S. HRG. 110–675

HEARING ON PENDING BENEFITS LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MAY 7, 2008

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C O N T E N T S

MAY 7, 2008

SENATORS

WITNESSES

Page

APPENDIX

HEARING ON PENDING BENEFITS LEGISLATION

WENDESDAY, MAY 7, 2008

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:34 a.m., in room 106, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

Present: Senators Akaka, Murray, Brown, Webb, Burr, and Graham.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, CHAIRMAN, U.S. SENATOR FROM HAWAII

Chairman AKAKA. Aloha. This hearing will come to order. Good morning. Welcome to this hearing on benefits legislation pending before the Committee.

At this time, I will defer to my colleagues and have them give their statements. Then, I will give mine and have the Members of the Committee give theirs, as well.

At this point in time, let me introduce Senator Nelson from Nebraska, and ask him to make his statement.

Senator Nelson.

STATEMENT OF HON. E. BENJAMIN NELSON, U.S. SENATOR FROM NEBRASKA

Senator NELSON. Thank you very much, Senator Akaka.

Thank you very much for holding this hearing. It is good to be here with our colleague, Chairman of the House Veterans' Affairs Committee, as well; and I want to thank you for holding the hearing on the Belated Thank You to the Merchant Marines of World War II Act of 2007, S. 961.

At this time I would like to enter, with the approval of the Committee, the statements of four Merchant Mariners for the record. Statement of Burt Young, William Jackson, Mark S. Gleason and Ian Allison, all of whom are surviving Merchant Mariners.

Chairman AKAKA. Without objection, they will be entered into the record.

[The four letters appear in the Appendix.]

Senator NELSON. Thank you.

Well, Mr. Chairman and Members of the Committee, as you well know, World War II United States Merchant Mariners bravely served alongside America's military. Inspired by patriotism and despite the harshest of battle conditions and at great sacrifice to their

personal safety, the Merchant Mariners proudly dedicated themselves to supporting the missions and completing their duty to our country without fanfare.

These brave men volunteered for an essential effort during a time of war which eventually would help lead to victory. Unfortunately for over 40 years, our Nation has declined to acknowledge their contributions and sacrifices.

World War II Merchant Mariners delivered troops, tanks, food, airplanes, fuel and other necessary supplies to every theater of the war. Soldiers on the front line would not have been able to complete their missions if the Merchant Mariners had not braved dangerous waters and delivered the means to do so.

The Merchant Mariners provided critical logistical support to the war effort and have been recognized in the Oxford Companion to World War II as one of the most significant contributions made by any nation to victory in World War II.

During every invasion, from Normandy to Okinawa, they were there—in the most dangerous of waters, in the face of threats and attacks from submarines, mines, armed raiders, destroyers, aircraft and the elements—the Merchant Mariners were there.

Though the numbers of the Merchant Mariners were small, their risk of dying during service was extremely high. Enemy forces sank over 800 Merchant Mariner ships between 1941 and 1944 alone. About 9,300 mariners were killed, 11,000 were wounded, and 663 were taken prisoner.

At the end of the war, one out of every 26 Merchant Mariners serving aboard merchant ships in World War II died in the line of duty. The highest casualty rate of any branch of the service.

Merchant Mariners casualties were kept secret during the war to keep information about their success from the enemy and to attract and keep mariners at sea.

Unfortunately to this day, 60 years after the end of World War II, the Merchant Marine remains the forgotten service.

Despite their service and support of the war effort, this country has dealt this class of World War II veterans a great disservice. They were denied benefits under the 1945 GI Bill of Rights—benefits granted to all of those who equally, admirably served in the Army, Navy, Marine Corps, Army Air Force or Coast Guard. Only the U.S. Merchant Marine was excluded.

Upon signing the GI Bill on June 22, 1944, President Franklin D. Roosevelt said, "I trust Congress will soon provide similar opportunities to members of the Merchant Marine who risked their lives time and time again during the war for the welfare of their country."

In 1988 the Merchant Mariners did finally receive a watered-down bill of rights, but some portions of the GI Bill have never been made available to the veterans of the Merchant Marine. No educations were available to Merchant Mariners, no low interest home loans, no lifetime compensation for war-related injuries and disabilities, no use of VA hospitals, no priority for local, State and Federal jobs, no Social Security for war time service.

While it is impossible to make up for over 40 years of unpaid benefits, this bill will at least acknowledge the service of the vet-

erans of the Merchant Marine and offers some compensation for their service in World War II.

S. 961, the Belated Thank You to the Merchant Mariners of World War II Act of 2007 would pay each eligible veteran or their widow a monthly benefit of $1,000 tax-free. Their average age is 83. Many have outlived their savings. This bill would provide a small amount of compensation for those who risked their lives to contribute to our success in World War II only to be forgotten.

There is overwhelming bipartisan support for this legislation. At last count, S. 961 had 59 cosponsors. The House passed a modified version of the Merchant Mariners Bill in June of last year which had 244 cosponsors.

Those that fought and lived during World War II have been duly labeled as "Greatest Generation." The 230,000-strong force of Merchant Mariners are surely part of that "Greatest Generation" and we owe them a tremendous debt. For the 9500 still living, we can never make up for years lost, but we can address injustice by recognizing their contributions and by passing S. 961 this year.

While I am here, I would also like the opportunity to highlight another bill that I have introduced that has been referred to the Senate Veterans' Affairs Committee, S. 2701. This bill would authorize a National cemetery in eastern Nebraska. Currently, there is no National cemetery in that region and I believe our Nebraska veterans desire a final resting place close to home for their families and loved ones to pay respect and honor their service.

I respectfully request the Committee take action on both pieces of legislation.

Mr. Chairman, I thank you for the courtesies and the Members of the Committee for allowing me to testify, and particularly, the courtesy for permitting me to go first.

I thank you very much.

[The prepared statement of Senator Nelson follows:]

PREPARED STATEMENT OF HON. BEN NELSON, U.S. SENATOR FROM NEBRASKA

Mr. Chairman, I would like to thank you for holding this hearing on the "Belated Thank You to the Merchant Mariners of World War II Act of 2007," S. 961. At this time, I would like to enter the statements of four merchant mariners into the record—the statements of Bert Young, William Jackson, Mark S. Gleeson and Ian Allison—all of whom are surviving merchant mariners.

Mr. Chairman, and Members of the Committee, as you well know, World War II U.S. Merchant Mariners bravely served alongside America's military. Inspired by patriotism, despite the harshest of battle conditions, and at great risk to their personal safety, the Merchant Mariners proudly dedicated themselves to supporting the missions and completing their duty to our country, without fanfare. These brave men volunteered for an essential effort during a time of war, which eventually would help lead to victory. Unfortunately, for over 40 years, our Nation has declined to acknowledge their contributions and sacrifices.

World War II Merchant Mariners delivered troops, tanks, food, airplanes, fuel and other necessary supplies to every theater of the war. Soldiers on the front lines would not have been able to complete their missions if the Merchant Mariners hadn't braved dangerous waters and delivered the means to do so. The Merchant Mariners provided critical logistical support to the war effort and have been recognized in the Oxford Companion to World War II as one of the most significant contributions made by any nation to victory in World War II.

During every invasion from Normandy to Okinawa, they were there. In the most dangerous of waters, in the face of threats and attacks from submarines, mines, armed raiders, destroyers, aircraft, and the elements, the Merchant Mariners were there.

Though the numbers of the Merchant Mariners were small, their risk of dying during service was extremely high. Enemy forces sank over 800 Merchant Mariner ships between 1941 and 1944 alone. About 9,300 Mariners were killed, 11,000 were wounded, and 663 were taken prisoner.

At the end of the war, 1 out of every 26 Merchant Mariners serving aboard merchant ships in World War II died in the line of duty, the highest casualty rate of any branch of the service.

Merchant Mariners casualties were kept secret during the war to keep information about their success from the enemy and to attract and keep mariners at sea. Unfortunately, to this day, 60 years after the end of World War II, the Merchant Marine remains the forgotten service.

Despite their service in support of the war effort, this country has dealt this class of World War II veterans a great disservice. They were denied benefits under the 1945 GI Bill of Rights—benefits granted to all those who equally admirably served in the Army, Navy, Marine Corps, Army Air Forces or Coast Guard. Only the U.S. Merchant Marine was excluded.

Upon signing the GI Bill on June 22, 1944, President Franklin D. Roosevelt said, "I trust Congress will soon provide similar opportunities to members of the Merchant Marine who have risked their lives time and time again during war for the welfare of their country."

In 1988, the Merchant Mariners did finally receive a "watered down bill of rights." But some portions of the GI Bill have never been made available to veterans of the Merchant Marine.

No education benefits were available to Merchant Mariners. No low-interest home loans. No lifetime compensation for war-related injuries and disabilities. No use of VA hospitals. No priority for local, State, and Federal jobs. No Social Security credit for wartime service.

While it is impossible to make up for over 40 years of unpaid benefits, this bill will acknowledge the service of the veterans of the Merchant Marine and offer some compensation for their service in World War II.

S.961, the "Belated Thank You to the Merchant Mariners of World War II Act of 2007," would pay each eligible veteran or their widow, a monthly benefit of $1,000, tax free. Their average age is 83. Many have outlived their savings. This bill would provide a small amount of compensation for those who risked their lives to contribute to our success in World War II, only to be forgotten.

There is overwhelming, bipartisan support for this legislation. At last count (May 1, 2007), S. 961 had 59 cosponsors. The House passed a modified version of the Merchant Mariners bill in June of last year which had 244 cosponsors.

Those that fought and lived during World War II have been duly labeled as the "Greatest Generation." The 230,000-strong force of Merchant Mariners are surely part of the Greatest Generation and we owe them a tremendous debt. For the 9,500 still living, we can never make up for years lost, but we can address the injustice by recognizing their contributions and by passing S. 961 this year.

While I'm here, I would also like the opportunity to highlight another bill that I have introduced that has been referred to the Senate VA Committee, S. 2701. This bill would authorize a National Cemetery in Eastern Nebraska. Currently, there is no national cemetery in the region. I believe our Nebraska veterans deserve a final resting place close to home for their families and loved ones to pay respect and honor their service.

I respectfully request that the Committee take quick action on both pieces of legislation.

Mr. Chairman, I would like to thank you and the Members of the Committee for allowing me to testify today.

Chairman AKAKA. I want to thank my friend, Senator Nelson from Nebraska, for his remarks. I know how passionate you are about this issue and I want to thank you for being here this morning.

Senator NELSON. Sometimes it surprises people that a Senator from a landlocked State like Nebraska (with the exception of the Missouri River), would take an interest in something like the Merchant Marine. But, all across America today we appreciate what they did during World War II. We are so appreciative and thankful that 9,500 are still with us; and it is opportunity and our pleasure, as well, to be able to help them at this time in our history.

So, thank you, Mr. Chairman and Members of the Committee.

Chairman AKAKA. Thank you, Senator Nelson. I know you are busy.

Senator NELSON. Thank you, Mr. Chairman.

Chairman AKAKA. And now I would like to introduce the distinguished Chairman of the House Veterans' Affairs Committee.

Congressman Filner has asked to make brief remarks on the Merchant Marine legislation, as well.

This is your time, Congressman Filner.

STATEMENT OF HON. BOB FILNER, CHAIRMAN, HOUSE COMMITTEE ON VETERANS' AFFAIRS, REPRESENTATIVE FROM CALIFORNIA

Mr. FILNER. Thank you, Senator, Mr. Burr, former colleague, Mr. Graham, and Mr. Webb.

Thank you for allowing me to speak. It has been a great joy to work with you, Mr. Chairman, as we represent our respective committees. I think we have done a great job.

In the year and a quarter—almost a year and a half—that we have been chairs, we have added close to 40 percent of new money for the health care of our veterans. We are about to take Mr. Webb's bill of education benefits for our service men for a new GI Bill.

When we first met over a year ago, we talked about some injustices that we would also have to remedy. You took a great step last week by recognizing as veterans, the Filipino Veterans of World War II who helped us win the war in the Pacific.

We have the atomic veterans that we still need to help and the Merchant Marine situation is an injustice that we would also like to remedy.

I would like to thank Senator Nelson for introducing the counterpart to H.R. 23, which passed the House by voice vote last July, and we hope that the Senate will take action.

I just ask that my statement be part of the record. Mr. Nelson covered everything very well.

I want to point out that the result of being left out of the GI Bill meant that the Mariners could not buy a home or go to college as their counterparts, eight million of them, were doing.

The jobs that were open paid significantly less and it was impossible to, perhaps, become a doctor, lawyer, teacher or engineer.

I know when my father got back from World War II, not only did he get some education, we were able to buy a house for the first time in our family's history. It allowed us to be part of the great middle class and to be able to participate in the American dream; yet those who helped us win the war, the Merchant Mariners, were left out of that ability.

It is impossible to make up for 40 years of unpaid benefits, but S. 961 will acknowledge the service they gave and offer compensation for their lost benefits.

So again, we had great bipartisan support. As Senator Nelson said, 59 senators have already cosponsored. We had 244 in the House before it passed. Those of you who served in the House know how difficult that is to get that many people on to a bill.

Thank you for allowing me to speak, Mr. Chairman. I hope this bill will be supported and come to the Senate for a full vote so that we can regain our Nation's moral ground and say thank you with a compensation for the injustice endured by our Nation's Merchant Mariners.

I thank the chair.

[The prepared statement of Mr. Filner follows:]

PREPARED STATEMENT OF REPRESENTATIVE BOB FILNER, CHAIRMAN, HOUSE COMMITTEE ON VETERANS' AFFAIRS

S. 961, BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2007

Mr. Chairman and Members of the Senate Committee on Veterans Affairs, I appreciate this opportunity to speak on the Belated Thank You to the Merchant Mariners of World War II Act of 2007, introduced in the Senate as S. 961. The companion bill, H.R. 23, which I introduced, was passed by the House of Representatives on July 30th of last year. This legislation corrects an injustice that has been inflicted upon a group of World War II veterans, the World War II United States Merchant Mariners.

World War II Merchant Mariners suffered the highest casualty rate of any of the branches of service while they delivered troops, tanks, food, fuel and other needed supplies to every theater of the war. Without their service, the troops and weapons and supplies could have not been transported to where they were needed. Their chance of dying during service was extremely high. Enemy forces sank over 800 ships between 1941 and 1944.

Unfortunately, these brave men were denied their rights under the GI Bill of Rights that Congress enacted in 1945. All those who served in the Army, Navy, Marine Corps, Air Force or Coast Guard were recipients of benefits under the GI Bill. The United States Merchant Mariners were not included.

The Merchant Mariners became the forgotten service. For four decades, no effort was made to recognize the contribution made by this branch of the Armed Services. The fact that Merchant Seamen had borne arms during wartime in the defense of their country seemed not to matter. The result of being left out of the GI Bill meant that the Mariners could not buy a home or go to college, as their counterparts in service were doing. Without a college education, the jobs that were open to them paid significantly less and were less fulfilling in many cases. It was impossible for them to become a doctor, lawyer, teacher, or engineer. And it was impossible to purchase a home, one of the stepping stones to the middle class. My father was a World War II veteran, and his ability to buy a home for our family changed our lives!

Legislation to benefit Merchant Seamen was finally passed by Congress in 1988 when the Seaman Acts of 1988 granted them some benefits in the GI Bill of Rights. While it is impossible to make up for over 40 years of unpaid benefits,

S. 961 will acknowledge the service of the Merchant Mariners and offer compensation for their lost benefits by paying each eligible veteran a monthly benefit of $1000.

The average age of Merchant Mariner veterans is now 82. Many have outlived their savings. A monthly check to compensate for the loss of a lifetime of ineligibility for the GI Bill would be of comfort and would provide some measure of security for these older veterans, many of whom are living on meager funds.

There is great bipartisan support for this bill among the Members of this Congress. 59 Senators and 244 Representatives have cosponsored S. 961 and H.R. 23. They realize that it is a question of morality and integrity. Is our Nation completely indifferent to the welfare of the men who made our success in World War II possible?

I thank you for granting me this opportunity to speak on the importance of S. 961. I urge you to support this legislation and to bring it to the full Senate for a vote, so that we can regain our Nation's moral ground and can say "thank you" with compensation for the injustices endured by our Nation's Merchant Mariners!

Chairman AKAKA. Thank you very much for your remarks, Congressmen Filner. Your full statement will be included in the record.

Mr. FILNER. Thank you, sir.

Chairman AKAKA. Thank you for being here.

STATEMENT OF HON. DANIEL K. AKAKA, CHAIRMAN, U.S. SENATOR FROM HAWAII

Chairman AKAKA. We have a lengthy agenda today and it reflects the work and commitment of many members on both sides of the aisle. Therefore, I will be brief.

Today we will examine legislation touching on benefits provided by VA. In general, the bills before us focus on two core parts of VA's mission: providing help to veterans disabled while serving their country; and assisting servicemembers as they transition from military to civilian life. Both are areas in which this Committee has worked and will continue to work as we develop another strong package of benefits legislation for veterans.

Before I begin, I want to speak very briefly about the items on the agenda that I have introduced. But, before I get to that, I want to express my gratitude to our ranking member who has worked hard with us on the legislation of this Committee and I want to thank him for his cooperation.

The Cost-of-Living Adjustment Act would increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation.

Many of the more than three million recipients of these benefits depend upon the tax-free payments not only to provide for their own basic needs but for the needs of their families as well.

S. 2309, the Compensation for Combat Veterans Act, addresses something Committee staff identified via their oversight efforts.

A number of cases where service medical records of veterans serving in combat areas are missing. As a result, combat veterans have had claims denied or unduly delayed. My bill would result in faster and more accurate decisions.

S. 2825, the Veterans Compensation Equity Act would provide a minimum disability rating for veterans receiving medical treatment for a service-connected disability. This bill would ensure that any veteran requiring continuous medication or, for example, a hearing aid, would receive at least a 10 percent rating for that disability.

In the area of readjustment benefits, I have introduced two bills that would help servicemembers and veterans return to their civilian lives.

Finally, I have introduced two complimentary bills that would improve the opportunities available to veterans for home ownership.

As is the case of recession, the biggest hurdle for implementation of these bills into law is cost. I am working to find appropriate offsets within the Committee's jurisdiction.

Finally, I am pleased to see S. 22 back on the agenda this morning. I have worked hard with Senator Webb to develop this proposal, and I believe that the measure, as we have it before us this morning, is a good one.

I thank the witnesses from VA and other organizations for coming today to share their views.

I am cognizant of the fact that there are a substantial number of bills under consideration today. Several of them may have been recently added to the agenda. Therefore, the Committee will hold the record of this hearing open for 2 weeks so that witnesses can submit supplemental views on any legislative item. It is important

that we have your input well in advance of our markup. which is tentatively scheduled for June.

I want to again thank all of you for joining us this morning and look forward to hearing the testimony of our witnesses.

Let me now ask our ranking member for his statement.

Senator Burr.

STATEMENT OF HON. RICHARD BURR, RANKING MEMBER, U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. Aloha, Mr. Chairman.

Thank you and thank you to all the witnesses who are here today.

Mr. Chairman, I would ask unanimous consent that my entire opening statement be part of the record and I will abbreviate as you have so eloquently done.

Chairman AKAKA. Without objection, it will be included.

Senator BURR. Mr. Chairman, today we are considering 28 different bills which touch on almost every veterans' benefits program, and are sponsored by more than 85 Senators. I think this shows that we all want to provide our Nation's veterans with the benefits they need, and more importantly, that they deserve.

Before we turn to the witnesses for their views of these bills, I want to say just a few words about one bill.

First is the America's Wounded Warriors Act, which would help create a modern less confusing disability system for our Nation's wounded warriors.

Today, the system often requires injured servicemembers to go through a lengthy, redundant and bureaucratic process at both the Department of Defense and the VA to get their disability benefits.

Each department assigns its own disability rating based on the same outdated VA rating schedule and complicated rules determine how much of a disability benefit from each department an injured veteran can get.

Over the past several months, we have heard from a number of witnesses about the need to update and simplify the system so our wounded warriors receive, in a quick and effective way, the benefits and services they need to recover and to move on with fulfilling and productive lives.

The Committee heard from General James Terry Scott, Chairman of the Veterans' Disability Benefits Commission, who recommended that we must realign the disability process so that the Department of Defense will be responsible for determining fitness for duty and VA for assigning any disability ratings.

He also stressed the need to update the VA's rating schedule to compensate veterans for loss of quality-of-life caused by their service-related disabilities and to place more emphasis on the rehabilitation of our wounded warriors.

We heard similar recommendations from the cochairs of the Dole-Shalala Commission, former Senator Bob Dole and Secretary Donna Shalala. In their views, the experiences of the wounded warriors at Walter Reed last year, who endured delays and frustration in getting disability benefits, have highlighted the need for fundamental change to our system.

We have also heard from veterans themselves about the need to improve the system. As the Iraq and Afghanistan Veterans of America put it, and I quote, "Everyday veterans from the wars in Iraq and Afghanistan face serious bureaucratic barriers to receiving fair compensation for injuries, and everyone agrees that action must be taken to reform the system." Unquote.

Then last month we heard from Deputy Secretary of Defense, Gordon England, who talked about the need to create clear bright lines between DOD and the VA in terms of responsibilities. In his view, if we were to clarify the roles of each department by having DOD determine fitness for duty and VA handle all other aspects of the disability system, that would, and I quote, "end some of the confusion our servicemembers face today."

Mr. Chairman, with all of that, I think it should be clear to all of us that we need to finally fix the disability system, and the Wounded Warriors Act is my effort to start us on that path.

Mr. Chairman, it is impossible for me to comprehend 28 bills today. I imagine every Member is somewhat overwhelmed. This is the collective thoughts and suggestions from over 85 senators and I appreciate the Chairman keeping the record open for 2 weeks so that we can receive additional comments from our witnesses, but also, hopefully, additional questions from this Committee's Members.

I stand committed to work with the Chairman as we move toward the markup. I think all members are committed to seeing that those issues addressed in legislation to help our veterans, that we do that as expeditiously as we can.

Mr. Chairman, I look forward to the witnesses' testimony today, to the questions, and, more importantly, the answers that are shared with this Committee; and to working with you as we move toward the June markup.

[The prepared statement of Senator Burr follows:]

PREPARED STATEMENT OF HON. RICHARD BURR, RANKING MEMBER, U.S. SENATOR FROM NORTH CAROLINA

Thank you, Mr. Chairman, and welcome to our witnesses. I appreciate you all being here today to discuss a long list of bills affecting veterans' benefits. Today, we're considering 28 different bills, which touch on almost every veterans' benefits program and are sponsored by more than 85 Senators. I think this shows that we all want to provide our Nation's veterans with the benefits they need and deserve.

Before we turn to our witnesses for their views on these bills, I want to say a few words about two of the bills: First, is the "America's Wounded Warriors Act," which would help create a modern, less confusing disability system for our Nation's wounded warriors.

Today, this system often requires injured servicemembers to go through a lengthy, redundant, and bureaucratic process—at both the Department of Defense and VA—to get their disability benefits. Each department assigns its own disability rating, based on the same outdated VA rating schedule, and complicated rules determine how much of the disability benefits from each department an injured veteran can keep.

Over the past several months, we've heard from a number of witnesses about the need to update and simplify this system, so our wounded warriors receive in a quick and effective way the benefits and services they need to recover and to move on with fulfilling, productive lives.

The Committee heard from General James Terry Scott, the Chairman of the Veterans' Disability Benefits Commission, who recommended that we realign the disability process, so the Department of Defense will be responsible for determining fitness for duty and VA for assigning any disability ratings. He also stressed the need to update VA's rating schedule; to compensate veterans for loss of quality-of-life

caused by their service-related disabilities; and to place more emphasis on the rehabilitation of our wounded warriors.

We heard similar recommendations from the co-chairs of the Dole-Shalala Commission, former Senator Bob Dole and Secretary Donna Shalala. In their view, the experiences of the wounded warriors at Walter Reed last year, who endured delays and frustrations in getting disability benefits, "have highlighted the need for fundamental changes" to the system.

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Then, last month, we heard from Deputy Secretary of Defense Gordon England, who talked about the need to create "clear, bright lines between DOD and Veterans Affairs in terms of responsibility." In his view, if we were to clarify the roles of each department, by having DOD determine fitness for duty and VA handle all the other aspects of the disability system, which would "end some of the confusion our servicemembers face today."

Mr. Chairman, with all of that, I think it should be very clear to all of us that we need to finally fix the disability system. And the America's Wounded Warriors Act is my effort to start us on that path.

This bill would get DOD out of the business of assigning disability ratings; it would require a complete update of the VA rating schedule; and it would require VA to compensate veterans for loss of quality-of-life. For veterans discharged due to disability, it would allow them to keep all of their benefits from DOD plus their disability benefits from VA. And it would authorize new "transition" payments, to help cover family living expenses so injured veterans can focus on rehabilitation, training, and getting back to work.

I know some of our witnesses have concerns about portions of this bill. But I also know that I don't want veterans another five decades from now to look back at these Committee hearings and say, "50 years ago they talked about the need to fix the system, but no changes were made.

Mr. Chairman, I believe our veterans deserve better than that. So, I hope this bill will provide a good starting point for us to find a way to fix the disability system, to ensure better benefits and, more importantly, to improve outcomes for veterans who have been injured in service to our country.

The second bill I'd like to comment on is the "Enhancement of Recruitment, Retention, and Readjustment Through Education Act." Last week, I joined Senator Graham, Senator McCain, and 15 of our colleagues in introducing this bill to improve education benefits for military personnel and, at the same time, to help strengthen our All-Volunteer Force.

Particularly now, with our Nation at war, it is important that we have a robust education program in place, to recognize the service of those who wear the uniform and to help our warriors get the education they may need to succeed in civilian careers after they leave the military.

It's also important that we provide the Armed Forces with the tools needed to attract high-quality recruits and to encourage servicemembers to stay for a military career, so our All-Volunteer Force will remain the best trained fighting force in the history of the world.

As the name of this bill suggests, it would address all of those goals—recruitment, retention, and readjustment. And it would build on existing education programs, to avoid any unnecessary administrative burden, delay, or confusion in getting these enhanced benefits to our veterans.

For starters, this bill would help career military personnel provide for the education of their families, by expanding the ability of servicemembers and members of the Guard and Reserves to transfer their un-used education benefits to a spouse or kids. After serving 6 years, a servicemember may be able to transfer up to 18 months of benefits to a spouse or children, and after serving 12 years in the military, a servicemember could transfer up to 36 months of benefits to children or a spouse. This could mean having $72,000 in benefits to put toward the college education of a child.

Also, it would immediately increase Montgomery GI Bill education benefits by 36 percent, which will pay for the average cost of a 4-year public college, including tuition, fees, room, and board. And it would provide an extra $500 per year for books and other supplies. These increases will help ensure that the 10,000 veterans and servicemembers going to school in my home State of North Carolina—and veterans across the country—can attend State schools debt-free.

This bill would also boost benefits for all of our Guard and Reserve soldiers, whether or not they have been deployed in the War on Terror. This means the 2,200 reservists going to school in North Carolina would get between a 36 percent and 50 percent increase in their education benefits.

It would also provide even higher benefits to those who have made a career of the military, by serving 12 years on active duty or in the Guard or Reserves. With this 82 percent increase, total education benefits could exceed $74,000 for career military personnel!

Also, to account for some of the more highly priced private colleges, the bill would create a grants program, to allow the Department of Veterans Affairs and colleges to join forces to help veterans attend those schools debt-free. VA could provide up to $3,000 extra benefits per year, if the college agrees to take care of some—or all—of the veteran's remaining unmet financial need. With this program, even expensive private colleges could be well within reach for many more veterans.

In addition, for those willing to serve for a career, the bill would encourage the military services to help them obtain an undergraduate degree during their service. Also, for servicemembers who obtained a degree before joining the military, it would allow them to use up to $6,000 per year of their education benefits to repay any Federal student loans.

With these improvements, I think this bill takes a generous but balanced approach that will help more military personnel and their families attain their educational goals debt-free, and will also encourage career military service and help sustain our All-Volunteer Force.

Mr. Chairman, I am committed to working with you and our colleagues to advance these and other bills on our agenda that will help improve the lives of those who have served and sacrificed for us all. I thank you for calling this hearing and look forward to discussing these and the other bills with our witnesses today.

Chairman AKAKA. Thank you very much, Senator Burr.

And now we will hear from Senator Webb.

STATEMENT OF HON. JIM WEBB, U.S. SENATOR FROM VIRGINIA

Senator WEBB. Thank you, Mr. Chairman, and I appreciate all the work that you have done and the staff has done in preparing this hearing and all the work that I know the witnesses have had to put into such a huge number of bills before us.

I would like to take a few minutes, if I may, and put into context where we are on S. 22, particularly since there has been what is being called "competing legislation" introduced by the ranking member and Senator Graham and some others. I regret that people would consider this to be competing legislation, in a political sense anyway.

I think what we have attempted to do here over the last 16 months is to involve everyone in the veterans process in coming together and putting forth a comprehensive piece of legislation that will truly address the readjustment needs of those who have been serving since 9/11. We have reached out to all our colleagues. We have reached out to all the veterans groups. We have reached out to this Administration, the Department of Veterans Affairs, and the DOD.

We have adjusted this bill. As the Chairman knows, we have listened very carefully to comments from the Chairman and from staff on a lot of the administrative issues.

We now have 57 cosponsors including 10 Republicans. From my view principal among them on the Republican side is Senator Warner. Senator Warner and I, I think, are the only two senators who have spent time as executives in the Pentagon. I spent 5 years in the Pentagon. Senator Warner had more time than I do. Both of

us former Secretaries of the Navy. Both of us I think are very dedicated to the manpower issues in the Department of Defense.

We have not only your support, Mr. Chairman, but also the support of the Chairman of the Armed Services Committee.

The so-called competitive bill that was introduced, a large part of that was involved with criticizing provisions in S. 22. Since that has been done, I think it is important to put some context into what we are trying to do and what, in my view, some of these larger issues are.

The criticism of our bill has fallen along three lines. One is that it is too expensive. The second is that it is difficult to administer and the third is that it would affect retention in the Department of Defense.

With respect to the expense of this bill, we have worked very hard over 16 months to put restraining provisions in it in terms of cost. We have a piece of legislation that I believe is very responsible. I do not believe that there were very many people at the end of World War II who were saying that the WWII GI Bill was too expensive when they were trying to give World War II veterans a true first-class chance at their future.

This is a responsible piece of legislation. This type of legislation is going to cost some money, but we have dealt with it very responsibly.

With respect to the administrative parts of this, we have met repeatedly with people from the DVA. I would like to hear from them when they testify about the cooperation that they have received from us and the fixes that we have been able to put in this bill as it was reintroduced.

With respect to the Department of Defense issues, in my view there has been a dividing line since 9/11 in terms of how the Department of Defense has taken care of its people. It has done a very good job managing the career force. It has not done a good job in terms of helping people transition back into civilian life.

We tend to make an assumption in this country that, because we have an all-volunteer force, we have an all-career force, and that is not true. I want to show two charts here just so we will understand the motivations behind this bill.

This chart shows the attrition levels in the United States military by the end of one's first enlistment. What that chart indicates is that before or at the end of one's first enlistment, 75 percent of the Army—of the enlisted people in the Army—leave the Army; 70 percent of the Marines leave the Marines; and about half of the Navy and the Air Force leave. That is to be expected.

We are a citizen soldiery by tradition in this country. But, what that means is, if you are only going to talk about issues affecting the career force, you are talking about well less than half of the people who go into the military.

The darker shaded bars on this chart are the people that we are principally focusing on.

The second point raised about retention ignores, in my view, as someone who spent a lot of time in manpower, the impact that a bill like this would have on recruitment—the ability of the Department of Defense to widen its recruitment base.

This chart is taken from an article that was in the Service Times 3 weeks ago. What it shows is propensity to serve in the military pre-9/11 and today. They take the enlistment eligible age group and asked, "Do you think you might want to go into the military?" Pre-9/11 it was 25 percent; today it is 13 percent.

If you look at the Army and the Marine Corps, which are carrying the load in Iraq and Afghanistan, 17 percent of America's youth had a propensity to serve in the Army before 9/11. That number is now 8 percent. 13 percent had a propensity to serve in the Marine Corps and that number is now 7 percent. They have dropped for all of our services.

I cannot think of a better way to broaden propensity to serve than to offer a truly meaningful educational benefit, rather than simply taking that smaller demographic (which is what DOD is doing right now) and pound on it, which is what has been happening to this point.

We can broaden the recruitment base. We can give first-class futures to the people who have served and I do not believe, as someone who has spent my life around the military, that this will affect retention.

I am sorry to take that much time, Mr. Chairman, but I wanted to put some context into this debate.

Chairman AKAKA. Thank you very much, Senator Webb.

Senator Graham.

STATEMENT OF HON. LINDSAY O. GRAHAM, U.S. SENATOR FROM SOUTH CAROLINA

Senator GRAHAM. Thank you, Mr. Chairman.

This is a very good debate to have. Someone asked me yesterday, why do you think Senator Webb introduced his bill? To help. I mean, I know why he introduced his bill. He spent a lot of time thinking about how to help those who serve, and Senator Burr and I and others have had that same motivation. So, it is not about one's motivations.

The reality is the Secretary of Defense does not support S. 22 and the Veterans Administration does not support S. 22. The Education Department has problems with S. 22, in terms of basically coming up with a new formula, reinventing the wheel. It would require a lot of administrative changes, hiring of additional people. Basically, I believe the Montgomery GI Benefit Program has served the Nation well and needs to be modernized; and we are not going to throw it out. We are just going to add components to it and modernize it; so, this is a good debate to have.

The idea of retention to me is important. This is World War II we are fighting. This is not Vietnam. This is a global struggle with an all-volunteer force, and anything we can do to help retain people I think would be great.

The hallmark of the bill that Senator Burr and I have put together is a retention element that I think makes sense given the force that we have and the war we are fighting.

Fifty percent of the people under the current program never utilized their GI benefits. Under the current program after 3 years, you are entitled to $1,100 a month to go to school. That was the

average cost of a State college in terms of room and tuition, where the average today is $1,500.

So, what we do for people who serve 3 years is bump up to $1,500 under Senator Burr and my bill. We also have $500—that does not exist today—a year for books because books was not covered. The $1,500 is the average monthly cost of room and tuition to go to a State college.

We have a component that if you go to a school that is beyond the average cost, that if the school in question that has a higher tuition rate than $1,500 would forgive some of the tuition, 25 percent, then we will put money on the table for the school; and if they will forgive 100 percent, it goes up another couple of thousand dollars. So, there is an incentive for the school to help the veteran; and when the school helps, the government helps.

But, the main concept that I am most intrigued about and like about our approach is transferability. You know, "three and leave"—if you serve your Nation for 3 years or 4 years and leave, you have done us all a great service. And under the bill that we are proposing, you will get a very hefty benefit to go to college. $1,500 a month plus $500 a year for books, and I think that is something you have earned.

But, for those who want to stay on, that would consider staying on at a time when we need you to stay on—desperately need you to stay in certain career fields—at the 6-year point you can transfer half the benefit to your spouse or your child. I predict that will make a world of difference to the active force, that there will be people really appreciating that benefit.

At the 12-year point, your benefit goes from $1,500 a month to $2,000; and you can transfer the entire benefit to a spouse or child.

A lot of people in the military are able to earn their degree on active duty. They never have to use their benefits. I think it would be a life-changing experience for a lot of men and women in the military if they served the 12 years to be able to transfer $2,000 a month to a spouse or child to go to college. I bet you there would be a lot more than 50 percent utilization, and it would help us retain people, and it would be an incentive for families to serve our Nation.

At the end of the day I am very proud of our approach. I think it is practical. It does not require reinventing the wheel. It is a robust benefit increase and it has a transferability component that I think the force needs and the Nation needs.

And there is another concept in here that I think is very creative. Right now under the current law if you are an ROTC graduate or an academy graduate, you are not entitled to GI benefits. So, what we do under this bill is we will allow people who will serve 5 years past their initial commitment—ROTC graduates or academy graduates—become eligible for the bill. That helps us with the captains and the majors. We are really hurting in that rank structure in the military as far as retention.

So, it would allow people in that rank structure, that period of service, to have a benefit they do not have today, which they can pass on to their families, because all of them are college graduates. They could use it for a post-graduate degree or they can transfer it to their spouse and their child.

I would like to introduce a statement from the sergeant majors of each service talking about how this transferability component, benefits going from the military member to family members, would enhance the quality-of-life and help retention.

I appreciate this opportunity to speak.

Chairman AKAKA. The matters that you just asked for without objection will be included in the record.

[The prepared statement of Senator Graham follows:]

PREPARED STATEMENT OF HON. LINDSEY O. GRAHAM,
U.S. SENATOR FROM SOUTH CAROLINA

MGIB TRANSFERABILITY

MGIB Transferability's importance to military Families is evidenced by the fact that it has been a consistent issue in the Army Family Action Plan's Top 5 "Army Critical Active Issues."

Transferability was rated as the number 1 Most Critical Active AFAP issue in 2003, 2004, and 2005 leading the Army to start a "pilot program" in FY 2006, offering transferability to soldiers enlisting in critical skills.

In the first year of the program, the Army limited transferability to spouses, but based on intense feedback from soldiers in the field, the Army opened the program up to spouses and children in November 2007.

The authority to transfer MGIB benefits to those with more than 6 years of service is particularly important to combat adverse retention in that cohort. The Department's 2007 Status of the Forces (Active) survey data show that the percent of Army members in the grades E5–E6 who believe that their spouses do *not* want them to stay on active duty has worsened significantly (six percentage points) since 2001. Transferability can powerfully assist spouses in improving their education, job opportunities, sense of inclusion, and resulting support for sustained military service.

Comments by Senior Enlisted Advisors

The Senior Enlisted Advisors have noted the importance of enactment of MGIB Transferability, and its importance to the field and fleet.

Sergeant Major of the Army (SgtMaj Kenneth O. Preston):

"This initiative has been an Army Family Action Plan top topic for several years. Over my tenure in this position, and talking to hundreds of thousands of Soldiers, Leaders and Families, many have asked for this benefit.

"The Army did a pilot last year to allow the transfer of MGIB benefits to a spouse only. For those Soldiers who elected to give up a part of their bonus, this was a great retention incentive. More Families want the benefit expanded to children.

"In testimony this year, I asked for the Congress to find the funding if possible and support the program. I asked at a minimum for the program to be funded and approved for those Soldiers killed on active duty as a way to help care for the family left behind.

"Soldiers are asking for this benefit. My concerns: since only approximately 33 percent of our Soldiers use their MGIB benefits, this initiative makes sense to allow Families to use. If this initiative is approved I have no doubt this 33 percent will go to 100 percent. The additional 66 percent will have to be funded in each year's budget.

"Why are only 33 percent using their MGIB benefits? I think most are taking advantage of tuition assistance money—4,500 dollars per Soldier per year—to gain their college degrees. Most Soldiers have completed their degrees by the time they leave the service. Hence their MGIB benefits go unused.

"My concern is if we get what we ask for, I would hate to lose tuition assistance. I think this would have an even larger impact on retention. We have worked hard to change the attitude of Soldiers and Leaders from, join the Army, do your time and get out and go to college; to, join the Army, go to college and continue to serve. This initiative is part of our lifelong learning strategy of growing the best leaders for the future. To lose this benefit I feel would have long term implications that would hurt the Army and maybe the other services just as much.

"I support the transfer of MGIB benefits to families, but with reservations to the conditions this initiative might be approved and where the money to support would come."

Sergeant Major of the Marine Corps (SMA Carlton Kent):

"Thousands of Marines and their families always bring this subject up to the leadership as we travel around the Marine Corps visiting Marines and their families. If this initiative is approved it would be utilized by numerous Marines to assist their families in attending college. It should not 'only' be utilized as a retention tool, but every servicemember should be given the opportunity to transfer their MGIB. The Marine Corps fully supports this initiative! This initiative would assist in our family support efforts. Semper Fi."

Master Chief Petty Officer of the Navy (Master Chief Joe R. Campa):

"Within days of the President's mention of this imperative in his State of the Union address, I started fielding calls and responding to questions from Sailors. Based on his remarks, they assume this will become a reality and that it's just a matter of time. Our Sailors and their families view this as a significant quality-of-life improvement.

"Since the State of the Union, the topic of transferability of MGIB to family members has been one of the most commonly asked questions I receive from Sailors. In the last 3 months, the subject has been raised in 12 separate all hands' calls in 6 different nations in front of more than 20,000 Sailors.

"Questions from Sailors were detailed and well-considered. They'd like to know which of their family members will be eligible to receive the benefit. Will it be exclusive to spouses, or are children eligible? They also asked if transferability would be tied to their length of time in service, or if any obligated service would be required.

"Our Sailors and their families have been asking for transferability for some time. This generation of Sailors has a greater focus on education and many complete their educational goals on active duty. Giving our Sailors the opportunity to transfer this benefit to family members is viewed as clear recognition of the support and sacrifice of our military families. An increase in retention would be inevitable."

Chairman AKAKA. Thank you very much, Senator Graham.

Now, we will hear from Senator Murray.

STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON

Senator MURRAY. Thank you very much, Chairman Akaka, Senator Burr.

I appreciate your holding this hearing on a vast array of legislation, and I think there is a lot of important bills in front of us today. But, before I talk about them, I do want to bring up the topic of great concern to everybody here, and that is the tragic incidents of veteran suicides and the VA's attempt to conceal the true numbers from Congress.

Mr. Chairman, we all know that there are sincere health care professionals across the VA who are doing their very best to find and help veterans who might be considering suicide. Those health care professionals face tremendous challenges, enough challenges with winning the trust of the veterans today who are not convinced that the VA is in their corner.

Their jobs are really made a lot more difficult when they are fighting the perception that the VA is more concerned with PR than getting the veterans the help and services that they need.

Now, yesterday the VA had the chance to tell the public about what happened. Secretary Peake and Dr. Katz testified in front of the House Veterans' Affairs Committee about the cover-up. And based on their testimony yesterday, I have to say, Mr. Chairman, that I am greatly concerned about the transparency and truthfulness of the Department.

We all know Congress has to have accurate information if we are going to provide the VA with the resources it needs and make in-

formed policy decisions. We have got to get this right so that the VA benefits programs we are talking about improving today have a maximum impact. So, Mr. Chairman, I just want to reiterate my concern about that to you.

Now, we do have a number of bills in front of us. I look forward to the hearing on them. I do want to say that I want to commend Senator Webb for his tremendous work on the GI Bill. I am very proud now to be a cosponsor of that bill.

I know that the Department of Defense and VA are currently opposing it, but I think he has really worked to make this bill work for today's world and I really want to commend him for the tremendous amount of work and his great presentation that he put in front of us.

I think recognizing the needs of today's forces is absolutely critical for retention and I believe his bill does that.

So, thank you very much.

Chairman AKAKA. Thank you Senator Murray.

Senator Brown.

STATEMENT OF HON. SHERROD BROWN,
U.S. SENATOR FROM OHIO

Senator BROWN. Thank you, Mr. Chairman, for calling this hearing and Senator Burr also. I appreciate the comments of several people on S. 22, Senator Webb's GI Bill, and add my support.

Just for a moment, I would like to focus on a smaller issue, important to a number of veterans, that also has to do with education—S. 1718, the Veterans' Education Tuition Support Act.

As Senator Webb's chart shows, education benefits can be a primary incentive for young people to join the military.

With the increasing prevalence of multiple deployments and PTSD and physical injury, servicemembers are more likely to face interruptions in their schooling, and the need for specialized transition assistance for veterans is growing.

I held a round table—one of 90 or so I have done around Ohio, many of them with veterans on the campus of Youngstown State University a few months ago—and heard from students who got called to active duty during their college studies. After returning home, these students were faced with a bureaucratic nightmare when they attempted to resume their academic studies.

The Veterans Education Tuition Support Act would answer those concerns and would help them in a difficult time in their lives as they reintegrate into society and want to get ahead with their college studies.

The bill would simply do three primary things. It would require colleges and universities to refund 100 percent of a student's tuition and fees for any term when they are activated for duty and they are pulled out of school in the middle of the term.

It would allow students to resume their education when returning with no backsliding in academic status. It would cap student loan interest rates during deployment.

That is not asking much of our colleges and universities, our institutions of higher learner, to do that. It is the right thing to do. Veterans should not be disadvantaged academically or financially. They are disadvantaged in too many ways already when they are

called to duty; and this is a small step. It is something we can do to help an awful lot of people.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Brown.

Before I call on the first panel, I would like to note for the record that the testimony of the Department of Veterans Affairs was, once again, late. Lack of advance testimony hampers us in our ability to prepare for a hearing. It is difficult to properly prepare when we do not know where VA stands on the bills before the Committee.

It is also a violation of the Committee rules. It is unacceptable that the Department of Veterans Affairs with its vast resources cannot submit testimony on time. Their excuse, and I am quoting, "It was stuck at OMB" may be true, but that means that OMB is being disrespectful not just to the Committee, but to the other witnesses as well.

I realize that the agenda for today's hearing is extensive and that some of the items have been added very recently. However, that cannot be an excuse for not providing the Department's views on the bills that have been available for many weeks and months.

I am very disappointed that your testimony was late and hope that this will be the last time that I have to comment on this subject. Please relay my views to OMB as well.

Now, I would like to welcome our principal witness from VA, Keith Pedigo, Associate Deputy Undersecretary for Policy and Programs. He is accompanied by Jack Thompson, Deputy General Counsel, and Keith Wilson, Director of VA's Education Service.

I thank you for being here today. I look forward to the VA's full testimony and we will include it in the record. Thank you very much.

Mr. Pedigo.

STATEMENT OF HON. KEITH PEDIGO, ASSOCIATE DEPUTY UNDERSECRETARY FOR POLICY AND PROGRAMS; ACCOMPANIED BY HON. JACK THOMPSON, DEPUTY GENERAL COUNSEL, DEPARTMENT OF VETERANS' AFFAIRS AND HON. KEITH WILSON, DIRECTOR OF EDUCATION SERVICE, DEPARTMENT OF VETERANS' AFFAIRS

Mr. PEDIGO. Mr. Chairman and distinguished Members of the Committee, I am pleased to be here today to discuss a number of bills that would affect several benefit programs administered by the Department of Veterans Affairs.

With me today is Mr. Jack Thompson, Deputy General Counsel and Mr. Keith Wilson, Director of the Education Program.

Mr. Chairman, the unnumbered proposal by Senator Webb entitled, "The Veterans Educational Assistance Act of 2007," would establish a new educational assistance program under title 38, U.S. Code.

In view of the details provided in my written testimony, we are unable to support the bill. However, we appreciate your efforts, Mr. Chairman, as well as those of Senator Webb to address some of the VA's concerns about the challenging administrative aspects of previous versions.

S. 961, the Belated Thank You to the Merchant Mariners of World War II Act of 2007, would provide a monthly benefit to cer-

tain individuals, or their surviving spouses, who served in the United States Merchant Marines during World War II.

While VA recognizes the sacrifices made by the Merchant Mariners in World War II, we cannot support this bill because of the concerns outlined in my written testimony.

S. 2090 would require the Court of Appeals for Veterans Claims to adopt rules to protect the privacy and security of documents retained by or electronically filed with the court. VA supports this bill.

S. 2091 would expand the number of active judges sitting on the Veterans Court from seven to nine. We believe that, under the current system, the court can effectively manage their projected case load within the funds requested in the President's 2009 budget.

S. 2138 would increase the number of assistant secretaries and deputy assistant secretaries VA is permitted to have. We support this bill.

S. 2139 would provide entitlement to educational assistance under the Montgomery GI Bill for certain members of the National Guard and Selected Reserve. VA does not support this bill as drafted because of the concerns outlined in my written testimony.

S. 2309 would amend Title 38 in a way that would permit the use of lay or other evidence as proof of service connection of a combat-related disease or injury. VA does not support this bill.

S. 2550, as proposed to be amended, would authorize VA to refrain from collecting all or a part of a debt owed to the United States under most programs administered by VA. Based on the proposed amendments, VA supports this bill.

With respect to S. 2573, the Veterans Mental Health Treatment First Act, VA does not yet have a cleared position. We ask that the Committee provide additional time for VA to establish a cleared position.

S. 2617 would authorize a cost of living adjustment in the rates of disability compensation and dependency and indemnity compensation. We support this bill.

S. 2674 would implement the recommendation of the Dole-Shalala Commission to completely restructure the disability and compensation systems. Title II of the bill would substantially restructure the VA disability compensation program.

While there are similarities between this bill and the Administration's proposal, we prefer the Administration's proposal.

S. 2683 would modify several statutory authorities relating to the educational assistance for veterans.

Mr. Chairman, overall VA cannot support the bill for the reasons covered in my written testimony.

S. 2701 would require VA to establish a national cemetery in the eastern Nebraska region. VA does not support this bill for the reasons articulated in my written testimony.

S. 2737 would give the Veterans Court jurisdiction to review whether, and the extent to which, the VA schedule for rating disabilities complies with applicable requirements of Title 38. In view of several concerns that are addressed in my written testimony, we do not support this bill.

S. 2768 would temporarily increase the maximum guaranty amount for certain housing loans guaranteed by VA.

Mr. Chairman, thank you for introducing this bill which seeks to provide authorization related to loan limitations similar to those established by the recently enacted Economic Stimulus Act.

S. 2825 would require VA to provide a minimum disability rating of 10 percent for any veteran requiring continuous medication or the use of one or more adaptive devices. VA does not support this bill because the Secretary already has the authority to provide a minimum disability rating of 10 percent for any veteran requiring continuous medication.

S. 2864 would expand the scope of services that VA may provide the veteran using the vocational rehabilitation and employment program. Because of concerns outlined in my written testimony, we are not able to support this bill.

S. 2889 contains legislative proposals that the Administration recently submitted to Congress as part of the annual budget submission.

Thank you, Mr. Chairman, for introducing the bill.

The unnumbered housing refinance legislation would increase the maximum guaranty amount and reduce the existing equity requirement for certain refinance loans.

Mr. Chairman, thank you for introducing this bill which seeks to improve the VA loan guarantee program.

Mr. Chairman, because S. 1718 and the unnumbered bill entitled, "Preventing Unnecessary Foreclosure for Service Members Act of 2008," would be implemented by the Department of Defense, we defer to that Department regarding the merits of the proposal.

Also S. 2471 would be implemented by the Department of Labor and we defer to that Department regarding its merits.

Mr. Chairman, thank you for introducing the unnumbered Veterans Benefits Enhancement Act of 2008 on behalf of VA.

Mr. Chairman, this concludes my testimony. I and my colleagues would be willing to answer any questions that the Members of the Committee might have.

[The prepared statement of Mr. Pedigo follows:]

PREPARED STATEMENT OF KEITH R. PEDIGO, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee, good morning. I am pleased to be here today to provide the Department of Veterans Affairs' (VA) views on pending benefits legislation. I will not be able to address a few of the bills on today's agenda because VA received them in insufficient time to coordinate the Administration's position and cost estimates, but we will provide that information in writing for the record.

POST-9/11 VETERANS EDUCATION ASSISTANCE ACT OF 2008

The draft proposal by Senator Webb entitled the "Post-9/11 Veterans Educational Assistance Act of 2008" (a revised version of S. 22, designated as ARM08A37, as received on May 1, 2008), would establish a new educational assistance program under title 38, U.S.C., in a new chapter 33. The program would consist of three payment types: (1) a lump sum payment to help defray tuition costs; (2) a monthly housing allowance; and (3) an annual stipend to help defray costs of books and supplies. The benefit is intended for individuals with active-duty service on or after September 11, 2001.

With the Nation at war, we must carefully assess the sufficiency of all our programs to meet the needs of today's veterans. In his State of the Union address, the President advocated an important enhancement of the Montgomery GI Bill, the transferability of entitlement from servicemembers to their spouses and children. This Administration priority, which has been submitted to Congress as draft legisla-

tion, would benefit those members committed to a career in service. It is an initiative our senior uniformed leaders enthusiastically support and one that supports the current makeup and retention of the all-volunteer force.

