

Action in Congress

By Tom Philpott, Contributing Editor

New Move on Death Benefits; Spousal Consent Needed?; Enrollment Fees Out for Vets

Death Benefits To Rise

The House in March passed a measure calling for a sharp rise in military death benefits. The Fiscal 2005 Emergency Supplemental Appropriations Act (HR 1268) increases a lump-sum death gratuity, paid to next of kin, from \$12,400 to \$100,000. Maximum coverage under Servicemembers' Group Life Insurance (SGLI) also would climb from \$250,000 to \$400,000. The total increase for the two changes would be about \$238,000.

The Senate was expected to approve identical death benefit gains in its own version of the 2005 wartime supplemental. However, the Senate and House differ on whether only direct combat deaths or all deaths should qualify.

There is also disagreement within the Pentagon. DOD officials have recommended applying increases retroactively only to combat deaths in Iraq and Afghanistan. Senior uniformed military leaders want the increase applied to any active duty death on or after Oct. 7, 2001 (the date on which the US initiated the war on terrorism), unless caused by the member's misconduct or other disqualifying circumstances.

The House compromised, splitting the increase between the two approaches. Its Appropriations Committee accepted language from Rep. David Obey (D-Wis.) that directs retroactive payment of the \$88,000 increase in death gratuity to the next of kin of members who died as a direct result of injury or illness incurred in Operation Enduring Freedom and Operation Iraqi Freedom. The committee would apply the \$150,000 hike in SGLI more broadly to beneficiaries of any member who died on or after Oct. 7, 2001, from injuries or illness incurred in "performance of duty." The term is open to case-by-case interpretation by defense officials.

The Senate Appropriations Committee began marking up its version of the wartime supplemental legislation in early April. One bill on its agenda, the HEROES Act (S 77) introduced by Sens. Joe Lieberman (D-Conn.) and Jeff Sessions (R-Ala.),



Lieberman wants higher death benefits.

proposes increases identical to those voted by the House, except they would go only to survivors of troops that died in combat areas since Oct. 7, 2001. (See "Action in Congress: Death Benefits," March, p. 20.)

Differences between the Senate and House legislation would be negotiated during a conference committee on the wartime supplemental.

Reserve Tax Credits

The Senate voted unanimously in March for an amendment from Sen. Mary Landrieu (D-La.) to its Budget Resolution for Fiscal 2006 to allow tax credits to employers that help close the pay gap felt by mobilized Guard and Reserve members who earn less on active duty than they did as civilians.

Landrieu's initiative would reserve a portion of the budget to provide employer tax credits equal to 50 percent of up to \$30,000 in salary differential paid to mobilized employees. The tax credits would be available only for employees mobilized for six months or longer.

Her proposal also would allow small businesses up to \$6,000 in tax

credits to help compensate them for having to hire temporary workers during periods that permanent employees are mobilized.

Budget resolutions set broad spending and tax guidelines, so inclusion of the tax credits, even if agreed to by the House, still amounts only to a tentative endorsement. Congress would have to pass authorizing legislation supporting the tax credits. The House Ways and Means Committee so far has not signaled support for new employer tax credits.

The Senate voted 100 to 0 to make funding room for Landrieu's HOPE at HOME (Help Our Patriotic Employers at Helping Our Military Employees) Act.

"Our Guard and Reserve put their lives on the line, taking the bullets on the front lines to fight for each of us, our freedoms, and our livelihood," said Landrieu. "They should be the first in line when it comes to tax relief."

Guard and Reserve members comprise about 45 percent of US troops in Iraq and Afghanistan, and about 41 percent of those take a pay cut while deployed, said Landrieu, citing estimates from the Government Accountability Office. Last October, the Senate passed a similar measure following a three-day filibuster by Landrieu during debate over a corporate tax relief bill.

Spousal Consent Controversy

Another death benefits issue to be settled during the House-Senate conference deliberations concerns "spousal consent."

At issue are two situations: First, a military enrollee in SGLI chooses to designate someone other than a spouse to be the primary beneficiary. Second, an enrollee elects to take less than the maximum amount of coverage.

The House said that, in both cases, the enrollee must obtain the consent of his or her spouse. In so doing, it ignored warnings from military service organizations—including the Air Force Association—that such a demand was "excessively stringent." A more appropriate change, they ar-

gued, is to require only "spousal notification," not "consent."

