includes the debarment of “all principals in that concern for a period of not less than five years.”<sup>92</sup>

(...continued)

disabled veteran-owned small businesses will submit offers; (2) the anticipated award will not exceed \$3.5 million (\$6 million for manufacturing contracts); and (3) the award can be made at a fair and reasonable price. 15 U.S.C. §657f(a)(1)-(3) (statutory requirements); 48 C.F.R. §19.1406(a) (increasing the price thresholds). The 2006 act, in contrast, applies only to the VA and authorizes set-asides and sole-source awards to small businesses owned by veterans without service disabilities. The 2006 act generally requires that contracts valued in excess of \$150,000 be awarded via a set-aside if the contracting officer has a reasonable expectation that at least two veteran-owned small businesses will submit offers, and the award can be made at a fair and reasonable price “that offers best value to the United States.” 38 U.S.C. §8127(d). However, sole-source awards of contracts valued in excess of \$150,000 may be made if (1) the contracting officer determines that the business is a responsible source with respect to the performance of the contract; (2) the anticipated price of the contract does not exceed \$5 million; and (3) the award can be made at a fair and reasonable price “that offers best value to the United States.” 38 U.S.C. §8127(c)(1)-(3).

<sup>88</sup> In contrast, firms do not need to be listed in the VA’s database to be eligible for contracting preferences under the VBA. *See generally* 13 C.F.R. §125.15.

<sup>89</sup> *See generally* CRS Report RL34753, *Debarment and Suspension of Government Contractors: An Overview of the Law Including Recently Enacted and Proposed Amendments*, by Kate M. Manuel.

<sup>90</sup> Debarment and suspension under the FAR, in contrast, may not be imposed for purposes of punishment. *See* 48 C.F.R. §9.402(b) (“The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment.”).

<sup>91</sup> Although Section 502 uses “shall” when describing when persons are to be debarred, such debarments are punishments, and an argument could thus be made that the determination as to whether to debar a particular person remains within the agency’s prosecutorial discretion. *See, e.g., United States v. Nixon*, 418 U.S. 683, 693 (1974) (citing the *Confiscation Cases*, 7 Wall. 454 (1869) (“[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case...”)); *Heckler v. Cheney*, 470 U.S. 821, 832 (1985) (noting that an agency decision to initiate an enforcement action in the administrative context “shares to some extent the characteristics of the decision of a prosecutor in the executive branch”); *Matter of E-R-M & L-R-M*, 25 I. & N. Dec. 520, 523 (2011) (finding that determinations as to whether to pursue expedited removal proceedings (as opposed to removal proceedings under Section 240 of the Immigration and Nationality Act (INA)) are within the executive branch’s discretion, even though the INA uses “shall” in describing who is subject to expedited removal).

<sup>92</sup> It is unclear how the term “principal” would be construed for purposes of this provision. However, particularly if it is (continued...)

## Reporting on Conferences<sup>93</sup>

**Section 707** of P.L. 112-154 requires the VA Secretary to report to the House and Senate Committees on Veterans' Affairs within 30 days of the end of each fiscal quarter on conferences sponsored or co-sponsored by the VA that were attended by 50 or more people and were estimated to cost the VA \$20,000 or more. The report must include an accounting of the final costs of the conference by category (i.e., transportation, per diem, lodging, refreshments, entertainment, etc.).

## Employment of Veterans by Federal Contractors<sup>94</sup>

Under current law, every federal contractor and subcontractor with a contract value of \$100,000 or more must report annually to the Secretary of the Department of Labor (DOL) with information on total employment, new employees, and the number of qualified veterans<sup>95</sup> in total employment and new employees.

**Section 708** of P.L. 112-154 requires the DOL Secretary to establish and maintain a website for public disclosure of the information federal contractors and subcontractors are required to report to DOL on their employment of veterans.

## VetStar Program<sup>96</sup>

**Section 709** of P.L. 112-154 directs the VA Secretary to establish an award program, the VetStar program, to recognize businesses' contributions to veterans' employment on an annual basis.

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construed to mean persons other than the firm's majority owner, questions could potentially be raised, in certain cases, as to whether individuals debarred as principals received due process prior to being excluded from government contracting. See, e.g., *Gonzalez v. Freeman*, 334 F.2d 570, 574 (D.C. Cir. 1964) (noting that, while potential vendors may not have a right to government contracts, "that cannot mean that the government can act arbitrarily, either substantively or procedurally, against a person or that such a person is not entitled to challenge the processes and the evidence before he is officially declared ineligible for government contracts.").

<sup>93</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

<sup>94</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

<sup>95</sup> Qualified veterans are: (1) disabled veterans; (2) veterans who served on active duty during a period of war; (3) veterans who served on active duty and participated in a military operation and were awarded a service medal; and (4) recently separated (from military service) veterans.

<sup>96</sup> This section was authored by Christine Scott, Specialist in Social Policy, ext. 7-7366.

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