Evaluation of any further program enhancements must take into account all foreseeable consequences, intended and unintended. Secretary of Defense Gates has notified Armed Service Committee Chairman Levin of the critical elements needed in our education programs to strengthen the all-volunteer force. He indicated that negative retention effects may begin when the value of the monthly education benefit exceeds about $1 ,500. For that reason, and because of other concerns stated in my testimony, we are unable to support this bill.

At its highest benefit level, this draft bill would provide the amount of tuition and fees for the individual's program of education, not to exceed the maximum amount of tuition and fees charged for in-state students at the State's highest-cost public institution in the State in which the student is enrolled. This benefit would be paid directly to the school. As discussed below, in certain instances where the benefit level does not cover the cost of tuition, VA and the educational institution could agree to cover the unmet expense.

In addition to tuition and fees, the program would pay an annual stipend of up to $1,000 for the cost of books and supplies. This benefit would be payable in the first month of each enrollment period. The bill would also provide a monthly housing stipend of up to an amount equal to the basic allowance for housing (BAH) payable by the Department of Defense (DOD) (under 37 U.S.C., § 403) to an E–5 with dependents in the region of the institution where the student is enrolled for individuals pursuing training at half-time or more.

For active-duty service of less than 36 months, a percentage of the maximum tuition payment, housing stipend, and books and supplies stipend would be paid, ranging from 40 percent for at least 90 days of service, to 90 percent for at least 30 months but less than 36 months of service. For those with less than 18 months of active-duty service, total creditable active-duty service would not include months of basic training or skill training.

The program would provide 36 months of entitlement that must be used during the 15 years following release from the latest period of qualifying active duty service of 90 days or more. All programs approved for benefits offered by an institution of higher learning (IHL) under the Montgomery GI Bill—Active Duty would be approved for the purposes of payment of benefits under chapter 33. However, other than for individuals who have entitlement to educational assistance under the Montgomery GI Bill-Active Duty (MGIB-AD, aka chapter 30), Montgomery GI Bill—Selected Reserve (MGIB-SR, aka chapter 1606), or the Reserve Educational Assistance Program (REAP, aka chapter 1607), there are no provisions in chapter 33 to pay for non-degree courses offered by other than IHLs; correspondences courses; or on-the-job, apprenticeship, or flight training.

An individual entering active duty after enactment of this bill would be required to elect MGIB-AD and incur the $1200 pay reduction if he or she wanted to pursue training offered by institutions or establishments that are not IHLs. Those individuals would also be able to transfer to chapter 33 at a later date. Individuals who decline MGIB-AD and become entitled under chapter 33 would only be able to pursue training at an IHL. This requires that individuals decide what type of program they wish to pursue prior to making an election for which program to credit their active-duty service.

Individuals who receive a college loan repayment incentive from DOD, participate in the Senior ROTC scholarship program, or are cadets at service academies could become eligible under chapter 33. However, they could not use the period of service they were obligated to serve in connection with one of the aforementioned programs to gain chapter 33 eligibility. Those individuals currently eligible for MGIB-AD, MGIB-SR, or the REAP could make an irrevocable election to receive benefits under chapter 33.

MGIB-AD individuals electing to receive benefits under chapter 33 may receive a refund of the $1,200 pay reduction they made to participate in MGIB-AD. If an individual used benefits under MGIB-AD, the refund would be prorated. Refunds would be payable as an addition to the last housing stipend payable before the individual exhausts his or her entitlement. In addition, an individual entitled to a "kicker" under MGIB-AD or MGIB-SR would be allowed to transfer the "kicker" to chapter 33. Such "kickers" would be paid in addition to the monthly housing stipend.

New chapter 33 would also establish the "Yellow Ribbon G.I. Education Enhancement Program." Under the "Yellow Ribbon" provisions, if the benefit level would not cover the cost of tuition, VA and the educational institution could agree to cover the unmet expense. VA would be limited to matching 50 percent of the unmet costs. This benefit would be available only to individuals with 36 months of post-Sep-

tember 10, 2001, service or those discharged from active duty because of service-connected disability.

Section 3323 of proposed chapter 33 would require VA and DOD jointly to prescribe regulations indicating the manner in which servicemembers would be notified of the benefits, limitations, procedures, eligibility requirements, and other aspects of chapter 33, and when the notification would occur.

In addition to establishing the new benefit program, this draft bill would provide for a temporary increase in rates payable under MGIB-AD. During the period August 1, 2008, through September 30, 2009, the 3-year MGIB-AD rate would be increased to $1,321, and the 2-year rate would be increased to $1,073. There would be no cost-of-living adjustment (COLA) for FY 2009. Beginning with FY 2010, the COLA formula for rates payable under MGIB-AD would change. VA would no longer use the Consumer Price Index-W figure to determine COLAs. Instead, VA would base the increase on figures from the National Center for Education Statistics. The amount of the increase would be based on the percentage of change in the average cost of undergraduate tuition for the previous 2 academic years.

We estimate that enactment of this draft bill would result in benefit costs of $171.7 million during FY 2008, $17.6 billion for 5 years, and $64.90 billion over 10 years. In addition, the implementation of the program would also entail administrative costs of $74.9 million during the first year and $289 million over 10 years.

We have the following concerns about how the provisions of this draft bill would affect the implementation of proposed new chapter 33:

- The new education program would become effective on August 1, 2009. VA does not now have a payment system or the appropriate number of trained personnel to administer the program. We estimate it would take approximately 24 months to deploy a new payment system. The Information Technology (IT) solution should include the capability to exchange data with DOD, determine eligibility, automatically generate letters, streamline or automate payment calculations, perform accounting functions, and authorize the release of all payments. In the interim, VA would be forced to manually process such payments. The amendments made by the draft bill do not contain provisions to fund VA for the significant additional general operating and information technology expenses required to administer this program.
- Tuition payments would be made in a lump-sum payment before the enrollment period begins. If a student does not attend or withdraws from the program of education, large overpayments would result. In addition, it is not clear from the bill whether the student would be eligible for any portion of the benefits disbursed if he or she were to withdraw from all or some classes. Payments should be made after enrollment is confirmed similar to payments made under Title IV, the Higher Education Act of 1965.
- Individuals transferring from MGIB-AD who used entitlement under MGIBAD would only be eligible for an amount of chapter 33 entitlement equal to the amount of entitlement they have remaining under MGIB-AD. Individuals eligible under REAP or MGIB-SR would not be subject to the limitation.
- The bill's "Yellow Ribbon" provisions would require VA to enter into a memorandum of understanding (MOU) with each participating educational institution. Entering into numerous MOUs with proprietary institutions would be a significant administrative burden. In addition, the institutions would not be required to offer assistance under this program to all individuals. Therefore, this provision would not be equitable to all eligible individuals.
- We are concerned about the housing stipend with respect to distance education. Housing stipends would be based on BAH rates where the school is located, not the student's residence. This could prompt some students to enroll in online learning programs at schools with the highest BAH rate.

S. 961

S. 961, the "Belated Thank You to the Merchant Mariners of World War II Act of 2007," would provide a monthly benefit to certain individuals, or their surviving spouses, who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II.

I would like to recognize the sacrifices made by members of the United States Merchant Marine Service (Merchant Mariners) during World War II and note that we currently treat these individuals as veterans by virtue of their service.

Currently, title 46 of the U.S.C. provides for the payment of burial benefits and interment in national cemeteries for certain former Merchant Mariners. S. 961 would amend title 46 to require VA to pay to certain Merchant Mariners the sum of $1,000 per month, tax exempt. This new benefit would be available to otherwise qualified Merchant Mariners who served between December 7, 1941, and December

31, 1946, and who received honorable-service certificates. The surviving spouse of an eligible Merchant Mariner would be eligible to receive the same monthly payment provided that he or she had been married to the Merchant Mariner for at least 1 year prior to the Merchant Mariner's death. S. 961 differs from other similar bills introduced for this purpose in that it provides retroactive eligibility to the date of enactment of this bill, rather than eligibility based on receipt of a certificate of honorable service or receipt of a claim for a benefit.

VA does not support enactment of this bill for several reasons. First, to the extent that S. 961 is intended to offer belated compensation to Merchant Mariners for their service during World War II, many Merchant Mariners and their survivors are already eligible for veterans' benefits based on such service. Pursuant to authority granted by section 401 of the "GI Bill Improvement Act of 1977," Pub. L. No. 95–202, the Secretary of Defense has certified Merchant Mariner service in the ocean-going service between December 7, 1941, and August 15, 1945, as active military service for VA benefit purposes. As a result, these Merchant Mariners are eligible for the same benefits as other veterans of active service. This bill appears to contemplate concurrent eligibility with benefits Merchant Mariners may already be receiving from VA, a special privilege that is not available to other veterans. Further, to the extent that Merchant Mariners may be distinguished from other veterans due to the belated recognition of their service, there are myriad other groups, listed at 38 CFR § 3.7(x), that could claim to have been similarly disadvantaged.

Second, there can be no doubt that Merchant Mariners were exposed to many of the same rigors and risks of service as those confronted by members of the Navy and the Coast Guard during World War II. However, the universal nature of the benefit S. 961 would provide for individuals with qualifying service and the amount of the benefit that would be payable are difficult to reconcile with the benefits VA currently pays to other veterans. S. 961 would create what is essentially a service pension for a particular class of individuals based on no eligibility requirement other than a valid certificate of qualifying service from the Secretary of Transportation or the Secretary of Defense. Further, this bill would authorize the payment of a greater benefit to a Merchant Mariner, simply based on qualifying service, than a veteran currently receives for a service-connected disability rated as 60 percent disabling. Because the same amount would be paid to surviving spouses under this bill, there would be a similar disparity in favor of this benefit compared to the basic rate of dependency and indemnity compensation for surviving spouses as provided under chapter 13 of title 38.

VA estimates that enactment of S. 961 would result in costs of $202,540,000 for FY 2009 and $1,140,511,000 over 10 years.

S. 1718

S. 1718, the "Veterans Education Tuition Support Act," would amend the Servicemembers Civil Relief Act to provide servicemembers reimbursement of tuition for programs of education interrupted by military service, deferment of student loans, and reduced interest rates for servicemembers during periods of military service. Because that Act is implemented by DOD, we defer to that department regarding the merits of S. 1718.

S. 2090

S. 2090 would require the U.S. Court of Appeals for Veterans Claims (Veterans Court) to adopt rules to protect the privacy and security of documents retained by, or electronically filed with, the court. It would require the rules to be consistent with other Federal courts' rules and to take into consideration the best practices in Federal and State courts to protect private information.

This bill would extend the Veterans Court's existing authority and anticipates the upcoming conversion from paper filing to electronic filing. The court's current Rules of Practice and Procedure provide several tools to safeguard sensitive information. For example, Rule 11 (c)(2) permits the Veterans Court, on its own initiative or on motion of a party, to "take appropriate action to prevent disclosure of confidential information." Rule 48 permits the Veterans Court to seal the Record on Appeal in appropriate cases. Rule 6 provides: "Because the Court records are public records, parties will refrain from putting the appellant's or petitioner's VA claims file number on motions, briefs, and responses (but not the Notice of Appeal (see Rule 3(c)(1))); use of the Court's docket number is sufficient identification. In addition, parties should redact the appellant's or petitioner's VA claims file number from documents submitted to the Court in connection with motions, briefs, and responses." This rule prevents the public from easily accessing a veteran's Social Security number. VA supports efforts to protect Social Security numbers.

The Secretary supports enactment of S. 2090 because the importance of safeguarding sensitive information in a veteran's files cannot be overemphasized. The proposal is logical given the impending conversion from paper filing to electronic filing, particularly in this distressing era of internet data mining and identity theft.

S. 2091

S. 2091 would expand the number of active judges sitting on the Veterans Court from seven to nine. We have witnessed the progress that the Veterans Court has made in reducing its inventory of cases through temporary recall of retired judges. Under the current system, we believe the Court can effectively manage its projected caseload within the funds requested in the FY 2009 President's Budget.

S. 2138

S. 2138, the "Department of Veterans Affairs Reorganization Act of 2007," is a VA proposal that would increase from seven to eight the number of Assistant Secretaries and from 19 to 27 the number of Deputy Assistant Secretaries VA is permitted to have. It would also repeal the requirement in current law that VA have a Director of Construction and Facilities Management.

These changes would allow the Secretary to establish within VA the position of Assistant Secretary for Acquisition, Logistics, and Construction to serve as VA's Chief Acquisition Officer. Each Federal agency is required to have four Chief Officers: a Chief Financial Officer (CFO), a Chief Information Officer, a Chief Human Capital Officer, and a Chief Acquisition Officer (CAO). Currently, VA's Assistant Secretary for Management serves as both VA's CFO and CAO.

VA proposed this bill for several reasons. First, the creation of a CAO position within VA would comply with the Services Acquisition Reform Act of 2003 (SARA). SARA requires that the head of each agency appoint a non-career employee as CAO whose official primary duty is acquisition management for the agency.

Second, the acquisition, logistics, and program management career fields have become so technically complex and specialized that these critical functions must be an official's primary duty and not an ancillary or collateral duty, as it has been for the Assistant Secretary for Management at VA. In fact, the Government Accountability Office (GAO) has identified a number of "cautions" in acquisition and has flagged as a serious weakness situations where "there is no CAO, or the officer has other significant responsibilities and may not have management of acquisition as his or her primary responsibility." VA's Inspector General has also identified two of the five major management challenges facing VA as "Financial Management" and "Procurement Practices." Establishing an Assistant Secretary for Acquisition, Logistics, and Construction will improve the span of control of the Assistant Secretaries by designating one of them to serve principally as VA's CFO and another to serve principally as VA's CAO.

Third, VA's acquisition, supply chain logistics, and program management involve billions of dollars of expenditures and thousands of VA personnel each year and are critical to VA's continued success. In FY 2006, VA spent over $10.3 billion acquiring goods and services, over a quarter of VA's total discretionary budget. Many of the goods and services VA acquires are critical tools VA's professionals need to serve veterans. For example, in FY 2006, VA procured $737 million in medical and surgical supplies, $3.5 billion in pharmaceuticals, and $1.1 billion in prosthetic devices. An Assistant Secretary with focused responsibility for acquisition, logistics, and construction would help ensure that consistent and sound decisions are made in these critical functions and ensure that they receive the visibility they need at VA.

Fourth, in 2006 the Secretary re-organized the construction function at VA. VA established the Office of Construction & Facilities Management as the lead construction, facilities, and real estate organization at VA. This office provides advice to senior officials on VA's capital facilities programs, major construction programs, construction and design standards, and leasing and real property management. To continue reform in this area, the Secretary would assign this new office as the other major functional areas under the new Assistant Secretary. Assigning construction and facility maintenance to the same Assistant Secretary makes sense because VA carries out much of its construction and facility maintenance by acquiring services.

The Secretary would use two of the new Deputy Assistant Secretary positions in support of the new Office of Acquisition, Logistics, and Construction, five in the Office of Information and Technology, and one in the Office of Management.

S. 2139

S. 2139, the "National Guard and Reserve Educational Benefits Fairness Act of 2007," would provide entitlement to educational assistance under the Montgomery

GI Bill (MGIB) for members of the National Guard and Selected Reserve who, on or after September 11, 2001, serve at least 20 months of continuous active duty, not less than 12 months of which must have been in a theater of operations (as designated by DOD). Individuals electing to receive benefits under this new provision would earn 36 months of eligibility and would be required to contribute $1,200 to participate in the program.

Under current law, members of the Selected Reserve are eligible for chapter 30 MGIB benefits if they serve an obligated period of at least 2 continuous years of active duty in the Armed Forces after June 30, 1985, followed by 4 years of service in the Selected Reserves. Unlike these reservists, the new eligibility category created by S. 2139 would not require the reservist to serve at least 4 years in the Selected Reserves after completing the active duty requirement to receive the full benefit payment. However, 20 months of continuous active-duty service would qualify a reservist for full benefits if he or she is discharged or released from active duty for "convenience of the government." Such reservists are currently entitled to a full-time monthly educational assistance rate of $1,101.

In addition, an individual currently may establish MGIB eligibility under 38 U.S.C. § 3011 with an active-duty obligation of less than 3 years. Such an individual is currently entitled to a full-time monthly educational assistance rate of $894. Once again, 20 months of continuous active duty would qualify the individual for full benefits as long as the obligation to serve was for at least 24 months and the discharge was "for the convenience of the government."

DOD must collect $1,200 from reservists who establish eligibility under 38 U.S.C. § 3011 or § 3012 no later than 1 year after completion of the 2 years of active duty service providing the basis for MGIB entitlement.

Selected Reservists who are ordered to active duty are potentially eligible for educational assistance under the chapter 1607 Reserve Educational Assistance Program (REAP), established under title10. The monthly rate for REAP is determined by the length of active-duty service. Service thresholds are 90 days, 1 year, and 2 years. The full-time monthly rates for the service thresholds are currently $440.40, $660.60, and $880.80, respectively.

This bill would add another eligibility category to the 15 existing MGIB eligibility categories separately distinguished by VA under title 38. Further, this legislation overlaps existing eligibility to education benefits provided by title 10, chapter 1607, although it provides a greater benefit.

Many members of the target population, reservists who have served 20 months of continuous active duty, will have previously received chapter 1606 or 1607 benefits. As currently written, S. 2139 would provide for retroactive credit for active duty service with payments made effective date of enactment. Section 16163(d) of title 10, U.S.C., provides that an individual may not use the same period of service to gain eligibility under both chapter 1607 of title 10 and chapter 30 of title 38. Because some reservists will have previously elected to receive chapter 1607 benefits in lieu of chapter 30 benefits, it is not clear whether the reservists who received chapter 1607 benefits could subsequently elect benefits under the provisions of this bill. If the intent is to permit these individuals an opportunity to elect benefits under the new provision, it is not clear how VA is to address payments that were made under chapter 1607 prior to such election. Reservists who are barred from using the same period of service to gain eligibility and choose to credit their service under chapter 30 would then not be entitled under chapter 1607 and thus would have been paid benefits to which they are not entitled. A number of claims will have to be re-worked by VA personnel because benefits will need to be terminated under chapter 1607 and benefits for the new program reissued.

VA does not support this bill as drafted for the following reasons.

S. 2139 is not equitable in comparison to other VA benefits. It provides for the maximum full-time rate of $1,101 per month and 36 months of entitlement for 20 months of continuous service, with no obligation for continued military service. By comparison, under the MGIB, a full 2 years of service in the regular active duty forces (regardless of operational theater) would pay a veteran only $894 per month without an additional 4-year commitment in the Selected Reserves.

S. 2139 fails to consider veterans discharged for reasons of disability. There are no provisions in the bill for a veteran to receive a lesser entitlement should the veteran be discharged prior to 20 months of continuous service for such reasons. Removing the thresholds for having an obligated period of service also removes criteria with which to judge and award benefits for service that falls short of that required for eligibility.

Further, this bill would place a significant administrative burden on VA. Nearly every veteran currently receiving benefits under REAP or chapter 30 (2-year rate),

who would fulfill the requirements under this bill, would be required to have his or her claim re-adjudicated, and benefits payments switched to this program.

Finally, S. 2139 would base eligibility for the educational assistance it provides on certain theaters of operation in which an individual served on active duty. Historically, VA education benefits have not been based on such criteria, and we believe it inappropriate to do so now.

We regret we are unable to provide an estimate of the cost associated with the enactment of this bill at this time.

S. 2309

S. 2309, the "Compensation for Combat Veterans Act," would amend 38 U.S.C. § 1154(b) to require VA to treat certain veterans as having engaged in combat with the enemy for purposes of section 1154(b), thus permitting the use of lay or other evidence for proof of service connection of a combat-related disease or injury. The veterans who would qualify for this treatment are veterans who, during active service with a U.S. military, naval, or air organization during a period of war, campaign, or expedition, served in a combat zone for purposes of section 11 2(c)(2) of the Internal Revenue Code of 1986, or a predecessor provision of law. In essence, this bill would equate service in a combat zone with engaging in combat with the enemy. VA does not support this bill.

Section 11 2(c)(2) of the Internal Revenue Code of 1986 defines "combat zone" as any area that the President by executive order designates as an area in which U.S. Armed Forces are engaging or have engaged in combat. Section 112 governs the computation of gross income for tax reporting purposes based upon service and applies to all veterans who serve in a combat zone regardless of actual involvement in combat. The executive order designates which geographical areas are combat zones and the date of commencement of combat activities.

Section 1154(b) of title 38, U.S.C., relaxes the evidentiary requirements a combat veteran must meet to prove service incurrence or aggravation. The language of section 1154(b) makes it clear that its purpose is to liberalize the method of proof allowed for claims based on injuries incurred or aggravated while engaged in combat with the enemy. This provision recognizes the unique circumstances of combat, which are not favorable for documentation of injury or illness because treatment for such injury or illness may be administered in the field under exigent conditions that do not permit concurrent documentation. Supporting evidence is often difficult to obtain when such a combat veteran later files a claim for service-connected compensation. This bill contemplates that all veterans in a combat zone are challenged with the same circumstance in documenting treatment for injury or illness in the field. Such circumstance does not exist for servicemembers who, although serving in a combat zone, have access to a medical facility for treatment and whose treatment would be documented in service treatment records. The purpose of section 1154(b) was to recognize the unique circumstance of actual combat.

Additionally, the proposed expansion of the phrase "engaged in combat with the enemy" to include veterans who serve in a general combat area or combat zone but did not themselves engage in combat with the enemy would mean that a determination as to the circumstances consistent with combat could be extended to include all of the common experiences that happen while serving in a combat zone. In the absence of clear and convincing evidence, lay or other evidence could be used to establish service connection for any disease or injury alleged to have been incurred or aggravated during service in a combat zone.

VA cannot estimate benefit costs based upon the potential application of the amendment because there are no data to evaluate the numbers of claims for service connection filed by veterans who served in a combat zone to which this amendment would be applied.

S. 2471

S. 2471, the "USERRA Enforcement Improvement Act of 2007," would make several changes to the enforcement of the Uniformed Services Employment and Reemployment Rights Act. Because that Act is implemented by the Department of Labor, we defer to that department regarding the merits of S. 2471.

S. 2550

S. 2550, as proposed to be amended, the "Combat Veterans Debt Elimination Act of 2008," would authorize VA to refrain from collecting all or part of a debt owed to the United States under any program administered by VA (other than a housing or small business program under chapter 37 of title 38, U.S.C.) by a servicemember or veteran who dies as a result of an injury incurred or aggravated in the line of

duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities after September 11, 2001, if the Secretary determines that termination of collection is in the best interest of the United States.

In response to the Committee Chairman's request, we provided VA's views on this bill, as introduced, in a letter dated February 13, 2008. In that letter, we raised certain concerns and suggested revisions. The bill, as proposed to be amended, appears to address VA's concerns. Accordingly, VA supports S. 2550, as proposed to be amended.

We estimate that enactment of this bill would result in additional benefits cost of $5,000 for FY 2009, and a 10-year cost of $50,000. In determining the costs, VA used the amount of debt of 21 fallen servicemembers. In relative terms, the total amount of accumulated debt over almost 4 years of collecting the information is so small, and the pattern of that accumulation so sporadic, that we would have little expectation of a material increase in the amount of benefit indebtedness.

S. 2617

S. 2617, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2008," would authorize a cost-of-living adjustment (COLA) in the rates of disability compensation and dependency and indemnity compensation (DIC). This bill would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans and of DIC for the survivors of veterans whose deaths are service related, effective December 1, 2008. Consistent with the President's FY 2009 budget request, the rate of increase would be the same as the COLA that will be provided under current law to Social Security recipients, which is currently estimated to be 2.5 percent. We believe this COLA is necessary and appropriate to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

We estimate that enactment of this bill would cost $687.2 million during FY 2009, $4.2 billion over the 5-year period FY 2009 through FY 2013, and $9.2 billion over the 10-year period FY 2009 through FY 2018. However, the cost is already assumed in the budget baseline, and, therefore, enactment of this provision would not result in any additional cost.

S. 2674

S. 2674, the "America's Wounded Warriors Act," would implement the recommendation of the President's Commission on Care for America's Returning Wounded Warriors ("Dole-Shalala Commission") to "Completely Restructure the Disability and Compensation Systems."

VA defers to DOD with regard to title I of S. 2674, which would amend chapter 61 of title 10, U.S.C., to create an alternative disability retirement system for certain servicemembers.

Title II would completely restructure the VA disability compensation program. Section 201 would require VA to conduct a study to determine the amount of compensation to be paid for each rating of disability assignable to veterans for service-connected disabilities. It would require VA to ensure that its determinations reflect current concepts of medicine and disability and take into account loss of quality-of-life and average loss of earning capacity resulting from specific injuries. In conducting the study, VA could take into account the findings, determinations, and results of any completed or on-going study or report that is applicable. Section 201 also would require VA to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report that would include VA's findings under the required study, as well as VA's findings with respect to matters covered by the study arising from the report of the Veterans' Disability Benefits Commission (VDBC) and the reports of such other independent advisory commissions that have studied the same matters. The report would be due to the Committees not later than 270 days after commencement of the required study.

Section 202 of the bill would require VA to conduct a study to determine the appropriate amounts and duration of transition payments to veterans who are participating in a rehabilitation program under chapter 31 or chapter 17 of title 38, U.S.C. In conducting the study, VA could take into account the findings, determinations, and results of any completed or on-going study or report that is applicable. Section 202 also would require VA to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report that would include VA's findings under the required study, as well as VA's findings with respect to matters covered by the study arising from the report of the VDBC and the reports of such other independent advisory commissions that have studied the same matters. The report

would be due to the Committees not later than 270 days after commencement of the required study.

These two sections are similar to section 201 of the Administration's proposal to implement the report of the Dole-Shalala Commission. VA supports efforts to improve procedures for disability retirement of servicemembers, to enhance authorities for the rating and compensation of service-connected disabilities, and to develop procedures to encourage completion of vocational rehabilitation plans under chapter 31. However, we do not believe that enactment of these sections is necessary in light of actions already undertaken by VA to study the same matters as these sections would require. In February 2008, VA entered into a contract with Economic Systems, Inc., of Falls Church, Virginia, to study the appropriate levels of compensation necessary to compensate veterans for loss of earning capacity and loss of quality-of-life caused by service-related disabilities and the nature and feasibility of making long-term transition payments to veterans separated from the Armed Forces due to disability while such individuals are undergoing rehabilitation under chapter 31 or chapter 17. These studies are expected to be completed by August of this year. We will provide the Committees with copies of these studies.

Section 203 of S. 2674 would require VA to conduct a study to identify factors that may preclude veterans from completing their vocational rehabilitation plans and actions VA may take to assist and encourage veterans in overcoming such factors. The study would examine: (1) measures used in other disability systems to encourage completion of vocational rehabilitation plans; (2) any survey data available to VA that relate to matters covered by the study; (3) the results of the studies required by sections 201 and 202 of this bill; (4) the report of the VDBC; and (5) the report of the Dole-Shalala Commission. The study would also consider the extent to which bonus payments or other incentives may be used to encourage completion of vocational rehabilitation plans under chapter 31 and such other matters VA considers appropriate. Not later than 270 days after commencement of the study, VA would be required to submit to the Committees on Veterans' Affairs a report including the findings of the study and any appropriate recommendations and proposals for legislative or administrative action needed to implement the recommendations.

There is no similar provision in the Administration's proposal. However, the Administration's proposal would authorize the payment of bonuses as an incentive to completing a vocational rehabilitation program. Thus, S. 2674 would further the same objective as the Administration's proposal. In addition, we believe that the study conducted by Economic Systems, Inc., which is already in progress, is consistent with the intent of this section.

Section 204 of the bill would require VA, not later than 1 year after the later of the dates of the reports required by sections 201(f) and 202(e)[1] of the bill, to submit to Congress a proposal including a statement of purpose of the disability compensation and transition payments that would be required pursuant to enactment of section 207 of the bill, a statement of the amounts of compensation for service-connected disability that would be required pursuant to enactment of that section, and a statement of the amounts and duration of transition benefits to be payable pursuant to enactment of section 207 of this bill to veterans participating in a rehabilitation program under chapter 31 or chapter 17 of title 38. The rates, amounts, and duration of these benefits would be exempt from judicial review. We do not support enactment of this section; we prefer the Administration's proposal.

The new compensation system would apply to veterans who have a disability rated as service-connected under chapter 11 of title 38, U.S.C. on the effective date of the new chapter 12 compensation system, and who file a claim with respect to such disability or another disability on or after that date, as well as to veterans who do not have a disability rated as service-connected under chapter 11 of title 38, U.S.C. on the effective date of the new chapter 12 compensation system, and who file a claim with respect to disability on or after that date. The disability rating for claims filed under chapter 12 would have to take into account all service-connected disabilities. The new chapter 12 compensation system would become effective, if at all, at most 85 days after VA submitted to Congress its proposal as to amounts of compensation and amounts and duration of transition benefits that are payable under the system. An award or increase of compensation with regard to a compensation claim filed during the 3-year period beginning on the effective date of implementation of the new VA compensation system could be retroactive for 3 years from the date of application or administrative determination of entitlement, whichever is earlier.

The new VA compensation system would also include transition payments to cover living expenses for disabled veterans and their families, consisting of either 3

[1] The bill itself incorrectly references section 202(d).

months of base pay if the veterans are returning to their community following retirement and not participating in further rehabilitation or longer-term payments to cover family living expenses if they are participating in further rehabilitation under chapter 31 or chapter 17. VA would also have authority to make transition payments to eligible veterans who are retired or separated under the alternate DOD system.

Section 208 of S. 2674 would also add a new chapter 14 to title 38, U.S.C., which would permit a veteran retired under the new DOD system and entitled to compensation under new chapter 12 to elect a 6.5-percent reduction in the entire amount of compensation to provide a supplemental survivor benefit for a surviving spouse or child(ren). A survivor would be entitled to 55 percent of the veteran's total compensation payable at the time of the veteran's death. Also under section 208, if a veteran elects to provide a survivor benefit to the veteran's child(ren) rather than spouse, VA would have to notify the veteran's spouse of the veteran's election.

VA has the following concerns regarding title II of S. 2674.

Currently, 2.7 million veterans are in receipt of VA disability compensation under chapter 11 of title 38, U.S.C. By simply filing a compensation claim when or after chapter 12 goes into effect, all of these veterans would become eligible for compensation under chapter 12, and all of their service-connected disabilities would have to be rerated under the rating schedule applicable to chapter 12. Our initial review of new chapter 12 indicates that benefits under the new VA compensation system would be far more favorable than benefits under current chapter 11. As a result, VA could be overwhelmed with claims by veterans seeking to have their service-connected disabilities compensated under new chapter 12.

VA would be required to submit to Congress its proposals regarding amounts of disability compensation and the amounts and duration of transition benefits not later than 1 year after submitting the later of its reports on compensation and transition benefits. VA would have 270 days from commencement of each study to report to Congressional committees on the study results. VA would have to wait for completion of the compensation study before drafting a rating schedule. As a result, VA would have approximately 15 months to draft a rating schedule compensating for loss of earnings and quality-of-life, propose it through notice-and-comment rulemaking, consider comments received, and issue a final rule. This is insufficient time considering the scope and complexity of the rating schedule.

The requirement that the Secretary of Veterans Affairs propose the amounts of disability compensation and the amounts and duration of transition benefits is insufficiently prescriptive for VA to formulate a proposal that will achieve the statutory objectives. The bill should provide more specific guidance in this regard. The legislature must give specific guidance to executive agencies when authorizing them to establish entitlement programs administratively. In addition, if S. 2674 were enacted and later challenged on constitutional grounds, the provision purporting to exempt the rates, amounts, and duration of these benefits from judicial review may be unavailing because Federal courts generally will interpret statutory provisions to avoid the serious constitutional questions that would arise if a statute were construed to deny any judicial forum for a colorable constitutional claim.

Although it would require VA to study actions VA could take to help and encourage veterans to overcome impediments to completing their vocational rehabilitation plans, S. 2674 would not authorize an achievement bonus payable upon completion of certain milestones of a chapter 31 vocational rehabilitation program. We believe that such payments are necessary to serve as incentives to encourage veterans to remain in the VA vocational rehabilitation program and complete their vocational rehabilitation objectives.

S. 2674 would authorize a survivor benefit that would be based upon a percentage of a veteran's compensation for loss of quality-of-life as well as earnings loss. Compensation for the effect of a disability on the veteran's quality-of-life would be similar to damages for pain and suffering awarded to an injured person in a tort lawsuit. Compensation for a veteran's survivors under title 38, U.S.C., on the other hand, is intended to replace the economic loss to the veteran's survivors resulting from the veteran's death. It would therefore be inconsistent to calculate survivors benefits under new chapter 14 based in part upon the compensation paid to a veteran for pain and suffering rather than based upon the loss to the veterans' survivors caused by loss of the veteran's earning capacity.

S. 2674 does not authorize VA to provide services to family members of eligible veterans as necessary to facilitate the family members' assistance in treatment, rehabilitation, or long-term care of the veteran, i.e., education concerning the veteran's injuries and expected progress and caregiver training, counseling, and psychological services. Because the Administration's proposed bill does authorize such services, we favor that bill over S. 2674.

All in all, we prefer the Administration's proposal to S. 2674.

S. 2683

S. 2683 would modify certain statutory authorities relating to educational assistance for veterans, as follows:

- Limit the accelerated-pay provisions of the Montgomery GI Bill-Active Duty educational assistance program (38 U.S.C. chapter 30) to non-degree programs;
- Eliminate sunset provisions for certain work-study opportunities: (1) outreach activities; (2) work performed at a State veterans home; and (3) work performed at a national or State veterans cemetery; and
- Authorize funding for State approval agency (SAA) contracts to be paid out of General Operating Expenses (GOE) rather than out of the Readjustment Benefits (RB) account and authorize amounts to be appropriated for this purpose for FY 2009 through 2011, and beyond.

Section 1 of S. 2683 would limit the accelerated payment provisions of 38 U.S.C. § 3014A(b)(1) to eligible individuals enrolled in a program of study that does not lead to a degree. This change would more closely align the accelerated payment provisions of chapter 30 with the newly enacted accelerated payment provisions of chapters 1606 and 1607 of title 10, U.S.C. Accelerated payment provisions were added to the chapter 1606 and 1607 provisions as part of the National Defense Authorization Act (Public Law 110–181), approved by the President on January 28, 2008.

VA objects to limiting accelerated payment provisions to non-degree programs because it could be detrimental to veterans. Many degree programs at institutions of higher learning, including those outside of the high-technology sector, have high costs. Of the total number of accelerated payments for chapter 30, 25 percent are in a program that leads to a degree from an institution of higher learning. We believe limiting accelerated payment to non-degree programs would prevent veterans from pursuing degree programs that would allow maximum benefit from the educational assistance entitlement they have earned.

VA supports the provisions of section 2 of the bill, which would eliminate the sunset dates for certain qualifying work-study activities. We believe that making these changes to 38 U.S.C. § 3485(a)(4) will promote administrative efficiency.

We do not object to the provisions of section 3 of the bill that would authorize the funding of SAA contracts with GOE funds. However, we note that the President's FY 2009 budget request does not include funds for this new GOE requirement; hence, additional funds would need to be appropriated.

We estimate that enactment of S. 2683 would result in net savings to RB of $1.2 million during the first year, $6.5 million over 5 years, and $13.9 million over 10 years. Furthermore, this bill would authorize funding for SAA contracts to be paid from GOE funds rather than RB funds. The amounts authorized for SAA reimbursement would be $22 million for FY 2009, $24 million for FY 2010, $26 million for FY 2011, and amounts as may be necessary for fiscal years after FY 2011.

S. 2701

S. 2701 would require VA to establish a national cemetery in the eastern Nebraska region to serve the needs of veterans and their families in the eastern Nebraska and western Iowa regions. Section 2(b) would require VA to consult with Federal, State, and local officials before selecting a site for the cemetery. Additionally, section 2(c) would require VA to submit to Congress a report on the establishment of the cemetery, including a schedule and estimated costs for the establishment of the cemetery.

VA does not support S. 2701. Under current VA policy, the need for a new national cemetery to serve eastern Nebraska and western Iowa is not sufficient to warrant the establishment of a new national cemetery in the eastern Nebraska region.

VA's policy is to establish national cemeteries in areas with the largest concentration of unserved veterans. In May of 2002, VA transmitted to Congress *Volume 1: Future Burial Needs*, as mandated by Public Law 106–117, and specific criteria to serve as the basis for deciding where to establish new national cemeteries: in areas with an unserved veteran population threshold of 170,000 within a 75-mile service radius. With passage of Public Law 108–109, Congress endorsed this policy by naming in statute the six geographic areas meeting this criterion. This policy has enabled VA to focus resources on serving areas in which high concentrations of veterans do not have access to a burial option. To support construction of a new national cemetery in the eastern Nebraska region (i.e., Bellevue), the bill cites VA's Future Burial Needs Report. This report was submitted to Congress on May 15, 2002, in response to the Veterans Millennium Health Care and Benefits Act (Public

Law 106–117) and includes a list of geographic areas with relatively greater needs for new national cemeteries. On the list is the Omaha, Nebraska, area with an estimated unserved veteran population of 115,000. However, the unserved veteran population in the Omaha area has actually declined since submission of VA's Future Burial Needs Report. Based on VA's VetPop 2007 model, we now estimate there are approximately 110,000 unserved veterans residing within a 75-mile radius of Bellevue, Nebraska, who are eligible for burial in a national cemetery. This number is significantly less than the 170,000 population threshold required to establish a new national cemetery.

The bill also cites a study by the Metropolitan Area Planning Agency in Omaha. The study, which was undertaken in October 2005, references an eligible veteran population of over 170,000 for the area. VA does not agree with this finding. Although we have not reviewed the study, we conjecture that the study includes groups VA does not consider eligible for burial in a national cemetery.

The VA State Cemetery Grants Program can provide an additional burial option for veterans in eastern Nebraska and western Iowa. Through this program, VA may provide up to 100 percent of the costs for establishing or expanding a State veterans cemetery, including the cost of initial operating equipment. Currently, the State Cemetery Grants Program has received applications for the establishment of four State veterans cemeteries that would serve Nebraska and the western Iowa region. Cemeteries are proposed for Alliance and Grand Island, Nebraska; Fort Riley, Kansas; and Des Moines, Iowa. VA would be happy to assist the State of Nebraska in exploring a State veterans cemetery option to serve the Bellevue region.

Besides objecting to S. 2701 because the need for a new national cemetery in the eastern Nebraska region is not sufficient to warrant a new national cemetery in that region, we note that the cost of establishing a new cemetery is considerable. Based on recent experience, the cost of establishing new national cemeteries ranges from $500,000 to $750,000 for environmental compliance requirements; $1 million to $2 million for master planning and design; $1 million to $2 million for construction document preparation; $5 million to $10 million for land acquisition, if required; and $20 million to $30 million for construction. The average annual cost of operating a new national cemetery ranges from $1 million to $2 million.

S. 2737

S. 2737, the "Veterans' Rating Schedule Review Act," would give the Veterans Court jurisdiction to review whether, and the extent to which, the VA Schedule for Rating Disabilities (rating schedule) complies with "applicable requirements of chapter 11" of title 38, U.S.C..

VA opposes S. 2737 for the following reasons. First, extending the Veterans Court's jurisdiction to include review of the rating schedule for compliance with applicable statutes would likely increase litigation, over both the validity of rating schedule provisions and the scope of the jurisdictional extension itself. Every claim in which VA grants service connection involves consideration of some portion of the schedule for purposes of rating the service-connected disability, as does every claim for an increased rating. S. 2737 would essentially expose the rating schedule to judicial review in every such claim appealed to the Veterans Court. Any case in which the court feels that a rating-schedule provision prevents a veteran from receiving the full amount of compensation to which the court considers the veteran entitled could be viewed as posing a reviewable conflict between the rating schedule and some statute in chapter 11. If S. 2737 were enacted, the number of appeals to the Veterans Court could skyrocket, an increase in case load the Veterans Court could ill afford. According to the Veterans Court's annual reports, the court's caseload has doubled since 1998. Adding the increase of appeals resulting from the jurisdictional extension to the already growing case load could delay final resolution of all appeals before that court.

A change in the court's jurisdiction would itself stimulate litigation. Undoubtedly, claimants' counsel would test the limits of the court's jurisdiction, giving rise to protracted litigation of uncertain outcome. The courts are still grappling with the parameters of the Veterans Claims Assistance Act of 2000 notice provisions some 8 years after the passage of that statute. Besides burdening the courts, S. 2737 would require additional VA resources to handle the increase in litigation resulting from judicial review of whether the rating schedule complies with chapter 11 requirements.

Second, S. 2737 would permit piecemeal review of individual rating classifications, which are matters particularly within VA's expertise. Establishing the criteria for rating disabilities and the rates of compensation payable under those criteria depends on gathering and analysis of medical facts, matters of technical and medical

judgment, including judgment about what disabilities and levels of disability should be included in the schedule. The prevention of piecemeal review was Congress's rationale in originally proscribing review of the rating schedule in the Veterans' Judicial Review Act. Congress intended that no court should substitute its judgment for the Secretary's as to what rating a particular type of disability should be assigned.

Third, S. 2737 would create a jurisdictional inconsistency. The bill would permit the Veterans Court to decide whether the VA rating schedule is consistent with statutes in chapter 11, but the United States Court of Appeals for the Federal Circuit (Federal Circuit) would remain without jurisdiction under 38 U.S.C. § 502 to review an action of the Secretary relating to the adoption or revision of the rating schedule. Nonetheless, the Federal Circuit would have jurisdiction under 38 U.S.C. § 7292(a) to review a Veterans Court interpretation of statute or regulation. Thus, the Federal Circuit would be barred from reviewing the content of the rating schedule on direct review but could review a Veterans Court decision on whether the rating schedule complies with chapter 11 requirements, which would likely require review of the content of the rating schedule.

Finally, under current case law, the Veterans Court is not totally without authority to review the rating schedule. The Federal Circuit has held that 38 U.S.C. § 7252(b) bars judicial review of the content of the rating schedule and the Secretary's actions in adopting or revising the content. However, the Federal Circuit has also held that the courts, including the Veterans Court, have jurisdiction to review the correct interpretation of rating-criteria content, the Secretary's actions in adopting or revising the criteria for compliance with the Administrative Procedure Act, and constitutional challenges to the rating schedule.

We cannot estimate the costs that would result from enactment of S. 2737.

S. 2768

S. 2768 would temporarily increase the maximum loan guaranty amount for certain housing loans guaranteed by VA. Currently, the maximum guaranty amount is 25 percent of the Freddie Mac conforming loan limitation, for a single family home, as adjusted annually. This means that the current VA maximum guaranty is $104,250 on a no-downpayment loan of $417,000. In high-cost areas, defined by Freddie Mac as Alaska, Guam, Hawaii, and the Virgin Islands, the maximum guaranty amount is $156,375 on a no-downpayment loan of $625,500.

S. 2768 would provide VA similar authorizations related to loan limitations such as those established by the recently enacted Economic Stimulus Act, Public Law 110–185. Specifically, it would increase the maximum guaranty amount to be equal to 25 percent of the higher of: (1) the Freddie Mac conforming loan limit, or (2) 125 percent of the area median price for a single-family residence, not to exceed 175 percent of the conforming loan limit. The higher guaranty amounts would be authorized through calendar year 2011. An increase in the maximum loan limit generally translates to more purchasing power for veterans. VA supports the increase in loan guarantee limits through December 31, 2008, consistent with the Economic Stimulus Act's other loan provisions. However, we need additional analysis to determine how the change in limit would affect our loan program beyond that date.

S. 2825

S. 2825, the "Veterans' Compensation Equity Act of 2008," would require VA to provide a minimum disability rating of 10 percent for any veteran requiring continuous medication or the use of one or more adaptive devices prescribed by a licensed health care provider for a service-connected disability.

VA does not support this bill. Providing a minimum 10 percent evaluation if continuous medication or the use of an adaptive device is required for otherwise noncompensable disabilities is an action already within the Secretary's authority in constructing VA's Schedule for Rating Disabilities. Therefore, legislation is unnecessary.

For the purpose of estimating costs, we assume that S. 2825 would primarily affect veterans with service-connected hypertension rated zero percent or with hearing loss rated zero percent (the largest and most readily identifiable groups of veterans that this bill would affect) and that only veterans with a combined evaluation of zero percent to 50 percent would receive an increase in combined degree of disability as a result of this measure. Veterans with higher combined degrees of disability would not likely receive an increase as a result of S. 2825. There are 264,095 veteran cases whose combined rating would increase by 10 percent due to an increased rating for either hearing loss or hypertension.

VA estimates that enactment of S. 2825 would result in benefit costs of $591.8 million in the first year, $3.3 billion over 5 years, and $7.5 billion over 10 years.

S. 2864

S. 2864, the "Training and Rehabilitation for Disabled Veterans Enhancement Act of 2008," would expand the scope of services that VA may provide to veterans who are entitled to vocational rehabilitation or independent living services under chapter 31 of title 38, U.S.C., to include services and assistance designed to improve a veteran's quality-of-life. The bill also would remove the current statutory limitation on the number of new entrants into programs of independent living in any fiscal year. The current limit is 2,500 veterans.

VA supports efforts to improve the quality-of-life for veterans with service-connected disabilities and to remove the limitation on the number of veterans who may enter programs of independent living so that all veterans who need those services may receive them. However, we are concerned about defining "quality-of-life," for purposes of the bill.

Consistent with Vocational Rehabilitation and Employment (VR&E) regulations and policy, the independent living program is designed to improve quality-of-life by providing services and assistance that result in decreased reliance on outside supports, decreased restrictions to living independently in the community, and increased independence in activities of daily living. The introduction of the phrase "and to improve a veteran's quality-of-life" in title 38, U.S.C., would require rulemaking in the related sections of the Code of Federal Regulations to define that phrase. We believe that an attempt to comprehensively define what services may be provided to "improve a veteran's quality-of-life" may be too prescriptive and may ultimately result in a reduction in the scope of services available under a program of independent living. For this reason, and because no offsets are provided for increased direct costs, we do not support S. 2864 in its present form.

No additional costs to VR&E are anticipated as a result of including language regarding improvement of a veteran's quality-of-life. This is consistent with current services and assistance that result in the veteran's decreased reliance on outside supports, decreased restrictions to independent living in the community, and increased independence in activities of daily living. Removing the limitation on the number of veterans who may enter independent living programs each fiscal year, however, would result in additional caseloads and additional costs. We estimate that enactment of S. 2864 would result in additional benefit costs of $877,000 in FY 2009, $12,971,000 over 5 years, and $47,563,000 million over 10 years.

S. 2889

S. 2889, the "Veterans Health Care Act of 2008," contains legislative proposals that the Administration recently submitted to Congress as part of the annual budget submission.

Section 7 would make permanent VA's authority to verify the eligibility of recipients of, or applicants for, VA need-based benefits and services using income data from the Internal Revenue Service and the Social Security Administration. The existing authority has been instrumental in correcting amounts of benefits payments and determining health care eligibility, co-payment status, and enrollment priority assignment; however, this authority expires on September 30, 2008. Expiration of this authority would interrupt the income verification process.

VA estimates that enactment of section 7 would result in net discretionary savings of $8.2 million in FY 2009 and $270 million over 10 years.

Section 8 would direct the Secretary to increase administratively the rates of disability compensation for veterans with service-connected disabilities and of dependency and indemnity compensation for the survivors of veterans whose deaths are service related, effective December 1, 2008. As provided in the President's FY 2009 budget request, the rate of increase would be the same as the COLA that will be provided under current law to Social Security recipients, which is currently estimated to be 2.5 percent. We estimate that enactment of this section would cost $687.2 million during FY 2009 and $9.2 billion over the 10-year period FY 2009 through FY 2018. This cost is already assumed in the Budget baseline and would not result in any additional cost.

We believe this proposed COLA is necessary and appropriate in order to protect the affected benefits from the eroding effects of inflation. The worthy beneficiaries of these benefits deserve no less.

S. 2938

S. 2938, the "Enhancement of Recruitment, Retention, and Readjustment Through Education Act of 2008," would increase the rates of basic Montgomery GI Bill (MGIB) education benefits for active-duty personnel, increase education benefits for

National Guard and Reserve soldiers, expand the authority for servicemembers to transfer their education benefits to spouses and dependent children, allow servicemembers to use a portion of their MGIB education benefit to repay Federal student loans, allow service academy graduates and Senior Reserve Officers' Training Corps officers MGIB educational assistance benefits if they continue serving for at least 5 years beyond their initial commitment, and create the College Patriots Grant Program, a matching program for VA and colleges to provide supplemental educational grants to qualified individuals.

The bill would provide transferability under all education programs VA administers for active duty servicemembers and reservists. Benefit transferability is an Administration priority, advocated by the President in his State of the Union address that would benefit those members committed to a career in service. It is an initiative our senior uniformed leaders enthusiastically support and one that is supportive of the current makeup and retention of the all-volunteer force. Under S. 2938, servicemembers who have served 6 years may transfer one half (18 months) of their educational benefits to a dependent child or spouse. For those who have served 12 years or more, the individual may transfer all of the educational benefits to a dependent child or spouse. In addition, this bill would provide increased benefits to all members of the active duty and Selective Reserve forces. The monthly benefit for a veteran with 3 years of active duty would be $1,500, which exceeds the average 4-year cost of tuition, fees, room, and board at a public institution. Additionally, a higher benefit rate would be payable to those who have served 12 years or more. Such members would receive $1,650 monthly, with that amount increasing gradually to $2,000 monthly in FY 2011. VA defers to DOD regarding how S. 2938 will affect recruitment and retention of the all-volunteer force.

VA could administer most of the provisions (excluding transferability) in the bill within our current information technology (IT) environment. VA anticipates a significant increase in the number of transferability claims. To ensure proper accounting procedures are followed, enhancements to the system would be necessary to automate system accounting. Rather than adding a new program, the bill would enhance existing programs. This would provide for smoother implementation, reduced risk of education claim backlogs, and untimely education claim adjudications.

VA estimates that the enactment of S. 2938 would result in direct costs to VA of $668.3 million during the first year, $6.6 billion for 5 years, and $15.0 billion over 10 years. In addition, VA estimates receiving reimbursement for DOD of $930 million in FY 2009, $5.3 billion for 5 years, and $10.0 billion over 10 years for programs administered by VA but funded from DOD's Education Benefit Trust Fund. VA also estimates requiring an additional 48 FTE to implement the bill in the first year at a cost of $3.8 million. The Administration is willing to work with the Congress to address the costs of this bill. There follows a discussion of the specific provisions of the bill, in which we also note several concerns and offer a few suggested technical changes.

Section 3 of the bill would require DOD, in consultation with VA, to develop a plan that would enable both Departments to better coordinate current educational assistance programs, as well as develop new ones, to ensure that each career member of the Armed Forces has the opportunity to earn a bachelor's degree before completing his or her active duty service and retiring from the Armed Forces. DOD would be required to submit a report detailing the plan to Congress no later than August 1, 2009.

Section 4 of S. 2938 would increase the rates of basic educational assistance under the Montgomery GI Bill—Active Duty (MGIB-AD) program. Rates would be classified as follows: (1) one tier for individuals with a 3-year service obligation, but who served at least 12 years of active duty; (2) another for individuals with a 3-year obligation, but who served less than 12 years; and (3) a final tier for those with a 2-year obligation. The full-time, 3-year benefit rate for those with over 12 years of service would increase to $1,650 per month in FY 2009; to $1,800 in FY 2010; and to $2,000 in FY 2011. The full-time, 3-year benefit rate for those with less than 12 years service would increase to $1,500 per month in FY 2009. The full-time, 2-year benefit rate would increase to $950 per month in FY 2009. Cost-of-living adjustments (COLA's) would not be provided in the fiscal years with specified rates; however, COLA's would be provided in subsequent fiscal years. The rate increases would be effective October 1, 2008.