The House agreed to require spousal consent, taking its cue from the Sessions-Lieberman bill, introduced as companion legislation in the House by Rep. Terry Everett (R-Ala.). The spousal consent provision was influenced by the story of Rachelle Arroyave who was pregnant and raising two young daughters at Camp Pendleton, Calif., in April 2004 when notified that her husband, Marine SSgt. Jimmy Arroyave, had been killed in Iraq.

Rachelle got another shock the next day, she said, when she learned that her husband, weeks before his death, had redesignated his mother, rather than Rachelle or his children, as beneficiary of \$250,000 in SGLI.

"If I knew how my husband had things set up," Rachelle said, "I would have discussed it with him, and I would have taken a policy out on my own to ensure that our children and I had some sort of financial security."

The Military Coalition, an umbrella group of service associations, initially endorsed the Sessions-Lieberman bill, including the spousal consent obligation, then changed its position, agreeing with the House Veterans' Affairs Committee that "spousal notification" would be more appropriate.

During floor debate, Rep. Shelley Berkley (D-Nev.) said not all service members have the same relationships with their spouses. Some reasonably prefer to leave their insurance to, say, children from a first marriage. Berkley also said that if a spouse is addicted to drugs, the member might want to make their children primary SGLI beneficiaries to ensure that money intended for schooling or clothes doesn't feed a drug habit instead.

Rep. Steve Buyer (R-Ind.), VA committee chairman, told colleagues that spousal consent violates "the principles of contractual law and the nature of life insurance." It effectively makes SGLI an involuntary plan for married members, he said.

The House, however, declined to allow amendments and passed the spousal consent requirement within the war supplemental.

Opponents hoped to persuade the Senate to accept spousal notification as an alternative and to fight for it again during a House-Senate conference to shape a final supplemental appropriations bill.

VA Enrollment Fee

After embracing in February the Bush Administration's plan to impose a \$250 annual enrollment fee on lower



Abell seeks drawdown tools.

priority veterans seeking VA health care, Sen. Larry Craig (R-Idaho), chairman of the Senate Veterans' Affairs Committee, had a change of heart.

In March, Craig joined with fellow Republican Sens. John Ensign (Nev.), Kay Bailey Hutchison (Tex.), and David Vitter (La.) in co-sponsoring an amendment to add \$410 million to the Senate budget blueprint for the Department of Veterans Affairs, thus removing the need for the enrollment fee. Ensign freed up the additional money by agreeing to lower spending on certain international initiatives, said VA committee spokesman Jeff Schrade.

"I don't think he found the enrollment fee unreasonable," said Schrade.

of Craig's sea change. "But you do what you can to help veterans."

The change means the Senate budget for 2006 no longer supports collecting enrollment fees from veterans in priority categories 7 and 8, those who are neither disabled nor poor. However, the House budget continues to support a proposal that those veterans pay a sliding-scale VA medical enrollment fee, from \$230 to \$500 annually, depending on income.

Both the House and Senate earlier had rejected another Administration initiative that would raise co-payments on VA-provided prescription drugs for non-service related conditions from \$7 to \$15.

Force Shaping Tools

The Defense Department has asked Congress to revive separation incentives and forced-retirement authorities last used during the post-Cold War drawdown.

They are needed as "force-shaping tools," said Charles S. Abell, principal deputy undersecretary of defense for personnel and readiness.

Abell said the Pentagon wants Congress to allow:

- A lump-sum "buyout" bonus, possibly set as high as \$25,000, to entice noncommissioned officers in overpopulated or low-demand job specialties to leave service before retirement eligibility at 20 years.

- A voluntary separation annuity that could be offered as an alternative to a cash buyout, again to entice those NCOs in overfilled specialties to leave before they reach 20-year retirement eligibility.

- New, high-year tenure gates for



Buyer says "spousal consent" violates principles of law and insurance.

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retirement-eligible officers to thin out populations in certain low-demand career fields.

■ Involuntary Selective Early Retirement Board (SERB) authority to be used as a "last resort" to retire officers involuntarily.

The Navy and Air Force are the only services currently cutting the size of active forces and therefore are more likely to use the new authorities, Abell said. The Navy will cut 25,000 sailors by 2007, and the Air Force will trim 2,300 airmen.