Section 5 of this measure would create a stipend for recipients of education benefits under the MGIB-AD education program. Individuals attending an approved program of education at an institution of higher learning (IHL) would be eligible to receive a stipend based on their training time. An individual attending an IHL at least half-time would be eligible to receive a stipend at the annual rate of $500. Those individuals attending at less than half-time would be eligible to receive a sti-

pend at the annual rate of $350. This section would be effective 1 year after the date of enactment. Individuals often change their training schedule throughout the year, as well as attend school for only part of a year. Thus, it is unclear whether VA would need to prorate this stipend based on enrollment changes.

Section 6 of S. 2938 would increase the rates of educational assistance for individuals receiving education benefits under the chapter 1606, MGIB—Selected Reserve (MGIB-SR) education program. The monthly rate for full-time pursuit of a program of education would be increased from the current rate of $317 to $634; the three-quarter-time rate would be increased from $237 to $474; and the half-time rate would be increased from $157 to $314. These rate increases would be effective on October 1, 2008. COLA's in these rates would not be provided for FY 2009; however, COLA's would be provided for the educational assistance payable for subsequent fiscal years.

Section 7 of this bill would increase the rates of educational assistance for individuals receiving education benefits under the Reserve Educational Assistance Program (REAP). The bill would link the new REAP rate to the proposed MGIB-AD increased rates (as provided under section 4 of this measure) using the current percentages (40, 60, or 80 percent, respectively) of the 3-year obligated-service MGIB-AD rate, based on the time the REAP benefit recipient served on active duty. Individuals who serve at least 12 years in the Selected Reserve would receive a percentage of the 12-or-more-year rates as proposed in the MGIB-AD increase. All others would receive a percentage of the less-than-12-year proposed rate. This amendment would take effect October 1, 2008.

Section 8 would modify and enhance the provisions of titles 10 and 38 for the MGIB-AD and MGIB-SR programs and REAP to authorize certain individuals on active duty or serving as members of the Selected Reserve to transfer their entitlement to educational assistance benefits to their dependents. This measure would eliminate the current requirement under the MGIB-AD program that an individual have a critical military skill or be in a Military Occupational Specialty that requires a critical military skill to be eligible to transfer a portion of such individual's entitlement. Instead, at the time of the request for transfer of entitlement, the individual would have to have completed 6 years of service and meet such other requirements as DOD might prescribe. This provision would allow such eligible individuals with less than 12 years of active-duty service to transfer up to 18 months of entitlement. Those with more than 12 years of active-duty service could transfer any number of unused months of entitlement. The bill also would exclude transferred entitlement for consideration as marital property. This section would be effective October 1, 2009.

Section 9 of S. 2938 would allow individuals with entitlement to MGIB-AD educational assistance benefits to elect to have all or a portion of their benefit dollars paid toward Federal student loans accrued under title IV of the Higher Education Act of 1965. The amount payable could not exceed the monthly benefit the individual is eligible to receive at the time of the payment toward the Federal student loans. The individual would have to be on active duty when the loan is repaid, and payments would be limited to no more than $6,000 in a 12-month period and would be paid monthly. This section would be effective 1 year after the date of enactment. As drafted, the bill would require VA to make such payments monthly. To require payments to be made with this frequency would unduly complicate the process and be administratively burdensome.

Section 10 of this measure would allow individuals who are commissioned after graduating from a Service Academy or following completion of a Senior Reserve Officer's Training Corps program under chapter 103 of title 10, U.S.C., after September 30, 2009, to qualify for MGIB-AD educational assistance benefits. The individual would be required to serve at least 5 years of continuous active duty in addition to the period of service for which he or she is obligated in connection with their commission. This section would be effective October 1, 2009.

Section 11 of the bill allows certain VEAP-era personnel who first entered on active duty as members of the Armed Forces on or after January 1, 1977, but before July 1, 1985, an opportunity to make an irrevocable election to receive benefits under the MGIB-AD program. In addition, within 1 year of this election, an individual who decided to make such election must have contributed $2,700 to DOD. The individual must also have completed the requirements of a secondary school diploma (or equivalency certificate) or completed the equivalent of 12 semester hours in a program of education leading to a standard college degree. The open eligibility period would run from October 1, 2009, to September 30, 2010.

Section 12 of S. 2938 would create the College Patriots Grant Program whereby VA and an institution of higher education (IHE) through a partnership could provide supplemental educational grants to assist qualified individuals to meet the cost

of attendance at that IHE. Under the program, Federal assistance would be made available to an IHE that has determined that a qualified individual has an unmet financial need for which the IHE is providing a portion of that unmet need. This provision would be effective 1 year after the date of enactment. Program outreach for the College Patriot Grant Program would be conducted by VA in coordination with the Department of Education and DOD. The administrative requirements to initiate such a program would be significant, and we recommend that the necessary resources be provided.

UNNUMBERED HOUSING REFINANCE LEGISLATION

S. xxxx would increase the maximum guaranty amount for certain refinance loans, sometimes referred to as "regular" refinances, and would reduce the existing equity requirement for such loans from 10 percent to 5 percent. In general, a regular refinance loan is one in which a veteran refinances a loan not already guaranteed by VA. The law currently limits VA's guaranty to $36,000 on regular refinance loans and limits the loan-to-value ratio (LTV) to 90 percent of the value of the security. This means that the maximum loan amount a veteran effectively may borrow with a VA guarantee is $144,000 and that a veteran who has no equity in his or her home may obtain a regular VA refinance loan for only 90 percent of the home's appraised value.

The change proposed by S. xxxx would increase the maximum guaranty amount on regular refinances by tying such amount to the Freddie Mac Conforming Loan Limit. This means that a veteran who meets VA's underwriting criteria could obtain a guaranty of as much as $104,250 on a loan of $417,000.

Furthermore, S. xxxx would change the existing LTV requirement for regular refinance loans by increasing the limit from 90 percent to 95 percent of the home's appraised value.

UNNUMBERED FORECLOSURE RELIEF LEGISLATION

S. XXXX, the "Preventing Unnecessary Foreclosure for Servicemembers Act of 2008," would amend the Servicemembers Civil Relief Act to protect against mortgage foreclosures for certain disabled or severely injured servicemembers. Because that Act would be implemented by DOD, we defer to that department regarding the merits of this proposal.

UNNUMBERED BENEFITS ENHANCEMENT LEGISLATION

Mr. Chairman, thank you for introducing S. xxxx, the "Veterans' Benefits Enhancement Act of 2008," on behalf of VA. Titles I and II of this bill would expand and enhance veterans' benefits, as noted below.

Title I—Education Benefits

Section 101 of S. xxxx would eliminate the requirement that educational institutions providing non-accredited courses must report to VA any credit that was granted by that institution for an eligible person's prior training.

Under current law, State approving agencies approve, for VA education benefits purposes, the application of educational institutions providing non-accredited courses if the institution and its courses meet certain criteria. Among these is the requirement that the institution maintain a written record of the previous education and training of the eligible person and what credit for that training has been given the individual. The institution must notify both VA and the eligible person regarding the amount of credit the school grants for previous training.

VA proposes to eliminate that notification requirement as it pertains to VA. VA will still have oversight, just as it does with accredited courses. VA will review records during compliance visits to assure the institution is evaluating and appropriately reducing program requirements because of credit given for prior training.

Removing the reporting requirement would shorten claims processing time because VA would not have to review each claim for the presence of such notice and, if not submitted, have to check with the school and student to assure the requirement has been met. It would also permit more cases to be processed through VA's Electronic Certification Automated Processing (ECAP) program. The ECAP system cannot process claims where proper credit reporting is at issue because those cases require manual development and review by a veteran's claims examiner. The more claims VA can process through the ECAP system, the more timely VA beneficiaries will receive their benefits.

Following up with schools for the written notification burdens the school certifying official and student, as well as VA. Often the school certifying official, who is responsible for reporting a veteran's enrollment, is not the individual who evaluates

credit. The certifying official has no control over how long it takes the school to accomplish the review and granting of prior credit.

Further, several of VA's stakeholders, including the National Association of Veterans' Program Administrators, have recommended that VA review school records to determine granting of prior credit during compliance visits rather than require the school to submit written reports. Eliminating this requirement would streamline the administration of educational assistance benefits and improve the delivery of benefits to veterans, reservists, and other eligible individuals.

There would be no costs associated with enactment of this section.

Section 102 of this bill would reduce from 10 days to 5 days the current waiting period required prior to the student's affirmation of an enrollment agreement with an educational institution to pursue a program of education exclusively by correspondence.

Under current law, an enrollment agreement signed by a veteran, spouse, or surviving spouse is not effective unless he or she, after 10 days from the date of signing the agreement, submits a written and signed statement to VA affirming the enrollment agreement. If the veteran, spouse, or surviving spouse at any time notifies the institution of his or her intention not to affirm the agreement, the institution, without imposing any penalty or charging any fee, promptly refunds all amounts paid.

The statutory 10-day period is twice the requirement of the Distance Education and Training Council (DETC) accrediting body standard, which states that institutions will allow a full refund of all tuition expenses paid if a student cancels within 5 days after enrolling in a course. Reducing the affirmation waiting period to 5 days would make the statute consistent with the DETC standard and eliminate confusion. It would also permit eligible individuals to begin their programs sooner. Should they decide at any time not to affirm the enrollment agreement, the eligible individuals would still be entitled to a refund of all amounts paid.

Finally, this proposal would allow VA to strengthen its partnership with the National Association of State Approving Agencies, which has had this issue high on its list of legislative priorities.

There would be no costs associated with enactment of this section.

Section 103 of the bill would eliminate the requirement that an individual must file an application with VA when that individual remains enrolled at the same school but changes his or her program of study.

Under current law, a student who desires to initiate a program of education must submit an application to VA in the form prescribed by VA. If the student decides a different program is more advantageous to his or her needs, that individual may change his or her program of study once. However, additional changes require VA to determine that the change is suitable to the individual's interests and abilities. It is rare for VA to deny a change of program, especially if the student is continuing in an approved program at the same school.

Under this provision, VA would accept the new program enrollment based on the certification of such enrollment from the school without requiring additional certification from the student. VA would still have oversight of program changes by reviewing school records when VA conducts its compliance visits. Again, this requirement would be eliminated for program changes only when the student remains enrolled at the same school.

Section 103 also would allow VA to increase the number of claims processed using the ECAP program without manual review by a veterans claims examiner. Thus, since VA could award benefits based only on the school's certification, without having to wait for additional certification from the student, VA could award benefits more timely and with less of a public information collection burden.

There would be no costs associated with enactment of this section.

Section 104 of the bill would eliminate the requirement that wages be earned by veterans pursuing self-employment on-job training authorized under section 301 of Public Law 108–183. That section expanded the chapter 30 Montgomery GI Bill program by authorizing educational assistance benefits for full-time on-job training (OJT) of less than 6 months needed for obtaining licensure to engage in a self-employment occupation or required for ownership and operation of a franchise.

Currently, all the provisions of title 38, U.S.C., that apply to VA's other OJT programs (except the requirement that a training program has to be for least 6 months) apply to franchise-ownership OJT, including the requirement that the trainee earn wages that are increased incrementally. Through contact with the International Franchise Association, VA has determined that OJT for new franchise owners does not involve the payment of wages. Thus, if franchise OJT programs are not exempted from the current title 38 wage requirements, no franchise-ownership OJT program will ever be approved for VA benefits.

VA has determined that no direct costs would result from enactment of this proposal. The estimated costs for implementing the section 301 authority have been included in the budget base each year since its enactment.

Title II—Other Benefits Matters

Section 201(a) of the bill would explicitly authorize VA to stay temporarily its adjudication of a claim pending before either a VA regional office (or other agency of original jurisdiction) or the Board of Veterans' Appeals (Board) when the stay is necessary to preserve the integrity of a program administered under title 38, U.S.C.

It is widely accepted that courts and administrative adjudicative agencies generally have the authority to manage their case loads and to stay cases as necessary for proper management. VA has historically used such authority sparingly to avoid waste and delay and to ensure consistency on important issues of law, usually when VA has appealed a controlling adverse decision by the U.S. Court of Appeals for Veterans Claims (Veterans Court). However, the Veterans Court recently curtailed this authority in *Ramsey* v. *Nicholson*, 20 Vet. App. 16, (2006), and *Ribaudo* v. *Nicholson*, 20 Vet. App. 552 (2007) (en banc), effectively assuming supervisory control of VA's adjudication docket.

In *Ramsey*, the Veterans Court held that VA could not stay cases while it appealed the Veterans Court's decision in *Smith* v. *Nicholson*, 19 Vet. App. 63 (2005), which required VA to pay benefits in a manner VA believed to be unauthorized by law and which VA had appealed to the Federal Circuit. *Ramsey* would have required VA to pay those benefits, irrespective of VA's position on appeal, if VA had not prevailed in its Federal Circuit appeal soon after *Ramsey* was issued. Had VA's appeal not been resolved so quickly, VA would have been required to grant claims pursuant to *Ramsey* while the Federal Circuit reviewed the appeal, and many veterans would have received benefits to which they were not entitled under the law.

Similarly, in *Ribaudo*, the Veterans Court held that VA could not stay cases while it appealed *Haas* v. *Nicholson*, 20 Vet. App. 257 (2006). Haas is a significant decision, with broad and costly implications, in which the Veterans Court ordered VA to presume that veterans who served exclusively on ships off the shores of Vietnam were nevertheless exposed to defoliants (including Agent Orange) that were sprayed only over land. In *Ribaudo*, the Veterans Court granted VA's request for a stay of cases, but only after holding that VA's own authority did not allow it to effect such a stay, thereby placing under the control of the Veterans Court VA's entire docket of claims affected by Haas, claims over which the Veterans Court does not yet have direct jurisdiction.

Section 201(a) would also require VA to issue regulations describing the factors it will consider in determining whether and to what extent such stays are warranted and would permit claimants to seek review of a stay in the Federal Circuit. Because the Federal Circuit has exclusive jurisdiction over appeals from the Veterans Court, it is in the best position to determine whether a case should be stayed pending such an appeal.

Under section 201(c), these new provisions would apply to benefit claims received by VA on or after the date of enactment and to claims received by VA before that date but not finally adjudicated by VA as of that date.

Section 202(a) of the bill would clarify that the Board has the authority to decide cases out of docket-number order when a case has been stayed or when there is sufficient evidence to decide a claim but a claim with an earlier docket number is not ready for decision.

Current law requires that "each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket." Section 202(a) would clarify that compliance with that requirement does not require the Board to refrain from deciding a case unaffected by a stay simply because that case has a higher docket number than a stayed case. Expressly authorizing the Board to decide cases out of docket order, when a later case is ready for decision sooner than an earlier case, would reflect current Board practice of allowing later cases that are ready for decision to proceed while earlier cases are still being developed. The Veterans Court's *Ribaudo* decision rested in part on its interpretation of current law, and the express recognition of the Board's practice will clarify that that statute does not relieve VA of its duty to decide administrative appeals quickly and efficiently.

Under section 202(b), this provision would apply to benefit claims received by VA on or after the date of enactment and to claims received by VA before that date but not finally adjudicated by VA as of that date.

The provisions in sections 201 and 202, governing staying of claims and management of the Board's docket, would save the benefit costs and administrative expenses associated with granting benefits under court precedents that are later over-

turned on appeal. The amount of savings cannot be predicted, because it would depend upon the nature of the court decisions at issue, the extent to which those decisions compel payments or other expenses, and the number of claimants affected. However, VA has estimated that the Veterans Court's decision in *Haas* will result in approximately $22.9 million in administrative costs and approximately $2.1 billion in benefit costs in the initial year of implementation.

Section 203 of the bill would eliminate the disparity between eligibility for burial and eligibility for a memorial headstone or marker. It would extend eligibility for memorial headstones or markers to a veteran's deceased remarried surviving spouse whose remains are unavailable for burial, without regard to whether any subsequent remarriage ended, and would ensure that the burial needs of veterans and their survivors are more adequately met.

Current law authorizes VA to furnish an appropriate memorial headstone or marker to commemorate eligible individuals whose remains are unavailable. Individuals currently eligible for such memorial headstones or markers include a veteran's surviving spouse, which includes "an unremarried surviving spouse whose subsequent remarriage was terminated by death or divorce." Thus, a surviving spouse who remarried after the veteran's death is not eligible for a memorial headstone or marker unless the remarriage was terminated by death or divorce before the surviving spouse died. However, a surviving spouse who remarried after the veteran's death is eligible for burial in a VA national cemetery without regard to whether any subsequent remarriage ended.

Enactment of this provision would result in only nominal benefit costs.

Section 204 of this bill would make permanent the authority given by section 704 of Public Law 108–183 that allows VA to contract for medical disability examinations using appropriated funds other than funds available for compensation and pension. Currently, that authority will expire on December 31, 2009.

This change would provide VA with flexibility needed to effectively utilize supplemental and other appropriated funds in responding to unanticipated needs and emergencies. The demand for medical disability examinations has increased beyond the limited number of requests that the current system was designed to accommodate. The rise in demand is largely due to an increase in the complexity of disability claims, an increase in the number of disabilities claimed by veterans, and changes in eligibility requirements for disability benefits. The permanent authority to provide examinations to veterans through non-VA medical providers would continue this important resource for VA in providing high-quality patient care and improving benefit delivery.

We estimate that enactment of section 204 would have no significant financial impact.

Section 205(a) of the bill would extend full-time and family Servicemembers' Group Life Insurance (SGLI) coverage to Individual Ready Reservists (IRRs), individuals referred to in 38 U.S.C. § 1965(5)(C). It would correct an oversight in the Veterans' Survivor Benefits Improvements Act of 2001, which provided such coverage for Ready Reservists, referred to in section 1965(5)(B), but not for IRRs. IRRs should be provided comparable coverage because many of them have been called up to serve in Operation Enduring Freedom or Operation Iraqi Freedom.

Section 205(b) would provide that a dependent's SGLI coverage would terminate 120 days after the date of the member's separation or release from service, rather than 120 days after the member's SGLI terminates, as currently provided. Under current law, a member retains SGLI coverage for 120 days after separation or release from service, but a dependent retains coverage for 120 days after that, for a total of 240 days after the member's separation from service, twice the period of coverage for most insureds. This provision would correct that inequity.

Section 205(c) would clarify that VA has the authority to set premiums for SGLI coverage for the spouses of Ready Reservists based on the spouse's age. This provision would correct an inconsistency between 38 U.S.C. § 1969(g)(1)(A), which does not require identical premiums for coverage of active duty members' spouses, and section 1969(g)(1)(B), which may be read to imply that identical premiums for coverage of Ready Reservists' spouses are required. This change would make the law consistent with VA practice.

Section 205(d) would clarify that any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces or refuses to wear the uniform of the Armed Forces, forfeits all rights to Veterans' Group Life Insurance (VGLI), as well as SGLI. This provision would be consistent with public policy and would eliminate a distinction between SGLI and VGLI insureds that has no rational basis.

There would be no costs associated with enactment of this section.

Section 206 of the bill would authorize the Secretary to provide Specially Adapted Housing (SAH) grants to active duty servicemembers who reside temporarily with a family member. Public Law 109–233 authorized the Secretary to provide such assistance to veterans by adding a new section 2102A to title 38, U.S.C. However, the new section did not expressly include active-duty servicemembers, nor did it amend section 2101(c), the section that provides eligibility to active duty servicemembers for other SAH grants.

This amendment also would ensure that, absent express language to the contrary, active duty servicemembers would be covered by future SAH benefit program amendments. Due to the structure of chapter 21, active duty servicemembers on occasion have been overlooked, inadvertently, in the course of amending the SAH program. For instance, a renumbering of SAH provisions in Public Law 108–454 inadvertently omitted the provision that created SAH eligibility for active duty servicemembers. Similarly, Public Law 109–233, failed to include authority for VA to assist active duty servicemembers temporarily residing with family members. This proposal would correct the latter oversight and, by amending section 2101(c) more broadly, would make the inclusion of otherwise eligible active duty servicemembers the rule, rather than the exception.

There would be no costs associated with enactment of this section.

Section 207 of the bill would designate the VA office established to support contracting with small businesses, which was required by section 15(k) of the Small Business Act (15 U.S.C. § 644(k)), as the Office of Small Business Programs, to more clearly represent that office's scope of authority. The name would not reflect any change in emphasis or support for disadvantaged small businesses, but rather would clarify that the Office of Small Business Programs has the full range of authority over many other small business programs. The new title would capture the overarching nature of the program, which encompasses the small disadvantaged business, the service-disabled veteran-owned small business, the veteran-owned small business, the qualified historically underutilized business zone small business, the women-owned small business, and the very small business programs.

There would be no costs associated with enactment of this section.

This concludes my statement, Mr. Chairman. I would be happy to now entertain any questions you or the other Members of the Committee may have.

Chairman AKAKA. Thank you very much for your statement. As I said, your full statement will be included in the record.

I am going to ask Senator Burr for his questions, then Senator Webb and Senator Graham and Senator Murray, and I will follow-up with my questions.

Senator Burr.

Senator BURR. Thank you, Mr. Chairman. Again, thank you to the VA for being here. And if I could take the opportunity to reiterate what the Chairman said. I guess our choice when testimony does not come on time is just not to have people testify. That may be what the Department of Veterans Affairs is attempting to do, not have to come up here and do it, and maybe sort of egging us on to just ignore you.

I have committed to the Chairman before and I will stay committed that something is going to change. The testimony has to come and I realize and have been lobbied not to say this because there were additions to the hearing today from the standpoint of legislation.

We do not get delays. We do not get the opportunity to say, well, I am not going to be ready for tomorrow so we will just put it off or delay when it happens, nor does any agency of the Federal Government.

I am sorry that the three of you have to sit there and take this because I know with every ounce of knowledge that I have it is not your fault and all I can do is ask you to be an effective communicator back through the chain to say that this cannot happen any more. It must stop.

I will be very brief. In your testimony, you stated that the 15-month timeframe in S. 2674 would not provide enough time to draft a new rating schedule that compensates for loss of earnings and loss of quality-of-life and to issue final regulations implementing it.

My question is simple. If 15 months is not enough time, how much is enough?

Mr. PEDIGO. Mr. Burr, I would ask Mr. Keith Wilson, the Director of the Education Program, to take that question.

I am sorry, sir. Are you talking about the rating schedule?

Senator BURR. Yes, S. 2674.

Mr. PEDIGO. Well, the biggest problem in getting new guidance out is getting through the regulatory process. At best it takes 6 to 9 months to get a set of regulations out.

The regulations that would be required to implement this bill would be far in excess of the complexity of what we have done in the VA disability program for many years. And so, there would be much greater public interest. We could have many more stakeholders' input to take into consideration in an effort to get a final package of regulations issued.

So, 15 months would be really pressing us if we had to accomplish something of this magnitude in that period of time.

Senator BURR. As a follow-up. Once VA's ongoing studies are complete, how long do you anticipate it would take before any suggested changes are, in fact, implemented?

Mr. PEDIGO. It is difficult to anticipate how those studies might end up guiding us, but my expectation is there would be some aspects that would come out of these studies that would be fairly easy to implement and that perhaps we could implement some of them almost immediately after analyzing the study and concluding that that is the direction that we want to go in.

Unfortunately, we are anticipating that most of the outcomes of those studies would require regulations which, as I previously said, is a very protracted process.

Senator BURR. Mr. Chairman, I thank you.

Chairman AKAKA. Senator Webb.

Senator WEBB. Thank you, Mr. Chairman.

First off, just to round the record here from a couple things that Senator Graham had said. I would just like to make sure we are clear on this.

Our bill also addresses the issue of Naval Academy and ROTC graduates. Once they have fulfilled their initial obligation, they would be eligible as would everyone else to receive benefits under S. 22.

With respect to transferability, I have been doing veterans' law off and on for 31 years now. This is a concept that has been around a long time.

When I was a Committee counsel on the House Veterans Committee back in the late 1970's, the cautionary word on transferability was, you must be very careful if you are ever taking a benefit away from a veteran even if you are giving it to a family member.

You never know what the circumstances are inside a family environment. You never know how someone is going to want to use an educational benefit as they readjust even after a military career.

My father went to night school for 26 years. He was a career military officer. He graduated from college my senior year in high school. I know he would have been tempted to transfer his GI Bill benefits that he was using at night if that were on the table.

But, the point is, number 1, it is a contested concept; and point number 2 is that a form of it is already in the law. Senator Warner passed an amendment in 2001 allowing the Department of Defense to conduct transferability pilot programs at the discretion of every service secretary going to critical MOSs.

If this is such a needed program in the Department of Defense, the question becomes why no one did it. It is still in the law right now. The only service that has even done it has been the Army and they started in 2006 and I think out of a potential of about 17,000 people in critical MOSs there are only 300 people who picked up on it.

I would just say a word of caution there about jumping into transferability as a broader concept and I do not quite understand how all of a sudden the Department of Defense is saying this is one of their top needs when it had the authority to conduct transferability pilot programs for 7 years.

I would like to ask the witnesses, Mr. Wilson, have you been working with us on the technical aspects of S. 22?

Mr. WILSON. Yes, sir.

Senator WEBB. How would you describe the cooperation.

Mr. WILSON. The cooperation has been very good. We have had a lot of productive meetings and made progress on several of the technical issues we had concerns on.

Senator WEBB. And in terms of the ability to implement a piece of legislation like this, have you found that our staff has worked well with you and made this a doable situation.

Mr. WILSON. They have worked well with us. We have made a lot of progress. I believe the degree of risk has been lessened by that progress.

When we talk about the risks with implementation, there are some things that we simply do not know and will not know for some time. So, I would hesitate to say that yes, we can implement. What I would be able to say, though, is that the risks have been significantly mitigated.

Senator WEBB. And the ultimate legislation also has certain requirements that would be put on DVA and DOD, as well. Is that not that correct?

Mr. WILSON. That is correct. The major challenge for us in what has been referred to this morning as competing legislation would be the transfer of entitlement provisions and that would be an administrative issue we have with the accounting.

Senator WEBB. Right. And that is not in our bill.

Mr. WILSON. That is correct.

Senator WEBB. Does the Administration have a position on the other bill? Do you support this other bill.

Mr. WILSON. We have not taken a formal position.

Senator WEBB. So, you have no position on the other bill?

Mr. WILSON. That is correct.

Senator WEBB. Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Webb.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. This is a good debate to have. The military community is going to get a better benefit if we can find some common ground here.

Why do you all oppose S. 22?

Mr. WILSON. The VA has—our main concern is administrative issues. I am talking from the administration perspective of the program itself.

Senator GRAHAM. Right.

Mr. WILSON. There are also administration concerns about the impact on recruitment and retention. My expertise is within the administrative concerns that we have with the bill.

Senator GRAHAM. Basically, they would come up with a new formula. Is that correct?

Mr. WILSON. Correct.

Senator GRAHAM. Tell us how that would work—some of the disparities that may come from that formula.

Mr. WILSON. The manner in which we make payments now, which is the same manner we have made since the Korean war era GI Bill, is that we make monthly payments based largely on a training time as an individual whether they are full time training, part time training, et cetera.

S. 22 would replace that mechanism with a mechanism by which we would administer three different benefit payment types. One payment would cover tuition and fees. Another payment would be the living stipend and another payment would be a books and supplies stipend. And those would go out at varying times of the year.

Senator GRAHAM. Would there be a difference based on where the veteran lived?

Mr. WILSON. Yes. The payment(s) would be unique to the individual and the costs that the individual has concerning their tuition and fees charges and their living expenses. Tuition and fees would be capped at the highest, at the level of the highest in-state public tuition within each State. We would pay up to that amount.

The living stipend would be based on the location of the school in which the participant is training and that is tied to DOD's basic allowance for housing zones. There are about 300 of those zones.

So, the total benefit that would be paid out would be unique to that individual's situation.

Senator GRAHAM. Are there any disparities between States that jump out at you in terms of what one State's tuition would be versus another for a State school?

Mr. WILSON. I do not have that information available right with me. I can provide that. What I can comment on is that the living stipend does vary greatly. That varies from about $2,700 a month to about $730 a month depending on the zone.

Senator GRAHAM. And as I understand the current law, and Senator Burr and I have been working with a lot of people like Senator Webb to try to figure out how to get this benefit improved. The current amount paid is $1,100 per month after 3 years of service, is that correct?

Mr. WILSON. That is correct. The Chapter 30 benefit for 3 months of service and full time training is $1,101.

Senator GRAHAM. And that used to be the average cost of tuition and room and board, right.

Mr. WILSON. Going back some years, yes, I believe that would be correct.

Senator GRAHAM. That would be State school. The average cost today is $1,500 a month, is not that correct.

Mr. WILSON. That is correct.

Senator GRAHAM. So, that is what the bill would do, pay the average cost—the transferability aspect to it.

You know, we can have this debate. It is an honest debate. I mean, Mr. Chairman, I would like to submit to the record the comments by the senior enlisted advisors of the Army, the Marine Corps and the Navy supporting this concept. I personally believe that our military members could make this choice. They would make an intelligent choice. It would be a choice they can handle, which does not currently exist, which would also help retention.

Do you have any comment about the transferability component of the bill in terms of administration.

Mr. WILSON. The only concern we have concerns the accounting mechanism. We do not have a robust accounting mechanism right now because we have paid very few claims under the current transfer of entitlement provisions and we simply have not had to stand up a significant system to account for those.

Senator GRAHAM. Anything we can do to help you there, just let us know.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Graham.

Chairman AKAKA. Senator Murray.

Senator MURRAY. Thank you, Mr. Chairman.

Mr. Pedigo, in your prepared statement you state a number of reasons why the Administration does not support S. 22. However, several of those objections have either been accommodated in the most recent version or refuted by our veterans service organizations.

Obviously everybody in this room wants to do everything we can to help our servicemen and women when they come home and readjust to the civilian population and we have a number of panelists on the second panel, I know, who are going to be airing their views when you are done.

But, I do want to ask you about a couple of your objections.

First of all, your statement objects to Senator Webb's bill primarily on the grounds that the bill would provide a benefit that would be so large it would result in negative retention effects, and I would like for you to explain to this Committee what appears to be the VA's foundational premise regarding this bill which is basically, do you view the Montgomery GI education benefit as primarily a retention tool or as a readjustment benefit for our servicemen and women?

Mr. PEDIGO. Senator, I think it would be a little bit of both. Clearly there are some aspects of it that would help retain some troops. However, we think it also contains some of the original GI

Bill aspects that would allow us to say that it also was a readjustment benefit.

Senator MURRAY. I heard Senator Webb's opening remarks about retention. He made very good remarks about how we need to recruit and retain individuals and young people today wanting to get education and this would be a great recruitment tool.

It is interesting to me that the Administration is fighting this so hard. If retention truly is something that they are concerned about, it seems to me they ought to be focusing on dwell times and length of service and re-deployment, but that would be just an aside.

Let me just say that this panel has got a number of VSOs who are going to be testifying.

Ray Kelly of AMVETS is here and he says they wholly support this bill. They called the education benefit the greatest recruitment tool and the rationale for so many of our servicemembers to join the ranks of our military.

Joe Violante of the Disabled American Veterans says in his testimony that the GI Bill for the 21st Century is in accordance with the "GI Bill for the 21st Century" set forth in the Independent Budget for fiscal year 2009, and that the DAV supports it.

Eric Hilleman of VFW says it enhances military strength while providing an educational benefit that equips a generation of veterans to face the challenges of war.

Carl Blake of Paralyzed Veterans of America says they support the bill and says it will return the GI Bill to the level established after World War II.

Now, of course, all the VSOs advocate on behalf of veterans they represent. It goes without saying. They are very patriotic and they want the best for our military, especially, of course, at the time of war.

How do you justify the Administration's assertion that this bill is too generous when all of these veterans organizations feel that it is necessary for a strong military and the proper acknowledgment of the service that our veterans have given to this Nation.

Mr. PEDIGO. Senator Murray, clearly we respect the positions of the veterans service organizations that assist us in so many ways and help their constituent veteran members.

Let me just make this clear. While we have a number of concerns about S. 22, the biggest concern would be the transferability aspect. As Mr. Wilson said and as Senator Webb articulated, there has been much progress made in the last couple of months in resolving some of the administrative issues that have concerned us so much on previous versions.

At this point I think that the primary issue—not to mean the only issue, but the primary issue—that we are concerned about is the lack of transferability.

Senator MURRAY. OK. I appreciate that.

Let me ask another question in my last one-half minute that I have and that is about the backlog of claims and appeals that have been raised is a significant hindrance for a lot of our veterans. Thousands of new appeals are filed with U.S. Court of Appeals for Veterans Claims every year.

Now, this Committee was asked by the Court of Appeals for Veterans' Claims to look into raising the number of judges from 7 to

9 in order to alleviate that pressure and help the processing of these appeals.

Chairman Akaka has introduced S. 2091 to do that. It is a bill that is supported by a number of the VSOs, but you say in your testimony that under the current system you believe that the court can effectively manage its projected caseload.

Can you explain to this Committee why the Court of Appeals for Veterans' Claims would ask for this increase if it did not need the extra help.

Mr. PEDIGO. I cannot speak for the court, Senator Murray, but I can say that the Administration has observed that the court has been making some progress in the last couple of years in handling the number of appeals that they have received by taking advantage of some of the former judges who are willing to come back and assist. And the Administration believes that the amount of money budgeted in the President's fiscal year 2009 budget is going to be sufficient to allow the court to add some resources to take care of the workload.

Senator MURRAY. We will be looking at that and I do not know that I agree with that. I think that there is a serious backlog. The Court of Appeals has asked for additional judges to deal with this. This Committee has responded with the right effort to do so. I hope that OMB is not just looking at everything in terms of cost but actually in terms of real cost to veterans who are waiting in line.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Murray.

Mr. Pedigo, many veterans have claims improperly denied while others wait months for records of combat to be located. According to VA employees at regional offices, passage of my legislation S. 2309 would decrease the pending time for an average claim by 2 to 3 weeks. The Administration opposes this bill.

Have you looked at how this bill might reduce the backlog of claims.

Mr. PEDIGO. Mr. Chairman, our look at this bill has not focused strongly on the impact it would have on claims.

Our real concern is that it would open up the evidentiary requirements of our disability compensation program by allowing veterans who served in a combat zone to take advantage of the same relaxed evidentiary requirements that we have traditionally given to veterans who were actually in combat.

So, we have concerns that some inequities could be created here and that we might be placed in a situation where we would have no choice but to take positive action on claims that, in fact, may not really be capable of being substantiated.

Chairman AKAKA. I understand that PriceWaterhouseCoopers is conducting a study for you that is due this summer to evaluate whether VA should reorganize its acquisition functions. My question to you is, is it premature for VA to propose a reorganization of this significance without the benefit of the results of this study?

Mr. PEDIGO. Mr. Chairman, let me ask Mr. Thompson if he is able to address that question.

Mr. THOMPSON. Yes. Mr. Chairman, I think we are confident that the results of the report will not argue against an enhanced bu-

reaucracy, if you will, for the procurement oversight by the Department.

So, while we do not know yet what the full implications of those findings are, we are confident that what the Administration has proposed will not be inconsistent with the results when they come in.

Chairman AKAKA. Thank you for your response.

Now that my friend and colleague, Senator Thune, has arrived, he will be making some brief remarks on his legislation.

So, it is good to have you here and let me ask you to give your statement at this time.

Senator Thune.

STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chairman and Ranking Member Burr, Senator Webb, Senator Graham.

I appreciate very much the opportunity to be before you today and thank you for your leadership on veterans' issues and for giving me an opportunity to speak in support of my bill, Senate Bill 161, the Veterans Disability Compensation Automatic Cost of Living Adjustment Act.

The bill has the bipartisan support of Senator Tester and Senator Snow and I very much appreciate their support.

It is a pleasure to come before this Committee to offer testimony on what I consider to be an extremely important issue. I would respectfully request the Committee pass S. 161 in a timely manner so that the full Senate may consider it.

The bill would automatically increase the rates of disability compensation and dependency and indemnity compensation by the same rate for which Social Security increases its rate each year.

Passing this legislation provides automatic cost of living adjustments to benefits each year for two groups of great Americans, those who have been disabled in military service to their country and survivors of those who have given their life in military service to our country.

This legislation not only protects these benefits from inflation but also sends a strong message of support from Congress to those deserving individuals.

Everyone understands that inflation erodes the purchasing power of all Americans. Everywhere we look it seems prices are going up. In the last 10 years the average rate of inflation has been around 3 percent a year and now it takes over $130 to purchase what you could purchase for $100 10 years ago. Now that may not sound like much, but it means a lot to those who are on fixed incomes.

These price increases especially affect disabled veterans and their families, as they may be unable to work long hours or at all, due to their service-connected disabilities.

Additionally, many veterans' survivors also depend on cost of living adjustments to keep pace with inflation. Now to be fair, I am not arguing that Congress has stood idly by and not acted on cost of living adjustments.

Indeed, this is not the case as annual COLA bills have been passed on time every year. In fact, the results, if you look at the

results of votes cast on similar cost of living adjustments for disabled veterans measures in the past 5 years: in 2007 the Senate passed it by unanimous consent; the House by a vote of 418 to zero. 2006 again, by a unanimous consent in the Senate and 2005, 2004, 2003, in every case by unanimous consent. I could go on, but I think the point is made.

Ultimately the question is this, if we pass this measure every year with such overwhelming support, why can we not just make it automatic.

Furthermore, our Social Security recipients receive an automatic COLA increase every year with no requirement of an act of Congress. I think it is only fair that our disabled veterans receive the same automatic COLA increase.

Passing this measure gives our disabled veterans piece of mind in knowing their benefits will maintain purchasing power. I think passage of this measure would send a powerful message to our disabled veterans, their survivors and their families. It sends a message that we value the sacrifices that they have made for the good of all Americans and sends the message that we thank them for their service.

It is also important to consider the Congressional Budget Office already assumes a COLA increase for disabled veterans in its base line, and, therefore, I have informally informed my staff that Senate Bill 161 would have no budgetary effect and no cost associated with its passage.

Chairman Akaka and Ranking Member Burr, I respectfully ask that the Committee promptly act on this legislation so it can be passed with what I think would be overwhelming support in the full Senate.

Thank you again for holding this hearing and for all that you do on behalf of America's veterans.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Thune. We do have you on the agenda and it will be looked at in June.

I am going to ask, are there any second round questions?

Senator BURR. Mr. Chairman, I just have two very quick questions while Mr. Wilson is here, as I think he is the expert at the table relative to education.

I realize that this is a Department of Education issue, but, under S. 22, would veterans still be eligible for Pell grants?

Mr. WILSON. Our understanding is they would.

Senator BURR. Now, given that S. 22 is comprehensive, which I think Senator Webb has made that perfectly clear. I commend him for the bill. He supplied a formula where every veteran who qualifies can choose the institution they want to go to and their education is paid for—administered and paid for—by the Department of Veterans Affairs under the new framework.

Given that the Department of Education cannot use VA benefits to determine qualification, would that not mean that veterans could then take the $4,700 that increases each year and this would be over and above the full tuition and housing allowance and book stipend that they are currently provided under S. 22?

Mr. WILSON. That is our understanding of the language right now. It would have no impact on the way VA benefits are counted

or not counted for the Department of Education programs right now.

Senator BURR. And your understanding of the Graham Bill would be an increase from $1,100 to $1,500 a month indexed annually, the new book stipend and the $4,700 of Pell grants on top of going toward the education?

Mr. WILSON. Correct.

Senator BURR. One last thing as it relates to the issue of retention—and I think this is probably a DOD issue, but I think you are appropriate because you have examined the full breath of all the legislation. Currently, the Department of Defense uses education kickers for retention. In other words, they offer a servicemember additional education credits, additional education money to stay in the military for some period of time.

Is it your assessment that if the full education is paid for, kickers are no longer a successful retention tool?

Mr. WILSON. It would be hard for me to understand where the kickers would be put under S. 22. I do not believe there is any language that would prohibit that from happening. Kickers can continue as they are now. I understand exactly where you are going and we have had questions along the same lines.

Senator BURR. The likelihood is they no longer would be designed for educational benefits because the full education package is there?

Mr. WILSON. Correct.

Senator BURR. I thank the witnesses and I thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Burr.

Senator WEBB. Mr. Chairman, if I may.

First of all, just to clarify that last point, we have always had the DOD kickers. It is an incentive to keep people in the military, career force, allow them to get educated. We had them when we had the draft, when we had the Vietnam GI Bill. They generally go to officers.

This is a program we are trying to design very heavily for that two-thirds of the people we were talking about who do not stay in.

I want to ask Mr. Pedigo to clarify something that he said earlier.

When you say that your Department's number 1 concern about S. 22 is transferability, does that mean you are generally supportive of the other parts of S. 22?

Mr. PEDIGO. Yes. What I said was VA's primary concern was transferability.

Senator WEBB. Right. But, other than that——

Mr. PEDIGO. And I believe I also said that that does not mean that is the only concern. There are obviously some other issues that we have concerns with: primarily still some remaining implementation concerns; as well as possibly some cost concerns.

Senator WEBB. But, when you were asked, you said the principal concern of Department of Veterans Affairs is the lack of a transferability provision.

Mr. PEDIGO. If we were to rank the concerns, that would probably be right at the top.

Senator WEBB. Were you aware before I mentioned it a little while ago that transferability is presently an option in the law?

Mr. PEDIGO. Yes, Senator, I was aware of that.

Senator WEBB. Do you care to comment about the fact that no one in the Department of Defense, nor service secretary really has chosen to exercise their legal option almost this entire Administration other than a minuscule program in the Department of the Army.

Mr. PEDIGO. Well, what you just stated was my understanding too—that the Army has had a small program providing for transferability—but that it has not gone beyond that.

Senator WEBB. So, I am a little at a loss here to understand how this—not to you specifically, but in general—as to how this has become sort of the driving concept when it has been available since 2001 and two of the three service secretaries have not even exercised their legal option to conduct a pilot program.

Mr. PEDIGO. Senator, I really do not want to speak any further on this issue because it really is something that the Department of Defense needs to address. And I do not believe I am in a position to have a full understanding.

Senator WEBB. All right. And for the record, I think what I said needs to be said. It is kind of confusing for people who have worked in this area for a long time to see something that is available in the law not exercised even as a pilot program, and suddenly its a driving component.

It kind of fits into the other concerns that I and a number of other people have had about who we are really trying to take care of here when they put a GI Bill in place.

We have two-thirds, pretty near, of people who are enlisting, leaving the military at or before the end of their first enlistment and they are falling through the cracks. And these are the people we really are trying to help here.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Webb.

Senator BURR. Mr. Chairman, can I be recognized for one more minute in the effort to clarify, because I think we will have a lengthy debate on the two options. I hope we will. And we will end up with a new benefit, I am convinced of that.

But, my understanding of current law allows for transferability if the determination is made—if a servicemember has served for 6 years and that servicemember makes an agreement to serve for 4 more years—and the transferability option is for 50 percent transferability and is only applicable to those categories that are of critical need.

So, just for full disclosure, there is not a blanket opportunity for DOD to go out and offer transferability. The caveats are: certain length of service, certain additional commitment, people that fill specific critical needs within DOD. So, there is a big difference between that and transferability for every veteran based upon years of service.

Senator WEBB. Well, the Senator is correct although there is another provision in the law. There are actually two other provisions in the law.

One is that the transferability in the current law is available only if the service secretary decides to implement it for critical military occupational specialties.

The point that I have been making here is that the service secretaries had this option since the end of 2001 when Senator Warner introduced this provision and had not elected it, even in terms of putting into place a pilot program. The Senator is correct: that it is not the same thing as broad-ranging, although we are talking about this benefit as a retention benefit. So, you would assume that even in your bill, it is going to go to the career force.

Senator BURR. I would also assume that the Secretary has made a determination that kickers have been more effective than implementation of transferability based upon the restrictions on the length of time for the transferability to be applicable or for the critical skills, and we will have this debate, I am sure.

Chairman AKAKA. Senator Graham.

Senator GRAHAM. No more questions, Mr. Chairman.

Chairman AKAKA. Thank you very much. Let me ask my final question and I will submit any others for the record.

Mr. Pedigo, in site visits to regional offices, Committee staff frequently documented lack of service medical records as the basis for a denial or delay in processing claims of OIF veterans. This is contrary to your testimony. Even the benefits delivery at discharge sites reported difficulty in obtaining service medical records.

Do you have data on the number of claims of veterans serving in combat zones that are denied or delayed because of missing service medical records?

Mr. PEDIGO. Mr. Chairman, I do not know the answer to that but I would be happy to go back and have staff check that out and submit an answer for the record.

Chairman AKAKA. Thank you very much.

Before we move on here, I want to thank Keith Wilson for his work with the Committee staff on S. 22. This has been a great help and we look forward to continuing to work with you for clarification and advice.

I want to thank this first panel for your responses, your testimony, and your remarks. You have been helpful. We have much to do and we will continue to work together. Any further questions will be submitted for the record.

[The responses to questions for the record follow:]

RESPONSES TO QUESTIONS FOR THE RECORD ADDRESSED TO KEITH WILSON, DIRECTOR OF EDUCATION SERVICE, DEPARTMENT OF VETERANS AFFAIRS

Question 1. Provide the in-state tuition and fees costs broken down by State to see the variance between States.

Response. VBA does not have access to this information. We defer to Department of Education for this data.

Question 2. Provide data on the number of claims denied due to the absence/inability to obtain service treatment records.

Response. VBA does not track denials due to the absence of or inability to obtain service treatment records. VA has specific procedures in place to trace missing records. The duty to assist a veteran with prosecution of his or her claim is clarified in 38 Code of Federal Regulations (CFR) 3.159 and the claims processing manual, M21–1MR, Part I, Chapter 1, *Duty to Assist*.

If VA is unable to obtain important evidence such as a veteran's service medical records, VA requests alternative documents to support the claim for benefits. For example, VA can request a search of military unit sick logs, morning reports, or Sur-

geon General Office reports for records of military hospitalization. Additionally, VA will ask the veteran for any alternative records that may contain some evidence to support the claim for benefits. Such evidence may include statements from other servicemembers, letters written during service, photographs taken during service, State or local accident reports, private medical reports, prescription records, or insurance examination records.

Ultimately, VA is governed by 38 CFR 3.102, in which a broad interpretation of available facts are applied and any reasonable doubt is resolved in favor of the veteran. This is particularly true in the absence of official records and when a claimed disability allegedly arose under combat or similarly strenuous conditions. Claims examiners are required to apply the benefit of the doubt in any case when records are missing. After a decision on a claim, the veteran must be notified of the application of the benefit-of-the-doubt rule and told how VA weighed the positive and negative aspects of the available evidence.

Chairman AKAKA. Thank you very much.

I welcome some of our witnesses to the second panel. Here joining us this morning are Carl Blake, Paralyzed Veterans of America.

Richard Paul Cohen, National Organization of Veterans' Advocates.

Eric Hilleman, Veterans of Foreign Wars.

Ray Kelley, AMVETS.

Steve Smithson, The American Legion.

Joe Violante, Disabled American Veterans.

Rick Weidman, Vietnam Veterans of America.

Welcome to all of you. Thank you for being here.

Mr. Blake, will you please begin with your testimony.

STATEMENT OF CARL BLAKE, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. BLAKE. Thank you, Mr. Chairman.

Mr. Chairman, Senator Burr, Senator Webb, on behalf of Paralyzed Veterans of America, I would like to thank you for the opportunity to testify today. Given the scope of the bills considered here, I will limit my comments to just a few of the bills.

As we did during the first session of the 110th Congress, PVA supports S. 22.

PVA, in conjunction with many of the veterans service organizations here, including The Independent Budget, have advocated for returning the GI Bill to the level established following World War II. We believe that S. 22 accomplishes that goal.

PVA appreciates the efforts being given to updating and modernizing the VA disability system. In fact, we have been very involved with a number of the commissions that have been charged over the last couple of years, particularly the Veterans Disability Benefits Commission and the Dole-Shalala Commission, with the developing real solutions to the problems facing the Veterans Benefits Administration.

We recognize that the claims processing system is in need of change. However, we believe that the current system is a fundamentally good system. As such, we oppose S. 2674.

The majority of our concerns with this legislation rest with the establishment of the enhanced VA disability compensation system outlined in Title II. I refer you to our written statement for the broader explanation of our concerns.

We believe that the most incomprehensible provision of this legislation is a requirement for the VA to reevaluate veterans on an as-determined basis.

It is important to point out that the VA already has the authority to reevaluate veterans for a particular disability. In fact, the VA uses this authority quite frequently based on objective medical evidence.

The VA chooses to no longer reevaluate a veteran when the objective medical evidence compiled over a period of time proves that the veteran's condition has stabilized.

It astounds us that this legislation will call for a procedure that would so overwhelm the disability evaluation system that it would likely crumble under the weight.

By creating this reevaluation process, the claims backlog would never be reduced and only continue to grow at an enormous rate. Moreover, the VA could not even begin to address the rate of growth that would occur in the claims backlog given its current staffing and resource levels.

We believe that a completely new disability system in the VA is unnecessary, and in fact, we believe the report released by the Veterans Disability Benefits Commission reaffirms that point.

PVA supports S. 2864, a bill to improve the outcome of the vocational rehabilitation and employment program of the VA and to eliminate the cap on the number of veterans enrolled in the independent living program. Many members of PVA have benefited from the vocational rehabilitation and independent living services offered by the VA.

In fact, PVA places such an importance on vocational rehabilitation that last year we designed our own vocational rehabilitation program to further support what the VA is already doing and to go above and beyond current services, something we have actually discussed with this Committee previously.

In partnership with VA and Health Net Federal Services, PVA opened its first vocational rehabilitation office in the SCI Center of the VA Medical Center in Richmond, Virginia in July of 2007. Buoyed by our rapidly growing caseload in Richmond, the establishment of productive relationships with the Veterans Health Administration and VR&E, PVA just recently opened a second vocational rehabilitation office in Minneapolis under the corporate sponsorship of TriWest Health Care Alliance.

While PVA sees some merit in portions of S. 2938, we generally oppose this legislation because we do not believe that it accomplishes our goal of returning the GI Bill to the level established following World War II.

We cannot argue with the fact that the legislation intends to increase the rates of educational assistance available to servicemembers and veterans.

Furthermore, we generally support the idea of transferability of GI Bill benefits to a dependent. However, we believe that this opportunity should be offered to any servicemember or veteran eligible for GI Bill benefits.

However, we oppose this legislation. First, we fundamentally disagree with the notion that realigning the GI Bill with the post World War II benefit would negatively impact retention. It is a

shame that honorable service establishing eligibility for GI Bill benefits is no longer sufficient under the guise of this legislation. This legislation then implies that if a servicemember is not willing to consider extended service or a career in the military, then the Federal Government should have less of an obligation to provide him or her with an education.

Mr. Chairman, Ranking Member Burr, again I would like to thank you for the opportunity to testify. We appreciate the efforts of this Committee to address the many benefits available to the men and women who have served and continue to serve and I would be happy to answer any questions that you might have.

[The prepared statement of Mr. Blake follows:]

PREPARED STATEMENT OF CARL BLAKE, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Chairman Akaka, Ranking Member Burr, and Members of the Committee, on behalf of Paralyzed Veterans of America (PVA) I would like to thank you for the opportunity to testify today on the proposed benefits legislation. The scope of benefits issues being considered here today is very broad. We appreciate the Committee taking the time to address these many issues, and we hope that out of this process meaningful legislation will be approved to best benefit veterans.

S. 22, THE "POST-9/11 VETERANS EDUCATIONAL ASSISTANCE ACT"

As we did during the first session of the 110th Congress, PVA supports S. 22, the "Post-9/11 Veterans Educational Assistance Act." This bill would enhance the current educational benefits for the men and women who have served on active duty since September 11, 2001. PVA, in conjunction with many veterans service organizations, including the co-authors of *The Independent Budget*—AMVETS, Disabled American Veterans, and Veterans of Foreign Wars—have advocated for returning the GI Bill to the level established following World War II. We believe that S. 22 accomplishes that very goal.

The dollar amount of educational assistance would be equal to the established charges of an approved institution. This would give the veteran a greater selection of institutions to pursue their education since they would not be restricted to less expensive institutions. An additional amount of funding would be paid for room and board, and a monthly stipend would be paid to the student for other expenses. Tutorial assistance would also be available, and would be paid for a period up to 12 months to help the student with difficult courses. This amount would not be taken from the student's entitlement. The bill allows the veteran up to 15 years to take advantage of these benefits. This is an important addition since many returning veterans may not be emotionally ready right away to start school. This educational package offers the veteran many incentives to encourage them to enroll in school or continue with their educational program.

S. 161, THE "VETERANS' DISABILITY COMPENSATION AUTOMATIC COLA ACT"

While PVA principally supports the concept of this legislation, we believe that passage of the bill could be detrimental to the legislative process. It certainly makes sense to have an automatic adjustment for disability compensation. However, because of the politics associated with all forms of legislation before Congress—including veterans' issues—many veterans' benefits and health care improvements are ultimately approved because they are attached to the COLA bill—legislation that is deemed "must-pass." More often than not, the VA COLA bill becomes the only vehicle to advance other important veterans' legislation. By eliminating this piece of legislation from the Congressional agenda, Congress and veterans' service organizations lose an important tool to improve benefits and health care services for veterans.

S. 961, THE "BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT"

Although we recognize the sacrifices that these brave men made in service to the Nation during World War II and we support the intent of this legislation, we have some concerns with the proposals it makes. The importance of their sacrifices cannot be overstated. While suffering extremely high casualty rates during the war,

they delivered troops, tanks, food, airplanes, fuel and other needed supplies to every theater of the war.

However, PVA believes that this bill would be very costly to the Department of Veterans Affairs (VA). We believe that the money needed to provide this new monthly benefit would reduce the ability of the VA to continue to provide the wide-ranging scope of benefits that it already manages.

We also do not understand how the amount to be provided as a monthly benefit was determined. As it stands, if this legislation was enacted, a merchant mariner would be entitled to a payment equal to veterans who have a 70 percent compensable service-connected disability. Furthermore, the surviving spouses of these veterans would be entitled to a benefit nearly equal to the amount provided to the surviving spouses of veterans with service-connected disabilities. Although we do not dispute the idea that these veterans should receive some type of benefit, we do not believe that the recommendations of this legislation are equitable with similar programs. We are not certain that this legislation maintains the priority that the VA follows for providing compensation benefits.

S. 1718, THE "VETERANS EDUCATION TUITION SUPPORT ACT"

PVA supports the provisions of S. 1718, the "Veterans Education Tuition Support Act." This legislation would provide for reimbursement to servicemembers of tuition for programs of education interrupted by military service, for deferment of student loans, and for reduced interest rates for servicemembers during that service. In recent years, Congress has taken important steps to update the Servicemembers' Civil Relief Act so as to provide proper protections to servicemembers when they serve on active duty. The need for these improvements has been more pronounced with Operation Enduring Freedom and Operation Iraqi Freedom (OEF/OIF) due to the high number of National Guardsmen and Reserve soldiers being called to active duty. These men and women are seeing some of the highest activation rates in history in support of the War on Terror.

It is a shame to think that active duty service and deployments to war could have a negative impact on the education of servicemembers, but that is exactly what is happening. This legislation would ensure that these brave men and women are not punished for their service. It would protect their right to attain higher education. It would also provide them a period of readjustment before their bills for education come due, while also allowing them the opportunity to return to the institution that they previously attended.

S. 2090

PVA fully supports the proposed legislation that would ensure privacy protection and security for records being handled by the United States Court of Appeals for Veterans Claims. This legislation would provide consistency for privacy and security procedures in the Court with other Federal courts.

S. 2091

PVA supports the proposed legislation that would increase the number of active judges sitting on the United States Court of Appeals for Veterans Claims from seven to nine. We would like to provide a couple of recommendations as it relates to this potential change. First, if two new judges are added to the Court, it is important to ensure that the terms of the first two are appropriately staggered. We believe that one judge should serve for no more than five or 7 years and the other judge should serve 10 to 12 years. This will ensure that the first two new judges and all subsequent judges will not leave the Court at the same time.

We would also recommend that Congress take more care to encourage the nomination of judges who have some prior experience in Veterans Law. Similarly, Congress could also ensure that the Court maintain an experienced and skilled central legal staff that would be in a position to assist newly appointed judges. With skilled legal staff and experienced Veterans Law judges, the transition to a nine-member Court would be eased.

S. 2138, THE "DEPARTMENT OF VETERANS AFFAIRS REORGANIZATION ACT"

PVA has no official position on S. 2138, the "Department of Veterans Affairs Reorganization Act." This legislation would establish a new position in the VA management structure—Assistant Secretary for Acquisition, Logistics, and Construction. We only wonder what the motivation is for creating this new position and potentially adding more layers to the complex VA bureaucracy.

S. 2139, THE "NATIONAL GUARD AND RESERVE EDUCATIONAL BENEFITS FAIRNESS ACT"

As stated in *The Independent Budget* for FY 2009, "since September 11, 2001, more than 600,000 individuals who serve in National Guard and Reserve forces have been mobilized for a variety of military, police, and security actions * * * Guard and Reserve recruiting, retention, morale, and readiness are already at considerable risk." With the ever-increasing strain being placed on these men and women, it is important that Congress take steps to upgrade benefits and support programs available to them. Foremost of these are education benefits under the GI Bill. It is time that the men and women serving in the National Guard and Reserves receive GI Bill benefits commensurate with their sacrifices. With this in mind, PVA supports S. 2139, the "National Guard and Reserve Educational Benefits Fairness Act."

S. 2309, THE "COMPENSATION FOR COMBAT VETERANS ACT"

PVA fully supports S. 2309, the "Compensation for Combat Veterans Act." This proposed legislation is in accordance with a recommendation included in *The Independent Budget* for FY 2009. As stated in *The Independent Budget*:

> While VA recognizes the receipt of certain medals as proof of combat, only a fraction of those who participate in combat receive a qualifying medal [qualifying medals include combat badges and medals received for valor]. Further, military personnel records do not document combat experiences except for those who receive certain medals. As a result, veterans who are injured during combat or suffer a disease resulting from a combat environment are forced to try to provide evidence that does not exist or wait a year or more while the Department of Defense conducts research to determine whether a veteran's unit engaged in combat.

It is important to note that this legislation would not eliminate or alter in any way the requirement that a veteran's claim for disability have an official diagnosis or that a clear connection between that claimed disability and military service exists. It would simply relieve the burden placed on veterans who served in a combat theater of proving that the claimed disability was combat-related. As it currently exists in law, service in a combat zone or theater does not necessarily meet the threshold that the VA has established for recognizing a combat veteran. This loophole needs to be changed to benefit the veteran and we believe this legislation will accomplish that task.

S. 2471, THE "USERRA ENFORCEMENT IMPROVEMENT ACT"

PVA supports S. 2471, the "USERRA Enforcement Improvement Act of 2007." This legislation will reduce the waiting times for USERRA cases and mandate that the Secretary of the VA refer these cases to the Attorney General's office within 15 days of receiving a complaint from a veteran. The Attorney General must then decide within 45 days if they will initiate an action and represent the veteran. Expediting this process is essential to indicate to veterans that the law created to protect their jobs while they serve the country is being enforced. Currently veterans do not file complaints because they lack confidence in the law.

S. 2550, THE "COMBAT VETERANS DEBT ELIMINATION ACT"

PVA principally supports S. 2550, the "Combat Veterans Debt Elimination Act." However, we have a couple of concerns with the proposal. First, we believe that the legislation should afford the same benefit to any servicemember who might have been killed while serving in the line of duty. We do not think that a special distinction should be made between a servicemember who was killed in a combat theater and a servicemember who was killed while serving at his or her home duty station. We would ask: "What is the difference between having a tank roll over on the individual in Iraq or Afghanistan and a tank roll over on the individual at Fort Hood, Texas?" The benefit of this legislation should be afforded to any servicemember killed while serving this Nation honorably.

Second, we wonder why a special exception is made in this legislation for certain debts to be collected. As we understand the bill, the only debt that the VA will be permitted to collect upon a servicemember's death is a home loan or small business loan.

S. 2617, THE "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT"

PVA supports S. 2617, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2008." This bill would increase the rates of compensation for veterans with

service-connected disabilities and the rates of dependency and indemnity compensation for widows of certain disabled veterans. As we have done in the past, we oppose again this year the provision rounding down the cost-of-living adjustment to the nearest whole dollar. Continuing to round down these benefits year after year only serves to erode the value of them. Furthermore, this provision forces veterans to bear some of the burden of cost-savings for the Federal Government.

S. 2674, THE "AMERICA'S WOUNDED WARRIORS ACT"

PVA appreciates the effort being given to updating and modernizing the VA disability system. In fact, we have been very involved with a number of the Commissions that have been charged over the last couple of years—particularly the Veterans' Disability Benefits Commission and the Dole-Shalala Commission—with developing real solutions to the problems facing the Veterans Benefits Administration. We recognize that the claims processing system is in need of change. However, we believe that the current system is a fundamentally good system. As such, we oppose S. 2674, the "America's Wounded Warriors Act."

The majority of our concerns with this legislation rest with the establishment of the "enhanced VA disability compensation system" outlined in Title II. Section 201 and Section 202 call for studies that essentially lay the groundwork for this new compensation system. Section 201 calls for the VA to conduct a study to determine the rates of compensation that should be paid to a veteran for a service-connected disability under the new chapter 12, title 38, U.S.C. The proposed legislation specifically outlines certain factors to consider to include the nature of injuries and combination of injuries for which disability compensation is paid under other disability programs; how that concept applies to commercial disability insurance; the extent to which quality-of-life and loss of earnings are independently taken into account under other disability programs; the effect of an injury or combination of injuries on average loss of earning capacity and a veteran's quality-of-life; the measurement of the effect of an injury or combination of injuries on a veteran's psychological state, loss of physical integrity, and social inability to adapt; and the extent to which disability compensation for veterans may be used as an incentive to encourage them to seek and undergo appropriate medical treatment and vocational rehabilitation. Section 201 calls for a similar study as it relates to veterans' transition benefits.

We believe that these studies are redundant and unnecessary. The Veterans' Disability Benefits Commission spent nearly 3 years studying most, if not all, of these very concepts. Even the Dole-Shalala Commission examined these concepts, albeit in a much more hasty fashion. Moreover, the VA has already contracted with a private firm to conduct a study to address many of these concepts.

PVA opposes the suggestion in the conduct of these studies that the VA would be required to consider the appropriate injuries to be covered under the new disability rating schedule. This is clearly an attempt to remove certain injuries and illnesses from the ratings schedule that some people believe should not be included. However, we believe that the list of all injuries and illnesses included in the existing ratings schedule have validity based on medical evidence.

Furthermore, we adamantly oppose any suggestion that age should be a determining factor when considering average loss of earnings capacity. This concept ignores the fact that in many cases, veterans, and older Americans in general, work well past the arbitrary age of retirement. To punish these veterans by taking away compensation based on an arbitrary age limit is patently unfair.

PVA has also long opposed the notion that 21st century medicine and technology somehow makes an individual less disabled. To then use disability compensation as an incentive to seek treatment is counterproductive. Unfortunately, this very idea is implied by the desired findings of the studies to be undertaken in Section 203 of the proposed legislation. The fact is that the vast majority of disabilities and illnesses outlined in the VA's schedule for rating disabilities are incurable.

Last, as it relates to these required studies, we believe that a fair comparison cannot be made between the VA disability compensation system and other disability compensation systems used around the country. During discussions with the Veterans' Disability Benefits Commission, PVA explained that VA disability compensation is a benefit provided because an individual became disabled in service to the country. Compensation reflects the debt of gratitude this Nation owes the men and women who served in uniform and recognizes the challenges they will face every day as a result of their service, both economically as well as socially. Nearly all other disability compensation programs studied during the Commission's work were shown to address simply loss of earnings or economic capacity.

PVA also has serious concerns about the approval process for the new disability evaluation system outlined in Section 205. The legislation sets up an all or nothing proposition for approval of the system. Such a process provides for no adjustment to the new approach once it is presented to Congress. Representatives and senators would be forced to simply say they support or oppose the system as a whole, notwithstanding any good or bad aspects of the proposal submitted by the Secretary of Veterans Affairs. In our view, this does not reflect good legislative process.

PVA is concerned about provisions of Section 207 of the bill as well. Under this section, the "enhanced VA disability compensation system" would include ratings based on average loss of earning capacity and quality-of-life. However, veterans included under the old disability system in Chapter 11 of Title 38, would not receive benefits based on loss of quality-of-life. This creates a serious inequity among disabled veterans. We believe that if quality-of-life payments are going to be a part of a compensation package, then it should not be restricted to only those veterans choosing to be classified under the new disability system.

PVA believes that the most incomprehensible provision of this legislation is the requirement for the VA to reevaluate veterans on an as determined basis. It is important to point out that the VA already has the authority to reevaluate veterans for a particular disability. In fact, the VA uses this authority quite frequently based on objective medical evidence. The VA chooses to no longer reevaluate a veteran when the objective medical evidence compiled over a period of time proves that the veteran's condition has stabilized.

The legislation also provides for the opportunity to adjust a veteran's disability rating under Chapter 12. The VA will be required under Section 1207 to adjust a veteran's rating in accordance with reevaluations as well as due to changes that might have been made to the rating schedule since the veteran was last evaluated. Meanwhile, the legislation includes contradictory language that addresses this very point. Under the heading "Preservation of Rating," a veteran under Chapter 11 cannot have his or her disability rating reduced due to a change in the ratings schedule. However, a veteran under Chapter 12 with the same disability may have his or her disability rating reduced.

This reevaluation process also essentially eliminates any protections veterans may have as it relates to the long-term status of their disability. It is very likely that many VA regional offices—particularly those that have come under scrutiny in recent years for low-balling veterans' disability ratings and by extension compensation rates—would see this as an opportunity to reduce any protected rating that can be justified. This is wholly unacceptable.

It also astounds us that this legislation would call for a procedure that would so overwhelm the disability evaluation system that it likely could not survive. By creating this reevaluation process, the claims backlog would never be reduced and only continue to grow at an enormous rate. Many veterans' claims would never leave this vicious cycle. Moreover, the VA could not even begin to address the rate of growth that would occur in the claims backlog given its current staffing and resource levels. Such a process would likely destroy the current VA claims process.

Given the concerns outlined here, we must reiterate our opposition to this bill. We believe that a completely new disability system in the VA is unnecessary. In fact, we believe the report released by the Veterans Disability Benefits Commission reaffirms that point. This is not to say that meaningful reforms cannot be made to the current system, but not at the expense of veterans and their families, particularly those who have served in previous conflicts.

S. 2683

PVA supports S. 2683, a bill that will modify certain authorities that VA has in the provision of educational benefits. First, the bill addresses current statute that allows the use of educational assistance under the Montgomery GI Bill (MGIB) for education leading to employment in the high technology industry. However, the original intent for this legislation was to provide assistance for short duration courses that lead to certification in technical fields. PVA supports this provision as it will reinforce the point that the MGIB is not only a recruitment tool, but a transition tool as well.

Likewise, PVA supports the provisions of the legislation that address the expanded scope of work that could be assigned to individuals participating in VA work study programs. The original public law specifically added to acceptable activities certain outreach services programs, activities relating to hospital and domiciliary care to veterans in State homes, and activities relating to the administration of national or State veterans' cemeteries. However, due to the fact that this program had

a delimiting date, it was allowed to slip last year. This legislation would make this opportunity permanent.

S. 2701

PVA, at the national level, has no official position on this legislation which authorizes the VA to establish a national cemetery in the eastern region of Nebraska to serve veterans in eastern Nebraska and western Iowa. We would note that the Great Plains Chapter of PVA, located in Omaha, Nebraska, does support this proposal. According to VA information, there is currently only one national cemetery located in Maxwell, Nebraska. With the rate that veterans are dying today, particularly World War II veterans, it is imperative that the VA be able to provide a suitable burial location for these men and women.

S. 2737, THE "VETERANS' RATING SCHEDULE REVIEW ACT"

PVA generally supports S. 2737, the "Veterans' Rating Schedule Review Act." We would like to point out up front that the text of the long title of the bill is not consistent with the text of the bill. We believe the title incorrectly refers to section 1151 of title 38 when it is meant to refer to Section 1155.

As we understand it, the proposed legislation will permit challenges to the rating schedule when not in compliance with "applicable" requirements of chapter 11 of Title 38. The only question we have is how far review of whether the rating schedule is in compliance with "applicable" requirements of chapter 11 (compensation for service-connection disability or death) will extend. However, a broad reading of such review may not be a bad thing.

Furthermore, while not addressed in this proposed legislation, we believe that Congress will also need to amend section 7292 of title 38 to give the Federal Circuit the authority to review decisions of the Veterans Court relating to Section 7252(b)(2)(B). If this change is not made, the Veterans Court's decisions on these issues would be non-reviewable. We believe that this could ultimately be harmful for veterans filing claims.

We would also like to suggest that you consider amending section 502 of title 38 to give the Federal Circuit the authority to review revisions of the rating schedule. Veterans and veterans' service organization representatives could then bring challenges to proposed amendments to the rating schedule which are not in compliance with the "applicable" requirements of chapter 11. Rule challenges can be a more effective way to correct situations where the VA is arguably not complying with a statute as opposed to individual cases which can take years and may be subject to facts which are not favorable to a clear presentation of a legal issue.

S. 2768

PVA supports S. 2768, a bill that would provide a temporary increase in the maximum loan guaranty amount for certain housing loans guaranteed by the VA. In light of the current difficulties in the housing market, any benefit that can be provided to veterans and their families when they purchase a home is vital. We believe that this proposed change in the law could help many more veterans, including the newest generation of veterans from Iraq and Afghanistan, to realize the dream of owning a home.

The home loan guaranty was last increased with the enactment of Public Law 108–454, the "Veterans Benefits Improvements Act of 2004." At that time, the maximum guaranty amount was increased to 25 percent of the Freddie Mac conforming loan limit. The current Freddie Mac conforming loan limit is approximately $417,000, which allows the VA to guaranty up to $104,250 for a veteran's home loan. However, the recently enacted Economic Stimulus Act increased the Freddie Mac loan guarantee limit to $730,000, but it failed to provide a similar increase for the VA home loan guaranty. This proposed legislation will correct that oversight.

S. 2825, THE "VETERANS' COMPENSATION EQUITY ACT"

PVA has no specific objection to this proposed legislation. This legislation would allow for a minimum disability rating of 10 percent for veterans who are on continuous medication or who require the use of one or more adaptive devices, such as a hearing aid. We believe that this legislation seems to address the inconveniences to quality-of-life that veterans face when they have to follow a medication regime or use an assistive device. We believe this legislation could certainly be beneficial to individuals who struggle at the bottom of the ratings schedule.

S. 2864, THE "TRAINING AND REHABILITATION FOR DISABLED VETERANS ENHANCEMENT ACT"

PVA supports S. 2864, a bill to improve the outcome of the vocational rehabilitation and employment (VR&E) program of the VA and to eliminate the cap on the number of veterans enrolled in the independent living program. Many members of PVA have benefited from the vocational rehabilitation and independent living programs offered by the VA. We believe that VR&E is critical to the reintegration of severely disabled veterans into civilian life. The primary mission of the VR&E program is to provide veterans with service-connected disabilities all the necessary services and assistance to achieve maximum independence in daily living and to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.

In fact, PVA places such an importance on vocational rehabilitation that last year we designed our own vocational rehabilitation program to further support what the VA is already doing, and to go above and beyond current services. The concept of the program is to provide vocational rehabilitation services under a PVA—corporate partnership that augments the many existing vocational programs. PVA believes that by introducing veterans with SCI disability to vocational rehabilitation counselors specializing in SCI disability that are able to provide extensive vocational-oriented services early in the medical rehabilitation process and who can continue to provide services as needed, the productivity and employment rates for this group of veterans will improve.

In partnership with VA and Health Net Federal Services, PVA opened its first vocational rehabilitation office in the SCI Center of the VA Medical Center in Richmond, Virginia in July 2007. Buoyed by our rapidly growing caseload in Richmond, the establishment of productive relationships with the Veterans Health Administration and VR&E, PVA just recently opened a second vocational rehabilitation office in Minneapolis under the corporate sponsorship of TriWest Health Care Alliance. We are confident that our continuing efforts in this initiative as well as the continuing efforts of our VA partners will result in the 85 percent unemployment rate among PVA members and other severely disabled veterans becoming a sad statistic of the past.

We are particularly pleased that the proposed legislation will repeal the limitation on the number of veterans enrolled in the VA's programs of independent living services and assistance. Currently, no more than 2,500 veterans can be enrolled in the independent living program in a give fiscal year. The cap that was placed on this program many years ago was an arbitrary number that was not aligned with the programs workload at that time and that gave no consideration to future workloads. The consequence of this cap is that as VR&E approaches the cap limit each year, they must slow down or delay delivery of independent living services for new cases until the start of the next fiscal year. While VR&E may not bump up against the cap every year, they have in some years and at those times veterans with severe disabilities who have been determined eligible and entitled to the VR&E program in the mid to late summer have had to wait until October to receive full services. It is absolutely time for this cap to be eliminated.

S. 2889, THE "VETERANS HEALTH CARE ACT"

PVA supports the designated sections of S. 2889 being considered. We would refer the Committee to our comments regarding S. 2617 as it relates to Section 8 of this proposed legislation.

S. 2938, THE "ENHANCEMENT OF RECRUITMENT, RETENTION, AND READJUSTMENT THROUGH EDUCATION ACT"

While PVA sees some merit in portions of the proposed legislation, we generally oppose this legislation because we do not believe that it accomplishes our goal of returning the GI Bill to the level established following World War II. We cannot argue with any legislation that intends to increase the rates of educational assistance available to servicemembers and veterans. Furthermore, we generally support the idea of transferability of GI Bill benefits to a dependent; however, we believe that this opportunity should be offered to any servicemember or veteran eligible for GI Bill benefits, not just those who have served a minimum of 6 years.

However, we oppose the legislation for several reasons. First, we fundamentally disagree with the notion that realigning the GI Bill with the post-World War II benefit would negatively impact retention. It is a shame that honorable service establishing eligibility for GI Bill benefits is no longer sufficient under the guise of this legislation. This legislation implies that if a servicemember is not willing to consider

extended service or a career in the military, then the Federal Government should have less of an obligation to provide him or her with an education. As such, we wholeheartedly disagree with the concept that the legislation advances which forces retention on servicemembers in order to take advantage of an increased benefit level.

Moreover, the GI Bill is a recruitment tool. With a good benefit comes improved recruiting. Unfortunately, this legislation ignores that fact. Meanwhile, it seeks to create different classes of veterans simply based on the length of their service and the benefits to which they would be eligible. PVA has long opposed any suggestion that one veteran's service is any more honorable than another veteran's service simply because he or she served longer.

THE "VETERANS BENEFITS ENHANCEMENT ACT"

PVA cannot offer a specific position on the proposed "Veterans Benefits Enhancement Act." However, we would like to express serious concern with a couple of provisions included in the legislation—Section 201 and 202. PVA opposes these provisions of the legislation. Both provisions are intended to allow the Secretary to ignore decisions by the Court of Appeals for Veterans Claims (the Court) while they seek appeal to the Federal Circuit or legislation to overturn a court decision. The Secretary has an adequate remedy in situations where he believes the Court has issued a decision contrary to law or which otherwise adversely affects the "integrity of the program." He can simply seek the authority from the Court to stay cases before the agency where it is believed appropriate or seek expedited review by the Federal Circuit. If a particular court decision truly threatened the "integrity of a program," the Courts would almost certainly give the Secretary's view due consideration. As it stands, we are unaware of any similar Federal agency which has legislative authority to ignore court decisions. Such authority would be extraordinary.

PVA appreciates the efforts of this Committee to address the many benefits available to the men and women who have served and sacrificed so much for this country. We is pleased that the Committee has chosen to make education benefits for servicemembers and veterans a central them of the legislation on the agenda. We look forward to working with you to advance these measures through the Congress so that servicemembers, veterans and their families can begin to take advantage of these meaningful changes.

Thank you again for the opportunity to testify. I would be happy to answer any questions that you might have.

Chairman AKAKA. Thank you, very much Mr. Blake.

Mr. Cohen.

STATEMENT OF RICHARD PAUL COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES

Mr. COHEN. Thank you, Mr. Chairman, Senators Burr and Webb.

I am going to confine my comments today to those bills that are of particular importance to the operation of the Veterans Benefits Administration and the Court of Appeals for Veterans Claims since those are the areas in which our members have most expertise.

I would like to start with the Veterans' Benefits Enhancement Act of 2008 and specifically with two sections contained therein, Section 201 and Section 202, both of which, hidden in plain sight, give undue power to the VA.

Section 201 would insert a new section into title 38, U.S. Code, Section 501(a), which would allow the VA the right and the power to stay the adjudication of claims when they deem it necessary. This would increase the backlog in the VA not decrease it. So, it is a bad idea in that regard.

Second of all, it will stall the development and adjudication of claims of veterans, some of whom are gravely ill.

Finally, we do not trust the VA to protect the veterans' interest. Rather, we think the VA will protect its own interests. It is not just our members and veterans who do not trust the VA.

If you look at the Ribaudo case where the VA first, on their own, attempted to stay the operation of Haas and refused to adjudicate claims of Blue Water veterans; then, when the VA was challenged on that in the court, they reluctantly came into court and asked for a stay. That is still stayed.

There are many vets who have filed claims which are not getting adjudicated. Many of them have cancer, which is caused by Agent Orange exposure. They cannot get determinations on their claims because of the stay. The VA now wants the right to do that themselves.

The Nemer case also talks about Agent Orange exposure and notes that the performance of the VA has contributed substantially to our sense of national shame.

Likewise, Section 202 would amend title 38, U.S. Code, Section 7107(a)(1) and would allow the Board of Veterans' Appeals to ignore their own docket. Ignoring docket numbers would just add to the backlog by allowing the DVA to decide whether they were going to decide a case or not, with no recourse provided to the veteran. This would add to the docket, would add to the backlog and is poor docket management. And quite frankly, NOVA cannot understand why the VA would ask for this power.

The next thing I would like to go to is Title II of America's Wounded Warriors Act, S. 2674, concerning incentives for treatment which is contained in Sections 201(b)(6) and 203.

In our testimony at length, NOVA explained why there may be unintended consequences in terms of the reluctance of veterans to participate in treatment if they are put into this kind of program. There is also an unintended consequence of a financial disincentive and a financial penalty. And third off, it would create different classes of veterans, those who were in treatment first and those who are not.

NOVA wants veterans to get treatment, but we are concerned that some of these ideas, which are thought to contain financial incentives, may work against what we are all interested in.

NOVA is also opposed to Section 201(c)(2)(D) which would create different classes of veterans based on the date claims are filed. That idea was rejected by the Veterans Disability Benefits Commission because it is a bad idea.

Likewise, we agree with the PVA that periodic review of ratings is unjustified.

NOVA does approve of S. 2737 to amend Section 7252(b) to provide a limited review of the schedule of ratings to see if the schedule complies with chapter 11.

NOVA also approves of adding judges to the Veterans Court. We have previously testified in favor of that, and we would also encourage the legislation to increase security of court records.

Thank you for the opportunity to testify. I will be happy to answer any questions.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF RICHARD PAUL COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

Mr. Chairman and Members of the Committee: Thank you for the opportunity to present the views of the National Organization of Veterans' Advocates, Inc. ("NOVA") on legislation pending before the Committee.

NOVA is a not-for-profit § 501(c)(6) educational organization incorporated in 1993 and dedicated to train and assist attorneys and non-attorney practitioners who represent veterans, surviving spouses, and dependents before the Department of Veterans Affairs ("VA"), the United States Court of Appeals for Veterans Claims ("CAVC") and before the United States Court of Appeals for the Federal Circuit ("Federal Circuit").

NOVA has written many *amicus* briefs on behalf of claimants before the CAVC and Federal Circuit. The CAVC recognized NOVA's work on behalf of veterans when it awarded the Hart T. Mankin Distinguished Service Award to NOVA in 2000.

The positions stated in this testimony have been approved by NOVA's Board of Directors and represent the shared experiences of NOVA's members, as well as my own 15-year experience representing claimants at all stages of the veteran's benefits system from the VA Regional Offices to the Board of Veterans' Appeals to the CAVC and the Federal Circuit.

Because of space and time constraints, and in the interests of concentrating on those areas in which our members have the most expertise and the most information to add to the dialog, NOVA will limit its comments to those bills which directly impact the operation of the Veterans Benefits Administration and the CAVC.

S. 2090, S. 2091 AND S. 2737

In an effort to decrease the time required to prepare the record for appeals, the CAVC has implemented Miscellaneous Order No. 03–08, adopting new Rules 10 and 28.1. Pursuant to these new rules, the VA will scan a veteran's entire VA claims file onto a disk to create the "Record Before the Agency." Thus, the veteran's confidential and sensitive information will be transformed into electronic data. Because the CAVC is preparing for the electronic filing of records (including personal data such as military service records, past and present medical treatment records, and veterans' personal statements, etc.), briefs and motions and for remote access to these same electronically-filed documents, there is an increased risk of unauthorized disclosure of confidential information unless precautions are taken. NOVA supports S. 2090 because it seeks to protect and secure veterans' private information in these electronically-filed documents, a serious concern to NOVA members and veterans alike.

Consistent with our testimony before this Committee on November 7, 2007, NOVA continues to support S. 2091. As NOVA predicted, the number of notices of appeals filed with the CAVC continues to increase, with a record-setting high of 4,643 appeals filed during FY 2007. Because this trend of increased appellate filings will likely continue, NOVA support S. 2091, which would authorize adding two more judges to the CAVC. These two new judges will help shorten the time a veteran's appeal waits for a judge to render a decision. NOVA applauds Congress' proactive steps in this area to date and further suggests Congress consider implementing legislation that would add two judges for every two thousand additional appeals filed.

NOVA also supports S. 2737 because it seeks to amend 38 U.S.C. § 7252(b), which provides for limited review of the Schedule of Ratings for disabilities to determine whether it complies with the provisions of Chapter 11. Currently, the CAVC has no jurisdiction to review the Schedule of Ratings, which is utilized by the VA to determine the appropriate percentage of a veteran's disability and thus the amount of VA compensation to be paid. This legislation (S. 2737) would correct this problem, as highlighted by the case of *Wanner* v. *Principi*, 370 F.3d 1124, 1129 (Fed. Cir. 2004), which held that the statutory scheme "excludes from judicial review all content of the ratings schedule as well as the Secretary's actions in adopting or revising that content."

For example, because of the Court's limited jurisdiction, veterans are precluded from arguing that the "acoustic trauma" requirements contained in the diagnostic code for tinnitus is contrary to 38 U.S.C. § 1110. This principle also has been applied in later cases, such as *Jones* v. *Principi*, 18 Vet. App. 248 (2004) (rejecting challenge to failure to provide for separate ratings for multiple scars under diagnostic code 7804); and *Byrd* v. *Nicholson*, 19 Vet. App. 388 (2005) (rejecting challenge to the Schedule of Rating regarding exclusion of periodontal disease). It is appropriate to open the CAVC's jurisdiction to include consideration of well-supported challenges to the VA's rating schedule.

S. 2309

NOVA supports the modification to 38 U.S.C. § 1154(b) which provides that a service member who served in a combat zone will be considered to have been in combat with the enemy. Establishing combat with the enemy can be a crucial first step in proving exposure to combat stressors, which is essential for receipt of VA

service-connected benefits for medical conditions such as Post Traumatic Stress Disorder (PTSD). This legislation would eliminate the incredible barriers facing veterans who were in combat, but whose service records do not include such designations (e.g., Combat Infantry Badge (CIB) or a purple heart) and who only knew their service buddies by nicknames. These barriers frustrate a veteran's later attempts to establish what occurred during his or her service in a combat zone.

To truly benefit servicemembers who have difficulty proving that their PTSD is related to their military service, NOVA suggests a different modification of § 1154(b). If the intent is to significantly assist combat veterans in receiving the benefits they earned, the current proposal will not bring about its intended purpose because 38 U.S.C. § 1154(b) does not provide a presumption that a veteran is entitled to benefits for a service-connected injury or disorder even for those veterans whom the VA concedes engaged in combat with the enemy. Rather, § 1154(b) has been interpreted as providing only a presumption of service *incurrence* which still requires proof of medical nexus, *Dalton* v. *Nicholson*, 21 Vet. App. 23 (2006). In order to accomplish the intended result, § 1154(b) needs the following addition:

> '(3) In the case of a veteran who has been diagnosed with PTSD after military service and who engaged in combat with the enemy as defined in (2) above, a connection between PTSD and active military service shall be presumed and may be rebutted only by clear and convincing evidence to the contrary.'

S. 2573

Although NOVA recognizes Congress' benevolent intent to encourage veterans to agree to treatment and rehabilitation which may prove beneficial, NOVA opposes S. 2573, "Veterans Mental Health Treatment First Act" primarily because of its likely unintended detrimental financial and treatment consequences. Section 1712C will impose upon veterans the "Hopson's choice" of treatment and a stipend or the standard VA treatment and compensation program. Veterans who have a diagnosis of service-connected PTSD and whose service-connected mental condition severely impairs their ability to earn a living will be forced to choose between the treatment first path or the path to receive adequate VA compensation.

Specifically, S. 2573 proposes that, a veteran who is married, and who has a disability which would be rated at 100 percent would forfeit the right to VA compensation of $2,699 per month in exchange for receiving only $2,000 at the beginning of the program and $3,000 at the conclusion and $500 per month during the program. Thus, over a year-long program, such a veteran would forfeit $21,388, (i.e., $32,388 less $11,000), and the veteran's family would be forced to live on $11,000 for that year. According to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision ("DSM-IV-TR") veterans with PTSD may habitually attempt to avoid thoughts or conversations associated with the trauma (DSM-IV-TR, C.(1)). They may also have markedly diminished interest or participation in significant activities (DSM-IV-TR, C.(4)) and irritability or outbursts or anger (DSM-IV-TR, D.(2)). Thus, the medical community recognizes that such veterans may reject all treatment if treatment is compelled. Furthermore, "[m]ost empirical studies or trials conducted to date show no relationship between compensation seeking, PTSD disability status, and treatment outcomes." IOM (Institute of Medicine) and NRC (National Research Council), 2007. "PTSD Compensation and Military Service." Washington, DC: The National Academies Press, pages 183–184.

Finally, this bill would create two classes of veterans and two programs of treatment: (1) the treatment first veterans; and (2) the simultaneous benefits and treatment veterans. It follows that all veterans would not be in the same treatment plans for the same conditions and that caregivers will come, however subconsciously, to stigmatize the non-treatment first veterans.

S. 2617

NOVA supports the Cost of Living Adjustments provided in S. 2617, but, additionally, supports the across the board immediate 25 percent increase for loss of quality-of-life which was recommended by the Veterans' Disability Benefits Commission ("VDBC") in its October 2007 report, "Honoring the Call to Duty: Veterans' Disability Benefits in the 21st Century."

S. 2674

NOVA generally supports Title II of America's Wounded Warrior Act, but with reservations concerning that portion of Sec. 201 (i.e., (b)(6) and (c)(2)(F)), and Sec. 203, which suggest a study of whether disability compensation may be used as an

incentive to encourage veterans to undergo appropriate treatment and vocational rehabilitation. This is especially inappropriate if the veteran's disability compensation is contingent on the veteran getting treatment at a VA facility. Where and when a veteran seeks treatment is his/her personal choice. Veterans do not always seek treatment at a VA facility—especially if they have the means (i.e., disability compensation) to go to a private doctor. As explained above, with respect to S. 2573, NOVA is concerned that the implementation of such a program would have the unintended consequence of discouraging veterans from applying for benefits which they deserve.

NOVA also opposes (c)(2)(E) which would create different classes of veterans according to their age at the time they file their claim. Any attempt to revise the existing payment scale based on the veteran's age at the date of the initial claim conflicts with the VDBC's conclusion that it "does not concur with the recommendation" to investigate whether to including factors such as the veteran's age would improve the ability of the rating schedule to predict earnings losses. (VDBC 235.) A review of VDBC's tables 7.2, 7.3 (VDBC 226, 227) reflects the conclusion that veterans who enter the VA disability system up to age 55 do not present a problem in terms of income parity. Moreover, 54.6 percent of veterans receiving initial VA disability awards are 55 years old or younger. (VDBC 101, Table 5.2.) Indeed, NOVA agrees with the VDBC's position that it "does not support a policy of considering age or other vocational factors in individual rating determinations" and does not believe that including factors such as age would improve the ability of the rating schedule to protect earnings losses because such determinations are unjustified and unfair to our WWII, Korean War and Vietnam veterans and to officers who are generally older than the enlisted troops under their supervision. (VDBC 235.)

Because Sec. 1205 appears to represent an unwarranted renunciation of the concepts of protected and permanent and total ratings (38 U.S.C. § 110; 38 U.S.C. § 1521; 38 CFR § 3.951(b); 38 CFR § 3.343(a)), NOVA opposes the broad discretion for periodic reevaluation and adjustment of disability evaluations contained in that section. Moreover, as found by the Institute of Medicine with respect to ratings for PTSD, "It is not appropriate to require across-the-board periodic reexaminations for veterans with PTSD service-connected disability." IOM and NRC 2007. "PTSD Compensation and Military Service." The National Academies Press, page 195.

S. 2825

NOVA supports S. 2825 because it seeks to add language to 38 U.S.C. § 1155, which would establish a minimum rating of 10 percent for a veteran who requires continuous medication or the use of an adaptive device is equitable. NOVA supports this proposed legislation because it is equitable and takes into account the real world limitations and restrictions imposed by chronic impairments which have previously slipped through the cracks and been non-compensatible.

THE "VETERANS' BENEFITS ENHANCEMENT ACT OF 2008"

The "Veterans' Benefits Enhancement Act of 2008" includes at Sec. 201 a modification of 38 U.S.C. by inserting § 501A which would grant the VA the authority, in the exercise of its own unsupervised discretion, to stay the adjudication of claims whenever it determines the stay to be "necessary." NOVA opposes S. 201 modifications as an unjustified intrusion into the jurisdiction of the CAVC by divesting the CAVC of its inherent jurisdiction to grant or deny such stays. Moreover, granting the VA the power to stay claims adjudication is dangerous because in actual terms, it would give the VA unfettered power to stall the development and consideration of hundreds of thousands of veterans' claims for benefits whenever the VA deems it necessary. Based on the vast experience of NOVA's members in assisting veterans with their appeals, it is NOVA's position that the VA cannot be trusted to exercise its use of this powerful tool in the best interest of our Nation's veterans.

NOVA's primary concern regarding this issue is highlighted by the VA's history of opposition to adjudicating the claims of critically-ill Navy veterans for benefits based upon illnesses caused by Agent Orange exposure. Thus, in the case of *Ribaudo* v. *Nicholson*, 21 Vet. App. 137 (2007), after the Court held unlawful and rescinded the unilateral stay instigated by the VA Secretary and imposed by the Chairman of the Board of Veterans' Appeals on the processing of appeals, the VA reluctantly resorted to the courts to obtain a stay of its obligation to continue adjudicating claims under the principles set forth in *Hass* v. *Nicholson*, 20 Vet. App. 257 (2006), *appeal docketed*, No. 07–7036 (Fed. Cir. Nov. 8, 2006). In *Ribaudo*, the VA asserted that the harm to the VA of continuing the adjudication of claims outweighed the harm to veterans ill with cancers resulting from their exposure to Agent Orange during Navy service off the coast of Vietnam. Another example of the

VA utilizing procedural bureaucracy to the detriment of veterans was criticized by the United States Court of Appeals for the Ninth Circuit which observed that the performance of the VA regarding the administration of benefits for diseases caused by Agent Orange exposure has contributed substantially to our sense of national shame, because the VA continues to resist payment of benefits through obstructionist bureaucratic opposition, *Nehmer* v. *U.S. Dept. of Veterans Affairs*. 494 F.3d 846, 849, 865 (9th Cir. 2007).

Similarly, NOVA is concerned about the effect of Sec. 202 which would amend 38 U.S.C. § 7107(a)(1) to allow an earlier BVA docket number to be ignored if "the earlier case has been stayed" or if "the earlier case has been delayed for any reason." There is no justification for departing from time-honored procedures of docket management to provide the BVA with complete discretion to juggle the docket and, without the possibility of challenge, to stay or delay a veteran's appeal and cause appeals to languish for many years longer than the usual 2-year waiting period until the veteran dies.

Chairman AKAKA. Thank you very much, Mr. Cohen.

Mr. Hilleman.

STATEMENT OF ERIC A. HILLEMAN, DEPUTY DIRECTOR OF THE NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. HILLEMAN. Thank you, Mr. Chairman, Senator Burr, Senator Webb.

On behalf of the 2.3 million members of the Veterans of Foreign Wars and our Auxiliaries, I would like to thank this Committee for conducting this hearing on the numerous veterans' bills that we review today.

Due to the number of bills and the relatively short period of time since receiving notices, we were unable to fully review each bill in its entirety, but we would be happy to do so for the record.

While the bulk of these bills address the needs of veterans today, we would like to focus on one of the VFW's highest legislative priorities for the 110th Congress, the GI Bill.

For many years the Veterans' of Foreign Wars has advocated for a 21st Century GI Bill in the spirit of the original World War II GI Bill. Our top five recommendations for improving this life-changing benefit are: number 1, increasing the GI Bill rates to cover the full cost of education, tuition, room, board and fees.

Number 2, eliminate the current qualifying impediment to Guard and Reserve soldiers which reward only the longest continuous tour of active duty. Our troops deserve a benefit that aggregates on a monthly basis and awards a percentage based on equitable benefit for equitable service.

Number 3, repeal the $1,200 Montgomery GI Bill buy-in charged to active duty troops during the first year of their enlistment.

Four, allow servicemembers to utilize their earned benefits throughout the duration of their lives, removing the 10-year delimiting date.

And five, remove all laws and rules limiting veterans from accessing college financial aid due to military service income and/or GI Bill benefits.

Of the bills pending before this Committee, two make dramatic changes to the current GI Bill.

First, let me offer our continued support for S. 22, the Post-9/11 Veterans Education Assistance Act of 2007.

This bill makes incredible strides to cover the full cost of education at any institution in the Nation. It substantially fulfills our

top four priorities for the GI Bill and makes our fifth priority irrelevant.

It would cover tuition at the highest in-state institution, provide housing, fees and books for our veterans. Further, it provides a dollar-for-dollar match for private schools that forgive tuition above the highest in-state rate cap.

It recognizes the tens of thousands of Guard and Reserve soldiers who have actively served multiple tours in Iraq and Afghanistan. It allows our Guard and Reserve veterans to aggregate these multiple tours in benefit toward a full-time active duty GI Bill benefit.

It lengthens the post-service usage period from 10 to 15 years from the date of discharge and establishes a post-service benefit for the Guard and Reserve. At its core, this bill is a promise of a full ride scholarship at any institution in the Nation.

The second bill before this Committee on the GI Bill is S. 2938, the Enhancement of Recruitment, Retention, and Readjustment through Education Act of 2008.

While this bill improves the current GI Bill, it falls far short of meeting our priorities for the GI Bill. We are encouraged by the intention of this bill and we recognize that Congress is committed to improving the current GI Bill.

S. 2938 seeks to improve active duty full-time reimbursement rate and increase it to $1,500 a month and provide a $500 book stipend, totaling $14,000 a year. This bill covers the current in-state national average cost in fiscal year 2009, but would fall $400 short in the following year.

This bill does not reflect the real costs of education and would cover far less of the real costs with each passing year as it is pegged to the Consumer Price Index not the real cost of education.

Further, this bill does not reward the valiant service of Guard and Reserve soldiers that have served multiple tours in Iraq and Afghanistan.

Simply put, it does not address our top five priorities for the GI Bill and, therefore, we cannot support S. 2938.

The original World War II GI Bill is hailed as one of the most monumental pieces of legislation in the 20th Century.

Many in Congress since have recognized the importance and have strove to improve the current GI Bill. The VFW recognizes the value of each of these various proposals and we urge you to examine these bills on a bipartisan spirit with an eye toward enacting a robust GI Bill that fully realizes the debt of honor that we owe our young men and women in uniform.

We call on Congress to pass a GI Bill for the President's signature by the 4th of July, so in celebration of the birth of a Nation, we may also celebrate the GI Bill as a grateful Nation's thanks to the patriots that have suspended their freedoms to protect ours.

Mr. Chairman, Members of this Committee, this concludes my testimony and I would be happy to answer any questions you may have.

Thank you.

[The prepared statement of Mr. Hilleman follows:]

PREPARED STATEMENT OF ERIC A. HILLEMAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman and Members of the Committee: On behalf of the 2.3 million members of the Veterans of Foreign Wars of the United States and our Auxiliaries, I would like to thank this Committee for conducting this hearing on the numerous veterans' benefit bills. Due to the number of bills and the relatively short period since receiving notices, we were unable to fully review each bill in its entirety. We would be happy to comment on any other bills for the record. While the bulk of these bills address the needs of veterans today, we would like to focus on one of the VFW's highest legislative priorities for the 110th Congress, the GI Bill.

For many years the VFW has advocated for a 21st Century GI Bill that mirrors the original WWII GI Bill. Our top five recommendations for improving this life-changing benefit are:

- Increase the GI Bill rates to cover the full cost of education: tuition, room, board, fees, and a cost-of-living stipend.
- Eliminate the current qualifying impediment for Guard and Reserve soldiers, which reward the longest continuous tour of active duty. Our troops deserve a benefit that aggregates on a monthly basis and pays a percentage of the active-duty benefit with an equitable benefit.
- Repeal the $1,200 MGIB buy-in charged to active-duty troops during the first year of their enlistment.
- Allow all servicemembers to utilize earned benefits throughout the duration of their lives, removing the 10-year delimiting date.
- Remove all laws and rules limiting veterans from accessing college financial aid due to military service income and/or GI Bill benefits.

These recommendations reflect the needs of veterans and the original spirit of the GI Bill. In 1944, President Franklin Roosevelt signed into law the *Serviceman's Readjustment Act*, known as the GI Bill of Rights. This bill helped millions of Americans realize the American dream. Nearly 12 percent of Americans served in uniform between 1945 and 1956 and more than 8 million returning veterans received debt-free college educations, low-interest home mortgages and small-business loan assistance. In 1947, half of the Nation's college students were veterans. For many, they were the first in their families to further their education beyond high school. Today the WWII GI Bill is credited with creating the middle class.

Subsequent wartime GI Bills were not nearly as robust as the WWII bill. The Vietnam-era GI Bill was a scaled-down version of the WWII bill. Nearly 6.8 million veterans out of 10.3 million eligible veterans used their benefit. Education benefits during the Vietnam era aided veterans in their transition from active duty to civilian life, but the benefit fell short of the WWII version.

The current MGIB is not meeting the need of our veterans. The inflationary rate of higher education is much greater than Consumer Price Index (CPI), to which the current MGIB is pegged. Over time, this disparity in inflation is causing the current GI Bill rate to erode.

It is time for a new GI Bill. It is time to revitalize the American dream and provide the 1 percent of our population that dons the uniform a life-changing benefit.

The VFW has long advocated for the creation of a GI Bill for the 21st Century in the fashion of the original WWII bill. We envision a transition benefit that will be a lasting contract with our veterans. The VFW wants:

- A GI Bill that increases military recruitment efforts, broadening the socio-economic makeup of the military, and strengthening our national security by attracting an increased number of young talented recruits—many of whom may not have considered military service.
- A powerful transition assistance program, allowing veterans to readjust to civilian life, improving their ability to care for themselves and their families, and becoming the leaders of tomorrow.
- A GI Bill that recognizes the unique sacrifices of the hundreds of thousands of Guard and Reserve soldiers who have served in Iraq, Afghanistan, the Horn of Africa, during Katrina and other national/international emergencies; and is proportional to their Active Duty counterparts.

We are not a nation at war; we are a nation with a military at war. Many troops have been to Iraq and/or Afghanistan multiple times. Some Guard and Reserve units are serving their second or third tours in country. Now is the time to honor their service with a GI Bill for the 21st Century, providing them with opportunities to become future leaders of our Nation.

Pause for one moment and consider the quality-of-life that WWII GI Bill recipients passed on to their children and grandchildren. We as a nation need to recog-

nize the indirect benefits our families received thanks to the education, housing and small business investment benefits a grateful nation gave to the Greatest Generation.

Many in Congress have recognized the importance of improving the GI Bill and have introduced bills toward this end. The VFW recognizes the value of each of these various proposals. We urge you to examine these bills in a bipartisan spirit and with an eye toward enacting a robust GI Bill that fully realizes the debt of honor we as a nation owe are young men and women in uniform. We call on Congress to pass a GI Bill for the president's signature by the 4th of July. So, in celebration of the birth of our Nation, we may also celebrate the GI Bill as a grateful Nation's thanks to the patriots that have surrendered their freedoms to protect ours.

S. 22, POST-9/11 VETERANS EDUCATION ASSISTANCE ACT OF 2007

This legislation enhances military strength while providing an educational benefit that equips a generation of veterans to face the challenges of tomorrow. The VFW has long advocated for a GI Bill in the spirit of the original WW II bill, which would cover tuition at the highest State institution, housing, fees, books, and provide a cost-of-living stipend.

This legislation accomplishes these goals and more. It provides a dollar-for-dollar match for private schools that forgive tuition above the highest in-state rate cap. It recognizes the tens of thousands of Guard and Reserve soldiers who have actively served multiple tours in Iraq and Afghanistan. It allows our Guard and Reserve veterans to aggregate multiple months of service toward an equitable percentage of the full time active duty benefit. It lengthens the post-service usage period from 10 to 15 years from date of discharge and establishes a post-service benefit for the Guard and Reserve. At its core, this bill is a promise of a full ride scholarship at any institution in the Nation. The VFW enthusiastically supports this bill.

S. 161, VETERANS' DISABILITY COMPENSATION AUTOMATIC COLA ACT, AND S. 2617, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2008

Both these bills would make a cost-of-living adjustment in the rates of disability compensation, dependents compensation, the clothing allowance and DIC rates. This adjustment would be linked to the rate of increase of the Social Security benefit. We support this annual adjustment as it allows our disabled veterans and their dependents to keep pace with the rising costs of goods and services, which is especially difficult lately with the rise in food and fuel prices. It is a small increase, but it makes a positive difference in the lives of thousands.

We would note that we continue to oppose the rounding-down of compensation to the lowest dollar, which was instituted several years ago as a budget reduction measure. We feel that this unfairly penalizes those who have given much to this country, and that Congress and the Administration should look to other areas to balance the budget, instead of using the backs of veterans.

S. 161 also includes a provision, which would make the cost-of-living adjustment permanently benchmarked to the Social Security Rates. We have no objection to this provision.

S. 961, BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2007

This bill would amend title 46, United States Code, to provide benefits to certain individuals who served in the United States merchant marine during WWII.

The VFW recognizes the heroic service of Merchant Mariners during WWII. Their sacrifices and heroic efforts were instrumental in winning the Second World War. We cannot, however, support this legislation to pay a monthly benefit of $1,000 to these merchant mariners or to their surviving spouses, which would be in addition to any current veterans' benefit that would be otherwise payable. We believe that this payment would be disproportionate, in terms of recognition and benefits, to what other veterans who have gone in harm's way in service to the country currently receive. With regard to their service as Merchant Mariners, and the proposal that they should be recognized for this Merchant Marine service in addition to being recognized as veterans, or for a period extending beyond the currently recognized dates of WWII, the VFW has not taken a position on this matter.