The force-shaping authorities sought are "not about getting rid of folks," said Abell, adding, "It's about keeping the right folks and right skill and experience mix."

During the post-Cold War drawdown, which followed the 1991 Persian Gulf War, the services enticed tens of thousands of careerists to leave with offers of either a Voluntary Separation Incentive (VSI) annuity or a Special Separation Benefit (SSB) lump-sum bonus.

VSI was set at 2.5 percent of a member's final basic pay times years served. SSB was 15 percent of a member's annual basic pay times years served. Abell said the two new authorities sought would be similar to these.

The services also need tougher high-year tenure rules to separate some retirement-eligible officers either to speed promotion of younger officers or to trim numbers in certain low-demand skill areas. In some circumstances, SERBs could be needed to review the relative performance of officers in certain year groups and specialties, identify the least capable, and retire them.

Abell said service leaders generally view SERBs as "breaking faith" with career officers, but without the SERB threat, he said, voluntary separation incentives are less effective.

"The carrot is sweeter when they know there's a stick," he said.

Early Disabled Retirees

Recent legislation that lifted the ban on concurrent receipt of military retired pay and VA disability compensation for the most seriously disabled and for all combat-injured retirees with 20 years or more years of service has widened the compensation gap between the 20-plus years group and retirees who are forced by their medical conditions to retire with less than 20 years.

To address this disparity, Rep. Mike Bilirakis (R-Fla.) has introduced HR 1366 to help disabled military

members who were forced to retire short of 20 years due to combat-related or operations-related conditions.

Bilirakis said the members in that category also forfeit a dollar of military retired pay for every dollar they receive in disability compensation. His bill would allow the combat-wounded among these so-called Chapter 62 retirees to receive retired pay in addition to disability compensation.

Specifically, they would receive an amount of retired pay equal to 2.5 percent of the member's average basic pay over their highest three earning years, multiplied by total years served.

The bill had only four co-sponsors nearly a month after its introduction March 17, but service associations and thousands of combat-disabled retirees forced to leave service early now have legislation to rally around.

Tricare Reserve Select

Thousands of Reserve and Guard members deactivated from post-9/11 deployments and thousands more soon to complete deployments are eligible to enroll in Tricare Reserve Select, a scaled-down version of Tricare Standard, the military fee-for-service medical plan.

Approved by Congress last fall, TRS took effect April 26, with monthly premiums announced only a month earlier.

In 2005, self-only coverage will cost \$75 a month (\$900 annually) and family premiums will be \$233 (\$2,796 annually). The rates are set to cover 28 percent of TRS costs, matching the cost-sharing formula for federal civilian employees enrolled in the Federal Employees Health Benefits Program.

Entering the program requires more than paying premiums, however. Reservists must make binding agreements to remain in the Selected Reserve for the duration of TRS coverage.

Not all drilling reservists are eligible. To qualify, reserve component members must have been mobilized under contingency orders of 30 days or longer and have served at least 90 days' continuous active service. For every 90 days served, a member will be eligible for a year of TRS. So a year's continuous deployment could qualify Guard or Reserve members for four years of coverage for themselves and their families.

If a reservist stopped payment, perhaps because of new health ben-



Some reservists can opt for Tricare.

efits offered by a civilian employer, coverage will end, but the extended service obligation would stand. TRS users also will pay the usual Tricare Standard fees, co-payments, and annual deductibles. They will not be eligible for Tricare Prime, the military managed care program, but may have access to military treatment facilities (MTFs) on a space-available basis. They will be eligible for drugs through MTF pharmacies, mail order, and Tricare network pharmacies.

TRS does not include all Tricare Standard provisions. For instance, it does not offer Standard's Program for Persons with Disabilities to aid those who have dependents who are mentally retarded or who have a serious physical disability.

Reservists must decide to enroll in TRS before leaving active duty. If they depart without a "preliminary" TRS agreement, eligibility expires.

One defense official called TRS "technically, one of the most complex benefits that we've ever rolled out."

Most deployed reservists and families already are eligible for Tricare for six months after mobilization. Congress authorized that temporary post-mobilization benefit permanently last year. TRS coverage starts when the transition coverage ends, on the 181st day after leaving active duty.

To seal the TRS agreement, the reservist must find a slot in a Selected Reserve unit. If the service can guarantee only two years in drill status, the TRS final agreement must be limited to two years. ■