S. 1718, VETERANS EDUCATION TUITION SUPPORT ACT

The VFW is pleased to support S. 1718, the Veterans Education Tuition Support Act. This bill would amend the servicemembers Civil Relief Act to provide reimbursement to servicemembers of tuition for programs of education interrupted by

military service, for deferment of student's loans and reduced interest rates for servicemembers during periods of military service. It would also prohibit a court from allowing a creditor to exceed the 6 percent limit on interest charged against student loan indebtedness. During this time of war, with members of the Armed Forces as well as their families under tremendous psychological stress and financial strain, this measure would provide a well-deserved measure of monetary relief and protection while actively encouraging our men and women in uniform to pursue essential educational goals.

S. 2090, A BILL TO PROTECT THE PRIVACY AND SECURITY CONCERNS IN COURT RECORDS.

This bill would protect privacy and security concerns in court records. The VFW supports this legislation; it is consistent with the privacy and security rules adhered to by other Federal courts.

S. 2091, A BILL TO INCREASE THE NUMBER OF COURT'S ACTIVE JUDGES.

S. 2091 would increase the number of active judges to the Court of Veterans Appeals for Veterans' Claims from seven to nine. The VFW supports this legislation as a way to decrease the growing number of appeals that contribute to the growing backlogged. We believe that the addition of two judges called to serve on behalf of veterans is a positive step in helping to protect the interest of those filing claims for disability benefits. We encourage the committee to move this legislation quickly.

S. 2138, DEPARTMENT OF VETERANS AFFAIRS REORGANIZATION ACT OF 2007

The Department of Veterans Affairs Reorganization Act was introduced by request. It makes changes to the number and scope of VA's assistant and deputy assistant secretaries. It also clarifies that two of the duties of the assistant secretaries shall be "construction capital" and "acquisition."

The VFW has no objection to this legislation.

S. 2139, NATIONAL GUARD AND RESERVE EDUCATIONAL BENEFITS FAIRNESS ACT OF 2007

The VFW lends its support to S. 2139, the "National Guard and Reserve Educational Benefits Fairness Act of 2007." This bill provides educational assistance under the Montgomery GI Bill for members of the National Guard and Reserve for extended service on continuous active duty that includes prolonged service in certain theaters of operation. Thousands of Reserve soldiers have returned from mobilizations longer than 20 months, including extended deployments in Iraq or Afghanistan, to find that while their length of service qualifies them for Chapter 30 benefits, due to Army procedures their orders fall short of the current 730-day threshold and rendering them ineligible for full educational benefits. This bill would remedy this fundamental injustice by amending Chapter 30 of title 38 to eliminate the 730-day order requirement for members of the Selected Reserve who have served at least twelve months in combat theaters of operation. In eliminating eligibility for benefits based solely on length of actual service, this bill recognizes their contribution and sacrifice through educational benefits, the most valuable benefits veterans receive.

S. 2309, COMPENSATION FOR COMBAT VETERANS ACT

S. 2309 would amend title 38, United States Code, to clarify the service treatable as service engaged in combat with the enemy for utilization of non-official evidence for proof of service-connection in a combat-related disease of injury. The VFW supports this legislation. This amendment to 38 U.S.C. 1154 eases the evidentiary requirements on veterans while relieving development burdens on DOD and VA.

S. 2471, UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA) ENFORCEMENT IMPROVEMENT ACT OF 2007

The VFW supports this bill, which would work to improve the enforcement of the USERRA of 1994. This legislation would require the Secretary of VA, upon receiving a complaint, to notify the veteran of his or her rights. The legislation would also likely increase the completion time of USERRA claims, as it would require expedition of referrals in certain cases to both the Attorney General and Special Counsel. The legislation would also require the Attorney General or Special Counsel to notify the veteran within 45 days of receiving referral whether they will act as the veteran's attorney.

The VFW believes that this legislation will help clarify the length and complicated USERRA process. Also, the bill would set forth more reporting requirements for the departments overseeing USERRA cases.

S. 2550, COMBAT VETERANS DEBT ELIMINATION ACT OF 2008

The VFW supports this legislation prohibiting the Secretary of Veterans Affairs from collecting certain debts owed to the United States by members of the Armed Forces and veterans who die because of an injury incurred or aggravated on active duty in a combat zone.

While the VFW does support this benefit, we would like to see it expanded to include all active duty military that die while serving their country. It is our belief that we should not to distinguish between the locations of deaths, but honor all of these men and women proudly serving our country in a time of war.

S. 2674, AMERICA'S WOUNDED WARRIORS ACT

The America's Wounded Warriors Act would improve and enhance procedures for the retirement of members of the Armed Forces for disability and improve and enhance authorities for the rating and compensation of service-connected disabilities in veterans. VFW supports the recommendations made in Title I of the bill—*Reform of Military Disability Retirement System & Aid to Families*.

We especially applaud the change that would eliminate the offset between VA and DOD compensation payments and reform the military disability retirement system by simplifying the claims process and eliminating the need for duplicative DOD/VA ratings and disability examinations. We also support Section 103(a), which calls on DOD to study TRICARE benefits for those retired under Chapter 61 of title 10 U.S.C. VFW believes that all members regardless of time in service and level of disability should be provided TRICARE benefits. And we hope that the study makes those recommendations to DOD.

VFW does not support provisions in Title II—*Modernization of VA Disability Compensation System*. This section does nothing to expedite claims process or improve quality within VA. A "new, modern" disability compensation system may be different but not necessarily *better* for veterans. In our view, this legislation would create a new rating schedule adding and deleting disabilities with new rates of compensation applied. Creating a second compensation program requires massive retraining within VA, which we believe will further exacerbate current backlogs and delays. While some veterans may benefit from this legislation, significant members of veterans young and old could be harmed.

We firmly believe that a one-time adjustment of the current schedule will not be sufficient to keep pace with the changing nature of "quality-of-life" and the evolving science of medicine, technology, and warfare. We would like to see a permanent advisory committee made up of medical professionals, and other stakeholders to oversee the continuous updating of the current ratings schedule. Any single plan to revamp the current rating system will make things only marginally simpler and easier on the VA bureaucracy and will occur at the expense of the rights and benefits of at least some veterans, dependents and survivors. Any such plan is simply unacceptable.

S. 2683, GI BILL MISCELLANEOUS IMPROVEMENTS ACT OF 2008

We support S. 2683, the "GI Bill Miscellaneous Improvements Act of 2008," introduced by Chairman Akaka of this committee. Firstly, this bill corrects a misapplication of rules determining educational accelerated payments that are made to individuals pursuing any courses in the high technology sector including associate and degree programs as well as the intended "short-term" programs. It would also make permanent authority established under Public Law 107–103 expanding the scope of work that could be assigned to individuals participating in VA work-study programs. This encompasses such activities as certain veteran outreach services programs, activities relating to hospital and domiciliary care to veterans in State homes, and activities relating to the administration of national or State veterans' cemeteries. Last, this bill would authorize appropriations for VA payments to State Approving Agencies (SAAs). Since 1988, VA payment for the services of SAAs has been made only out of funds available for readjustment benefits, a mandatory funding account, and has thus been subject to funding caps. We concur that in authorizing appropriations for the SAAs, the program will be able to justify increases in the current funding level beyond the current or future caps.

S. 2701, A BILL TO DIRECT THE SECRETARY OF VETERANS AFFAIRS TO ESTABLISH A NATIONAL CEMETERY IN THE EASTERN NEBRASKA REGION TO SERVE VETERANS IN THE EASTERN NEBRASKA AND WESTERN IOWA REGIONS.

This bill would direct the Secretary of VA to establish a national cemetery in Nebraska to serve veterans in the eastern Nebraska and western Iowa regions. The VFW supports this legislation as it would provide an estimated 172,500 veterans residing in this area a final resting place. It fulfills the requirement by VA under the *Veterans Millennium Health Care and Benefits Act* (Pub. L. 106–117) of a population threshold of 170,000 people living within a 75-mile radius of a State cemetery. The VFW's Department of Nebraska has worked diligently with the VA to encourage the establishment of this cemetery as many family members of veterans have to drive over 4 hours to the closest national cemetery. We encourage the committee to approve a national cemetery for this region.

S. 2737, VETERANS RATINGS SCHEDULE REVIEW

It would amend title 38, U.S.C., granting jurisdiction to the U.S. Court of Appeals for Veterans Claims to review compliance of the schedule. It applies to ratings for disabilities under section 1155 of that title with statutory requirements applicable to entitlement to disability compensation under chapter 11 of the same title.

The VFW believes that while this may benefit some veterans it has the potential to introduce further judicial chaos into the VA compensation program. We are concerned that this legislation may stem from the complaints of a few plaintiffs' attorneys and would ask that the committee hold a separate hearing to review the efficacy of this proposal.

S. 2768, A BILL TO PROVIDE A TEMPORARY INCREASE IN THE MAXIMUM LOAN GUARANTY AMOUNT OF CERTAIN HOUSING LOANS GUARANTEED BY THE SECRETARY OF VETERANS AFFAIRS.

This bill would provide a temporary increase in the maximum amount of a loan guaranty for housing loans guaranteed by the VA. The VFW applauds this legislation as it will correct an inequity in the Economic Stimulus package which provided a temporary increase in Fannie Mae, Freddie Mac, and FHA home loan guarantees to 125 percent of medium home prices in metropolitan areas, while neglecting the VA home loan program. This guaranty would raise the VA amount from $417,000 to about $520,000 as well as exempting homeowners from down payments or need for private mortgage insurance. It would also extend the VA increase through 2011, which offers some relief for homeowners during this time of economic uncertainty.

S. 2825, VETERANS COMPENSATION EQUITY ACT OF 2008

The VFW is pleased to support this bill, which would require a minimum disability rating for veterans receiving medication or treatment for a service-connected condition. Under current law, there are cases where a veteran receives medical treatment or adaptive devices for a condition found to be service-connected, but that are not compensable. One example of this is a hearing aid. Veterans suffering from hearing loss who use an aid often receive disability ratings below the 10 percent threshold for compensation. This is unfair.

We believe that if the disability is severe enough to warrant the need of a prosthetic or adaptive device, the disability should be compensable. In the cause of a hearing aid, there are major inconveniences including the artificial nature of the hearing restoration and the problems associated with wearing one that should require a compensable award. There are other conditions, such as hypertension, which can require continuous medication—daily changes in a veteran's life—that should also grantee a minimum compensation award.

We support this legislation and the small, but meaningful difference it would make in the lives of those service-connected veterans.

S. 2864, TRAINING AND REHABILITATION FOR DISABLED VETERANS ENHANCEMENT ACT OF 2008

The VFW strongly supports S. 2864. This important legislation would help severely injured veterans in three ways. First, it would repeal the limitation of the number of veterans enrolled in programs of independent living services. Second, it would make the Independent Living program mandatory. Finally, it would concentrate on increasing the quality-of-life for theses veterans.

As the war continues to produce injuries, independent living becomes a reality for more and more servicemembers. As of 2001, the Independent Living cap was raised to $2,500. The VFW believes the cap removed, as the VA has found this cap is caus-

ing a delay in services to severely disabled veterans. Our veterans should not wait for their service-connected injuries to be treated.

The VFW appreciates Senator Akaka's rigor in ensuring that severely injured veterans receive treatment that will pursue an increased quality-of-life for the Nation's veterans.

S. 2938, ENHANCEMENT OF RECRUITMENT, RETENTION, AND READJUSTMENT THROUGH EDUCATION ACT OF 2008

Due to the constraints of this hearing, we were unable to fully review this bill in its entirety. We would be happy to comment on this bill for the record.

S. 2951, A BILL TO REQUIRE REPORTS ON THE PROGRESS OF THE SECRETARY OF VETERANS AFFAIRS IN ADDRESSING CAUSES FOR VARIANCES IN COMPENSATION PAYMENTS FOR VETERANS FOR SERVICE-CONNECTED DISABILITIES.

Due to the constraints of this hearing, we were unable to fully review this bill in its entirety. We would be happy to comment on this bill for the record.

S. 2961, A BILL TO ENHANCE THE REFINANCING OF HOME LOANS BY VETERANS.

Due to the constraints of this hearing, we were unable to fully review this bill in its entirety. We would be happy to comment on this bill for the record.

DRAFT BILL, PREVENTING UNNECESSARY FORECLOSURE FOR SERVICEMEMBERS ACT OF 2008

Due to the constraints of this hearing, we were unable to fully review this bill in its entirety. We would be happy to comment on this bill for the record.

DRAFT BILL, VETERANS BENEFITS ENHANCEMENT ACT OF 2008

Titles I & II only

Due to the constraints of this hearing, we were unable to fully review this bill in its entirety. We would be happy to comment on this bill for the record.

DRAFT BILL, A BILL TO MAKE STILLBORNS INSURABLE DEPENDENTS FOR PURPOSES OF SERVICEMEMBERS' GROUP LIFE INSURANCE (SGLI) PROGRAM.

VFW has no objection to draft legislation, which would amend title 38, U.S.C., to make a stillborn child an insurable dependent under the SGLI program. The loss of a child, at any age, is very difficult and tragic event for a family. While monitory compensation will not replace or lessen the emotional strain of such a devastating event. This provision would provide a measure of support military families at an extremely troubling time.

DRAFT BILL, A BILL TO REQUIRE A REPORT ON THE INCLUSION OF SEVERE AND ACUTE POST TRAUMATIC STRESS DISORDER (PTSD) AMONG THE CONDITIONS COVERED BY THE TRAUMATIC INJURY PROTECTION COVERAGE UNDER SGLI.

Due to the constraints of this hearing, we were unable to fully review this bill in its entirety. We would be happy to comment on this bill for the record.

Thank you, this concludes our testimony. We welcome any questions this committee may have.

Chairman AKAKA. Thank you very much, Mr. Hilleman.

Now we will hear from Mr. Kelley.

STATEMENT OF RAYMOND C. KELLEY, LEGISLATIVE DIRECTOR, AMVETS

Mr. KELLEY. Chairman Akaka, Ranking Member Burr, Senator Webb, thank you for holding this hearing today.

S. 22 is the most comprehensive veterans education reform bill, and for that reason AMVETS wholly supports this legislation.

AMVETS supports S. 161.

AMVETS does not oppose the idea of S. 961, but during the time of war when veterans are in greater need, we believe that this funding could be spent more appropriately.

AMVETS supports all the provisions in S. 1718.

It is important to protect the privacy and security of our veterans. Therefore, AMVETS supports the provisions in S. 2090.

Allowing two additional judges to sit full time on the U.S. Court of Appeals for Veterans Claims will assist in reducing the current Court of Appeals backlog. Therefore, AMVETS supports this bill.

AMVETS is unclear of the intent of S. 2138. Therefore, we hold no position at this time.

AMVETS supports the provisions of S. 2139.

We support the spirit of S. 2309, but believe it may have implications that are not the intent of the bill. Therefore, we recommend changing the language to arrive at the desired intent.

S. 2471 will assist in ensuring USERRA laws are upheld; AMVETS supports this legislation.

AMVETS will be more inclined to support S. 2550 if the types of indebtedness were outlined more specifically and if it included, "any death that occurred in the line of duty."

AMVETS supports S. 2617.

We oppose S. 2674. Title I of this bill would amend title 10, U.S. Code, to provide for a new disability retirement system. AMVETS does not oppose the idea of the change, but rather the method in which it will be enacted.

AMVETS believes this provision could be studied separately from the rest of S. 2674 and then could be implemented independently.

AMVETS believes that age should not be a factor in determining loss of earnings. Disability compensation should not be used as an incentive for veterans undergoing rehabilitation or treatment.

Our biggest concern with 2674 is the requirement for the Secretary to reevaluate all veterans who are receiving compensation. There are two overlying problems with this provision. First, reevaluations will compound the backlog of claims that currently exist by causing every veteran to routinely reenter the claims process.

Second, if every veteran is required to periodically be reviewed, it would eliminate the permanent and total status for veterans. Removal from this status would adversely affect surviving spouses and their family members of the permanent and total rated veteran.

Currently, spouses and veterans who have been rated permanent and total for more than 10 years will receive DIC. Also Survivors and Dependents Educational Assistance and CHAMPVA would be jeopardized by these reviews.

Again, AMVETS adamantly opposes S. 2674.

We continue to support provisions for veterans to receive accelerated payments for educational assistance. AMVETS supports S. 2683.

We support S. 2701 which will establish a national cemetery to serve veterans in eastern Nebraska.

We generally support the spirit of S. 2737 but feel that it raises more questions and would prompt further amendments to Sections 502 or 7292 of title 38.

S. 2768 would temporarily increase the maximum loan amounts for certain housing loans guaranteed by VA. AMVETS supports this bill.

S. 2938 seeks to improve retention and recruitment by enhancing educational benefits for servicemembers and veterans. AMVETS supports some of the provisions in this bill. However, our organization supports S. 22 as the educational enhancement bill for our veterans.

AMVETS has not had time to fully review the other pieces of legislation and will submit those for the record.

Mr. Chairman, this concludes my testimony. I am happy to respond to any questions you may have.

[The prepared statement of Mr. Kelley follows:]

PREPARED STATEMENT OF RAYMOND C. KELLEY,
NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Chairman Akaka, Ranking Member Burr, and Members of the Committee: Thank you for holding this hearing to discuss pending legislation.

S. 22

S. 22, the "Post-9/11 Veterans Educational Assistance act of 2007," is the most comprehensive and appropriate veterans educational reform bill, and for these reasons AMVETS wholly supports this legislation. The post WWII GI Bill allowed what is known as the Greatest Generation to achieve that greatness. It is an embarrassment to know that the greatest recruitment tool and the rationale for so many of our servicemembers to join the ranks of our military has eroded to nothing more than lip service to the true financial burden borne by our veterans to obtain their degrees.

S. 161

S. 161, the "Veterans' Disability Compensation Automatic COLA Act" allows for automatic annual increase in rates of disability compensation and dependency and indemnity compensation. Veterans whose earning power is compromised or completely lost as a result of service-connected disabilities must rely on VA compensation for necessities of life, as must surviving spouses. Erosion of these rates due to inflation has a detrimental impact on recipients with fixed income. These benefits must adjust to increase with the increases in the cost of living. It is for all these reasons that AMVETS wholly supports this legislation.

S. 961

S. 961, the "Belated Thank You to Merchant Mariners of World War II Act of 2007" provides a monthly benefit payment of $1,000 and a certificate of honorable service to Merchant Mariners or surviving spouses of those who served in World War II. AMVETS is not wholly opposed to this bill, although we would prefer those monies be appropriated for veterans of the Armed Forces.

S. 1718

AMVETS supports S. 1718, the "Veterans Education Tuition Support Act," that will amend the Servicemembers Civil Relief Act to provide increased financial protection to servicemembers who are college students and who are called to active duty. By adding Section 707 to the Servicemembers Civil Relief Act, oversights that adversely effect college students who are called to active duty will be corrected. Currently, if a student-veteran disenrolls from college due to military obligations they are at the mercy of the school to refund any tuition and fees that have already been paid for that quarter or semester. This legislation will mandate said reimbursement and allow the veteran to re-enroll at the same status upon returning to school. Furthermore, this bill will allow servicemembers to defer student loan repayment while deployed and ensure that the interest rate is held at no more than 6 percent providing parity with other loan obligations that can be reduced due to their service.

S. 2090

AMVETS sees S. 2090 as an administrative update to provide protection under HIPAA for documents filed electronically that will be otherwise made public information. It is important to protect the privacy and security of our veterans; therefore, AMVETS supports the provisions in S. 2090.

S. 2091

Allowing two additional judges to sit full time on the U.S. Court of Appeals for Veterans Claims will assist in reducing the 151,000 claims that are currently backlogged. Therefore, AMVETS supports this bill.

S. 2138

AMVETS is unclear of the intent of this bill; therefore we hold no position on S. 2138 at this time.

S. 2139

S. 2139, the "National Guard and Reserve Educational Benefits Fairness Act of 2007" provides educational assistance under the Montgomery GI Bill for members of the National Guard and Reserve who serve extended periods of continuous active duty that include a prolonged period of service in certain theaters of operation and for other purposes. While AMVETS does not oppose anything in this bill, our organization supports Senator Webb's GI Bill, S. 22.

S. 2309

As a coauthor of *The Independent Budget*, AMVETS supports S. 2309 in clarifying Section 1152(b) of title 38 U.S.C., but under a more critical eye AMVETS would consider an amendment that would allow the Secretaries of the VA and DOD to determine what should be considered a combat zone. This change in thought came from the realization that some members of the military could be within the combat theater of operation without stepping foot into the country in which hostile activities are taking place.

S. 2471

S. 2471 improves the Uniformed Services Employment and Reemployment Rights Act of 1994 by reforming the complaint process and expanding reporting requirements with respect to enforcement. AMVETS wholly supports this legislation and the affect it would have to ensure employers are following current regulations. It is important for veterans to understand employee eligibility and job entitlements. With such a large new veteran population due to Operation Enduring Freedom and Operation Iraqi Freedom, AMVETS supports any measure that seeks to assist veterans to understand their rights and compels employers to notify them of said rights.

S. 2550

Without the inclusion of home and small business loans AMVETS is unclear to which debts the bill refers. AMVETS would be more inclined to support this legislation if the types of indebtedness were outlined more specifically and included any death that occurs in the line of duty.

S. 2617

In partnership with *The Independent Budget*, AMVETS supports S. 2617, which will provide cost-of-living adjustments to those who are receiving compensation and pensions through the VA.

S. 2674

S. 2674 the "Americas Wounded Warriors Act," consists of provisions that will establish a new retirement system for members of the military who become disabled, and a new compensation system for service-connected disabilities. AMVETS opposes this bill. In each of the titles there are provisions that are either incomplete, unnecessary because of redundancy, or are a detriment to our disabled veterans' financial security.

Title I of this legislation amends title 10, U.S.C., to provide for a new disability retirement system, but what the legislation does not provide for is an explanation of what this new system will look like, but requires a study to determine how to best implement this new system, with Congress enacting provisions from the report of the Secretary of Defense. If Congress does not enact provisions pertaining to the retirement system the Secretary of Defense will determine who is eligible for care and who is not. AMVETS believes the retirement provision of this bill could be separated from the compensation portion of the legislation.

Title II of S. 2674 calls for a study to consider the loss of earnings and loss of quality-of-life under the new rating schedule. There is already a study underway to evaluate these issues, so an additional study would be redundant and unnecessary. AMVETS also believes that using age as a factor for average loss of earnings is a contradiction. If compensation is adjusted for age a young veteran would be compensated at a higher rate than an older veteran. If age is used as a factor for loss of earnings than it must only be used to find the median loss of earnings over a life time and not as a sliding scale that will change the amount of compensation a veteran receives over their life time.

Also, AMVETS disagrees with using disability compensation as an incentive for veterans to undergo treatment. Disability compensation should not be seen or used as anything other than a payment to cover the difference in loss of earning capacity. To promote rehabilitation AMVETS suggests studying and understanding the reasons why veterans do not participate in rehabilitation services that are currently provided.

The biggest concern AMVETS has with S. 2674 is that a statute will be put in place that will require the Secretary to reevaluate all veterans who are receiving compensation. There are two overlaying problems with this provision. First, reevaluations would compound the backlog of claims by causing every veteran to routinely reenter the claims process. This will put unimaginable stress on an already weak claims system. Currently, the Secretary has the discretion to review cases as needed. AMVETS believes this existing provision is sufficient for conducting reviews.

Second, if every veteran is required to be periodically reviewed it would eliminate the permanent and total status for veterans. Removal of this status would adversely affect surviving spouses and family members of the permanent and total rated veteran. Currently, spouses of a veteran who has been rated as permanent and total for 10 years will receive dependency and indemnity (DIC). This benefit would be eliminated by virtue of reviews. Also, Survivors and Dependents Educational Assistance and CHAMPVA are provided when a veteran is rated permanent and total. Because of the mandatory review of this legislation, both of these benefits would no longer be provided and put disabled veterans' families in a position where they will not have insurance or assistance for college.

S. 2683

S. 2683 would allow veterans to receive accelerated payments of basic educational assistance leading to employment in high technology industry that does not lead to an associate or higher degree. It also repeals the delimiting periods for expansion of work-study allowance opportunities as well as authorizes appropriations for amounts for reimbursement of expenses of State and local agencies in administration of education benefits. AMVETS supports this legislation and the positive effect it will have for veterans seeking post secondary education.

S. 2701

AMVETS supports S. 2701 which would establish a national cemetery to serve veterans in eastern Nebraska. According to the bill, an independent analysis conducted by the Metropolitan Planning Agency concluded that 172,500 people reside in a 75 mile radius of Bellevue, NE. This number falls within the threshold set by the Department of Veterans Affairs and it is for this reason that AMVETS wholly supports this legislation.

S. 2737

AMVETS generally supports the spirit of this legislation, but feels that it raises more questions in resolving this matter. Making amendments to Section 503 and Section 7292 will provide reviewability by both the Circuit Courts and by the veterans or their representatives.

S. 2768

AMVETS supports S. 2768, the temporary increase in maximum loan guaranty amounts for certain housing loans guaranteed by the Secretary of Veteran Affairs. This legislation corrects the VA Home Loan Guaranty exclusion from the Economic Stimulus Act. The Veterans Benefits Act of 2004 increased the guaranty amount to 25 percent of the Freddie Mac conforming loan limit. The Economic Stimulus Act of 2008 raised the Fannie Mae and Freddie Mac limits, however left the VA limit of $417,000 in place. AMVETS supports raising the VA guaranty in this time of economic uncertainty.

S. 2825

S. 2825, "Veterans' Compensation Equity Act of 2008" provides a disability rating of at least 10 percent to any veteran requiring continuous medication or the use of one or more adaptive devices such as hearing aids. AMVETS wholly supports this legislation as indicated by its inclusion in the Independent Budget for fiscal year 2009. Currently the VA *Schedule for Rating Disabilities* does not provide a compensable rating for hearing loss at certain levels severe enough to require hearing aids. AMVETS believes providing a compensable rating for this condition would be consistent with minimum ratings provided elsewhere when a disability does not meet the rating formula requirements but requires continuous medication.

S. 2864

AMVETS supports changing the language of title 38, sections 3104, 3109, and 3120 to include the language "and to improve such veteran's quality-of-life" therefore we support S. 2684. Removing the cap on enrollment and provisions to improve success in vocational rehabilitation are critical in improving the lives and providing independent living for many veterans.

S. 2889

Section 7 of S. 2889 would repeal title 38, section 5317 and allow the Secretary of Veterans Affairs to continue to obtain information from the Secretary of the Treasury or the Commissioner of Social Security for the purpose of verifying income. AMVETS supports this measure as it will qualify many low income veterans for benefits.

Section 8 of S. 2889 calls for increase in rates of disability compensation and dependency and indemnity compensation. According to section 8, dollar amounts for disability compensation, clothing allowance, and DIC rates shall increase at the same percentage by which benefit amounts payable under title II of the Social Security Act are increased. AMVETS supports this section as it is important for disability payments and other benefits increase as the cost of living in the United States increases. Without such increases, disabled veterans will not be able to maintain a comfortable living.

S. 2938

S. 2938 seeks to improve retention and recruitment by enhancing education benefits for servicemembers and veterans. AMVETS supports some provisions of this bill, including the transfer of education benefits to dependents after 12 or more years of service. AMVETS also supports the immediate increase of education benefits outlined in this bill; however our organization supports Senator Webb's new GI Bill, S. 22.

SENATOR AKAKA'S HOUSING REFINANCE BILL

This piece of legislation increases the maximum percentage of loan-to-value of refinancing loans subject to guaranty from 90 to 95 percent. Because of declining home prices in many markets, people who had a 90 percent loan-to-value ratio some years ago might have found themselves shut out of the refinancing market. AMVETS fully supports this measure which allows veterans and servicemembers to take advantage of refinancing options that would not be available to them at a 90 percent loan-to-value ratio.

SENATOR MENENDEZ'S BILL TO PROVIDE PLOT ALLOWANCES FOR SPOUSES AND CHILDREN

This legislation allows for a plot allowance of $300 for spouses and dependent children of a veteran buried in a State cemetery on or after the date of enactment of this measure. While AMVETS is not opposed to the bill, we would first like to see the recommendations of the Independent Budget.

SENATOR BOXER'S BILL TO INCLUDE SEVERE AND ACUTE PTSD AMONG CONDITIONS COVERED UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE

While AMVETS supports this legislation and its effort to research the effects of PTSD and ensure that veterans are compensated appropriately, we are hesitant to make an official stance without seeing the final draft of the legislation. This legislation requires the Secretary of Defense to provide a report to the Secretary of Veterans Affairs as to the feasibility and advisability of including severe and acute Post Traumatic Stress Disorder (PTSD) as a direct result of military service in a combat

zone among the conditions covered by traumatic injury protection coverage under Servicemembers' Group Life Insurance. It also requires the report to include the effects of financial strain incurred by family members of the Armed Forces who suffer from severe and acute PTSD.

SENATOR BAUCUS'S BILL TO ADDRESS VARIANCES IN COMPENSATION PAYMENTS FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

AMVETS supports this legislation and its effort to create uniformity in disability ratings for service-connected disabilities and compensation payments.

SENATOR CASEY'S "DISABLED VETERANS HOME OWNERSHIP PRESERVATION ACT OF 2008"

As it stands now, AMVETS supports the idea behind the Disabled Veterans Home Ownership Preservation Act of 2008. We agree that servicemembers who become seriously injured or ill during their military service should be given a 1-year protection from foreclosure after their service ends. AMVETS would like to see the final draft of this legislation however before taking an official stance on the bill.

SENATOR VITTER'S BILL TO ADDRESS INSURABLE DEPENDENTS UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE

AMVETS supports Senator Vitter's legislation to include stillborn children as insurable dependents under Servicemembers' Group Life Insurance (SGLI).

SENATOR AKAKA'S "VETERANS' BENEFIT ENHANCEMENT ACT OF 2008"

While AMVETS supports the enhancement to benefits outlined in Title One and Title Two of the Veterans' Benefit Enhancement Act of 2008, we would like to see the final draft of this legislation before reaching a final opinion.

Chairman Akaka, this concludes my testimony. I am happy to respond to any questions the Committee may have.

Chairman AKAKA. Thank you very much, Mr. Kelley.

Mr. Smithson.

STATEMENT OF STEVE SMITHSON, DEPUTY DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. SMITHSON. Good morning, Mr. Chairman and Members of the Committee.

I appreciate the opportunity to appear before you this morning to offer The American Legion's views on the various bills being considered by the Committee today.

The American Legion is generally pleased with the intent of many of these bills. There are several draft bills we did not receive in time to thoroughly review that will be addressed in an addendum to my written statement. Also, page 2 of my written statement submitted to the Committee is missing. So, my addendum will also include that page.

Due to the time constraints this morning, I am going to limit my oral remarks to S. 2309 and S. 2674.

S. 2309, the Compensation for Combat Veterans Act. The purpose of this bill is to amend title 38, U.S. Code, to clarify the service treatable as, "service engaged in combat with the enemy" for the utilization of non-official evidence for proof of service-connection in combat-related disease or injury.

The American Legion supports the intent of this bill. Unless the veteran was wounded or received a specific commendation, decoration or badge such as Combat Infantry Badge or Combat Action Ribbon or an award for valor, it is often very difficult to establish that a veteran engaged in combat with the enemy in order to trig-

ger the combat presumptions under title 38, U.S.C., Section 1154(b).

We must recognize, however, that the very meaning of the term "engaged in combat with the enemy" has taken on a whole new meaning as the nature of warfare in today's world has changed. This is especially true of service in the combat theaters of Iraq and Afghanistan.

Due to the fluidity of the battlefield and the nature of the enemies' tactics, there is no defined front line or rear safe area.

Military personnel in non-combat occupations and support roles are subjected to enemy attacks such as mortar fire, sniper fire and improvised explosive devices just as their counterparts in combat arms-related occupational fields.

Unfortunately such incidents are rarely documented making them extremely difficult to verify. Servicemembers who received a combat-related badge or award for valor automatically trigger the combat related presumptions of title 38, U.S.C., Section 1154(b).

But, a clerk riding in a Humvee who witnessed the carnage of an IED attack on his convoy does not automatically trigger such a presumption and proving that the incident happened or that he or she was involved in that incident, in order to benefit from the presumption afforded under Section 1154(b), can be extremely time-consuming and difficult.

Given the evolving nature of modern warfare, as reflected in the enemy's unconventional tactics in Iraq and Afghanistan, the American Legion is of the opinion that it not only makes sense to clarify the definition of "engaged in combat with the enemy" under title 38, U.S.C., Section 1154(b), in order to adapt to the new realities of modern warfare it is essential that we do so not just for those serving now, but for those who have served in the past and those who will serve in the future.

We would also like to note that a provision similar to S. 2309 is addressed in Title I of H.R. 5892, currently pending in the House of Representatives.

As a basic intent of S. 2309 and H.R. 5892 is essentially the same, we are hopeful that any differences in these two bills are worked out and a final product defining "engaged in combat with the enemy" in a manner that is consistent with the realities of combat in today's world is passed by Congress and subsequently enacted into law.

S. 2674. This legislation proposes sweeping changes of both the Department of Defense disability retirement system and the Department of Veterans Affairs disability compensation system, and it is comprised with two titles. My written statement addresses several of American Legion's concerns with this legislation. My remarks this morning will expand on one of our major concerns.

As proposed in this legislation, veterans in the current VA disability system will remain in that system for payment purposes but can elect to opt into the new system or will automatically be put into the new system upon filing a new claim. The underlying premise here is that the new system will be more beneficial for veterans than the old system.

However, many of the specifics of the new system including the rating schedule and payment levels will not be known until all the

mandated studies are completed and the subsequent recommendations adopted and put into place.

The American Legion is concerned that there will undoubtedly be a number of veterans for whom it would be more advantageous to remain under the current system, but, nonetheless, enter the new system without fully realizing the possible disadvantages. Unfortunately this legislation does not contain any safeguards to protect those who would be adversely impacted by entering the new system.

We, therefore, urge the inclusion of language in this legislation that protects the claimant from the reduction of benefits established under the old system, especially in those cases where the veteran has been so rated for a period of 20 years or more, or those with disabilities deemed by VA to be permanent and total in nature.

At the very least, VA needs to be directed to provide clear notice to veterans that entering the new system does not guarantee an increase in benefits and could actually result in reduction of benefits.

The American Legion also strongly opposes Section 207(b)(3) of this bill that amends the current law that generally prohibits the reduction of disability rating that has been in effect for 20 years or more.

We see no need to make such a change that is obviously designed to allow for reduction of benefits and would undoubtedly have an adverse impact on many service-connected disabled veterans under the proposed new system.

Mr. Chairman, that concludes my testimony. I would be happy to answer any questions you or Members of the Committee may have.

[The prepared statement of Mr. Smithson follows:]

PREPARED STATEMENT OF STEVE SMITHSON, DEPUTY DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. Chairman and Members of the Committee: Thank you for this opportunity to present The American Legion's views on the bills being considered by the Committee today. The American Legion commends the Committee for holding a hearing to discuss these important and timely issues.

S. 1718, "VETERANS EDUCATION TUITION SUPPORT ACT"

The purpose of this bill is to identify the current plight that returning college-bound servicemembers have been unjustly enduring from some institutions of higher learning. S. 1718 recognizes the complete transformation of the Reserve Components into an operational force. Activations and intermittent duty such as training or duty in support of operations are now an obligation of service.

The American Legion supports the proposed bill to amend the Servicemembers Civil Relief Act (Public Law 108–189) that will prohibit unfair penalties on members who are called to active-duty service while enrolled in institutions of higher education. A refund of tuition and fees pre-paid by a servicemember to a university for classes not taken due to performance of military obligations is long overdue. The American Legion is concerned that activations during the middle of a course is extremely disruptive and while this legislation aims to correct injustices financially, in most cases the veteran must restart the course and has lost valuable time due to deployment.

This legislation also aims to allow a servicemember the opportunity to reenroll with the same educational and academic status that they had when activated. In a sense, it will be as if the servicemember never left college and therefore with not be penalized.

The American Legion supports S. 1718.

S. 2090

The purpose of this bill is to protect privacy and security concerns in court records.

The American Legion supports this bill. Given the rise in identity theft during the last several years, proper information security has become extremely important. This bill is both appropriate and timely.

S. 2091

The purpose of this bill is to increase the number of active judges for the United States Court of Appeals for Veterans Claims.

The American Legion supports this bill. Given the large number of cases appealed to the Court and the Court's recent need to recall retired judges to help with the caseload, it is reasonable to increase the number of active judges from seven to nine as proposed in this legislation.

S. 2138, "DEPARTMENT OF VETERANS AFFAIRS REORGANIZATION ACT OF 2007"

The purpose of this bill is to amend title 38, United States Code (U.S.C.), to establish within the Department of Veterans Affairs the position of Assistant Secretary for Acquisition, Logistics, and Construction, and for other purposes.

The American Legion does not have an official position on this bill.

S. 2139, "NATIONAL GUARD AND RESERVE EDUCATIONAL BENEFITS FAIRNESS ACT OF 2007"

The purpose of this bill is to provide educational assistance under the Montgomery GI Bill for members of the National Guard and Reserve who serve extended period of continuous active duty that include a prolonged period of service in certain theaters of operation. Although this bill is a step in the right direction by providing benefits for time served, The American Legion is concerned that it fails to recognize those veterans that complete their tours honorably, but not serve an aggregate of 20 months, and do not meet the other requirements of eligibility. These veterans have served their country honorably yet are excluded from earned benefits.

Furthermore, The American Legion also believes that a servicemember or veteran should have the authority to transfer their educational benefits to family members, such as their spouse and children. This is an earned benefit that should be used at their discretion and based on family need. This transferability option would show the thanks of a grateful nation to the servicemember or veteran. Transferability also recognizes the importance of family support to the servicemember or veteran because, although the Nation recruits the servicemember, it re-enlists the family for continued service by the servicemember in the Armed Forces.

The American Legion supports the primary concept of this bill and supports benefits for time spent on Federal activation at the full time active duty rate.

S. 2309, "COMPENSATION FOR COMBAT VETERANS ACT"

The purpose of this bill is to amend title 38, U.S.C., to clarify the service treatable as service engaged in combat with the enemy for the utilization of non-official evidence for proof of service-connection in a combat-related disease or injury.

The American Legion supports the intent of this bill. Given the evolving nature of modern warfare, as reflected in the enemy's unconventional tactics in Iraq and Afghanistan, the very term "engaged in combat with enemy" takes on a whole new meaning. On today's battlefield there is no longer a safe or rear area. Personnel in traditional support roles are subject to the same attacks and dangers, such as rocket and mortar attacks, sniper fire and improvised explosive devices, as are their combat arms counterparts. It makes sense to clarify the definition of "engaged in combat with the enemy" under title 38, U.S.C., section 1154(b) to recognize this fact.

S. 2471, "USERRA ENFORCEMENT IMPROVEMENT ACT OF 2007"

The purpose of this bill is to amend title 38, U.S.C., to improve the enforcement of the Uniformed Services Employment and Reemployment Rights Act of 1994, and for other purposes.

The American Legion is deeply concerned with the protection of recently separated military veterans employment and reemployment rights. Furthermore, the American Legion believes the Federal Government must demonstrate zero-tolerance of illegal and egregious hiring practices that ignore USERRA provisions. Currently, veterans are filing claims after the non-compliance employment or employment events occur, but due to delayed resolution of the claims, many veterans are experi-

encing unnecessary financial hardships from the time of grievance to final determination. This bill will impose timely, realistic deadline on Federal agencies responsible to process USERRA claims.

The American Legion supports this bill which will strengthen veterans' employment and reemployment rights.

S. 2550, "COMBAT VETERANS DEBT ELIMINATION ACT OF 2008"

The purpose of this bill is to amend title 38, U.S.C., to prohibit the Secretary of Veterans Affairs from collecting certain debts owed to the United States by members of the Armed Forces and veterans who die as a result of an injury incurred or aggravated on active duty in a combat zone, and for other purposes.

The American Legion supports this legislation.

S. 2573, "VETERANS MENTAL HEALTH TREATMENT FIRST ACT"

The purpose of this bill is to amend title 38, U.S.C., to require a program of mental health care and rehabilitation for veterans for service-related Post Traumatic Stress Disorder (PTSD), depression, anxiety disorder, or a related substance use disorder, and for other purposes.

The American Legion supports S. 2573.

S. 2617, "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2008"

The purpose of this bill is to increase, effective as of December 1, 2008, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans. The amount of increase shall be the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401, et seq.) are increased effective December 1, 2008.

The American Legion supports this annual cost-of-living adjustment in compensation benefits, including dependency and indemnity compensation (DIC) recipients. It is imperative that Congress annually considers the economic needs of disabled veterans and their survivors and provide an appropriate cost-of-living adjustment to their benefits, especially should the adjustment need to be higher than that provided to other Federal beneficiaries, such as Social Security recipients.

S. 2674, "AMERICA'S WOUNDED WARRIORS ACT"

The purpose of this bill is to amend titles 10 and 38, U.S.C., to improve and enhance procedures for the retirement of members of the Armed Forces for disability and to improve and enhance authorities for the rating and compensation of service-connected disabilities in veterans, and for other purposes.

This legislation proposes sweeping changes of both the Department of Defense (DOD) disability retirement system and the Department of Veterans Affairs (VA) disability compensation system and is comprised of two titles.

Title I—Reform of Military Disability System & Aid to Families

This title seeks to establish a new disability retirement system, paying a lifetime annuity to those determined to be unfit for continued military service as a result of an injury or disease incurred or aggravated in the line of duty. DOD would no longer assign disability ratings for the purpose of determining eligibility to medical retirement or medical severance payments. For those found unfit for military service, the annuity would be based on the member's rank and years of service. There would also be no offset between the annuity payment and future VA compensation payments.

This title also directs the Secretary of Defense to conduct a study to determine lifetime eligibility to medical and dental care under TRICARE under the new system. If Congress subsequently fails to establish legislation governing TRICARE eligibility, the Secretary of Defense would establish eligibility by regulation no later than the effective date of implementation of the new system. The American Legion supports the proposed changes to the military's disability retirement except for the provision regarding eligibility to lifetime medical and dental care under TRICARE. The American Legion supports the provision in the House of Representatives companion bill, H.R. 5509, wherein retired pay under the new system is treated as retired pay for all purposes under the amended title, including for purposes of eligibility for medical and dental care. We urge that this provision be amended to be consistent with the version in H.R. 5509.

Title II—Modernization of VA Disability Compensation System

The specifics of a new VA compensation system, including the amount of compensation payments, quality-of-life and transition payments, as well as development of a new rating schedule, will be the subject of a series of studies culminating with a report and proposals to Congress. The legislation specifically directs the Secretary of Veterans Affairs to consult with veterans' service organizations (VSO) in conjunction with the studies. VA's report on the studies is due to Congress in 7 months and, within 9 months following submission of the report, VA is required to submit a proposal to Congress detailing the new compensation and transition payment rate structure. Congress, prior to the new system going into effect, would have the ability to review the proposed new payment rates and vote on a privileged measure to formally reject them. However, in the absence of such a formal rejection by Congress, the new rates would go into effect.

This title contains some promising aspects, such as the inclusion of the VSO community in the study process as well as the establishment of quality-of-life and transition payments. There are, however, some proposals in this legislation which give rise for concern and actual opposition in some instances.

For example, the legislation specifically directs the VA Secretary to address the following in its study:

> The nature of injuries and combination of injuries for which disability compensation is payable under various disability compensation programs of the Federal Government, State governments, and other countries.
>
> To the extent applicable, the nature of injuries and combination of injuries for which disability compensation is payable under commercial disability insurance.

Military service is inherently different from any other form of employment and examining other disability compensation and insurance programs for the purpose of drawing comparisons to the disability compensation program administered by the Department of Veterans Affairs is not appropriate. Moreover, The American Legion would strongly oppose any attempt to adjust VA's compensation program so it more closely resembles other compensation programs, as specifically referenced in the legislation, as such an adjustment would most likely result in a reduction or restriction of current VA disability benefits.

In determining the amounts of compensation under the study, the VA Secretary is specifically directed to consider the following:

> The appropriate injuries or combination of injuries to be covered by the new schedule for rating service-connected disabilities.
>
> The appropriate level of compensation, including an age-appropriate level of compensation at time of initial filing of claims, under that schedule for loss of earnings.

The American Legion opposes any attempt to limit the chronic disabilities or illnesses for which a veteran is eligible to establish service connection. The American Legion also opposes the use of age in determining the level or amount of compensation as the amount of compensation should be based on the severity of the condition, regardless of age, as is the current practice.

This legislation also makes the attempt to insert congressional oversight directly into the process by allowing Congress to formally reject VA's proposal detailing the new compensation and transition payment rate structure. While this provision may appear to be promising, the method to reject the proposal, a joint resolution of the House and Senate, is a very involved process and it is likely that the Secretary's proposals will take effect without any congressional action.

Additionally, as proposed in the legislation, veterans in the current system will remain in that system (for payment purposes) but can elect to opt into the new system or will automatically be put into the new system upon the filing of a new claim. The American Legion is concerned that there will undoubtedly be a number of veterans for whom it would be more advantageous to remain under the current system but, nonetheless, enter the new system without fully realizing the possible disadvantages. We, therefore, urge the inclusion of language in this legislation that protects the claimant from the reduction of benefits, established under the old system, especially in those cases where the veteran has been so rated for a period of 20 years or more (such a designation currently prohibits the reduction in rating except where the rating was based on fraud). At the very least, VA needs to be ordered to provide clear notice to veterans that entering into the new system does not guarantee an increase in benefits and could actually result in the reduction of benefits. The American Legion also strongly opposes section 207(b)(3) of this bill that amends the current law that generally prohibits the reduction of a disability rating that has been in effect for 20 years or more. We see no need to make such a change that is obvi-

ously designed to allow for reduction of benefits and would undoubtedly have an adverse impact on many service-connected disabled veterans under the proposed new system.

S. 2683

The purpose of this bill is to amend title 38, U.S.C., to modify certain authorities relating to educational assistance benefits for veterans, and for other purposes. Historically, The American Legion has encouraged the development of essential benefits to help attract and retain servicemembers into the Armed Services, as well as to assist them in making the best possible transition back to the civilian community. S. 2683 aims to better serve veterans and ultimately assist them in financial stability.

As stated earlier, The American Legion supports providing servicemembers and veterans the authority to transfer their educational benefits to family members, such as their spouse and children. This is an earned benefit that should be used at their discretion and based on family need.

The American Legion proudly supports this bill.

S. 2701

The purpose of this bill is to direct the VA Secretary to establish a national cemetery in the eastern Nebraska region to serve veterans in the eastern Nebraska and western Iowa regions

The American Legion supports the policy of the National Cemetery Administration (NCA). The area defined in this bill seems to meet the NCA's criteria for establishing a new veterans' cemetery.

The American Legion supports this bill.

S. 2737, "VETERANS' RATING SCHEDULE REVIEW ACT"

The purpose of this bill is to amend title 38, U.S.C., to grant jurisdiction to the United States Court of Appeals for Veterans Claims (CAVC or Court) to review the schedule of ratings for disabilities under section 1151 of that title with statutory requirements applicable to entitlement to disability compensation under chapter 11 of that title, and for other purposes.

The American Legion supports the intent of this bill, which is to allow the CAVC to be able to determine whether sections of part 4 of 38 Code of Federal Regulations comply with chapter 11 of title 38, U.S.C. Permitting the Court to perform such a review is important because a regulation should be consistent with, and never be able to override a Federal statute.

S. 2768

The purpose of this bill is to provide a temporary increase in the maximum loan guaranty amount for certain housing loans guaranteed by the Secretary of Veterans Affairs. Presently, the Veterans Benefits Act of 2004 increased VA home loan eligibility for qualified veterans for a home loan up to $417,000. Qualified veterans purchasing a home in the high cost areas of Alaska, Guam, Hawaii and the U.S. Virgin Islands may obtain a no-down payment home loan of up to $625,500. This increase in the maximum loan guaranty amount offered by S. 2768 should become permanent.

The American Legion supports this bill.

S. 2825, "VETERANS' COMPENSATION EQUITY ACT OF 2008"

The purpose of this bill is to amend title 38, U.S.C., to provide a minimum disability rating for veterans receiving medical treatment for a service-connected disability.

The American Legion fully supports this legislation. It is reasonable to conclude that service-connected conditions that do not meet the schedular's requirements for a compensable evaluation but, nonetheless, require regular treatment, cause economic impairment and should therefore be afforded a minimum rating of 10 percent.

S. 2864, "TRAINING AND REHABILITATION FOR DISABLED VETERANS ENHANCEMENT ACT OF 2008"

The purpose of this bill is to amend title 38, U.S.C., to include improvement in quality-of-life in the objectives of training and rehabilitation for veterans with service-connected disabilities, and for other purposes.

The American Legion endorses this bill which will increase the number of service-connected disabled veterans who would benefit directly from the services this program currently provides and ultimately aid in their recovery from the wounds of war.

CONCLUSION

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on these important measures. We will provide the Committee with additional views on those draft bills we did not have time to thoroughly review. Those draft bills include: the Housing Refinance legislation; the bill directing the Secretary of Veterans Affairs to provide a plot allowance for spouses and children of certain veterans who are buried in State cemeteries; the bill to require reports on the progress of the Secretary of Veterans Affairs in addressing causes for variances in compensation payments for veterans for service-connected disabilities; the bill to make stillborns insurable dependents for purposes of the Servicemembers' Group Life Insurance program; and the bill to require a report on the inclusion of severe and acute Post Traumatic Stress Disorder among the conditions covered by traumatic injury protection coverage under Servicemembers' Group Life Insurance. In addition, we support S. 22; we have no position on S. 961; we do not support S. 2938; and we have no position on sections 3 and 7 regarding S. 2889.

As always, The American Legion welcomes the opportunity to work closely with you and your colleagues on enactment of legislation in the best interest of America's veterans and their families.

ADDENDUM

Mr. Chairman and Members of the Committee: Thank you for this opportunity for The American Legion to present its views on various veterans legislation being considered by this Committee.

S. 2951, "REPORT ON VARIANCES IN COMPENSATION PAYMENTS"

The purpose of this bill is to require reports on the progress of the Secretary of Veterans Affairs in addressing causes for variances in compensation payments for veterans for service-connected disabilities.

The American Legion supports this legislation.

S. 2984, "VETERANS BENEFITS ENHANCEMENT ACT OF 2008" TITLE I AND II

The purpose of this bill is to amend title 38, United States Code (U.S.C.), to expand and enhance veterans' benefits, and for other purposes.

Title I

The American Legion does not have any official position regarding the provisions of this title.

Title II

Sections 201 & 202

The American Legion strongly opposes section 201 of this bill, giving the Department of Veterans Affairs (VA) authority to temporarily stay the adjudication of claims pending before the Board of Veterans' Appeals (BVA) or the agency of original jurisdiction when the Secretary of Veterans Affairs determines that a stay is necessary to preserve the integrity of a program administered under title 38, U.S.C. Basically, this section would allow VA to simply disregard a court decision, it does not agree with, while it appeals the decision to a higher court. We oppose such a measure on two points. First, it's not necessary as VA currently has the option of going through the appropriate court to request a stay in instances where VA feels a stay is necessary to preserve the integrity of a program. Moreover, to allow VA to simply ignore court decisions and stay the adjudication of various claims at will, without seeking proper approval or authority to do so, would undermine the judicial process. The American Legion also opposes section 202, which would amend title 38, U.S.C., to allow the BVA to decide a particular case before another case with an earlier docket date if the earlier case has been stayed, or if a decision on the earlier case has been delayed for any reason and the later case is fully developed and ready for a decision. This proposed change would allow the BVA to use its own discretion to disregard the docket date of appeals and is contrary to the reason appeals are assigned a docket number and decided in docket order in the first place.

Section 205

First, this section would offer to those in the mobilization category of the Reserves within the Individual Ready Reserve, the option to be covered by Servicemembers Group Life Insurance (SGLI), instead of only the option to be covered by Veterans Group Life Insurance (VGLI) as is now the case. The American Legion supports this provision, which corrects an omission in previous legislation. These individuals are in an essentially on-call status because of their professional or occupational specialties, and can be sent to active duty at any time. The option to be insured under SGLI allows them access to dependent coverage and to SGLI's much lower group premium rates. We believe this addition to be correct and fully justifiable.

Next, this section presents two technical corrections to the rules concerning SGLI dependent coverage. First, the present wording of title 38, U.S.C., in regards to dependent SGLI coverage stipulates dependent coverage will terminate 120 days after the servicemembers coverage terminates. As SGLI coverage for servicemembers terminates 120 days after separation from service, this permits dependent coverage to continue even after the servicemember's SGLI coverage has ended. The provision of S. 2984 in this regard would simply even these time periods up and correct the current discrepancy in coverage periods. Second, premiums for SGLI dependent (spousal) coverage are actually age based as is necessitated by sound actuarial principles, and cannot be the same for all members in this category. S. 2984 properly removes such incorrect wording from the statute to reflect SGLI's premium structure in this area.

Last, this section seeks to change the current SGLI statute so that coverage under Veterans Group Life Insurance (VGLI), the follow-on program to SGLI for continuation of such life insurance coverage after active duty, is also eliminated, as the SGLI benefit itself presently is, for those convicted of mutiny, treason, spying, desertion or conscientious objection to military service, a logical inclusion apparently simply overlooked previously.

The American Legion has no objections to these corrections to the involved insurance portions of title 38, U.S.C., and believes them proper and correct on their face, their justification self-evident, and that such should be enacted to correct the present errors in the law as described.

The American Legion does not have positions on the provisions of sections 203, 204, 206, and 207 of this legislation.

S. 2550, "COMBAT VETERAN DEBT ELIMINATION ACT OF 2008"

The purpose of this bill to amend title 38, U.S.C., to prohibit the Secretary of VA from collecting certain debts to the United States in the case of veterans who die as a result of a service-connected disability incurred or aggravated on active duty in a combat zone, and for other purposes.

The American Legion supports S. 2550.

S. 2934, BURIAL PLOT ALLOWANCE

The purpose of this bill is to direct the VA Secretary to provide a plot allowance for spouses and children of certain veterans who are buried in State cemeteries. The American Legion supports this bill as we do not believe there should be discrimination against families of veterans who choose to bury their deceased hero in a State veterans' cemetery and do not receive a plot allowance but would get a plot allowance if they buried their veteran in a national cemetery.

A veteran's family often has little choice but to choose a State cemetery to bury their loved one in because of distance and other factors. Passage of this bill would reflect a common sense approach to helping a grieving family.

S. 2946, EXPANSION OF DEPENDENT COVERAGE UNDER SGLI FOR STILLBORN CHILDREN

The purpose of this bill is to amend title 38, U.S.C., to include a stillborn child to be regarded as an insurable dependent under the Servicemembers Group Life Insurance (SGLI) program. SGLI currently provides free $10,000 coverage for dependent children.

The American Legion supports the inclusion of stillborn children for the purpose of this coverage. The intent of the dependent coverage benefit under SGLI is to provide a much needed financial assistance to servicemembers for the related financial expenses (funeral costs, etc.) who suffer the traumatic loss of a dependent child. We believe it is self-evident that such assistance should also be provided in the case of stillborn children, and that the definitions for such as provided in the proposed legislation are both reasonable and proper. The American Legion does not believe the

frequency of these cases to be such that any significant financial impact would be experienced by the SGLI program.

S. 2961, HOUSING REFINANCE LEGISLATION

The purpose of this bill is to amend title 38, U.S.C., to enhance the refinancing of home loans by veterans.

The American Legion is very supportive of this bill.

S. 2965, PROPOSAL TO REQUIRE A REVIEW ON INCLUDING PTSD UNDER SGLI TRAUMATIC INJURY PROTECTION

The purpose of this bill is not to establish a benefit per se, but seeks to require a report be conducted by the VA Secretary in concert with the Secretary of Defense, to determine the feasibility of including Post Traumatic Stress Disorder (PTSD), of a "severe and acute" level, in the schedule of disabilities used for ascertaining coverage under the Servicemembers Group Life Insurance (SGLI) Traumatic Injury (TSGLI) Protection group policy rider. Such PTSD would be required to result from direct military service in a combat zone, and be of a severity level that precludes the member from performing the daily activities of living after the member is discharged/released from military service.

The proposed legislation cites the unique circumstances both of military service in general and combat service in particular, the financial strain on military family members of those suffering such severe disability, and the recovery time and the hardship of the recovery process involved. We would also mention here the time needed for making a claim for VA compensation benefits, and the time involved in the VA adjudication process prior to reaching a rating decision and the subsequent start of compensation payments. One of the purposes of the TSGLI benefit is to provide the disabled servicemembers meeting its traumatic injury criteria a significant cash payment to assist them and their families in handling the immediate financial needs following such injury, given the time involved for the start of other benefits, such as VA compensation.

The American Legion strongly agrees with the intent of this proposal, and observes that such a VA/DOD study is long overdue. Information continues to come to light that PTSD, along with Traumatic Brain Injury (TBI) has reached extraordinarily high levels among those with service in the Iraq and Afghanistan theatres. Recently, on April 17, 2008, the RAND Corporation released the first comprehensive private sector study of these matters titled, "Invisible Wounds of War: Psychological and Cognitive Injuries, Their Consequences and Services to Assist Recovery," and among its conclusions estimated PTSD disabilities to varying degrees have affected as many as 300,000 veterans of Iraq and Afghanistan service, out of some 1.6 to 1.7 million servicemembers deployed to those areas since October 2001, along with some 320,000 estimated TBI cases. Such a state of affairs can only be expected to continue as operations in those theatres are maintained on an on-going basis. It is increasingly obvious a major health crisis has occurred in the PTSD and TBI areas where veterans of Iraq and Afghanistan service are concerned, and that steps to address this should be undertaken as soon as possible.

A particular point of concern, we would also like to note here is the definition of "severe and acute" PTSD in connection with coverage under TSGLI. While being one of the issues to be determined under the proposed report, we believe such PTSD disability should fall within the provisions of a VA service-connected disability rating for PTSD of between 50 percent to 70 percent, with a related Global Assessment of Functioning (GAF) score in the 50 to 40 range or less. PTSD evaluations in these ranges comprise severe symptoms and/or serious social and occupational impairments and, as severity increases, include such conditions as severe impairments in communication and judgment, plus delusional and suicidal behavior.

S. 2981, "DISABLED VETERANS HOME OWNERSHIP PRESERVATION ACT OF 2008"

The purpose of this bill is to amend the Servicemembers Civil Relief Act to provide a 1-year period of protection against mortgage foreclosures for certain disabled or severely injured servicemembers, and for other purposes.

The American Legion supports this bill.

Chairman AKAKA. Thank you very much, Mr. Smithson.

Now, Joe Violante.

STATEMENT OF JOSEPH VIOLANTE, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. VIOLANTE. Aloha, Mr. Chairman and Members of the Committee.

On behalf of the 1.3 million members of the Disabled American Veterans, I am honored to appear before you today to discuss the legislative measures pending before this Committee.

S. 2091 would increase the court's number of active judges. Before DAV could support an increase of two more judges, we would request that this Committee require the court to include the following items in an annual report:

The number of appeals filed; the number of petitions filed; the number of applications filed for attorney fees and costs; the number and type of dispositions; the median time from filing to disposition; the median time from the filing of briefs to disposition; the number of cases disposed by the clerk, a single judge, multi-judge panels and the full court; the number of oral arguments; the number and status of pending appeals and applications for equal access to justice fees; a summary of any service performed by recalled retired judges during the fiscal year; and the number of cases pending longer than 18 months.

S. 2674 consists of two sections: the provisions of Title I address retirement of members of the Armed Forces for disability; and the provisions of Title II address compensation of veterans for service-connected disabilities.

Title II, Section 201, requires the Secretary of Veterans Affairs to examine a number of factors in conducting a study.

The bill requires those studies to reflect current concepts of medicine and loss of earning capacity from specific injuries. The Secretary would also be required to consider which injuries the new rating schedule would cover, the level of compensation for loss of quality-of-life, as well as standards for determining quality-of-life. Additionally, the VA is to study the level of compensation for loss of earning capacity that takes into account the age of a veteran.

The foregoing studies are unnecessary because the Secretary has already contracted to conduct the study that takes into account most of the items listed in this section of the bill.

While DAV does not oppose innovative treatment plans with real health-related benefits, using compensation as an incentive to undergo treatment is discriminatory against veterans.

Instead of using disability compensation as an incentive, Congress should focus on removing the barriers to accessing treatment and vocational rehabilitation. Those barriers include obstacles such as access to child care and ability to receive time off work, to mention a few.

The bill modifies Section 1155 by providing that ratings under the existing compensation system will continue to be based on average impairment of earning capacity. For veterans receiving compensation under the enhanced VA disability compensation system, the ratings must reflect average loss of earnings and quality-of-life. This bill still creates two classes of veterans.

Section 207 provides that as frequently as the Secretary considers it appropriate, the Secretary must reevaluate and, if nec-

essary, adjust the disability rating for any veteran receiving compensation under new Chapter 12.

As my colleagues have pointed out, this will only enhance the current backlogs; and also with regards to permanent and total, it will have some unintended consequences regarding DIC, educational benefits, and for dependents in CHAMPVA.

Section 207(b)(3) of the bill amends Section 110, which currently prohibits the reduction of a disability rating that has been in force for 20 or more years. This change will allow VA to continue to periodically reevaluate a veteran's disability. To now revoke the 20-year protection is highly precarious and unfair. Older veterans will suffer more unnecessary instability in their lives and younger veterans will never achieve that stability.

S. 2951 would require reports on the progress of the Secretary of Veterans Affairs in addressing causes for variances in compensation payments to veterans for service-connected disabilities. DAV supports this legislation.

Title II of the Veterans Benefits Enhancement Act of 2008 deals with provisions that would, amongst other things, permit VA to temporarily stay adjudication of claims while waiting pending court decision. The DAV opposes this provision of the bill.

The Secretary currently has that authority. He can approach the court to get a stay. We do not believe that giving the Secretary carte blanche ability to stay cases will benefit anyone.

Mr. Chairman, that concludes my testimony. On behalf of the DAV, we hope that you will consider our recommendations; and I will be pleased to answer any questions from you or the Committee Members.

[The prepared statement of Mr. Violante follows:]

PREPARED STATEMENT OF JOSEPH A. VIOLANTE,
NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. Chairman and Members of the Committee: On behalf of the 1.3 million members of the Disabled American Veterans (DAV), I am honored to appear before you today to discuss the legislative measures pending before this Committee.

S. 2938

The "Enhancement of Recruitment, Retention, and Readjustment Through Education Act of 2008," proposed by Senator Graham (R–SC), would amend titles 10 and 38, United States Code (U.S.C.), to improve educational assistance for members of the Armed Forces and veterans in order to enhance recruitment and retention for the Armed Forces. Under title 38, U.S.C., chapter 30, this bill proposes to provide a veteran who served on active duty in the Armed Forces for 12 or more years, the following: A monthly rate of $1,650 for months occurring during fiscal year 2009, $1,800 for fiscal year 2010; and $2,000 for fiscal year 2011. Veterans who served less than 12 years would receive $1,500 beginning in fiscal year 2009. The bill also proposes an *annual* stipend of $500 for veterans pursuing an approved program of education at or above the half-time rate, and an *annual* stipend of $350 for less than the half time rate.

Currently, veterans with only 2 years of active service receive a reduced rate of educational benefits. However, those veterans with 2 years of service as well as those with three or more, receive a cost-of-living increase based on the consumer price index. This proposed legislation would eliminate the cost-of-living adjustment for veterans with less than 3 years of obligated service, which is effectively a reduction of benefits. The rate set by this bill regarding those with less than 3 years of service is $950 beginning in fiscal year 2009, which is approximately the level of benefits forecast for that fiscal year based on the current scale that takes into account a cost-of-living adjustment. Under this proposed legislation, educational benefits are capped at $950 beginning in fiscal year 2009 for those veterans with less

than 3 years of service. The DAV questions the reasons for this reduction of benefits.

Further, the DAV believes this bill focus more on retention of servicemembers than on educational benefits for those that have served. This places the legislation outside the mission scope of the DAV. We therefore take no position on this legislation.

S. 22

The "Post-9/11 Veterans Educational Assistance Act of 2008," S. 22, amends title 38, U.S.C., to establish a program of educational assistance for members of the Armed Forces who serve in the Armed Forces after September 11, 2001. The provisions listed herein apply to former servicemembers with three or more years of active service, but also include many veterans who served less than 3 years of active duty, to include those who served at least 30 consecutive days and then discharged for a service-connected disability.

Under the provisions of this bill, VA would pay an amount equal to the "established charges for the program of education, except that the amount payable * * * may not exceed the maximum amount of established charges regularly charged * * * for full-time pursuit of approved programs of education for undergraduates * * *." This amount would be in accordance with the "public institution of higher education offering approved programs of education for undergraduates in the State in which the individual is enrolled * * *." This would further be applicable to the "highest rate of regularly-charged established charges for such programs of education among all public institutions of higher education in such State offering such programs of education."

This legislation also provide a *monthly* stipend equal to the monthly housing allowance received by military servicemembers holding a rank of E–5 and applicable to the zip code area wherein the school is located. Under this bill, a qualified veteran would have 15 years to use his/her education benefits.

This bill is in accordance with the "GI Bill for the 21st Century" set forth in *The Independent Budget for Fiscal Year 2009*, published by the Independent Budget veterans' service organizations. Because of this, as well as the section of this bill entitling those veterans who serve at least thirty days of active duty and who were discharged because of a service-connected disability, the DAV supports this bill.

S. 161

S. 161, introduced by Senator Thune (R–SD) on January 4, 2007, provides for annual cost-of-living adjustments (COLAs) to be made automatically each year in the rates of veterans' disability compensation and rates of dependency and indemnity compensation. This measure would index COLAs for veterans and survivor compensation programs to Social Security increases, thereby eliminating the need to introduce, and pass, and enact a veterans COLA bill each year. DAV supports this measure.

S. 961

S. 961, introduced by Senator Ben Nelson (D–NE) on March 22, 2007, amends title 45, U.S.C., to provide benefits to certain individuals who served in the United States Merchant Marines during Word War II. DAV opposes this legislation, which would provide far greater benefits to Merchant Marines who have no disabilities than many veterans receive for severe service-connected disabilities. Our opposition to this bill in no way indicates what we undervalue the contributions made by the brave individuals who served as Merchant Marines during World War II, and played a vital role in our ultimate victory in that war.

S. 1718

S. 1718, introduced by Senator Brown (D–OH) on June 27, 2008, amends the Service-Members Civil Relief Act to provide for reimbursement to servicemembers of tuition for programs of education interrupted by military service, for deferment of students loans and reduced interest rates for servicemembers during periods of military service, and for other purposes. This bill proposes to provide a 13-month transition period for servicemembers to reenroll in a program of education and to begin paying back student loans undertaken for a program of education. The bill also institutes a 6 percent interest rate cap on student loans while a member is deployed on active duty, and requires education program providers to make reasonable accommodations to their students who are members of the Armed Forces and who discontinue a program of education because of a deployment.

Many veterans enrolled in education programs are recalled to duty and deployed to Iraq or Afghanistan return with service-related disabilities. These veterans above all else, are affected by the restraints this bill intends to loosen. Because of the potential benefits this bill will provide, especially to those returning from deployment with service-related disabilities, the DAV does not oppose the favorable consideration of the bill.

S. 2090

S. 2090, introduced by Chairman Akaka (D–HI) by request on September 25, 2007, would protect privacy and security concerns in records at the United States Court of Appeals for Veterans Claims (the Court).

If enacted, S. 2090 would initiate legislation that authorizes the Court to establish rules governing the privacy and security of certain information concerning the Court's electronic filing system. Many Federal Courts now operate under an electronic filing (e-filing) system. Congress has authorized appropriations for the Court to begin utilizing an e-filing system that is expected to be in progress by June 2008. Currently e-filing for applications for attorney fees and costs under the Equal Access to Justice Act is operational. However, there is currently no legislation authorizing the Court to promulgate rules regarding the privacy and security of electronic records.

Essentially, S. 2090 empowers the Court to prescribe rules as it determines necessary to carry out its pending functions under an e-filing system. The proposed legislation does not dictate to the Court any details requiring inclusion in such rules, but merely authorizes the Court to prescribe such rules "consistent to the extent practicable with rules addressing privacy and security issues throughout the Federals Courts." DAV has no opposition to S. 2090.

S. 2091

S. 2091, introduced by Chairman Akaka *by request* on September 25, 2007, would increase the number of the court's active judges.

If enacted, S. 2091 would increase the Court's number of active judges from seven to nine. While the DAV does not have a current resolution from its membership on this specific legislation, we question the need for more judges at this time.

Before DAV could support an increase of two more judges, we would request that this Committee require the Court include the items mentioned below in its annual report. Until this information is made available to Congress, it is, in our estimation, premature to expand the number of judges to nine full-time active judges.

DAV believes that Congress should require an annual report from the Court that requires the following information:

(1) The number of appeals filed.
(2) The number of petitions filed.
(3) The number of applications filed under section 2412 of title 28, U.S.C.
(4) The number and type of dispositions, including settlements, cases affirmed, remanded, denied, vacated and appealed to the Federal circuit.
(5) The median time from filing to disposition.
(6) The median time from the filing of briefs to disposition.
(7) The number of cases disposed by the Clerk of the Court, a single judge, multijudge panels and the full Court.
(8) The number of oral arguments.
(9) The number and status of pending appeals and petitions of applications for Equal Access to Justice Act fees.
(10) A summary of any service performed by recalled retired judges during the fiscal year and an analysis of whether any of the caseload guidelines established under section 7257(b)(5) of title 38, U.S.C., were met during the fiscal year.
(11) The number of cases pending longer than 18 months.

Until the Court reports on the above items, DAV cannot determine whether additional judges are needed and therefore, cannot support additional judges on the Court.

S. 2138

S. 2138, introduced by Chairman Akaka *by request* on October 4, 2007, would amend title 38, U.S.C., to establish within the Department of Veterans Affairs (VA) the position of Assistant Secretary for Acquisition, Logistics, and Construction, and would increase the number of authorized Assistant Secretaries and Deputy Assistant Secretaries. DAV has no resolution on this matter and, therefore, we have no position.

S. 2139

S. 2139, introduced by Senator Klobuchar (D–MN) on October 4, 2007, amends title 38, U.S.C., to provide educational assistance under the Montgomery GI Bill for members of the National Guard and Reserve who serve extended periods of continuous active duty that include a prolonged period of service in certain theaters of operation. This bill provides that reservists or National Guard soldiers who serve on active duty for at least 20 months on or after September 11, 2001, and who serve a period of not less than 12 months in a theater of operations designated by the Secretary of Defense will, under certain circumstances, be entitled to educational benefits under title 38, U.S.C., chapter 30. This bill does not involve educational or vocational benefits specifically designed for veterans with disabilities, and is therefore outside the mission scope of the DAV. However, the bill does provide enhancement of educational service provided by VA. The DAV, therefore, does not oppose the bill.

S. 2309

S. 2309, introduced by Chairman Akaka on November 6, 2007, amends title 38, U.S.C., section 1154, to clarify service treatable as that which a veteran engaged in combat with the enemy, and allowing for utilization of non-official evidence for proof of service connection for a combat-related disease or injury. The DAV supports this bill; however, we suggest amendments. This legislation establishes that a veteran who "during active service * * * served in a combat zone for purposes of section 112 of the Internal Revenue Code of 1986, or a predecessor provision of law, shall be treated as having engaged in combat with the enemy in active service for purposes of that paragraph during such service in that combat zone." The legislation as currently written would allow, for example, an Iraqi War veteran who only served in Bahrain and was consequently never in danger of being exposed to combat the same consideration as an Iraqi War veteran who served inside the combat theatre of operation.

We, therefore, suggest an amendment to this legislation that would still consider a class of veterans as having been exposed to combat, but suggest that those veterans with service inside the borders of the combat theatre of operation receive such consideration, such as those serving inside the borders of Iraq, Afghanistan, Vietnam, etc.

S. 2471

S. 2471, introduced by Senator Kennedy (D–MA), improves the enforcement of the Uniformed Services Employment and Reemployment Rights Act of 1994. DAV has no opposition to the favorable consideration of this measure.

S. 2550

S. 2550, introduced by Senator Hutchinson (R–TX) on January 23, 2008, would amend title 38, U.S.C., to prohibit the Secretary of Veterans Affairs from collecting certain debts owed to the United States by members of the Armed Forces and veterans who die as a result of an injury incurred or aggravated on active duty in a combat zone. Although DAV does not have a resolution on this issue, we would not be opposed to its favorable consideration by this Committee.

S. 2617

S. 2617, introduced by Chairman Akaka on February 8, 2008, would increase effective as of December 1, 2008, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans. The "Veterans' Cost-of-Living Adjustment Act of 2007," would increase the rates of compensation for veterans with service-connected disabilities; however, within the bill is a provision that "[e]ach dollar amount increased under paragraph (1), if not a whole dollar amount, shall be rounded to the next lower whole dollar amount." While the DAV supports the overall intent of this bill, we have testified for the past several years that rounding down the adjusted rates to the next lower dollar amount will gradually erode the value of benefits and they will not keep pace with the rise in the cost of living. Rounding down veterans' cost-of-living adjustments unfairly targets veterans for convenient cost savings for the government. The DAV supports S. 2617, but we urge the Committee to strike the provision regarding the rounding down of the COLA. DAV has a long-standing resolution opposing the rounding down of our COLA. This resolution, Resolution 100, was passed again by the delegates at our last National Convention assembled in New Orleans, LA, August 11–14, 2007.

S. 2674

S. 2674, introduced by Senator Burr on February 28, 2008, consist of two sections-title I and title II. The provisions of title I address "retirement of members of the Armed Forces for disability," and the provisions of title II address "compensation of veterans for service-connected disability. Each title consists of various sections that we will address independently.

Title I of the bill amends chapter 61 of title 10, U.S.C., which currently governs retirement or separation from the military for physical disability. The bill proposes to divide chapter 61 into three subchapters. The first subchapter contains the provisions of the existing retirement system (the "old system"). The second subchapter contains the provisions of the new retirement system created by this bill, and the third subchapter would contain administrative provisions that apply to both retirement systems.

Members retired for disability after the effective date of this legislation would be subject to retire under the new system created by this bill, and members retired prior thereto would be subject to the old system. However, members retired after October 7, 2001, but prior to the effective date of this legislation could make an irrevocable choice between the two systems. Those eligible to convert to the new system after discharge must do so via the respective Board for Correction of Military Records (BCMR).

The bill, however, does not outline the details of the new military retirement system. Instead, the bill requires the Secretary of Defense to conduct a study to determine whom and under what circumstances a member retired under the new system will receive medical and dental care. Congress will then enact provisions of law with respect to who is entitled to such medical and dental care only after the report of the Secretary of Defense.

If Congress fails to enact any provisions of law specifying the category(ies) of retired servicemembers eligible for health care by the date of implementation of the "enhanced Department of Veterans Affairs (VA) disability compensation system" provided for in title II of this bill, then the Secretary of Defense will have sole discretion to determine who is eligible for such care. The DAV cannot blindly support any piece of legislation that allows for such carte blanche rulemaking, especially considering the Defense Department's historical propensity for abuse of both discretion and authority concerning this Nation's sick and injured servicemembers.

A more acceptable approach would be outlining which classes of service retirees are eligible for medical and dental care within the legislative language. It would also be more acceptable to construct legislation wherein improvements in transition benefits are not dependent on the creation of a new VA disability compensation system.

Title II implements what the bill calls the "enhanced VA disability compensation system." Section 201 in title II of the bill requires the Secretary of Veterans Affairs (the Secretary) to examine a number of factors in conducting a study, including: The injuries for which disability compensation is paid under other programs; the extent to which quality-of-life and loss of earnings are separately taken into account in those other programs; the effect of injuries on earnings, quality-of-life, psychological state, physical integrity, and ability to adapt socially; and the extent to which disability compensation may be used as an *incentive* to undergo treatment or rehabilitation. Section 202 requires a similar study on transition benefits.

The bill requires those studies to reflect current concepts of medicine and loss of earning capacity from specific injuries. The Secretary would also be required to consider which injuries the new rating schedule would cover; the level of compensation for loss of quality-of-life as well as standards for determining loss of quality-of-life. Additionally, the VA is to study the level of compensation for loss of earning capacity that takes into account the age of a veteran, and the extent to which disability compensation may be used as an incentive to undergo treatment and vocational rehabilitation.

First, the foregoing studies are unnecessary because the Secretary has already contracted with Economic Systems, Inc. to conduct a study that takes into account most of the items listed in this section of the bill. A second study, apart from being redundant, would be an unwise use of departmental resources.

The substance of some of these studies are also quite concerning to us. For example, the "Secretary would be required to consider the appropriate injuries to be covered under the new disability rating schedule" of which Congress must later approve or disapprove. We feel this language is aimed at removing those disabilities that some feel should not be in the rating schedule. If that is the case, numerous scenarios exist that provide a valid basis for all disabilities currently in the rating schedule.

These studies also suggest using age as a determining factor when considering average loss of earnings capacity. This provision negates the practice that all disabled veterans are compensated based on the "average" loss of earning capacity. Ultimately, we feel this suggests compensating an older veteran at a lower rate than a younger veteran for the same disability. However, we also realize the intent behind this may be to compensate a younger veteran at a higher rate (temporarily) because of findings from the Veterans Disability Benefits Commission indicating younger veterans suffer increased rates of earnings' loss throughout their life when faced with disabilities earlier in life.

The inherent problem with such an approach would be determining at what age a veteran would no longer be entitled to a higher rate of compensation. Many individuals in today's society who are in relative good health choose to continue working well into their 80's, such as many senators and congressmen. This approach would inevitably create unfairness.

Therefore, age must ultimately be left out of any determination concerning the average loss of earning capacity. Compensating older veterans at lower payment rates than younger veterans, while at the same time boasting a new compensation system based on 21st century medicine and 21st century technology is self-contradicting. Access to 21st century medicine cures very few conditions; however, it does extend the lives of people that once would have lived much shorter lives because of disability, thereby allowing them to continue working beyond the average retirement age if they desire, or if they are capable.

While the DAV does not oppose innovative treatment plans with real health-related benefits, using compensation as an incentive to undergo treatment is discriminatory against veterans. Furthermore, the underlying assumption is that 21st century medicine is likely to cure veterans' disabling conditions. That is unfortunately not the case. For example, musculoskeletal disabilities such as gunshot wounds, joint replacements, degenerative disc disease, and arthritis; injuries to sensory organs such as hearing loss and blindness; injuries to the skin such as disfiguring and debilitating burn scars; systemic diseases such as diabetes; digestive system disabilities such as Crohn's disease, abdominal injuries such as gunshot wounds resulting in adhesions of the peritoneum, hepatitis, or bowel section removal; and diseases and injuries to the central and peripheral nervous systems such as multiple sclerosis, amyotrophic lateral sclerosis, or combat injuries resulting in paralysis of long nerves, are not curable.

The logistics required for such changes would be nearly impossible with VA's current workforce. Perhaps more important is the way such a law would be perceived by the veteran community. The disabled veteran community *will* view the current proposal as another way of saying that veterans are being less than honest or that by making it harder to qualify for disability payments, less will be entitled to such payments. The DAV is not insinuating that such a mindset exists behind this proposal. Nonetheless, the scars of the past do not heal quickly, or do not heal at all. Various sections of society have severely scrutinized disabled veterans for the benefits they receive, albeit more so in the past than the present. This provision, as well as others in this bill will open those old wounds.

Instead of using disability compensation as an "incentive" to undergo treatment or vocational rehabilitation, Congress should focus on removing the barriers to accessing treatment and vocational rehabilitation. Those barriers include obstacles such as access to childcare and ability to receive time off work, to mention a few examples.

Section 207 of the bill modifies title 38, U.S.C., section 1155, by providing that ratings under the existing compensation system will continue to be based upon average impairment of earning capacity. For veterans receiving compensation under the "enhanced VA disability compensation system," the ratings must reflect average loss of earning capacity *and* quality of life.

The DAV realizes the intent of this bill is not to create two compensation systems, but rather to avoid it. We appreciate that mindset, and understand that once the new system under this bill goes into effect, there would be only one system under which any benefit is paid. Nonetheless, this bill still creates two "classes" of veteran. For example: veterans under the new system would receive a quality-of-life payment for an identical disability that does not warrant such a payment under the old system; veterans under the old system would receive compensation for disabilities which no longer exist in the new system.

This provision is inherently unfair. Only those veterans rated under the "new system" will receive a "quality-of-life payment." This appears to be an incentive for every veteran to choose entrance into the new system. If VA and Congress give quality-of-life payments serious consideration, then there is no justifiable reason to provide such payments only to those that fall under the new system or that other-

wise choose to convert to the new system. If this provision is not meant to entice veterans into the new compensation system, then what justification is there for not providing such payments to all disabled veterans?

Section 207 of the bill also creates, amongst others, a new statute—title 38, U.S.C., section 1207—which provides that, as frequently as the Secretary considers it appropriate, the Secretary *must* reevaluate and, if necessary, adjust the disability rating for any veteran receiving compensation under new chapter 12.

Under this section, not only will VA be forced to "adjust" a veteran's rating in accordance with repeat examinations, but will *also* be required to adjust the rating in accordance with changes made to the rating schedule incorporated since that veteran's last examination. This renders moot the first sentence in the *new* section 1155(e) that states: "an adjustment in the Rating Schedule will not result in a veteran's existing disability rating being reduced * * *." This sentence creates a fallacy via section 1155(e) resulting in the potential that a veteran could get reduced based on perceived improvement then reduced further in the same rating based on a change in the rating schedule. In the alternative, a veteran with no improvement may nonetheless receive a reduced rating based solely on a change in the rating schedule. Worse yet, depending on changes in the rating schedule since a veteran's last examination, he/she could actually receive a reduced rate of compensation even though the veteran's disability increased in severity. The DAV cannot agree with this.

When VA chooses not to re-evaluate a particular disability, it is usually because that veteran has already undergone multiple examinations over the course of many years. Therefore, VA bases the determination not to re-evaluate a veteran's disabilities upon objective medical evidence. There is no conceivable harm to the interest of the veteran or the government in this practice. This provision attempts to fix what is not broken.

Likewise, this requirement would cause irreparable harm to the efficiency and management capability of the claims process, in part by causing the backlog of claims to increase exponentially. No claim (apart from disabilities such as amputation and the few wherein a medical examiner opines as stable) would ever be put to rest. Therefore, hundreds of thousands of self-perpetuating claims would be added to the backlog each year. The number of pending claims would climb into the millions very rapidly. There would be no cost-savings realized because of the logistics required. The VA does not, and will not, have the number of claims adjudicators and compensation and pension examiners necessary to control the inevitable result of this provision.

Continual re-examinations are also unnecessary. Veterans Health Administration procedures already require VHA to notify the appropriate regional office whenever a service-connected disabled veteran receives medical care for a service-connected disability. The regional office concerned is then to consider to what extent, if at all, the medical report will affect that veteran's disability rating. These procedures are outlined in VA's Health Care Adjudication Manual, M–1. Likewise, regulations requiring VBA to accept such reports as claims can be found at title 38, Code of Federal Regulations, section 3.157 (2007).

This and the following provision will also have severe unintended consequences that must be considered. One such consequence is a barrier to death benefits under title 38, U.S.C., section 1318. This statute allows a surviving spouse to receive dependency and indemnity (DIC) benefits if the veteran spouse was rated permanent and totally disabled (P&T) for no less than 10 consecutive years prior to death. The effect of these provisions will ultimately result in many veterans evaluated as P&T receiving reduced rates of compensation, whether or not the propriety of such reductions are lawful, which will be up for debate in many cases. These reductions will interrupt the 10-year window of their P&T ratings resulting in VA denying surviving spouses DIC benefits under section 1318.

Two other consequences of equal if not greater severity is the termination of benefits under title 38, U.S.C., chapter 35, Survivors and Dependents Educational Assistance (DEA), and the VA Civilian Health and Medical Program (CHAMPVA) under title 38, U.S.C., Section 1781 and title 38, Code of Federal Regulations, Section 17.270. Each of these benefits are established when, *inter alia*, a veteran is rated by VA as P&T.

DEA provides educational opportunities to children whose education would otherwise be impeded or interrupted because their veteran-parent suffers from a severe service-connected disability. The objective is to provide educational assistance to aid children in attaining the educational status they might normally have aspired to and obtained but for the disability of such parent. Similarly, DEA provides educational assistance for veterans' spouses with a service-connected total disability, permanent in nature, to assist them in supporting themselves and their families at

a standard of living to which the veteran, but for the veteran's service disability, could have expected to provide for the veteran's family.

Likewise, CHAMPVA benefits provide a totally disabled veteran with the means to ensure that his/her family has access to health care insurance. Many such veterans are not military retirees otherwise eligible for TRICARE benefits, and are unemployed; therefore, they usually do not have other private health care coverage. In these circumstances, these families are dependent solely on CHAMPVA for health insurance.

This and the following provision would prevent many families from ever establishing entitlement to such benefits because of the perpetual nature which the claims process will become. Worse yet, is that many families currently utilizing DEA and CHAMPVA benefits will have future entitlement to those benefits severed at the most critical times, during the course of attending school or obtaining potential life saving medical care.

A veteran rated totally disabled will not require an actual rating reduction in order to lose these benefits. There are two vital triggering mechanisms that determine entitlement to these benefits, at least pertaining to this discussion—a rating of *permanent* and *total*. Therefore, when a veteran enters the new system proposed by this bill, either voluntary or involuntary, that veteran will be re-evaluated thereby losing the *permanent* rating status required for entitlement to both DEA and CHAMPVA.

Nonetheless, many veterans will receive a rating reduction under this system, usually for no other reason than a misapplication of the law. The cumulative effect will result in a totally disabled veteran's family losing a large portion of their household income, potentially their only income, followed by a revocation of vital health insurance and education benefits. The veteran in this scenario will also lose entitlement to dental care at the VA.

Ultimately, through reduced compensation resulting in poverty for entire families, compounded by a revocation of health insurance, and further compounded by a veteran's inability to send his/her children to college, the scars left by the damaging effects of this legislation could last for generations. This scenario is not an exaggeration. This portion of the legislation, as well as section 207(b)(3) below, has unintended detrimental consequences. The DAV has long-standing resolutions objecting to such changes. Therefore, we must actively oppose this bill.

Section 207(b)(3) of the bill amends title 38, U.S.C., section 110, which currently prohibits the reduction of a disability rating that has been in force for 20 or more years. This change will allow VA to continue to periodically reevaluate a veteran's disability. This change expressly severs veterans from protection from reductions in disability ratings that have been in effects for a long period of time—20 or more years.

Congress originally enacted the protections provided by title 38, U.S.C., section 110 in 1958. See 38 CFR § 3.951(b) (2007). Congress further amended section 110, *inter alia*, in 1964. Apart from the general concern for the interests of disabled veterans, Congress realized the subsequent positive impact this enactment would have on the Administration. In addressing the administration's concerns, Congress, *inter alia*, stated: "It has in practice, however, worked extremely well, and has given no problem in the administration of the various veterans' laws. In fact, quite the contrary has been the case. It has eased administration and reduced administrative costs." 1964 Acts. House Report No. 1407, see 1964 U.S. Code Cong. and Adm. News, p. 2833.

To now revoke the 20-year protection is highly precarious and unfair. We believe it will cause more unrest in the nearly 3 million veterans receiving compensation than for which anyone is prepared. Apart from all future veterans, this provision will affect more than any other those disabled veterans that have endured their disabling conditions the longest. This oldest group of veterans will suffer more unnecessary instability in their lives than any other group. Likewise, younger groups of veterans will never achieve such stability. Taking away this protection and still calling this an enhanced benefit plan is simply inconceivable.

Many VA adjudicators will inevitably see this change as the proverbial suggestion, if not a mandate, to reduce any protected rating that can be justified. The downstream result will be that those veterans and their families that have come to depend on VA compensation the most will lose that compensation at critical times in their lives. Surely, this is not the way a grateful nation treats its disabled veterans.

S. 2683

S. 2683, introduced by Chairman Akaka on March 3, 2008, would amend title 38, U.S.C., to modify certain authorities relating to educational benefits for veterans.

Section I of the bill, concerning accelerated educational assistance payments, clarifies that veterans seeking employment in a high technology industry are not required to seek an associate degree or higher in order to qualify for the accelerated payments. This bill does not involve educational or vocational benefits specifically designed for veterans with disabilities, and is therefore outside the mission scope of the DAV. However, the bill does provide enhancement of educational service provided by VA. The DAV therefore does not oppose the bill.

S. 2701

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S. 2701, introduced by Senator Ben Nelson on March 4, 2008, would direct the secretary of Veterans Affairs to establish a national cemetery in the eastern Nebraska region to serve veterans in the eastern Nebraska and western Iowa regions. DAV has no mandate from its membership on this matter. However, we would not oppose its favorable disposition by this Committee.

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S. 2737

S. 2737, introduced by Chairman Akaka on March 10, 2008, the "Veterans' Rating Schedule Review Act," amends title 38, U.S.C., section 7252(b), by granting the Court jurisdiction to review "whether, and the extent to which, the schedule of ratings for disabilities complies with applicable requirements of [title 38, U.S.C.,] chapter 11." The DAV supports this legislation because, while continuing the Court's prohibition from reviewing the content of the VA's rating schedule, this amendment would clarify the Court's authority to review the rating schedule in so far as ensuring its agreement with chapter 11, and therefore its compliance with congressional intent.

S. 2768

S. 2768, introduced by Chairman Akaka on March 13, 2008, would provide a temporary increase in the maximum loan guaranty amount for certain housing loans guaranteed by the Secretary of Veterans Affairs. Although DAV has no mandate from its membership on this matter, we would not oppose its favorable disposition by this Committee.

S. 2825

S. 2825, introduced by Chairman Akaka on March 13, 2008, would amend title 38, U.S.C., to provide a minimum disability rating for veterans receiving medical treatment for a service-connected disability. This bill provides a compensable rating for any veteran who requires continuous prescribed medication or the use of one or more prescribed adaptive devices for treatment of a service-connected disability. Although DAV does not currently have a resolution on this issue, its purpose is beneficial to disabled veterans and DAV would encourage this Committee to favorably support its passage.

S. 2864

S. 2864, introduced by Chairman Akaka on April 15, 2008, amends title 38, U.S.C., to include improvement in quality-of-life in the objectives of training and rehabilitation for veterans with service-connected disabilities. This bill also repeals the limitations on the number of veterans enrolled in a program of independent living service and assistance. A disabled veteran's quality-of-life, as well as his/her independence in life is integral. Many who live without disability can easily take these issues for granted. However, a veteran facing a lifetime of disability does not have the luxury to do so. This bill would require the VA to focus on this important and ever challenging struggle in the lives of disabled veterans. The DAV supports this bill.

S. 2889

S. 2889, introduced by Chairman Akaka *by request* on April 17, 2008, would, in pertinent Section 7 and Section 8, make permanent the authority to carry out income verifications and increase the rate of disability compensation and DIC. DAV is opposed to making permanent the authority to carry out income verifications since there are recognized savings realized when Congress renews this provision. Those serving can be used to enhance other programs for disabled veterans. Under Section 8, DAV continues its opposition to the rounding down of our annual COLA.

S. 2951

S. 2951, introduced by Senator Baucus (D–MT), on May 1, 2008, would require reports on the progress of the Secretary of Veterans Affairs in addressing causes for variances in compensation payments for veterans for service-connected disabilities.

In May 2005, the VA Office of Inspector General (VAIG) issued a report on the variances in VA disability compensation payments. It is interesting to note that the VAIG found some key distinctions in important areas of claims adjudications between those States with higher compensation rates (high cluster) and those States that had the lowest compensation rates (lower cluster).

In the higher cluster States, training was a priority; raters were more experienced; medical evaluations were better; there was a lower error rate; it took longer to render a decision (more thorough decision); fewer pending claims, despite more claims, more veterans on the role and more thorough decisions; fewer cases were sent (brokered) to other regional officers; and there was a higher percentage of represented cases. The converse was true in the lower cluster States.

It is also important to note that represented veterans in the lower cluster States did as well as veterans from higher cluster States. DAV supports this legislation to require the Secretary to report on the progress or the variances in compensation payments.

S. 2961

S. 2961, introduced by Chairman Akaka on May 1, 2008, would amend title 38, U.S.C., to enhance refinancing of home loans by veterans. This measure would increase the maximum percentage of loan-to-value of refinancing loans subject to guaranty under title 38, U.S.C., section 3710(b)(8) from 90 percent to 95 percent. DAV has no opposition to this worthy bill.

DRAFT LEGISLATION

Draft bill introduced by Senator Casey (D–PA) would help prevent the unnecessary foreclosures for Servicemembers. This measure proves that:

- Servicemembers who become seriously injured or ill during their military service will be given a 1-year protection from foreclosure after their military service ends.
- Any servicemember, including those above, who files a disability claim with the VA within 1 year of the end of their military service, will be protected from foreclosure until 30 days after the VA adjudicates their claim.
- The definition of "Serious Injury and Illness" is taken from the Service Members Civil Relief Act; DAV has no objection to this bill.

DRAFT LEGISLATION

Draft bill introduced by Senator Menendez (D–NJ) would amend title 38, U.S.C., to direct the Secretary of Veterans Affairs to provide a flat allowance for spouses and children of certain veterans who are buried in State cemeteries. DAV has no position on this matter.

DRAFT LEGISLATION

Title I of the "Veterans' Benefits Enhancement Act of 2008" makes minor changes to title 38, U.S.C., chapter 36, regarding education benefits under that chapter. The DAV has no opposition to such changes. Title II of the bill deals with provisions that would, amongst others: Permit VA to temporarily stay adjudication of claims while awaiting pending court decisions, thereby allowing the Board of Veterans' Appeals to decide certain cases out of docket number order. The DAV opposes this portion of the bill.

Section 201 of the bill states that, "[n]otwithstanding any other provision of this title, the Secretary may temporarily stay the adjudication of a claim or claims before the Board of Veterans' Appeals or an agency of original jurisdiction when the Secretary determines that the stay is necessary * * *." A VA claimant's only remedy during such a stay would then be to petition for review of the action under regulation(s) yet to be promulgated by the Secretary. The claimant would be required to file such a petition with the United States Court of Appeals for the Federal Circuit (Federal Circuit), which could then set aside such action only if it determines that the action is arbitrary and capricious. The Secretary, in this by-request legislation, is essentially requesting unilateral authority to stay cases at will, thereby shifting the onerous burden of challenging such a stay to a VA claimant.

The Secretary and Chairman of the Board currently have authority to manage the activities of the Board that includes authority to stay classes of cases before it for well-articulated reasons of sound case management. However, that authority does not include the *unilateral* authority to stay cases pending an appeal to the Federal Circuit of a decision by the Court of Appeals for Veterans Claims. Where the Secretary or the Chairman of the Board desires to stay the effect of any decision of the Court of Appeals for Veterans Claims pending appeal to the Federal Circuit, the proper course is to file in the court that has jurisdiction over the particular case a motion to stay the effect of that case.

The Secretary's by-request legislation is a result of his disagreement with judicial precedent that decisions of the Court, unless or until overturned by the Court *en banc*, the Federal Circuit, or the Supreme Court, is a decision of the Court on the date issued. Any rulings, interpretations, or conclusions of law contained in such a decision are authoritative and binding as of the date the decision is issued and are to be considered and, when applicable, are to be followed by VA agencies of original jurisdiction, the Board, and the Secretary in adjudicating and resolving claims. *Ramsey* v. *Nicholson*, 20 Vet. App. 16, 23 (2006) (citing *Tobler* v. *Derwenski*, 2 Vet. App. 8, 14 (1991)).

The foregoing notwithstanding, the *Ramsey* Court concluded that it is reasonable for the Board to stay its proceedings in a case that arguably falls within the precedent of one pending appeal at a higher Court. However, the Court was clear in that the Board cannot choose to ignore a decision as if it had no force or effect. Absent reversal, a decision is law that the Board must follow. Nonetheless, where the Secretary desires a stay, the proper course is to file in the court that has jurisdiction over the particular case a motion to stay the effect of that case-to do so unilaterally is unlawful. *Ramsey*, 20 Vet. App. at 38–39.

The *Ramsey* Court also made clear, in light of explaining the proper pathway to lawfully request a stay of cases, that VA's consistent practice of refusing to follow the law of the circuit unless it coincides with the Board's views (meaning the issuance of unilateral stays) "is intolerable if the rule of law is to prevail." *Ramsey*, 20 Vet. App. at 24. The Secretary's by-request legislation seeks codification of that "intolerable" practice.

The Secretary's request further ignores the reality that VA employs a small army of attorneys, any of whom are qualified to file a motion for a stay of proceeding in the proper jurisdiction. The vast majority of VA claimants, however, do not have such expertise or resources. The system currently in place serves an important check and balance function. If the Courts issue a decision that VA sternly disagrees with, the Secretary has the resources and authority to appeal to a higher Court. If the Secretary wishes, he may file a motion with that Court for a stay of proceeding on all cases affected by the case on appeal. The higher Court may grant such a motion, thereby allowing the stay to continue. If the higher court finds the motion unreasonable, they may deny the motion and therefore deny the right to a stay. If the motion to stay is granted and a VA claimant wishes to challenge the stay, he/she may petition for a writ of mandamus, which the Court considers under the All Writs Act.

Despite the foregoing, in accordance with this legislation, the Secretary would have carte blanche ability to stay cases at will. Such ability would go unchecked until a stay affected a beneficiary with enough resources to challenge the stay in the Federal Circuit. Even then, the bill contains no language that imposes a time limit on a stay. For instance, if VA chooses to appeal a case to the Court of Appeals for the Federal Circuit, and therefore stays like cases at the agency level and eventually loses the appealed case, there is nothing in the bill that would prevent the VA from continuing the stay nearly indefinitely while it decides whether to seek a legislative change to a judicial precedent of which it disagrees-such as it is expressly doing with this by-request legislation. Congress should refuse to award the VA such overreaching, and potentially abusive authority.

DRAFT LEGISLATION

Senator Vitter (R–LA) has proposed a bill to amend title 38, U.S.C., to make stillborn children insurable dependents for purposes of the Servicemembers' Group Life Insurance program. The DAV has no resolution on this issue, which lies outside the mission scope of the organization. DAV has no opposition on this bill.

DRAFT LEGISLATION

Senator Boxer (D–CA) has proposed a bill to require a report on the inclusion of severe and acute Post Traumatic Stress Disorder among the conditions covered by traumatic injury protection coverage under Service Members' Group Life Insurance.

The VA has long considered an injury or disability one that can be either physical or mental. Severe cases of PTSD can be as debilitating and life altering as many physical disabilities. Therefore, DAV supports this proposed legislation.

Mr. Chairman, this concludes my testimony on behalf of DAV. We hope you will consider our recommendations. I will be pleased to address any questions you or other Members of the Committee may wish to ask.

Chairman AKAKA. Thank you very much, Mr. Violante.

Mr. Weidman, before you give your statement, I would like to address the timeliness of your written testimony. I understand the Committee did not receive your testimony until yesterday evening. A full day and one-half after it was due.

As I mentioned earlier, it helps our Committee work that we receive this on time and late reception of these, of course, is unacceptable; and I ask you to abide by the Committee rules.

So, Mr. Weidman, would you please give your statement.

STATEMENT OF RICK WEIDMAN, GOVERNMENTAL AFFAIRS DIRECTOR, VIETNAM VETERANS OF AMERICA

Mr. WEIDMAN. Duly noted, Mr. Chairman.

I will comment on and would like to associate my remarks with my colleagues to my right. There were many pieces of fine legislation here. I'll just touch on things that were not touched on this morning.

We are very much in favor of S. 1718. We're equally strongly—and perhaps even more so—in favor of Senator Brown's other bill that would essentially re-establish veterans offices on campuses around the country and provide money for tutors. It will enhance whatever GI Bill we have in effect at any given time and help more veterans stay in school to completion.

S. 2990. Everyone is for greater computer security. But, one thing—the VA may use this to come up with their old canard that they cannot give detailed information about what is going on at the Board and at the Court of Veterans Appeals because it may compromise privacy concerns.

Frankly, we do not think that is the main reason. It is lack of transparency. So, if in the Committee report you could duly note that, we would strongly recommend that, sir.

S. 2091. Increasing of judges. We are in favor of it, but only if VA makes the commitment to have more staff and better management of the caseload that it does have. And, last but not least, as a part of that perhaps, or as a separate bill, to explore some kind of sanctions on the VA when it does not carry out the court's orders.

It is very often true that the court will order anywhere from seven to nine things—and the same thing with the Board—and VA does only two. What that does is churn claims back and forth through the system, which further contributes to the backlog.

So, in regard to the overhaul of the Compensation and Pension system, Senator Burr, we appreciate the strong effort on your behalf in looking to reform that.

Most of the problems, however, we believe, do not need a different system. You need proper implementation of the system we have and holding people accountable for what they are and are not doing. To be giving out bonuses, given the shoddy job that the VBA

is doing today is, to us, simply outrageous; and we would like to see it stopped.

In regard to S. 2309 and the presumption that an injury occurred in a war zone is enough for the stressor (if it is PTSD) or the incident (if it is a physiological injury). We would point out that it is very difficult to document this. I served as a medic in I Corps Vietnam and, frankly, the paperwork lots of time was acting. In a forced choice between filling out the field medical card and saving someone's life, the life of that GI who was wounded came first.

And, it is very often true that you do not have complete medical records. I have a lot of contact with the young people coming home, particularly a number of young medics, and they tell me it is still happening in the field—where there is not complete documentation of incidents.

I would also point out that the re-analysis of the National Vietnam Veterans Readjustment Study that was released in August of 2006—the Dorwin study—that they went back and found documentary evidence in over 90 percent of the veterans on that statistically valid random sample of Vietnam veterans. They had documentary proof in the way of either after action reports, medical records or newspaper clips, or after-action histories in the Army and the Navy and Marine Corps archives.

So, to believe that somehow veterans suddenly lose their honor when they get hurt is simply an unacceptable notion to us. This bill is very much needed and we strongly support your early passage of it. We thank the chairman for your proactive action in this regard.

When it comes to USERRA, S. 2471, we are in favor of anything that will improve the enforcement, but we have doubts about OSC even before the news that broke in the papers this morning about the Office of Special Counsel.

We have tried enforcement now for years and have changed the law and strengthened the law several times since 1991 in order to have it work better.

Perhaps it is time to take a different approach and move to incentivize employers. A very small percentage of America's employers are paying a cost of this war in that they have employees who are Guard and Reserve soldiers who are activated not once but multiple times.

Tax breaks for those employers and making available retraining dollars to those employers when they have to train a temp to take that individual who has been activated's place; and to retrain the person, Guard or Reserve soldier, when he or she returns to catch up with what they missed during the anywhere from 12 to 15 months they were away, would be extraordinarily helpful.

I see I am out of time. I would be glad to answer any questions.

Let me just end with one comment on S. 22. It is the most important thing, the most important thing, that the Congress can do for these young men and women returning home today.

If in our private life we had the opportunity to invest one dollar and it was guaranteed that within 10 years we would have seven dollars back, it would be a foolish individual indeed who would not invest that one dollar. And that is what the return would likely be on today's GI Bill, just as it was on World War II's GI Bill.

I thank the chair.
[The prepared statement of Mr. Weidman follows:]

PREPARED STATEMENT OF RICHARD WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA

Good morning, Mr. Chairman. On behalf of VVA National President John Rowan and all of our officers and members, I thank you for the opportunity to share our thoughts on these pieces of pending vital legislation with you and the other distinguished Senators and this panel. With your permission, I will keep my remarks brief and to the point.

S. 1718—THE VETERANS EDUCATION TUITION SUPPORT ACT

The "Veterans Education Tuition Support Act," amends the Servicemembers Civil Relief Act to require an institution of higher education, in the case of a servicemember who, because of military service, discontinues a program of education at an institution that administers a Federal financial aid program, to: (1) refund to the servicemember tuition and other fees paid for the portion of the program of education for which the servicemember did not receive academic credit because of such military service; and (2) provide the servicemember an opportunity to reenroll at the institution with the same educational and academic status that the servicemember had when the program was discontinued because of the military service.

Vietnam Veterans of America (VVA) strongly supports early enactment of this proposal. This proposal will provide simple common sense equity for those called to active duty, and is the least that institutions should do for those who place their lives on the line for all of us. It is a shame that there needs to be a law passed in order to achieve this simple goal, but we know from talking to young servicemembers that this proposed law is much needed.

S. 2090—PRIVACY AND SECURITY CONCERNS

S. 2091—INCREASING THE NUMBER OF JUDGES AT THE COURT OF VETERANS APPEAL

VVA favors enactment of both measures. Increasing the number of judges, if it accompanied by hiring of additional personnel to assist the judges in their work, should help somewhat to cut down the unconscionable delays currently experienced by veterans waiting for a decision on their claim before the court.

VVA also favors strengthening security of records as long as it is accompanied by report language that makes it clear that general data on cases before the court is to be released into the public domain as appropriate. In other words, it must be made clear that VA cannot withhold vital data as to what is happening with cases pending before the court using their canard of protecting each veteran's privacy. If VA were really worried about privacy of the individual veteran, then the medical records of individuals would not be wide open (with no record) to any physician or other generally authorized person in the Veterans Health Administration whether there was a legitimate need for the person accessing the data to be looking into that veterans' record or not. Still, with the above noted reservation, VVA favors passage of S. 2090.

S. 2138—DEPARTMENT OF VETERANS AFFAIRS REORGANIZATION ACT OF 2007

VVA favors enactment of this proposal, as the needs and demands of construction is a huge job in and of it, and should not be combined with any other procurement or management activities. VVA does hope that the Committee will take a close look at why regulations fully implementing Public Law 109–461, particularly as it pertains to procurement utilizing service-disabled veteran-owned small business concerns of all sort, including construction.

S. 2139—NATIONAL GUARD AND RESERVE EDUCATIONAL BENEFITS FAIRNESS ACT OF 2007

While VVA favors full equity for National Guard and Reserve soldiers who have been activated since 2001 (same hostile fire should equal same benefits), the way to achieve parity or fairness regarding the educational benefits is not to increase financial contributions of Guard and reservists in our view, but rather early enactment of S. 22 as amended. Should that prove to not occur this session of Congress, then VVA would not oppose this bill.

S. 2309—COMPENSATION FOR COMBAT VETERANS' ACT

VVA strongly favors this bill, and thanks the Chairman for advancing this proposal to put an end to any attempt by DOD or VA to deny compensation based on MOS or other factors which may not mean much given the nature of warfare in Iraq and Afghanistan today. VVA is painfully aware of how VA and/or DOD can and sometimes will play this "game" with veterans in regard to exposure to certain conditions during military service that can cause illness or injury.

S. 2471—USERRA ENFORCEMENT IMPROVEMENT ACT OF 2007

VVA favors enactment of this proposed legislation as taking several much needed steps to strengthen and improve the USERRA system for ensuring re-employment rights of individuals who are members of the Reserves or of the National Guard.

Having noted that we favor this initiative, VVA also suggests to the Committee that there is not enough staff at the Veterans Employment & Training Service (VETS) of the United States Department of Labor (USDOL) who are adequately trained and supervised to do proper investigations regarding re-employment. VVA would hope that the Appropriations Committee would add to the VETS staff and to the VETS training budget enough additional resources to close this gap between what needs to be done and what is now happening in many States.

VVA further suggests that a very small percentage of businesses are bearing a disproportionate share of the burden of paying for these wars in which we are currently engaged, in that they are the ones who DO support their employees who are also Guard and Reserve soldiers when they are deployed. These employers pay the cost of lost productivity, the cost of hiring and training a temporary employee while the Guard soldier or reservist is on active duty, and in many cases the cost of retraining the returning service person whose skills have become outdated and the cost of helping that person readjust to civilian life again.

Therefore, VVA strongly urges the Congress to consider two options: First, to provide tax incentives for those employers who have Guard and Reserve soldiers on their payroll who are activated for the proportional number of months in a given year that their employee was away; and, two, to make available training dollars through USDOL to both train the temporary replacement worker and the returning servicemember when they come back to the job. These two measures together would materially strengthen the support for the National Guard and Reserves from the employer community, but we believe it would greatly reduce the number of problems with re-employment rights, therefore reducing the number of complaints dramatically.

What we are really suggesting is that we look to better educate the employers as to what is their responsibility under the USERRA law *BEFORE* there is a problem and everyone gets emotional, but also that the employers' perspective and needs should be taken into account. Frankly, VVA believes that providing real incentive for voluntary compliance will prove to be far more effective than any or all enforcement efforts.

S. 2550—(HUTCHISON) COMBAT VETERANS DEBT ELIMINATION ACT OF 2008

S. 2550 would prohibit the Secretary of Veterans Affairs from collecting debts owed to the United States by certain members of the Armed Forces or veterans who die as a result of an injury incurred or aggravated on active duty in a war or a combat zone after September 11, 2001. It would except any amounts owed the United States under Federal housing and small business loan programs from such prohibition on debt collection.

VVA favors enactment of this measure. We should be providing support and assistance to the family, not hounding them with debt collectors.

S. 2573—VETERANS MENTAL HEALTH TREATMENT FIRST ACT

This proposal would amend title 38, United States Code (U.S.C.), to require a program of mental health care and rehabilitation for veterans for service-related Post Traumatic Stress Disorder, depression, anxiety disorder, or a related substance use disorder, and for other purposes.

VVA is not sure of the intent of this act, but believes that it may have some merit if it truly strengthens rehabilitation and training that will help in the veterans' recovery to the highest state of independence and realization of natural talents possible. For veterans of working age, that means re-acquiring the ability to obtain and sustain meaningful employment at a living wage. VVA looks forward to discussing with this proposal further with the sponsor and co-sponsors, and making further comments at the hearing on May 21.

S. 2617—VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2008

Effective December 1, 2008, this proposal would increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

VVA strongly favors this proposed legislation.

VVA also asks that the Committee take a hard look at payments for DIC and at payments for ratings of 60 percent and more to consider adjusting the compensation rate base, separate and apart from the annual Compensation Cost-of-Living (COLA). VVA agrees with the findings of the recent Commission that dealt with compensation for service-disabled veterans that the payments are purchasing substantially less today than was the case a decade or two ago, and even the COLA has not resulted in maintaining the buying power to properly "care for him who shall have borne the battle and for his widow and his orphan."

S. 2683—AMENDS TITLE 38, U.S.C., TO MODIFY CERTAIN AUTHORITIES RELATING TO EDUCATIONAL ASSISTANCE BENEFITS FOR VETERANS, AND FOR OTHER PURPOSES

VVA strongly favors this bill, which would increase the monies available to the State Veteran Approving Agencies, who essentially are the primary quality assurance program for the educational benefits program. These State agencies depend on the VA for the grants that enable them to do a thorough job of investigating and approving (or not) programs of study that can be used by a veteran and still draw education benefits.

The State Approving agency model has worked well for many years, and the primary problems experienced with this program has been that there simply was not enough money appropriated to get the job done in some past years. VVA thanks Senator Akaka for taking steps toward assuring that adequate resources are available to keep these programs strong, and to ensure the success of the educational benefits are available only for programs that are reputable and real in regard to the education the veteran will receive for money spent.

S. 2737—VETERANS' RATING SCHEDULE REVIEW

This proposal would authorize the Court of Appeals for Veterans Claims to review whether, and the extent to which, the schedule of ratings for veterans' disabilities complies with statutory requirements applicable to entitlement to veterans' disability compensation for service-connected disability or death.

VVA favors this act, which could provide some potentially useful oversight of VA implementation of the laws pertaining to disability compensation. It has long galled us that the rating schedule, as just one example, for PTSD has little or nothing to do with the definition of PTSD in the DSM IV. Frankly the rating schedule seems to be more about dementia than Post Traumatic Stress Disorder (PTSD). However, VVA must point out that the VA all too often does not follow the orders issued by the Court of Appeals for Veterans claims, or only partially follows said orders. VVA recommends that a way be found to make it clear that VA is to comply with any and all orders of the Court just as it would (should) comply with an order from any other Federal judge.

S. 2768—PROVIDES A TEMPORARY INCREASE IN THE MAXIMUM LOAN GUARANTY AMOUNT FOR CERTAIN HOUSING LOANS GUARANTEED BY THE SECRETARY OF VETERANS AFFAIRS

VVA generally favors this proposed legislation as a temporary measure to alleviate some of the pressure on veteran home buyers (and those who are potential home loan lenders to veterans) by in effect raising the amount guaranteed by VA.

However, VVA suggests that there are some broader conceptual problems that need to be addressed in the VA home loan guaranty program to make it more consistent and coordinated with other VA benefits and services, including health care. VVA looks forward to discussing possible reform of this program with staff on both sides of the aisle.

S. 2825—VETERANS' COMPENSATION EQUITY ACT OF 2008

This proposed measure would amend title 38, U.S.C., to provide a minimum disability rating for veterans receiving medical treatment for a service-connected disability.

VVA favors passage of this proposal. This change is needed, particularly in regard to the conditions of hearing loss and the separate condition of tinnitus, which are more often than not rated as 0 percent even though there is significant ongoing impairment in the ability to function normally in the workplace or in just accomplishing every day tasks that those with normal hearing take for granted. The

0 percent rating is often over-used, apparently in order to save money instead of properly compensating for the loss of function, limitations on earnings, and other factors such as quality-of-life.

S. 2864—TRAINING AND REHABILITATION FOR DISABLED VETERANS ENHANCEMENT ACT OF 2008

This proposal would amend title 38, U.S.C., to include improvement in quality-of-life in the objectives of training and rehabilitation for veterans with service-connected disabilities, and for other purposes.

Vietnam Veterans of America (VVA) strongly favors enactment of this proposal at an early date. There are no limitations on the number injured on the battlefield, and therefore there should be no artificial limitation placed on the number that can qualify for, enroll in, and receive independent living services and assistance. In addition, quality-of-life should have long been considered to be a factor in the receipt of services by service-connected disabled veterans (but was not), and it is time that this be rectified.

SERVICEMEMBER'S GROUP LIFE INSURANCE (SGLI) AND PTSD

VVA also encourages the Committee to take up the measure introduced by Senator Barbara Boxer of California that would include Post Traumatic Stress Disorder (PTSD) as among the conditions covered by traumatic injury protection coverage under the Servicemember's Group Life Insurance in tandem with your distinguished colleagues on the Committee on Armed Services. This is a much needed step that will finally recognize that PTSD is every bit as debilitating (possibly even more so) than traumatic physical injury, and will make a world of difference in how many families will remain intact where the returning servicemember is suffering from PTSD.

Thank you, Mr. Chairman for allowing Vietnam Veterans of America to provide you and your distinguished colleagues with our comments on so many bills under consideration. VVA further thanks you and Senator Burr for your consistent strong leadership for veterans.

I will be pleased to answer any questions.

Chairman AKAKA. Thank you very much, Mr. Weidman.

I am going to come last with questions and ask the Ranking Member, Senator Burr, for his questions.

Senator BURR. Thank you, Mr. Chairman. Mr. Weidman, let me thank you for your comments and suggest to you that I do disagree with one statement you made.

I am thoroughly convinced, having read most of the commission reports, that the system that we currently have cannot just be fixed and be functional. That is one of the reasons that I spent a lot of time trying to redesign for the 21st Century a disability system.

Clearly, if we are missing it, as all of you at the table know, I have been extremely open to try to modify where you have brought new information or new realities to us, and will continue to do that.

I have got very limited time, so I am going to do something I hate to do, which you probably hate even more. I am going to start with Mr. Blake and I am going to ask about 11 questions. I am going to ask for a yes or no answer, and I am going to go your way. I am going to have somebody behind me keep up with your answers, if I can. I'll start with you, Carl.

Do you oppose an immediate 36 percent increase in the Montgomery GI education benefit?

Mr. BLAKE. Principally I would say no.

Senator BURR. Mr. Cohen.

Mr. COHEN. NOVA does not have an opinion at this point. I need to research it and get back to you.

Senator BURR. Mr. Hilleman.
Mr. HILLEMAN. No, sir.
Senator BURR. Mr. Kelley.
Mr. KELLEY. No, sir.
Senator BURR. Mr. Smithson.
Mr. SMITHSON. No, sir.
Senator BURR. Joe.
Mr. VIOLANTE. No, sir.
Senator BURR. Mr. Weidman.
Mr. WEIDMAN. No, sir.
Senator BURR. Do you oppose an immediate 36 percent increase in the education benefit for Guard and Reserve soldiers who have been deployed since September 11, 2001?
Mr. BLAKE. No, sir.
Mr. COHEN. NOVA has same answer as before.
Mr. HILLEMAN. No, sir.
Mr. KELLEY. No, sir.
Mr. SMITHSON. No, sir.
Mr. VIOLANTE. The DAV has no opposition.
Mr. WEIDMAN. No, sir.
Senator BURR. Do you oppose an immediate 50 percent increase in the education benefits for Guard and Reserve soldiers who have not yet deployed in the war on terror?
Mr. BLAKE. No, sir.
Mr. COHEN. Same comment.
Mr. HILLEMAN. No, sir.
Mr. KELLEY. No, sir.
Mr. SMITHSON. No, sir.
Mr. VIOLANTE. No.
Mr. WEIDMAN. No, sir.
Senator BURR. Do you oppose an 80 percent increase in the education benefits for career military personnel?
Mr. BLAKE. I would say, sir, I could not give you a yes or no, because we do not have a position as it relates to career. We look at a veteran as a veteran.
Senator BURR. Thank you.
Mr. COHEN. NOVA has no position on that.
Mr. HILLEMAN. Overall 80 percent increase on all education benefits available to active duty——
Senator BURR. Do you oppose an 80 percent increase in education benefits to career military personnel?
Mr. HILLEMAN. For the entire force, sir?
Senator BURR. Yes, sir.
Mr. HILLEMAN. I would have to take that question and review it—take a look at it.
Senator BURR. Thank you.
Mr. Kelley.
Mr. KELLEY. Off the cuff AMVETS would say, no; no opposition to that.
Mr. SMITHSON. My answer is similar to Mr. Blake's in that we see all military personnel and veterans as the same.
Senator BURR. Thank you.
Mr. VIOLANTE. DAV has no position.
Mr. WEIDMAN. VVA would favor it as long as DOD pays, sir.

Senator BURR. Do you oppose allowing Guard and Reserve personnel to transfer education benefits to a spouse or a child?

Mr. BLAKE. Principally, no, sir.

Mr. COHEN. NOVA has no position on that.

Mr. HILLEMAN. We do not oppose it, sir. However, we have great concerns about how it is managed.

Mr. KELLEY. No, sir.

Mr. SMITHSON. No, sir.

Mr. VIOLANTE. DAV has no position.

Mr. WEIDMAN. It should be a separate program, sir.

Senator BURR. Do you oppose allowing more regular component military personnel to transfer education benefits to a spouse and children.

Mr. BLAKE. No, sir.

Mr. COHEN. NOVA has no position on that, sir.

Mr. HILLEMAN. As long as that transfer, sir, does not impact the veterans education benefit.

Mr. KELLEY. No, sir.

Mr. SMITHSON. No, sir.

Mr. VIOLANTE. No position.

Mr. WEIDMAN. No, sir, not as long as voc rehab would still appertain to the individual should he or she become ill or disabled as a result of military service.

Senator BURR. Do you oppose allowing servicemembers to use education benefit to pay off student loans?

Mr. BLAKE. Do not really have a position, sir.

Mr. COHEN. NOVA has no position on that, sir.

Mr. HILLEMAN. No, sir.

Mr. KELLEY. Currently there is regulation when you enlist that you can opt for one or the other. I do not think I would have any opposition to it, but there are already some rules in place.

Senator BURR. Thank you.

Mr. SMITHSON. We do not have a position on that.

Mr. VIOLANTE. No position, Senator.

Mr. WEIDMAN. No, sir.

Senator BURR. Do you oppose allowing graduates of military academies to be eligible for some of the Montgomery GI education benefits.

Mr. BLAKE. Sir, as an academy graduate, I would have to reserve judgment on that question.

Mr. COHEN. NOVA has no position on that, Senator.

Senator BURR. Thank you.

Eric.

Mr. HILLEMAN. No Sir.

Mr. KELLEY. No, sir.

Mr. SMITHSON. We do not have a position on that.

Mr. VIOLANTE. No position, Senator.

Mr. WEIDMAN. No, sir.

Senator BURR. Do you oppose allowing post-Vietnam era career personnel who declined education benefits previously to now access the Montgomery GI bill?

Mr. BLAKE. Principally no, sir.

Mr. COHEN. NOVA has no position on that, Senator.

Mr. HILLEMAN. We do not oppose that position, sir.

Mr. KELLEY. No, sir.
Mr. SMITHSON. We do not oppose it.
Mr. VIOLANTE. No position, Senator.
Mr. WEIDMAN. No position, sir.
Senator BURR. Do you oppose creating a matching program that would help more veterans attend school debt-free.
Mr. BLAKE. I am not sure I understand the question, sir. A matching program? Could you explain that just quickly, please.
Senator BURR. Well, I would say that probably includes Senator Webb's bill in the way that I have asked it because he has a match at the end for private schools.
Mr. BLAKE. I would have to think about that and get back to you, sir.
Mr. COHEN. NOVA has no position on that, Senator.
Mr. HILLEMAN. No, sir.
Mr. KELLEY. No, sir.
Mr. SMITHSON. No position.
Mr. VIOLANTE. No position.
Mr. WEIDMAN. No position. But, we think that any bill, whether it is S. 22 or otherwise, should be the same as that accorded to my father when he returned home from World War II, sir.
Senator BURR. Thank you.
The last thing, Mr. Chairman, I realize the red light is on.
Eric, I wanted to go to you with something you said, that the Graham bill would next year fall $400 short of the requirements needed by a servicemember to attend school. Do you take into account in your assessment the $4,700 in Pell money that is available.
Mr. HILLEMAN. Sir, if you examine Pell grants, they are based on prior years' financial income. So, if an individual returned off of deployment or they recently separated from active duty, their prior active duty military pay would count against them for seeking Pell grants approximately for the first 2 years that they went after them.
With the proposed amount that you have in your bill, sir, you would be at $14,000 starting fiscal year 2009. The national average cost projected for fiscal year 2009 for education at a 6 percent inflationary rate is estimated to be about $14,400. So, you would fall $400 behind in fiscal year 2009, the year that it is enacted.
Senator BURR. So, the answer is, you did not take Pell into account because you do not know if Pell qualifies?
Mr. HILLEMAN. Pell does not impact GI Bill benefits, sir.
Senator BURR. That is correct. But, under the current structure for the GI Bill benefit, Pell is part of what a servicemember can access for their educational needs.
Mr. HILLEMAN. That is true, sir. However, Pell grants are considered based on income. So, if prior years tax returns for a veteran who is recently separated from service or who is still in service, they would not qualify for a Pell grant, sir.
Senator BURR. Do you fear that there might be a service personnel that would hit an income limit based upon what we pay in the military.
Mr. HILLEMAN. I am sorry, I do not understand the question. Say again.

Senator BURR. I will take it up in a written question to you.

Mr. HILLEMAN. Please, sir.

Senator BURR. I have abused my time now and I know Senator Webb is anxious to refute everything I just asked.

[Laughter.]

Chairman AKAKA. Thank you, Senator Burr.

Senator Webb.

Senator WEBB. If only I had the time.

Well, let me ask you only two follow-on questions to all of that. Then I have something else I want to say.

Do you believe that Senator Burr and Senator Graham's bill provides a better readjustment opportunity for those who have left the military than S. 22?

Mr. BLAKE. No, sir.

Mr. COHEN. NOVA has no position on that, Senator.

Mr. HILLEMAN. No, sir.

Mr. KELLEY. No, sir.

Mr. SMITHSON. No.

Mr. VIOLANTE. No, sir.

Mr. WEIDMAN. No, Senator.

Senator WEBB. Do you believe that S. 22 provides a better readjustment benefit for those leaving the military than Senator Burr's bill?

Mr. BLAKE. Yes.

Mr. COHEN. NOVA has no position on that, Senator.

Mr. HILLEMAN. We believe that S. 22 provides a more robust stabilization and transition benefit, sir.

Mr. KELLEY. Yes, sir.

Mr. SMITHSON. We believe that S. 22 provides a more equitable and comprehensive approach.

Mr. VIOLANTE. Yes, Senator.

Mr. WEIDMAN. Yes, sir.

Senator WEBB. Thank you very much.

Now, I would like to take this few remaining minutes left to thank all of you and all of the other members of veterans' organizations who are not at the table with you for all the assistance that you have provided us over the past 16 months in coming up with this bill. I appreciate your cooperation. I appreciate your input. I appreciate your suggestions.

I think we were able to make the type of modifications that have resulted in a highly responsible piece of legislation, and the most important thing to remember here is that your members have earned this benefit.

At a time when this country was in great chaos, when a lot of people just did not know what to do, the people that you represent stepped forward for the good of the country. Politics aside, they marched toward the sound of the guns and into danger.

Our country owes every one of them the ability to have a first-class future and that is what this is all about. There is no politics in it whatsoever. We did it for the people who came out of World War II and we owe it to the people who have been serving since 9/11.

Thank you.

Chairman AKAKA. Thank you very much, Senator Webb.

To all of our witnesses, if the VA disability system is revised from its current form, should veterans of different eras be rated by different sets of rules.

Mr. Blake.

Mr. BLAKE. I would have to say on the face of that question, Senator, the answer is no, but I think it is more complex than simply the statement of that question. It would depend upon how this entire thing is laid out.

Chairman AKAKA. Mr. Cohen.

Mr. COHEN. I do not believe that the VA has the capability nor could it develop the capability of administering a far more complex system like your question suggests. Because of the complexities and the increase in backlog, it would not be a good idea. Also, because it would create different classes of veterans, it would be a bad idea. They should all be paid and considered the same.

Chairman AKAKA. Mr. Hilleman.

Mr. HILLEMAN. Mr. Akaka, the VFW has long opposed a dual compensation system.

Chairman AKAKA. Mr. Kelley.

Mr. KELLEY. AMVETS also opposes a competing compensation system.

Chairman AKAKA. Mr. Smithson.

Mr. SMITHSON. The American Legion also opposes such a system.

Chairman AKAKA. Mr. Violante.

Mr. VIOLANTE. DAV is in opposition to such a system.

Chairman AKAKA. Mr. Weidman.

Mr. WEIDMAN. VVA strongly opposes a two-tier system.

Chairman AKAKA. Several of you have indicated that veterans with hearing loss who require the use of a hearing aid have a decreased quality-of-life. It is my understanding that some veterans have lost their jobs as a result of their hearing loss being rated as non-compensable.

Would you agree that such hearing loss can also reduce earnings?

Mr. VIOLANTE. DAV would agree with that, Senator.

Mr. WEIDMAN. VVA would agree with that and add that tinnitus in many cases reduces earnings capacity as well, sir, rated separately.

Mr. KELLEY. AMVETS agrees also.

Mr. SMITHSON. American Legion agrees.

Mr. HILLEMAN. We also agree, sir.

Mr. BLAKE. Mr. Chairman, in addition looking at average impairment of earning it is very clear that on average such a hearing loss definitely does decrease earning capacity.

Chairman AKAKA. Now, this question is for all of you.

Do your organizations endorse VA's guidelines for establishing new national cemeteries? This is a national cemetery question.

Mr. KELLEY. AMVETS does agree, Senator.

Mr. BLAKE. Senator, I would defer to AMVETS as the resident expert of the IB on NCA issues.

Mr. COHEN. Senator, NOVA would defer to our colleagues at the table on this issue.

Mr. WEIDMAN. Mr. Chairman, VVA thinks that the paradigm by which we have done citing in the new rules at VA of national ceme-

teries need to be rethought, just as the medical center systems which was set up on a paradigm that the majority of those serving being from urban areas and population concentration. That is not who is in this Army today.

Forty percent come from towns of 25,000 or less and sothe paradigm of delivering medical care and in the future the paradigm of where you cite new cemeteries, national cemeteries, is going to have to follow the reality of who is serving today and what part of the country are they from and where are they returning to which is different than what has been in the past, sir.

Mr. VIOLANTE. Mr. Chairman, just in response. DAV does not have a position on that other than our support in the IB. So, I would defer to Mr. Kelley's comment.

Mr. SMITHSON. What was the complete question, Mr. Chairman?

Chairman AKAKA. The question on the cemeteries was whether your organization endorses VA's guidelines for establishing new national cemeteries?

Mr. SMITHSON. Yes, we do.

Chairman AKAKA. As you know that the established criteria requires an unserved veteran population threshold of 170,000 within a 75-mile radius.

So, I thank you so much for your responses, all of you. Thank you for being here. We wanted to hear from you on these bills before we mark it up and so I thank you for your presence and your responses.

Thank you.

And we have another panel.

I would like to welcome Mr. Herman Gerald Starnes, a Merchant Marine with service in World War II.

Also Mr. Charles Dana Gibson, a Merchant Marine with service during World War II and a Maritime Historian.

I want to welcome the third panel.

Please know that your full testimony will appear in the record of this hearing and I am going to ask Mr. Starnes, please begin with your testimony.

STATEMENT OF H. GERALD STARNES, U.S. MERCHANT MARINE WITH SERVICE DURING WORLD WAR II

Mr. STARNES. My name is H. Gerald Starnes and I am here today as an old veteran in support of Senator Nelson's efforts to move forward S. 961, the Belated Thank You to the Merchant Mariners of World War II Act of 2007.

We would like to express our compliments to you, Senator Akaka, for getting your bill, S. 1315, passed over a lot of opposition to increase veterans' benefits by the Filipinos who fought alongside U.S. forces in that war and to Senator Nelson for his "aye" vote.

Their situation is very similar to ours, but I must say they are a little bit of ahead of us in that they have had inadequate compensatory benefits while we have yet to get a penny from our government for our part in winning that greatest of our country's wars.

I am speaking for about 2,800 still living veteran alumni of the United States Merchant Marine Academy at Kings Point, New York, combined with about 8,000 members of the Just Compensa-

tion Committee of the American Merchant Marine Veterans in their legislative effort.

The U.S. Merchant Marine Academy is the only one of the five Federal services academies that sends their cadets into wartime combat zones. I was one of those cadets.

A memorial monument on the campus bears the names of 142 young men who lost their lives in combat.

For over six decades, Congress has denied veterans' benefits and recognition to thousands of World War II Mariners. Records show 260,000 served in harm's way and 106,000 were certified to receive the Combat Bar.

A half billion tons or more of tanks, PT boats, gasoline, aviation fuel, trucks, jeeps, amphibious craft, medicine and food rations along with thousands of troops were delivered to our allies ports and bases all over the world.

Students of and historical writers of the Merchant Marine in the war estimates that 833 ships and 6,834 men were lost. Their casualties were in one in 26 compared to the U.S. Marine Corps is 1-in-34.

240 Mariners were killed before Pearl Harbor and 604 became POWs. Others died after the War as 54 merchant ships struck mines.

In early 1944 it was becoming obvious to the President and the Congress that we and the allies were going to win World War II in the coming months.

Several Members of Congress and the President recalled after the 1929 stock market crash and the great depression came on, thousands of unemployed World War I veterans marched on the Capitol, camped out here in the parks and streets, and demanded the service bonus they had been promised for 1945.

When the bill in Congress to give them a partial early bonus payment failed, many of them went home, but perhaps 10,000 of them remained and became very unruly here in the city. Well, these vets were too much for the Capitol Police, obviously, and the Army was ordered to drive them out of the city and they did that with tear gas and tanks.

When the news spread, there was a huge citizen outcry from all over the country. I was just a little boy and I did not know what my dad—World War I veteran with the mustard gas injury to his lungs, and his veteran friends were talking about. Dad finally got his bonus in 1936—just in time to pay for my kid brother's birth and a canvas top and a rebuilt engine for his old Model "A." He had a big smile on his face for his government had, at last, come to his aid when he needed it.

With the anticipation of some 12 million World War II veterans returning home, Congress passed the famous GI Bill of Rights. When President Roosevelt signed the bill in June 1944, he said, "I trust Congress will soon provide similar opportunities to members of the Merchant Marine who have risked their lives time and time again for the welfare of their country." He died in April 1945 and any thoughts of a Merchant Marine bill died with him.

The GI Bill denied us by Congress entitled the Armed Forces veterans, many of whom had never left their chairs in Stateside assignments, to 4 years of college, low interest home mortgages, job

priority guarantees, mustering out pay, VA medical benefits, funding for widows and children, 52 weeks unemployment insurance and travel pay home.

President Truman sent us each a tiny little lapel pen and a thank you note. The Navy gun crews on merchant ships with whom we helped man the guns were entitled to all the GI Bill of Rights benefits.

There are myths and untruths concerning Merchant Mariner's compensation benefits as often told to the Veterans' Affairs Committees of both the House and the Senate relative to excess pay, veterans benefits, civilian or military status, and cost estimates.

Mariners pay was a bit over the military pay, but we received pay only when we were signed on a ship as a crewman or an officer. If you had signed off a vessel, you were on your own for lodging, meals and travel. When signed on, any meals that you took ashore, lodging or travel were for your account.

Not until 1977 could a merchant seaman apply for a benefit of any kind. In 1986 a Federal judge in New York ruled that Merchant Mariners were victims of discrimination.

In 1988, 43 years after the war ended we were officially recognized as veterans by a paper discharge from the United States Coast Guard and limited VA medical attention if we were homeless or on Medicaid and a flag and a tombstone.

All the cadets and officer graduates of the Merchant Marine Academy were sworn in as Naval Reserve soldiers and subject to Navy discipline and called to active duty.

According to international law, all Mariners lose their civilian status when they man offensive weapons and are subject to courts martial by the armed force with whom they serve.

By an act of Congress in 1941, the Navy mounted guns on merchant ships and issued orders to the masters of those vessels that directed gunnery training be given to the officers and crewmen.

In 1942, the Chief of Naval Operations, at that time Admiral King, directed that naval discipline and control be exercised against the Merchant Marine in all theaters of war.

Our calculations show that the first year cost estimate for this bill to be less than several of the current individual earmarks and will diminish significantly each passing year due to the high death rates of all we World War II veterans—which is now somewhere around 100—to $1,500 a day. This bill will self-destruct in 10 years at a total cost estimate of about half or less than the projected $1.4 billion that has concerned many of the Senators.

All the old Merchant Mariners are over 80 years of age and they have all served in combat zones. Many are enfeebled, in ill health and in pitiful situations, financially, physically, and mentally.

The economic stress of inflation and higher costs of living are especially stressful as they enter the last years of their lives, still proud and talkative of their wartime experiences at sea during World War I and World War II in defense of this country.

This is our last chance to get any recognition we earned as young men years ago.

Mr. Chairman, may I, as a tired old leader of tired old men, with all due respect, take the liberty of suggesting to you, sir—and your staff probably have many bills requiring your attention—therefore,

would you please seriously consider having Senator Nelson and his staff turn to fore and aft, port and starboard and help you get S. 961 to the Senate floor before we all have gone down to "Davy Jones' Locker."

Mr. Chairman, we sincerely thank you and the Committee Members for giving us the privilege of listening to our story, and we certainly appreciate Senator Nelson's testimony in our behalf.

Thank you all very much.

[The prepared statement of Mr. Starnes follows:]

PREPARED STATEMENT OF MR. H. GERALD STARNES

Mr. Chairman, and Members of the Committee, my name is H. Gerald Starnes. I am here today as an old veteran in support of efforts to move S. 961, a "Belated Thank You to the Merchant Mariners of World War II Act of 2007." We would like to express our compliments to Senator Akaka on getting S. 1315 passed over some opposition to increase veterans' benefits for Filipinos who fought alongside U.S. forces in that war and to Senator Nelson for his "aye" vote. Their situation is very similar to ours, but I must say they are ahead of us in that they have had inadequate compensatory benefits while we've yet to get a penny from our government for our part in winning that greatest of our country's wars.

I am speaking for about 2,800 still living veteran Alumni of the United States Merchant Marine Academy at Kings Point, NY, combined with about 8,000 members of the Just Compensation Committee of the American Merchant Marine Veterans in this legislative effort. The U.S. Merchant Marine Academy is the only one of the five Federal services academies that sends their cadets into wartime combat zones. I was one of those cadets. The memorial monument on campus bears the names of 142 young men who lost their lives in combat.

For over six decades, every Congress has denied veteran's benefits and recognition to thousands of World War II (WWII) Mariners. Records show 260,000 served in "harm's way" and 106,000 were certified to receive the Combat Bar. A half billion tons or more of tanks, PT boats, gasoline, aviation fuel, trucks, jeeps, amphibious craft, medicine and food rations along with thousands of troops were delivered. These cargoes were transported on 5,500 ships the Mariners manned over dangerous seas to our and our allies' ports and bases all over the world. Students of and historical writers on the Merchant Marine in the war, estimate that 833 ships and 6,834 men were lost. Their casualties were 1 in 26 compared to the U.S. Marine Corps with 1 in 34. 240 Mariners were killed before Pearl Harbor, 604 became POW's. Others died after the war as 54 merchant ships struck mines.

With the anticipation of some 12 million WWII veterans coming home, Congress passed the famous GI Bill of Rights. When President Roosevelt signed the bill in June 1944, he said, "I trust Congress will soon provide a similar opportunities to members of the Merchant Marine who have risked their lives time after time for the welfare of their country." He died in April 1945 and any thoughts of a merchant marine bill died with him. The GI Bill denied us by Congress entitled the Armed Forces veterans, many of whom had never left their chairs in stateside assignments, to 4 years of college, low interest home mortgages, job priority or guarantees, mustering out pay, Veterans Administration (VA) medical benefits, funding for widows and children, 52 weeks unemployment insurance and travel pay home. President Truman sent each of us a tiny lapel pen and a thank you note. The Navy gun crews on merchant ships with whom we helped man the guns were entitled to all the GI Bill of Rights benefits.

Myths and untruths concerning Merchant Mariner's compensation and benefits are often told to the Veterans' Affairs Committees of the House and Senate relative to excess pay, veterans benefits, civilian or military status, and cost estimates:

- Mariners pay was a bit over military pay, but they received pay only when signed on a ship as a crewman or officer. If you had signed-off on a vessel, you were on your own for lodging, meals and travel. When signed-on, any meals, lodging and travel you chose to take on shore were for your account.
- Not until 1977 could a merchant seaman apply for benefits of any kind. In 1986 a Federal judge in New York ruled that Merchant Mariners were victims of discrimination. In 1988, 43 years after the war ended we were officially recognized as veterans by: a paper discharge from the USCG; limited VA medical attention if homeless or on Medicaid; a flag; and a tombstone.
- All the cadets and officer graduates of the Merchant Marine Academy were sworn in as U.S. Naval Reserve soldiers and subject to Navy discipline and call to

active duty. According to international law, all mariners lose their civilian status when they man offensive weapons and are subject to courts martial by the armed force with whom they served. By an act of Congress in Nov. 1941, the navy mounted guns on merchant ships and issued orders to the masters of those vessels that directed gunnery training be given to the officers and crewmen. In 1942, Chief of Naval Operations, Admiral King, directed that Naval Discipline and Control be exercised against the Merchant Marine in all theaters of war.

• Our calculations show the first year cost estimate to be less than several of the current individual earmarks and will diminish significantly each passing year due to the high death rates of all WWII veterans now about 1,100–1,500 a day. The bill will self-destruct in 10 years at a total cost estimate of about half or less than the projected $1.4 billion that concerns some Senators.

All the old Mariners are over 80 years of age and have served in combat zones. Many are enfeebled, in ill health and in pitiful situations, financially, physically, and mentally. The economic stress of inflation and higher and higher costs of living is especially stressful as they enter the last years of their lives still proud and talkative of their wartime experiences at sea during WWII in defense of this country. This is our last chance to get the recognition we earned as young men years ago.

Mr. Chairman, may I, as a tired old leader of tired old men, with all due respect, take the liberty of suggesting that you, sir, and your staff probably have many bills requiring your attention, Therefore, would you please seriously consider having Sen. Nelson and staff "turn too" fore and aft, port and starboard to help you get S. 961 to the Senate floor before we all have gone down to "Davy Jones' Locker."

Mr. Chairman, we sincerely thank you and the Committee Members for giving us the privilege of listening to our story. And we certainly appreciate Senator Nelson's testimony in our behalf. Thank you all very much.

Chairman AKAKA. Thank you very much, Mr. Starnes for being here and testifying before this Committee.

And now we will hear from Mr. Gibson.

STATEMENT OF CHARLES DANA GIBSON, U.S. MERCHANT MARINE WITH SERVICE DURING WORLD WAR II, AND MARITIME HISTORIAN

Mr. GIBSON. Thank you, sir. Chairman Akaka, Ranking Member Burr and distinguished Members of this Committee, I thank you for the opportunity to testify today on S. 961.

In the early fall of 1944, 8 days following my 16th birthday, I was at sea en route to Europe aboard the LT 785, a seagoing tug, owned and operated by what was commonly referred to as the Army Transport Service.

We were subsequently operational off England, France, Holland, and Belgium for a period of about 6 months before I returned to the United States.

I then sailed on the U.S. flag merchant tanker throughout the remainder of the period of hostilities. I continued sailing through 1946 until 1947, later returning to sea during the Korean conflict.

I have written and published numerous histories concerning the maritime services. I was the author of a successful application in the 1980's for Army civilian seamen and another in 1991 for seamen of the U.S. Coast and Geodetic Survey, both of which received veterans' status under Public Law 95–202.

It should be noted that I, too, would benefit financially if either S. 961 or the House companion, H.R. 23, were to become law.

My written testimony transmitted to your staff, which I believe you have in front of you, covers in detail many of the myths concerning the groups covered by S. 961 and H.R. 23.

The first of such myths relates to casualties. The claim has been made by the proponents for the bill that the Merchant Marine suf-

fered over 9,000 battle deaths and that the ratio of such deaths exceeded that of the armed services.

My research has determined that these claims are widely exaggerated and completely unsubstantiated and my written testimony goes into detail on that.

The actual battle deaths of the Merchant Marine, together with the Army Transport Service, was 6,185 men. That figure, when correlated against what was a minimal total wartime force of 415,000, results in a ratio of 1-in-67, not—and I repeat—not the 1-in-26 so wrongly being touted.

It has also been alleged in this statement—and this is stated in testimony to the House on H.R. 23—that the seaman's pay stopped as of the loss of their ship. That idea has its origins in law, which was overridden by action of the Maritime War Emergency Board as of December 1941.

From that point on, a man's pay plus applicable war zone bonuses continued until such time that he was repatriated. In the case of seamen made prisoners of the enemy, base pay continued until that person was safely repatriated.

The assertion that disabled or injured men were physically protected is also untrue. My written testimony covers these points in detail and contains relevant supporting citation.

Yet another fallacy centers around the means by which our veterans approvals were granted in 1988.

This was not by an act of Congress, or, as one source puts it, by the decision of the Supreme Court. In reality, it was an administrative approval from the Civilian Military Service Review Board, a body appointed by the Secretary of the Air Force who had been designated that authority by the Secretary of Defense acting under the laws of 1977, that being Pub. L. 95–202.

Regarding VA benefits, I would like to make it clear that the 1988 approvals put the Merchant Marine and Army Civil Service Seamen on exactly the same footings as all veterans of the United States Armed Forces. The cutoff date for that veteran's recognition—namely, the end of actual hostilities in World War II, that being August 15, 1945—was a date based upon sound deliberation.

Following that point in time the Merchant Marine and the Army Transport Service could no longer be considered combatant entities as that term is interpreted under international law. My written testimony also covers the change in labor policy for the Merchant Marine that occurred once the shooting stopped.

At the beginning of the war, the seamen's union pledged a no-strike pledge. After the surrender that pledge expired and four work stoppages resulted in strikes which lasted in total 10 weeks. All of these strikes having taken place within a period of eligibility also encompassed by S. 961, that is, between August 16, 1945 and December 31, 1946. And I walked the picket line in one of those strikes.

Mr. Chairman, although not germane to the agenda of this hearing, I would ask the Committee to give consideration to granting the holders of the Merchant Marine Mariners medal the same access to those special VA benefits which are presently available to holders of the Armed Services Purple Heart. My understanding is that H.R. 447 addresses that issue.

In closing, I would like the Committee to know that I am proud of my service during the war and of the contribution we made toward the winning of that war. In the same vein, I believe it is my duty as a responsible citizen to make the Committee aware of the facts as it deliberates this legislation.

I would be pleased to answer any questions that you, Mr. Chairman, or any other Members of the Committee may wish to direct me.

Thank you.

[The prepared statement of Mr. Gibson follows:]

PREPARED STATEMENT OF MR. CHARLES DANA GIBSON

Chairman Akaka, Ranking Member Burr, and distinguished Members of this Committee, I thank you for the opportunity to testify today on S. 961.

In the early fall of 1944, 8 days following my 16th birthday, I was at sea, en route to Europe aboard the LT–785, a seagoing tug, owned and operated by what was commonly referred to as the Army Transport Service. We were subsequently operational off England, France, Holland, and Belgium for a period of about 6 months before I returned to the United States. I then sailed on a U.S. flag merchant tanker throughout the remainder of the period of hostilities. I continued sailing until 1947, later returning to sea during the Korean conflict.

I have written and published numerous histories concerning the maritime services. I am the author of a successful application in the 1980's for Army civilian seamen and another in 1991 for seamen of the U.S. Coast and Geodetic Survey to receive veterans' status under Public Law 95–202. It should be noted that I, too, would benefit financially if either S. 961 or the House companion, H.R. 23, were to become law.

As a historian whose interests and writings have centered on America's military and maritime past, I am amazed at the numbers of foundationless myths which seem to have evolved over time into alleged facts. My testimony this morning will address merchant seamen casualties (including Army Civil Service Seamen) during World War II in comparison to the casualty ratios of the Armed Forces; the issue of pay to merchant seamen aboard ships captured or destroyed in combat; background on the oceangoing merchant marine receiving veterans' status in 1988; and the participation of merchant seamen in work stoppages and strikes in the fifteen months following the end of hostilities.

Although not germane to the agenda of this hearing, I would ask the Committee to give consideration toward giving the holders of the Merchant Marine Mariners Medal the same accesses to special VA benefits that are presently available to holders of the Armed Services Purple Heart.

CASUALTIES

Much of the argument offered in support of the bill now under consideration revolves around extravagant claims of excessive losses of merchant seamen during the War. I have performed extensive research centering on bona fide battle casualties suffered by both merchant seamen and the Army's Civil Service seamen. My eventual conclusion has been to rely for accuracy upon the published works of Captain Arthur Moore and Dr. Robert Browning, Jr. Both authors include in their works the ships and crews lost through marine casualty not directly related to direct enemy action. Over this past summer, my wife and I did a breakdown of both works in order to separate out U.S. merchant ship losses and personnel casualties resulting solely from battle causes, i.e., enemy action. We did this in order to satisfy ourselves as to the ratio of battle deaths to total force. The analysis we performed resulted in a tally of 5,755 actual battle deaths enumerated by Captain Moore and 5,763 given by Doctor Browning—a difference between them of only eight men. I have chosen Doctor Browning's figure on the grounds that Doctor Browning, in his capacity as Chief Historian of the U.S. Coast Guard, accessed some post operational reports which were not utilized by Captain Moore.[1] To Browning's figure of 5,763 I add the recorded battle deaths of U.S. Army Civil Service seamen which comes to 422 men—

[1] Dr. Robert M. Browning, Jr., *U.S. Merchant Vessel War Casualties of World War II*, Naval Institute Press, Annapolis MD, 1996 (Browning is the chief historian of the U.S. Coast Guard.); Captain Arthur R. Moore, *A Careless Word . . . A Needless Sinking*, American Merchant Marine Museum, Kings Point, NY, 1986.

both figures taken together total 6,185. This number falls far short of the 9,300 mariners being touted by the supporters of H.R. 23 and S. 961.[2] They use this as the basis for the assertion that the merchant marine suffered the highest casualty rate of any service during World War II, equivalent to 1 in 26 killed. The claim that their casualty rate surpassed that of the Marine Corps or was greater than that of the Armed Forces combined cannot be supported. In any event, comparisons are specious given the lack of available data on the Merchant Marine.

To compare Armed Forces casualties against those of the Merchant Marine is like comparing apples against oranges. Even if one should attempt such a comparison, the calculations must be based upon total force—NOT PEAK FORCE. Furthermore, combat-related deaths must be distinguished from deaths which were not combat-related. This is easily done for the Armed Forces, but it is far more difficult when dealing with the numbers for the Merchant Marine. There are some general figures available regarding large segments of the Merchant Marine labor force which entered oceangoing employment in World War II, but these do not add up to the full wartime force. Unknown is a sizable number representing men for which we have no ready figures—figures which could only be arrived at through an exhaustive search within the Merchant Marine personnel files that are held by the U.S. Coast Guard. This missing factor concerns those men who entered the Merchant Marine Oceangoing labor force following December 7, 1941, through means of "letters of intent to employ" written by shipping companies and/or unions and addressed to the U.S. Coast Guard which then issued the seaman's certification for one of three entry ratings, i.e., ordinary seaman, wiper, or messman. Such men did not go through the apprentice training programs that were operated by the U.S. Maritime Service and for which we do have the approximate numbers. Another factor to consider is that the Merchant Marine was a fluid industry in terms of personnel with one- and two-trippers running into the high figures.

It should not be lost in the discussion that unlike members of the Armed Forces, merchant seamen during the war could terminate their employment at the end of any voyage. Such short-term employees who entered the Merchant Marine prior to August 1945 are not included in the peak force statistic of 250,000—which Rear Admiral Land, the Administrator of the War Shipping Administration (WSA), gives for one point in 1945. It appears that the often quoted 1 in 26 ratio is derived at by dividing 9,300 into Admiral Land's 250,000.

A further caveat enters into the overall picture when one considers what was a back and forth flow of seamen between the Merchant Marine and the Army Transport Service. One can only guess at that cross-over in employment but probably it was not overly imbalanced.

Admiral Land's peak force figure for the Merchant Marine encompasses only oceangoing Merchant Marine personnel and does not include those Merchant Marine personnel who were employed upon the Great Lakes or other inland waters. It also does not include the shore-side cadres employed at Maritime Service training installations, nor does it include those shore-side employees of shipping companies and/or of WSA general agents. The Armed Forces counterparts to those support forces were the thousands of uniformed men and women who never left the United States but whose numbers are nevertheless included within the Armed Forces total force figures. In contrast, therefore, the "total force" figure given for the Merchant Marine represents only those personnel whose service was oceangoing and as such was within waters subject to enemy action. In light of the above, it cannot be denied that a huge disparity enters into any matrix which attempts to compare the percentage of Armed Forces combat losses against the percentage of Merchant Marine combat losses.

According to research dated August 23, 2007, and performed by Christine Scott of the Congressional Research Service (CRS), the total force number of wartime merchant mariners may exceed 400,000. In a report prepared for Congress, she brings out testimony given in 1947 by Theodore L. Kingsley, the Executive V-P of the Alumni Association of the U.S. Merchant Marine Cadet Corps who stated his estimate that 400,000 served. She also quotes a maritime industry representative, one Seth Levine, who claims that "there may have been as many as 450,000 who served in the merchant marine at one time or another during the war." Another testimony submitted by James V. McCandless, the Assistant to the Commissioner of the U.S. Maritime Administration stated, "That 400,000 seamen served in the maritime labor force between July 1941, and July 1945."

If one accepts a figure of 400,000 merchant seamen added to by my rough estimate of at least another 15,000 whose sole wartime sea service was for the Army, this total force number—namely, 415,000—when computed against the total of 6,185

[2] Available at *www.usmm.org*.

battle deaths resulting from my analysis of Moore's and Browning's works as well as Army records results in a ratio of 1 in 67 which falls far short of the ratios touted by advocates of S. 961. The Army and Army Air battle death ratio was 1 in 48; the Navy 1 in 113; the Marines 1 in 34. Battle deaths for the total armed services were 1 in 55.[3]

PAY ISSUES

Another myth underlying the case for the benefits legislation under consideration concerns the alleged callous treatment of American merchant mariners by the government during World War II. I specifically reference here the erroneous assertion that once a merchant ship was lost by enemy action or marine casualty, the pay of its crewmembers was suspended, thereby denying these crews compensation while in lifeboats or as involuntary guests of the enemy. This mythology has been accepted as fact and was cited in recent Congressional testimony before the House Committee on Veterans' Affairs.[4]

In truth, an American merchant mariner whose ship was sunk continued to accrue base wages plus any applicable Area War Bonus until such time that he was repatriated. If he had become a prisoner of the enemy (POW or Internee), his base wages continued through his tenure as a prisoner, up until the time he was repatriated.

For those who incurred disabilities due to injury or war related illness, their War Risk Insurance would have paid $200 a month up to a total of $5,000. After that, should the disability be deemed permanent, an additional benefit would have kicked in to the amount of $100 per month up to a max of $2,500. If a crewman died as a result of enemy action, or later due to external cause while in captivity, his dependents would have received a flat sum of $5,000. The Army's Civil Service seamen were covered in case of disability or death by Federal Employees Compensation.

The undeniable fact is that merchant seamen serving aboard U.S. flag ships, whether employed by the War Shipping Administration or by private operators, were compassionately protected in the fiscal sense throughout the entirety of World War II. The agency which saw to that, as well as regulating bonuses and compensating for the loss of personal effects, was the Maritime War Emergency Board which was established in December 1941. A history of the board as well as its decisions are contained within a monograph from the U.S. Department of Labor, entitled History of the War Emergency Board. This document can be obtained through the Record Office of the U.S. Maritime Administration or from the Library of Congress. The Army's civil service seamen were covered in case of disability or death by Federal Employee Compensation.

VETERANS' STATUS

Groups of former merchant seamen lobbying on behalf of the proposed bill have made other assertions which are radical departures from historical fact. One disseminated myth concerns the application process which resulted in the granting of veterans' status in 1988 to the oceangoing merchant mariners of World War II, 1941–1945. The proponents are not alone in their misconceptions over what was a long and involved process. Even the authors of serious writings dealing with the experiences of merchant mariners have inadvertently added to what has become a morass of error. Some of this has bordered on the ridiculous as in Peter Elphick's book, *Liberty . . . The Ships that Won the War*.[5] Elphick wrote: "* * * merchant seamen were excluded from veterans' benefits. That remained the situation until 1986 when by order of the Supreme Court no less, and much too late for many, the U.S. Government granted World War II seamen the coveted veterans' status."

Many seem to be under the false impression that the award of veterans' status in 1988 (some confuse it as being given in 1977) was by an act of Congress. Another version is that it occurred pursuant to enactment of the "Seamen's Act of 1988." There is also a belief, widely distributed to the media, that the veterans' status given to merchant seamen who served at sea between December 7, 1941 and August 15, 1945, was a "watered down" version of the benefits to which Armed Forces veterans are entitled.

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[3] DOD statistics available at *http://siadapp.dmdc.osd.mil/personnel/CASUALTY/WCPRINCIPAL.pdf*.

[4] Committee on Veterans' Affairs, U.S. House of Representatives, Hearing on H.R. 23, the "Belated Thank You to the Merchant Mariners of World War II Act of 2007," April 18, 2007.

[5] Peter Elphick, *Liberty . . . The Ships that Won the War*, Naval Institute Press, Annapolis, MD, 2001.

The truth is that there was never any court ruling—much less one by the Supreme Court in 1986—which granted the 1988 veterans' rights to merchant seamen. Neither was there such a thing as the "Seamen's Act of 1988."

Factually, 1988 was the year that the Department of Defense (DOD) administratively approved the group known as The American Merchant Marine in Oceangoing Service During the Period of Armed Conflict, December 7, 1941–August 15, 1945, for benefits under title 38, United States Code (U.S.C.) (the laws as administered by the Department of Veterans Affairs). The enabling statute through which DOD is authorized to grant approvals for those benefits is Public Law 95–202, Title IV § 401, November 23, 1977, 91 Stat. 1449, appended to title 38 § 106, U.S.C. Annotated. The applicable benefits which include medical care and compensation for service-connected disabilities, as well as benefits for the survivors of merchant mariners who lost their lives in the war, are substantial and in a considerable number of cases have rescued beneficiaries from poverty.

The language of Public Law 95–202 makes no specific reference to the Merchant Marine. Instead, it grants the Secretary of Defense authority to receive applications from any civilian group which, in a time of war, has rendered contractual, or other employment believed by the applicant to have been equivalent to "active duty" in the Armed Forces. As stated in Public Law 95–202, the Secretary of Defense is authorized to promulgate regulations by which such groups could be considered. DOD considerations are to follow the guidance of five criteria:

1. Extent to which the group acquired a military capability and was critical to a military mission;
2. The group's subjection to the discipline and control of the military;
3. Inability of group members to resign;
4. Group assignment to combat zones;
5. Group expectations that their service might be considered active military service.

For his administration of the review process, the Secretary of Defense designated the Secretary of the Air Force who in turn appointed a body of officers to be known as the Civilian/Military Service Review Board (CMSRB).

To date, a total of ninety-eight civilian groups have made application to CMSRB. Of these, over seventy-six have been formally reviewed. Twenty-one primary groups (later added to by a number of subgroups for a total of 33 groups) have been recommended for approval and were subsequently approved by the designated Undersecretary of the Air Force. These groups include the Women's Auxiliary Service Pilots (WASPs), the Flying Tigers of the China Theater, Civilian Airline Pilots Who flew cargo over "The Hump" in the China/Burma Theater, and the Civilian Defenders of Wake Island, among others. Of the group applications that were turned down (disapproved) prior to 1987, seven—including two of my early-on authorship—were for World War II seamen. During that same period, two World War II seamen groups were approved: the Henry Keswick Crew on Corregidor and the U.S. Merchant Seamen who served on Blockships in Support of Operation Mulberry.

On January 19, 1988, the Undersecretary of the Air Force approved CMSRB's recommendations. This approval, as is the case of all past CMSRB approvals, enables members of the Oceangoing Merchant Marine and the Army Transport Service, later Transportation Corps, Water Division—that is those who served between December 1941 and August 1945 to apply individually to the particular branch of the Armed Service with which the group had been allied for the issuing of Armed Forces discharges. For merchant mariners, the discharges were to be issued by the Coast Guard; for my group, the Army mariners, by the Army. I have been told that according to Coast Guard records since 1988 over 98,000 World War II Merchant Mariners have been provided with discharge documents (DD–214s). I have no information at hand as to the number of Army seamen who have received DD–214s. Upon receipt of the discharges, the holders became eligible to receive full entitlements currently allowed under title 38, U.S.C.

In the 1990's, a bill referred to as the "Veterans' Enhancement Act" was passed by both the House and the Senate and signed into law. It gave limited benefits under title 38 (burial rights) to those who had Merchant Marine service during the period between August 15, 1945, and December 31, 1946. That entitlement is far less than the full benefits afforded the seamen who served during the period of armed conflict, December 7, 1941–August 15, 1945. To my knowledge the "Veterans' Enhancement Act" is the only Federal legislation in our country's history that has granted any veterans benefits, albeit in this case restricted ones, to members of a civilian group for their employment outside of a period of actual armed conflict.

LABOR RELATIONSHIP

Another issue that should be understood when considering the proposed legislation is the labor relationship the merchant seaman had with the War Shipping Administration. A pamphlet provided by the WSA during the war entitled "How to Get Your Bearings—An Information Pamphlet for Prospective Merchant Sailors," answered the question of whether or not merchant seamen were entitled to all the benefits of the members of the Armed Forces. The pamphlet says, "No, a merchant seaman is engaged in a civilian capacity on a volunteer contractual basis, even though his employer, in some instances may be the United States." Merchant seamen and the Army's Civil Service seamen had a much different relationship with the U.S. Government than those who either enlisted or were conscripted into the armed services. In my own experience, I never recall anybody during the war, either Army seaman or merchant seaman, who believed that he, was a part of the armed services.

The proposed legislation provides benefits to Merchant Mariners who served beyond the end of the war and would include Merchant Mariners who entered the maritime services after August 16, 1945, but before December 30, 1946—who do not have veterans' status. My personal knowledge is that CMSRB gave considerable thought to August 15, 1945 as the legitimate termination date for veterans' status under the criteria established by Public Law 95–202 as well as by the recognized understanding of the term combatant under the interpretations of international law. Additionally, it should also be noted that, according to the Department of Commerce literature in the post-war 1945 to 1946 period, the maritime seamen's unions and its members participated in four labor strikes and work stoppages. During the war, the maritime unions had entered into a no-strike agreement with the WSA. But after V-J Day the agreement ended. These strikes and work stoppages encompassed a period in excess of 10 weeks and involved thousands of merchant marine officers and seamen, including myself—all of whom would be covered by the presently written S. 961.

I hope that this information has been helpful to the Committee. As a World War II seaman who saw wartime service in both the Army Transport Service and the Merchant Marine, I am very proud of my service and the significant contribution we made to the war effort. But, as a maritime historian, I think it important that the Committee have an accurate understanding of the facts.

Chairman AKAKA. Thank you very much, Mr. Gibson.

Mr. STARNES. Excuse me, Mr. Chairman, can I comment a little bit on the numbers.

Chairman AKAKA. Fine.

Mr. STARNES. The numbers as Senator Nelson announced before—because of secrecy, my numbers would be a little bit different than Senator Nelson's. His were more than mine. I was a little more conservative.

There is really no way they were ever known, really, and put out as a record. So, that is what happens here. These numbers are just the best the experts on in can estimate.

Thank you, sir.

Chairman AKAKA. Thank you very much.

I am going to ask our Ranking Member, Senator Burr, for any questions he may have.

Senator BURR. Thank you, Mr. Chairman.

Thank you, Mr. Starnes, for your testimony. Thank you, Mr. Gibson, for what I think was an incredibly insightful recant of that period and I am reminded that this is not the first time Congress has dealt with this. They dealt with it as early as 1946.

Mr. STARNES. Excuse me, Senator. I would like to express to you, you nominated one of my cousins for the Academy at one time.

Thank you, sir.

Senator BURR. You are more than welcome. And I am sure I will have an opportunity at some point to meet that young man.

Mr. STARNES. He has done two stints of duty in Afghanistan.

Senator BURR. Thank him on behalf of the Chairman and myself for his service.

Mr. STARNES. I will do that.

Senator BURR. Thank you. I have only got one question and it is an effort to clarify, Mr. Gibson.

You stand to benefit financially if this is enacted, but I think what I heard you testify and say is, you do not think you are owed that $1,000 a month.

Mr. GIBSON. Well, sir, I will put it this way, greed being what it is, I sort of hesitate to answer that question.

In truth, I can say, in a way, that I am opposed to this bill simply because it includes, as I have already stated, the post-hostility group and it does not cover the other Pub. L. 95–202 groups.

And worst of all, I think is the tenure. In other words, how about the man who, for instance, signed on a ship for 10 days—a coastwise ship—then quit for one reason or another. He figured this is not for me. He goes ashore, and under this bill, if it is passed, that same man would get $1,000 a month for the rest of his life; and I think that is absurd.

Senator BURR. Well, let me just say, again, I appreciate the fact that both of you were willing to come here and to share your stories and your requests with us. I know the Chairman will take this up as expeditiously as the Committee can.

I have got to say, Mr. Gibson, it is refreshing to actually have somebody testify that would be the financial beneficiary that calls balls and strikes and says, you know, if you look at it the way I see it, there are people that would be included that are not deserving of it. That is not something that happens frequently up here. I just wanted to point that out and to thank you for your honesty and openness on this issue.

Mr. GIBSON. Thank you, Senator.

Senator BURR. I thank the Chair.

Chairman AKAKA. Thank you very much, Senator Burr.

Drawing on your own experience during the war, were you ever officially told that you would receive post-war veterans benefits similar to that of the Armed Forces?

Mr. STARNES. No, sir, not expressly. This came up later. I was in the Academy at the time the President (President Truman) died, and word came out somewhat after that. But, no, we did not have any expressed promise of it, sir. I will be honest with you about that.

As I said, he had made that statement to the Congress, as I understand, but of course, he got sick and was disabled and everything and it ended there.

We did not have any organization at that time put together to push it or anything like that. So, we just went on our merry way.

Chairman AKAKA. Mr. Gibson, any comment on that?

Mr. GIBSON. Well, as a matter of fact, I agree there. During my period I had no knowledge that, you know, such was the case.

Chairman AKAKA. Mr. Starnes and Mr. Gibson, Committee staff have told me that many who are supporting S. 961 are unaware of the VA benefits and services that are currently available to them under law.

Do you believe that VA has provided effective outreach to advise World War II Merchant Mariners of their benefit eligibility? What can VA do to get the word out?

Mr. STARNES. I think that is true that they really do not know what they are—just exactly what they are. Actually all they ever gave us was just a small pamphlet and I still have mine. I had it in my files. It did not describe very much, sir, as I remember reading it. You are right. A lot of them do not know that they have that benefit.

But, as I understand it, there is some income involved with it—if you have a certain amount of income—and I am just talking off the top of my head, as I understand it, sir.

I would like to make one comment about both of us. I would be a beneficiary. Well, obviously I do not need that. I have done well. But, for every one of us like me and this gentleman here who may have enough to go on our own, there are a hundred other fellows out there now that are really in bad shape, you know, crew members. I was lucky enough to be an officer and get paid well.

I thank you, sir.

Chairman AKAKA. Mr. Gibson.

Mr. GIBSON. My comment is, sir, that the American Merchant Marine Veterans of World War II did send quite a bit out—at least to their membership—that these benefits were available; that is, after the approvals of 1988.

To my knowledge, I do not think the press really picked it up, and, of course, there were people that had no contact with the American Merchant Marine veterans groups, as this gentlemen just said. They probably never heard of it.

My own experience, though, I was instrumental in helping some people who were in dire need. One was a widow and the other two or three people were former veterans. And the VA was very responsive, you know, in those cases.

Mr. STARNES. Senator, could I say one more thing?

I will use my own experience. When I got that notice from the Coast Guard, it was a paper. And I will tell you, honestly, sir, that when I looked at it, it looked so non-beneficial that I almost threw it away. A lot of them did.

You see, I was working for General Electric at that time—I had a pension coming and was a manager and on good salary and all of that—and I saw that as being actually worthless, sir. That was my own opinion at that time and a lot of other people were the same way.

We are thinking now, I do not know how many of the veterans will have their discharge papers. Those numbers, those high numbers are not going to come out. I have talked to several of them. They call us all the time wanting to know how to get their Coast Guard discharge. So, the numbers will be down. As I said, at our ages, we are all over 80 and it will self-destruct.

My reason for wanting that money is to get some sort of recognition—and the other boys are the same—from our government; recognition of what we did back then, which we have not really had. We do not have anything in that way at all and it is a recognition for what we did.

That is, those of us, you know, who are doing pretty well. But we do need it for a lot of our crewmembers that sailed with us.

Chairman AKAKA. Mr. Starnes, let me ask you the question about the $1,000 in S. 961 as a payment amount.

Mr. STARNES. Yes, sir.

Chairman AKAKA. Do you know what the basis for that payment amount of $1,000 in S. 961 is?

Mr. STARNES. Well, sir, I do not. That number came from the House in H.R. 23, which they had studied for a long time. That is where that number comes from, the House Committee.

Chairman AKAKA. Mr. Gibson, based on your knowledge as an historian, and your knowledge and your research concerning post-war Merchant Marine benefits, did Congress ever make affirmative action to withdraw benefits from the Merchant Marines?

Mr. GIBSON. I am not quite certain exactly what you mean, sir. I do not think there was any affirmative. I mean, I cannot recall any action to withdraw or any—oh, wait, I beg your pardon. Let me restate that.

Yes, sir. Under Public Law 17, which I think was passed in, well, in the early 1940's during the war. At the lobby pressure of the seaman's unions and the shipping companies, those seamen that were employed on U.S. flagships under the United States Maritime Commission (later, the War Shipping Administration, which was the successor agency to that responsibility), in effect, the law withdrew Federal employees' compensation and civil service retirement from those employees. It placed them then under the U.S. navigation laws, which, in essence, was the right to sue and recover in the case of disabilities. Which was then overwritten, in turn, when the War Emergency Board came in with their insurance programs.

So, I think Public Law 17 was a definite withdrawal of rights; because, say somebody was killed during the period right after that, the day before he had been a Federal employee and now he was no longer a Federal employee. And the FEC benefits had been very good.

Mr. STARNES. But, as I recall that was specific and it was involved—was it not?—in the transition over the war emergency tankers that I worked for.

Mr. GIBSON. No. It was specific to the entire Merchant Marine. However, sir, this had nothing to do with veterans' benefits.

Chairman AKAKA. Let me thank both of you for your testimony. It will be helpful to us.

I noticed that there are witnesses from other panels still here, and I want to thank them for remaining here to hear this panel and the second panel as well.

I want you to know we truly appreciate you taking the time to share your views with us.

So, with that, this hearing is adjourned.

[Whereupon, at 12:23 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA

Our veterans made a sacrifice by laying their lives on the line to protect the freedoms we enjoy every day as Americans. It is our civic duty to make sure our veterans get the care and benefits they need and deserve. However, recent news reports stated that veterans in Montana with combat-related ailments receive far lower payments, on average, from the VA disability system than veterans in almost every other State. VA documents also show that veterans in Montana who began receiving compensation from the VA between the year 2005 and 2007 receive, on average, far less than the national average.

To make certain that Montana's veterans get the disability payments they have earned and deserve, I have introduced legislation that would require the Department of Veterans Affairs to ensure fairness in the disability benefits veterans receive. The bill will require the VA to submit periodic reports to the House and Senate Veterans' Affairs Committee on the VA's progress in addressing the variance in payments paid to disabled veterans across the country.

The mandatory reports would include a description of how the VA is working to improve the quality of examinations for veterans with service-connected disabilities and an evaluation of whether the Veterans Benefits Administration has sufficient staff to properly serve America's veterans. My bill would also require the VA to report on differences in the submittal rate of disability claims to the VA among various groups of veterans, including rural veterans and veterans who served in the National Guard, and describe how the VA is working to eliminate such differences. This bill is critical to ensure veteran in Montana or anywhere else in the country doesn't get the short end of the stick.

Veterans in Montana are fed up with the disability ratings process and this bill surely will not fix all the problems facing veterans in Montana. It takes too long for a veteran to get his claim processed, and too many Montana veterans don't get the right rating. We must continue working to see these problems addressed. But this legislation is an important step in the right direction because it will force the VA to tell us what it's doing to get this process fixed.

Three years ago, the Office of Inspector General's (OIG) issued a report, *Review of State Variances in VA Disability Compensation Payments*, which confirmed that variances in average annual disability compensation payments by State have existed for *decades*. This issue should be examined fully to ensure that those who served our Nation receive the benefits they have earned. The question before us today is not whether the benefits rating system needs to be fixed, but whether the VA will do what it takes to fix the system. I look forward to evaluating this and other important pieces of legislation before the Committee this morning and I thank the Members of this Committee for giving us the opportunity to find a way to better serve our Nation's veterans.

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Chairman Akaka, Thank you for holding this important hearing today, and for including my bill, S. 2965, on the Committee's agenda. This legislation directs the Secretary of Veterans Affairs, in consultation with the Secretary of Defense, to issue a report to Congress on the feasibility and advisability of covering severe and acute Post Traumatic Stress Disorder under the Servicemembers' Group Life Insurance (TSGLI) Traumatic Injury Protection Program. I am proud that Senator Lieberman has joined me in cosponsoring this bill.

The TSGLI program, established by Congress in 2005, assists severely-injured or incapacitated servicemembers who have suffered a traumatic injury in a combat operation. The benefit—ranging from $25,000 to $100,000—now covers the short-term

costs associated with a physical injury such as the loss of an arm or eye. Such support is intended to help families cover travel expenses so that they can be with their loved ones during recovery, meet other unexpected expenses such as lost pay, or give the servicemember a financial head start on life after recovery.

Also covered under the TSGLI program are Traumatic Brain Injuries that leave a person with the "inability to carry out the daily activities of living." This term is defined by the VA as "the inability to independently perform at least two of the six following functions: bathing, continence, dressing, eating, toileting, or transferring in or out of a bed or chair with or without equipment." A servicemember with a TBI who meets these criteria for 15 days receives $25,000, with additional pay outs of the same amount if conditions remain the same after 30, 60, and 90 days.

Under current law, the TSGLI program does not cover severe and acute PTSD, despite the fact that the VA's own experts have stated that "post service mental health problems, such as PTSD and associated psychosocial dysfunction, are pernicious and disabling * * *."

While the degree to which individuals are disabled due to Post Traumatic Stress Disorder can vary widely, we know that certain combat veterans with PTSD are so traumatized from their experiences that they are unable to carry out the activities of living that most of us take for granted each and every day.

The VA has stated that TSGLI was modeled after commercial Accidental Death and Dismemberment policies, although expanded "to address the unique needs of military service." The conflicts in Iraq and Afghanistan define these unique needs. We must acknowledge the severity of these injuries and consider covering severe Post Traumatic Stress Disorder under TSGLI.

A growing number of my colleagues and I have been fighting for years now to remove the stigma associated with mental health problems within the Armed Forces. We have also fought to make mental health care a more accessible and normalized element in evaluating a servicemember's overall health. I applaud the work of this Committee, which has instituted dramatic improvements in policy, as well as substantial increases in resources dedicated to mental health outreach and treatment for our Nation's veterans.

I am hopeful that the VA will report that covering severe and acute PTSD under TSGLI is not only feasible, but a critical change necessary to bring some comfort and stability to those who have sacrificed so much.

PREPARED STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA

S. 2139

Mr. Chairman, Thank you for allowing me to add my voice to the growing chorus of supporters of legislation that would expand the current benefits available to our servicemembers and veterans, particularly legislation that would provide more equitable benefits to members of our National Guard and Reserve.

One of the bills the Committee is considering today is S. 2139, the National Guard and Reserve Educational Benefits Fairness Act. I introduced this legislation in October 2007 in response to what I believe is an appalling and unacceptable situation. While Guard and Reserve soldiers are being asked to serve as first-class soldiers on the battlefield, the benefits they are eligible for following demobilization continue to relegate them to second-class veteran status.

For instance, current Title 38 regulations allow members of the Selected Reserve to qualify for full Chapter 30 educational benefits only if they meet the following three criteria: first, be ordered to Active Duty for 730 days or longer; second, serve at least 20 consecutive months on Active Duty; and third, be qualified in a valid Armed Services occupational specialty.

However, thousands of Guard soldiers have returned from Active Duty mobilizations that lasted for longer than 20 months, including extended deployments in Iraq or Afghanistan, only to find that while the length of their service qualifies them for Chapter 30 benefits, bureaucratic procedures cause the length of their orders to fall short of the 730-day threshold, and thus they are ineligible for full educational benefits.

A specific example of this problem occurred upon the return of the 1/34th Brigade Combat Team from Iraq in July 2007 after a 16-month deployment, the longest deployment of any unit in the Iraq war at that point. While nearly 4,000 members of this unit, known as the Red Bulls, had served 22 months on Active Duty, roughly half had orders that called for Active Duty service for up to 730 days and half did not. Thus, despite all having served equal lengths, only half were eligible for Chapter 30 benefits. Over 1,100 of these affected soldiers are members of the Minnesota

National Guard and many of them found themselves unable to enroll in school last fall as they had planned.

Thankfully, after Minnesota National Guard commanders and soldiers, along with myself and other colleagues, drew public attention to this glaring oversight, Army officials responded by agreeing to have the Army Board of Corrections for Military Records amend each affected soldier's individual orders to ensure Chapter 30 eligibility. All soldiers in the 1/34th BCT who have applied for Chapter 30 benefits have been approved, but the delays and bureaucratic obstacles for these soldiers to receive their hard-earned benefits should never have occurred in the first place.

I believe the only to way to ensure that additional Guard and Reserve units returning from deployments overseas do not encounter similar unfairness is to change the current regulations for granting Chapter 30 benefits.

The National Guard and Reserve Educational Benefits Fairness Act would amend Chapter 30 of Title 38 to eliminate the 730-day order requirement for members of the Selected Reserve, thereby granting eligibility for benefits based solely on length of actual service. The bill would extend Chapter 30 eligibility to any National Guard or Reserve soldier who is mobilized to Active Duty for 20 consecutive months after September 11, 2001, serves at least 12 of those 20 months in a theater of operations, and satisfies all existing occupational requirements for Chapter 30 eligibility.

I believe that we should be repaying our debt to soldiers based on the length of their actual service, not based on bureaucratic guidelines for processing orders. Minnesota Guard soldiers and their fellow Guard and Reserve soldiers around the Nation have made unprecedented sacrifices in Iraq and Afghanistan. They are asked to serve as Active Duty soldiers on the battlefield, and they should be eligible for Active Duty benefits when they return home.

I am proud that Senators Coleman, Dorgan, Dodd, Harkin, and Lincoln have joined me in cosponsoring this legislation that would advance the process of recognizing the critical contributions of the Guard and Reserve soldiers to Operation Enduring Freedom and Operation Iraqi Freedom and reward their sacrifices through educational benefits, the most valuable benefits veterans receive.

I would like to thank Members of veterans' organizations who are testifying before the Committee today, and I appreciate their comments on this bill. I would also like to thank Members of the Committee for their consideration of this and other legislative proposals to break through the current disparity in treatment between Active Duty and Selected Reserve benefits. Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. BOB DOLE AND SECRETARY DONNA E. SHALALA, CO-CHAIRS, PRESIDENT'S COMMISSION ON CARE FOR AMERICA'S RETURNING WOUNDED WARRIORS

Mr. Chairman and Members of the Committee, we are sorry that we cannot be with you today to testify in person. We have been specifically requested to comment on S. 2674, America's Wounded Warriors Act, sponsored by Senator Burr. We commend the Senator for his commitment to those who have been injured or wounded in the service of our Nation. Please accept our comments as part of this hearing's record.

As you all know, last year, we had the privilege of serving as co-chairs of the President's Commission on Care for America's Returning Wounded Warriors. We have testified previously before this Committee regarding the recommendations issued from that effort. We are grateful that so many of the recommendations have been adopted or are in the process of being implemented.

Let us briefly remind you what these recommendations include:

- Immediately Create Comprehensive Recovery Plans to Provide the Right Care and Support at the Right Time in the Right Place;
- Completely Restructure the Disability Determination and Compensation Systems;
- Aggressively Prevent and Treat Post Traumatic Stress Disorder and Traumatic Brain Injury;
- Significantly Strengthen Support for Families;
- Rapidly Transfer Patient Information Between DOD and VA;
- Strongly Support Walter Reed by Recruiting and Retaining First Rate Professionals through 2011.

The recommendation that is relevant for today's hearing is our call to completely restructure the disability determination and compensation systems of the DOD and VA.

Congress should clarify the objectives for DOD and VA disability systems to reflect the goal of returning injured servicemembers to optimal functioning in Amer-

ican society. This means that disability compensation should be redefined to compensate not only for "lost earnings capacity" but for the life-long loss in life's quality due to service-related disability. It also means that the current VA Schedule for Rating Disabilities needs to be changed and updated to reflect these concepts.

Because it is difficult to ask individuals to accept a new system "sight unseen," we supported a study to determine what changes would be necessary and what a quality-of-life payment might include. This study is currently underway and should issue findings in August of this year.

We also recommended that the DOD compensate for the loss of a military career due to a disability by providing a life-time annuity payment commensurate with time served and rank to all servicemembers. This concept brings DOD into the 21st century of employment benefits—benefits important in maintaining an all volunteer force and consistent with other current civil service benefits. This recommendation also removes the quandary surrounding concurrent receipt and allows the DOD to focus on its main job—maintaining our fighting force.

The Services, by necessity, must retain the ability to determine fitness to serve. When a servicemember is found "unfit" because of a disability, they should be offered a choice to voluntarily separate or to retrain for another military position for which they would be eligible.

A single medical examination should be all that is required to provide the baseline data to determine fitness for duty and to provide for an initial VA disability rating. A demonstration project is currently under way that will allow us to assess the effectiveness of such a system.

Disability ratings are currently established by the VA Schedule for Rating Disability—a schedule that is far from current. In fact, ratings for the signature injuries of this conflict—Post Traumatic Stress Disorder and Traumatic Brain Injury—are totally inadequate. We recommended that the schedule be kept current. Failure to do so potentially disadvantages those disabled veterans.

We know that it takes time to transition from servicemember to veteran, during which there may be a drop in income. This is a particular problem for the newly disabled veteran who may require months of rehabilitation or re-education in order to enter the work force. To help with this, we recommended that the VA provide transition pay in the form of living expense support while the veteran is in school or rehabilitation, or for a period of 3 months. After the 3 months are up or rehabilitation or education training is completed, the earnings loss payments would begin.

Again, we recognized that for many this is a difficult concept and so we recommended and supported a VA initiated study to flesh out the details of such a proposal. This study will also report its findings in August.

S. 2674 accomplishes much of what we recommended. Under the provisions of this bill, the military disability retirement system would provide for a lifetime annuity for those injured in the line of duty and deemed unfit for continued service. The annuity would be based, as we suggested, on length of service and rank. The Defense Department would no longer be in the disability business, resolving, once and for all, the issue of concurrent receipt and the confusion surrounding different disability ratings for different purposes.

We recommended that TRICARE benefits be provided for those servicemembers found unfit due to combat-related injuries. S. 2674 would establish a study to recommend parameters for TRICARE coverage under the new system. Certainly, who gets TRICARE is part of the drive to have the DOD accept VA ratings for all medical conditions, not just the condition that results in a determination of unfit.

S. 2674 also calls for a study to determine compensation appropriately reflecting lost earnings capacity and decreased quality-of-life due to a service-connected disability. While studies can just delay decisions, this study allows the Secretary to use the findings from any and all previous studies to address the specific areas defined in the bill. We understand that many questions surround adding a quality-of-life component to veterans' disability compensation. How much, for what, based on each individual or an average of all similarly situated, how is it measured, is it applied retroactively, and when does it apply, before or after rehabilitation? These questions should be answered as quickly as possible and the VA Ratings Schedule for Disabilities adjusted not just now, but periodically based on evidence.

S. 2674 directs the VA to study the appropriate amount and duration of transition payment for servicemembers discharged because of a service-connected disability and directs the VA to make recommendations for appropriate incentives to ensure that a veteran completes a vocational rehabilitation program. As we discovered, the average medically discharged servicemember has an annual income drop from $38,000 to $18,000 during transition to civilian employment. We also discovered that the number of individuals rehabilitated through the VA Vocational Rehabilitation and Education Program are only a small fraction of those who apply. While the

Servicemembers' Group Life Insurance Traumatic Injury Protection Program (TSGLI) provides some financial support for selected injuries, other strategically targeted solutions are needed to support these individuals and encourage program completion.

We are well aware that an election year can make the legislative process even more challenging. However, insuring the well being of our servicemembers and veterans is a bipartisan and bicameral goal. We are grateful that our recommendations have been given serious consideration, and that you are ready to act.

PREPARED STATEMENT OF MR. RICK JONES, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION FOR UNIFORMED SERVICES (NAUS)

Chairman Akaka, Ranking Member Burr, and Members of the Committee: On behalf of the nationwide membership of the National Association for Uniformed Services (NAUS), I am pleased to present our views on S. 961, the Belated Thank You to Merchant Mariners of World War II Act of 2007. We appreciate the opportunity to submit a statement concerning one of the injustices done to a group of men—the World War II Merchant Mariners—who bravely and honorably gave wartime service to their country.

NAUS commends your attention to this important bill. It fulfills the Nation's debt of gratitude in recognition of the heroic service put forth during World War II by the thousands of young men who volunteered for service in the United States Merchant Marine. These American heroes have struggled for more than six decades for acceptance among their military brethren and the public. And it is unthinkable that these brave men should be given a cold shoulder by the Nation they proudly served.

S. 961, the Belated Thank You to Merchant Mariners of World War II Act of 2007, would recognize the contribution made by the men and women who served in the United States Merchant Marine in World War II between the years 1941 and 1946. It would also provide a compensation of $1,000 per month to balance a lifetime of ineligibility for veterans' benefits and provide those few surviving World War II mariners, whose average age today is 83, the status of "veteran" under the Social Security Act to give a small enhancement of that retirement benefit.

Let us review a bit of history.

In 1936, Franklin Roosevelt, the thirty-second President of the United States, urged Congress to pass the Merchant Marine Act to man and establish a shipping capability to be used for commerce during peacetime and converted for use by the Navy during wartime or national emergency.

In a 1935 letter to Congress, Roosevelt wrote, "* * * in the event of a major war in which the United States itself might be engaged, American flag ships are obviously needed not only for naval auxiliaries, but also for the maintenance of reasonable and necessary commercial intercourse with other nations. We should remember lessons learned in the last war."

In this congressional message the President further stated, "If we are going to keep away from our shores the forces that have convulsed the Old World and now menace the New, the job will be done in large measure by the ships and the sailors of the Merchant Marine and by the working men who build the ships and supply them. If they fail, the whole effort fails. And earnest, hardworking Americans, who spend the best part of their lives providing for the security and happiness of those they love, know that precious security and happiness depend exactly on the success of that effort."

Passage of this Act proved prescient when, in 1939, war broke out in Europe and American interests were threatened.

With American entrance into the war on the horizon, President Roosevelt told the American people in 1941, "Today, as never before in our history, our Merchant Marine is vital to our national welfare. I do not mean vital merely in the conventional sense that it makes an important contribution, but in the stronger sense that it is a crucially decisive factor in our continued existence as a free people."

Immediately after Pearl Harbor, Merchant Marine activity was needed to carry out lend-lease to Britain, to fulfill the terms of the First Moscow Protocol, to move troops and supplies to all theaters of war, and to ship petroleum. In order to meet the worldwide needs for shipping, it became necessary to coordinate the existing private shipping facilities and to centralize Federal control over merchant shipping.

The merchant fleet helped build up in the British Isles a tremendous arsenal of supplies during 1943 and early 1944 in preparation for the invasion of Europe. Huge convoys, some with as many as 167 ships, delivered the troops and supplies in shuttle service across the Atlantic.

The invasion of Normandy on June 6, 1944, was the greatest sea-borne invasion in history. At its head were 32 American merchant ships, many of which had previously suffered severe battle damage. These 32 ships were charged with explosives and were sunk off the beachhead in order to form a breakwater for subsequent landing of supplies. Following this, 10 oceangoing tugboats, operated by the Merchant Marine, towed the famous artificial ports into position, thereby making possible the quick landing of tanks, guns, supplies, and heavy equipment necessary to hold and expand the beachhead.

Under the Merchant Marine Act and in a 5-year period from 1941 to 1946, America built nearly 3,000 Liberty Ships—emergency steel cargo vessels with a cargo capacity of approximately 10,000 dead-weight tons each—and the number of mariners grew from 55,000 to between 215,000 and 250,000 mariners and seamen.

In effect, these men and their ships were responsible for transporting the vast majority of overseas military cargo, including military and civilian personnel and supplies, to war zone destinations.

Many of these mariners were recruited specifically to staff ships under the control and direction of the U.S. Government to assist the World War II effort. These seamen were subject to government control; their vessels were controlled by the government under the authority of the War Shipping Administration and, like other branches of military service, they traveled under sealed orders and were subject to the Code of Military Justice.

Some volunteers joined the Merchant Marine because minor physical problems, such as poor eyesight, made them ineligible for regular service in the Army, Navy, or Marine Corps. Others were encouraged by military recruiters to volunteer for service in the Merchant Marine because the special skills offered by these volunteers could best be put to use for our country by service in the Merchant Marine. Most important, all were motivated by their deep love of country and personal sense of patriotism to contribute to the war effort.

The wartime movement of supplies and the troops was much more than a simple ocean cruise. It was hard work and dangerous.

Members of the Merchant Marine served on ships that engaged the enemy, lost their ships because of enemy action, were physically wounded or disabled as a result of enemy action, became prisoners of war, and served in combat and war zones under threat of attack by enemy air or submarine.

And a cadre of American merchant seamen participated in a number of perilous World War II invasions, including the invasions of Normandy, Sicily and the Philippines.

As Members of the Committee know, the Atlantic Ocean was alive with German submarines at the start of the war, traveling in "wolf packs," ready to sink transport of critical supplies of oil, raw materials and food to England and Russia.

Early in the war, German U-boats sank two of every 12 ships that left U.S. ports. In 1942, losses to the merchant fleet equaled 39 percent of new ship construction in that year. With more successful counter to enemy submarines, this ratio was reduced to 11 percent in 1943, to less than 8 percent in 1944, and to only 4 percent in 1945.

During the war period, it is reported that more than 8,000 merchant seamen lost their lives or were declared missing in action, and an additional 609 merchant seamen became prisoners of war. An estimated 731 vessels were sunk with another 40 ships and crews lost without a trace.

At the conclusion of the war, Merchant Marine vessels played another important role: returning home the huge number of armed personnel from overseas. Over 3,500,000 men were brought home from overseas areas. And after the war ended, they carried food and medicine to millions of the world's starving people.

Regarding the service of the Merchant Marines, Gen. Dwight D. Eisenhower, on National Maritime Day, 1945, said, "The officers and men of the Merchant Marine, by their devotion to duty in the face of enemy action, as well as natural dangers of the sea, have brought us the tools to finish the job. Their contribution to final victory will be long remembered."

And in the Pacific theatre, Gen. Douglas MacArthur said, "I wish to commend to you the valor of the merchant seamen participating with us in the liberation of the Philippines. With us they have shared the heaviest enemy fire. On this island I have ordered them off their ships and into foxholes when their ships became untenable targets of attack. At our side they have suffered in bloodshed and in death. The caliber of efficiency and the courage they displayed in their part of the invasion of the Philippines marked their conduct throughout the entire campaign in the southwest Pacific area. They have contributed tremendously to our success. I hold no branch in higher esteem than the Merchant Marine services."

Mr. Chairman, the National Association for Uniformed Services believes that it is now time for the United States to recognize properly these individuals for their exceptional contribution and strength of effort. They helped preserve the freedoms we enjoy today.

We ask Congress to support those now almost-ancient mariners whose heroic contribution as members of the ocean-going Merchant Mariners struggled to help secure the American victory in World War II. On behalf of a grateful Nation, we urge you to extend these benefits to those once young men who went to sea as crewmembers of the Merchant Marine during World War II.

We note that Canada recently approved a tax-free compensation package for its Merchant Navy veterans and surviving spouses. Our northern neighbor provides between $5,000 and $24,000 in lump-sum payments to eligible Canadian mariners who served during the First and Second World Wars and the Korean War.

Mr. Chairman, we thank you and the Members of this Committee for your consideration of this important bill, and we look forward to working with you to ensure that a grateful Nation will protect, strengthen, and improve benefits and services of those who answer the call to duty, especially at a time of crisis and war.

Again, the National Association for Uniformed Services appreciates the opportunity to present a statement on this matter.

Thank you.

May 14, 2008.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

Re: S. 961, the "Belated Thank You to the Merchant Mariners of World War II Act of 2007"

DEAR CHAIRMAN AKAKA: On behalf of the undersigned American maritime labor organizations, and the active and retired members we represent, we are writing to ask that you and your Committee mark-up and favorably report S. 961, the "Belated Thank You to the Merchant Mariners of World War II Act of 2007" as soon as possible. This legislation, introduced by Senator Ben Nelson, authorizes certain benefits to individuals who served our Nation as members of the United States-flag merchant marine during World War II. To date, this legislation has been cosponsored by a bipartisan group of fifty-nine (59) Senators. Its companion bill, H.R. 23, passed the House of Representatives under suspension on July 30, 2007.

During its consideration of H.R. 23, the House Committee on Veterans' Affairs made changes to the legislation that would, among other things, reduce its overall cost. For example, the House-passed bill eliminated the payment of benefits to survivors' spouses. Second, it is no longer self-funded. It sets up a Merchant Mariner Equity Compensation Fund and leaves it to Congress to later determine funding within its spending caps. Finally, those who have received benefits under the Servicemen's Readjustment Act of 1944 (PL 78–346) are not eligible for benefits under H.R. 23.

We support these changes as necessary to address existing budgetary constraints, and as a means to expedite and facilitate the enactment of this legislation. Consequently, we strongly urge you to consider S. 961 at your Committee's next legislative mark-up session so that S. 961/H.R. 23 can be sent to the Senate for its consideration. In so doing, you will be telling all the American merchant mariners who together suffered one of the highest rates of casualties in World War II, that they are not forgotten.

As General of the Army, Allied Expeditionary Forces in Europe, Dwight David Eisenhower stated, "When final victory is ours there is no organization that will share its credit more deservedly than the Merchant Marine." Fleet Admiral Chester W. Nimitz, Commander-in-Chief, Pacific Theater, said that "The Merchant Marine * * * has repeatedly proved its right to be considered as an integral part of our fighting team."

General of the Army Douglas MacArthur, speaking of the merchant seamen who supported the liberation of the Philippines, stated that "With us they have shared the heaviest enemy fire. On these Islands I have ordered them off their ships and into foxholes when their ships became untenable targets of attack. At our side they have suffered in bloodshed and death * * *. They have contributed tremendously to our success. I hold no branch in higher esteem than the Merchant Marine Service."

Finally, President Franklin Roosevelt eloquently and accurately summed up the contributions of America's World War II merchant mariners, telling the country and the world that they "have written one of its most brilliant chapters. They have delivered the goods when and where needed in every theater of operations and across every ocean in the biggest, the most difficult and most dangerous job ever taken." In fact, when President Franklin Roosevelt signed the GI Bill in 1944, he recognized the service and valor of America's mariners, stating that, "I trust Congress will soon provide similar opportunities to members of the merchant marine who have risked their lives time and time again during war for the welfare of their country."

We believe that it is time to do what President Roosevelt hoped would be done, and to fully acknowledge the service of America's World War II merchant mariners by providing them with the benefit call for in this legislation. Again, on behalf of the undersigned American maritime labor unions, we ask that you mark-up and favorably report S. 961, and to bring S. 961 to the Senate for its consideration.

We ask that you include this statement in your Committee's hearing record on this legislation and we look forward to working with you and your staff for the enactment of S. 961.

Sincerely,

THOMAS BETHEL,
President, American Maritime Officers.
TIMOTHY BROWN,
President, International Organization of Masters, Mates & Pilots.
DONALD KEEFE,
President, Marine Engineers' Beneficial Association.
GUNNAR LUNDEBERG,
President, Sailors Union of the Pacific.
ANTHONY POPLAWSKI,
President, Marine Firemen's Union.
MICHAEL SACCO,
President, Seafarers International Union.

U.S. MERCHANT MARINE ACADEMY ALUMNI FOUNDATION,
May 19, 2008.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in reference to your Committee's consideration on May 7, 2008, of S. 961, the "Belated Thank You to the Merchant Mariners of World War II Act of 2007."

I am Chairwoman of the U.S. Merchant Marine Academy Alumni Foundation. As an organization of alumni of the Federal Academy, we very strongly support S. 961 and thank you for taking this bill under consideration. Many of our fellow alumni are members of the greatest generation and the recognition for their heroics contained in this bill is well deserved.

During the war, many Americans and persons of other nations made sacrifices to attain the victory. We graduates of the U.S. Merchant Marine Academy are proud of all our maritime colleagues who served in the merchant marine; we are especially proud of the midshipmen who gave their lives. Every year, we honor the 142 midshipmen who sailed on U.S. merchant ships and went down on those ships as they were attacked by the enemy. Many other mariners lost their lives. Today, there are discussions as to the number of mariners who were exposed to combat. While academic discussions may take place, it is incontrovertible that sailing on the blue ocean in the face of the enemy was a singular heroic act multiplied many times. Due to the passage of time, those who were lost in the war, or lost afterwards to injuries sustained in action and those who have passed in the intervening years will not benefit from actions that we take now. The cadre of those who served is dwindling and we support the passage of S. 961 to provide the "Belated Thank You."

We note with some pleasure that the veterans' organizations testifying before your committee uniformly supported the intent of S. 961 in providing the recognition to the merchant marine. Several noted the level of recognition as being disproportionate. We believe that the level is commensurate with the belated aspects of the recognition. Many mariners, as noted above, are no longer with us. Providing a meaningful level of recognition to those who are able to benefit is fitting.

We also note the testimony of the Veterans' Administration that S. 961 calls for "concurrent eligibility." We disagree as the current benefits are for burial and medical needs; neither can be duplicated. They also note that other groups could claim similar benefits. We have reviewed the list identified and do not find any group that has the number of persons subjected to combat at the level of the merchant marine; moreover, we believe that any other group or persons in a situation similar to our colleagues should have the opportunity to plead their case. If honorable service was given, it is right to provide proper consideration.

Mr. Chairman, thank you and your committee for taking the time to address this long neglected aspect of our Nation's victory in World War II. We strongly urge you to take positive action on S. 961.

We respectfully request that this letter be made a part of the hearing record.

Sincerely yours,

IVY B. SUTER,
Chairwoman; Class of 1978.

PREPARED STATEMENT OF MR. IAN T. ALLISON, SANTA ROSA, CA

S. 961, THE BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2007

Thank you, Mr. Chairman and Members of the Veterans' Affairs Committee. My name is Ian Allison, Co-chairman of the Just Compensation Committee, a non-profit unincorporated group of Merchant Marine Veterans of World War II registered with the Internal Revenue Service. Our 10,800 members have joined together seeking equal treatments for all Veterans of World War II who shared the loss of 20 Million people on this earth who participated voluntarily or otherwise in the great war.

I would like to submit as evidence at this Veterans' Affairs Committee hearing on S. 961 a famous book entitled "A Careless Word—A Needless Sinking" by Captain Arthur R. Moore. I recognize that at 704 pages, it is too great to become part of this electronic record and acceptance for printing, but I submit it as an exhibit material to be maintained in the Committee files for review and use by the Committee.

The book accounts for 820 American ships, firefighters, tankers, passenger and troop ships lost at sea in World War II. Over 9,000 Merchant Seamen, were either killed or lost in action. 12,000 men were wounded or maimed and 786 prisoners of war taken by the enemy. The majority of these lost souls lay in Davy Jones' locker at the bottom of the sea without markers or tombstones to show their gravesites.

What depraved men branded these gallant mariners we lost at sea, as DRAFT DODGERS? As an Engineer working in the bowels of gasoline tankers, plying the waters of the Atlantic and Pacific and facing the German and Japanese U-boats, I've never met a fellow soldier, sailor or Marine who would trade places with me.

I would like to tell you the story of one lost ship that I have picked at random. The same story can be told of 819 other ships that met with death and destruction—the penalties of war.

> THE SS JACKSONVILLE, A T–2 TANKER BUILT AT THE SWAN ISLAND SHIPYARDS BY HENRY KAISER IN PORTLAND, OREGON, IN 1944. ON AUGUST 30, 1944, A TORPEDO HIT THE SHIP JUST AFT OF THE MIDSHIP HOUSE. FIRE BROKE OUT AND THE 80-OCTANE GAS COVERED THE SHIP STEM TO STERN IN FLAMES. A SECOND EXPLOSION BROKE THE SHIP TOW WITH BOTH PARTS STILL BURNING. THE FOREPART SANK QUICKLY, THE STERN SECTION SINKING THE NEXT DAY.
>
> THERE WERE NO LIFEBOATS OR RAFTS LAUNCHED. OUT OF THE 78 MEN ON BOARD, THE ONLY 2 SURVIVORS JUMPED OVERBOARD INTO THE FLAMING WATER, AND SWAM AWAY FROM THE SHIP. THEY WERE PICKED UP BY A U.S. DESTROYER ESCORT AND TAKEN TO IRELAND.
>
> FOR THE GRACE OF GOD, THERE GO I. IT COULD HAVE BEEN MY SHIP. I SAILED 3 YEARS DURING THE WAR, IN THE ENGINE ROOM, ON A GASOLINE TANKER BUILT IN PORTLAND, OREGON, BY HENRY KAISER. I CAME OUT UNSCATHED BUT 9,000 OF MY COMRADES DID NOT.

Why? Why? Why, were the gallant members of the Merchant Marine, who suffered the highest casualty rate of the war, with 1 out of every 26 dying, left out

of the 1944 GI Bill of Rights? Some warped minds were at work to have engineered this travesty. I can only speculate after 60 years of thought and observation.

I have come to the conclusion that in general, these things stirred up jealousy and animosity about the Merchant Mariners.

1. We had no discrimination in our ranks whereby we accepted Blacks, Hispanics and aliens into our ranks. Some of them became ship's officers on up to the "4 Stripe" rank of Captains and Chief Engineers. None of the others services were as non-discriminatory as the Merchant Marine. Discrimination was still rampant in America during the War.

2. Merchant Mariners didn't wait to be drafted. We were all volunteers. Both the Japanese and German Nays took their toll of our men both before and after WWII.

3. Our ALL VOLUNTEER crews of U.S. Merchant Marine ships during WWII were union members of one of the many union organizations representing unlicensed personnel i.e. Sailors Union of the Pacific (SUP); Seafarers International Union (SIU); Cooks and Stewards (MCS); and ship officers union, which were Master Mates and Pilots (MM&P). None of the other Services in the U.S. Armed Forces had legally incorporated organization to represent their interest as to pay, transportation, living condition and more. These were all pre-war organizations which were a great boon and offered efficiency to the war effort.

I am sure that Members of this Committee, after intelligent review of history and facts about World War II, will be convinced of the necessity of passing our Senate Bill S. 961.

I thank you for your time in reading my testimony given this 7th day of May, 2008.

PREPARED STATEMENT OF MR. WILLIAM JACKSON, OAKLAND, CA

S. 961, THE BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2007

My name is William Jackson. I am 88 years old and have been working as a Merchant Mariner since 1935. I still volunteer as Chief Engineer on the S.S. Oak Victory, a 1944 Victory ship that is being restored in Richmond, California. I am here to ask you to pass S. 961, the "Belated Thank You to the Merchant Mariners of World War II Act of 2007."

I had shipped for several years as a busboy on a passenger and freight ships. But during the summer of 1937, I received the new U.S. Coast Guard identification Z Card and started shipping out of the National Maritime Union hall in New York as a messman. Although my home was on the West Coast, I shipped out of New York because the National Maritime Union had integrated their shipping hall. None of the West Coast unions had and didn't until the Fair Practice Employment Act in the 1960's. Before the United States officially entered WWII on December 7, 1941, I voluntarily sailed on ships into the war zones of Africa, Egypt and the Suez Canal. In July 1941, we witnessed two air raids while our ship was docked next to a dry-dock where the target of the attack, a British cruiser, was being repaired. Before the official beginning of the War, there were a number of U.S. ships sunk or damaged.

On December 7, 1941, I was in San Francisco when Pearl Harbor was bombed. At first, I decided I would contact my classmate from Oakland High School. We had been in R.O.T.C. together, where I had been the only African-American person. Together, we went right down to the U.S. Army recruiting station. There were a mixture of other races from Mexico, China and Native Americans. I noticed that they called all the other guys and assigned them and sent them home. I asked them, "How about me?" This lady said, "Sorry, but we have no place for African-American soldiers." I felt like my heart had stopped. To think that our teachers taught us that we were supposed to be equal citizens, to vote, to be loyal and to defend our country in time of war. I became very angry and told them "Don't ever try to draft me. I just returned from a war zone with the merchant marine. I'll go back and get a ship." I was never called up by the Draft Board but I saw more action at sea in the North Atlantic and Pacific than lots of men in the Army and Navy did. On December 9th, I signed on the S.S. Panama and continued to sail. In August 1942, the ship I was on was sunk by enemy action. I was hospitalized in Trinidad for 4½ months without pay as was Union policy.

In February 1943, I refused to sign on as a Steward Department crew. I had been granted endorsement as "wiper," the entry level rating in the engine room by the U.S. Coast Guard. The National Maritime Union supported my cause. I was assigned to position as wiper on the S.S. Exceller. I was refused the berth twice by

the 1st Assistant Engineer, but was finally accepted at the insistence of the U.S. Coast Guard and the N.M.U. Late in June 1943, after 4 months of abuse by the 1st Engineer, I had earned the time to sit for the next rating—Fireman/Watertender. I did and passed. I continued sailing throughout the war, and after that, earning ratings of Oiler, Junior 3rd, and then 2nd Engineer.

In November 1963, I took an assignment on the S.S. Hope Hospital Ship as a 2nd Engineer. This ship would go to 8 different underdeveloped countries, stay for 10–11 months and serve as a 125 bed hospital training ship, teaching local medical personnel modern medicine practices. It had a medical staff of 300 people plus 50 doctors who rotated every 2 months. The ship's crew totaled 76 men with the Engine Room having 26. Our mission was to keep the ship supplied with power as there were three operating rooms, ICU, two pediatric wards, two women's wards, two men's wards, plus labs, a dental clinic and more. During that time, I earned promotions to First Engineer and then Chief Engineer. It was the hardest job I ever loved. I officially retired in 1985 but returned to serve in Operation Desert Storm for two 7-month tours.

The U.S. Merchant Marine was formed by the War Shipping Administration to supply manpower to man the vast number of merchant ships to carry all the war materials, troops, planes, food, etc., to Allies around the world on all fighting fronts. To do this, they needed as many as 230,000 seamen—deck, engine room and stewards.

The merchant marine was the first of all services to integrate. It may have taken the union and the U.S. Coast Guard to make the steamship company give me the right to sail in the engine room, but it did integrate the ships of the merchant marine. And the merchant marine service schools were integrated between 1942 and 1943. The merchant marine was the first to integrate and make my dreams come true.

Today, May 7, 2008, I submit this statement to request passage of S. 961, the "Belated Thank You to the Merchant Mariners of WWII Act of 2007." I had a tough time of it in the U.S. Merchant Marines, but did win equality on a racial level. Now I am asking for equality with all other U.S. veterans for benefits denied the merchant mariners by the GI Bill of Rights of 1944.

Mr. Chairman and the entire Veterans' Affairs Committee, I thank you.

PREPARED STATEMENT OF MR. MARK S. GLEESON, OAKMONT, PA

S. 961—BELATED THANK YOU TO THE MERCHANT MARINERS OF WWII ACT OF 2007

Thank you, Mr. Chairman and Members of the Veterans' Affairs Committee. My name is Mark Gleeson and I am a member of the American Merchant Marine Veterans of WWII. I joined the American Maritime Service is June 1945 fully expecting to be part of the invasion fleets invading Japan planned for November 1945. Physical injuries in training camp and at sea cut my sea service short. I have my Honorable Discharge from the United States Coast Guard under the provisions of Public Law 105–368. I appear today speaking in favor of S. 961.

I first applied for my military discharge under the provisions of Pub. L. 95–202 in 1989. When this was turned down, I became involved in the efforts of Merchant Marine veterans to gain our denied veterans' recognition through Federal legislation. The issue at point was when did WWII end and who qualified for veteran's recognition. For almost 10 years I had a title of Vice Chairman of the Merchant Mariners Fairness committee, the ad hoc committee that worked with many distinguished Members of Congress to finally pass legislation in 1998 granting veterans status to about 3000 seamen who had been denied such recognition by the Civilian/Military Service Review Board due to their interpretation Pub. L. 95–202. I have written a personal chronicle of this 10-year legislative struggle.

In reflection on this chronicle that covers five sessions of Congress, it is obvious that the scope of S. 961 cannot be a funding problem. It does not fund the varied veterans' benefits, including educational, loan, and medical benefits. It acknowledges the service of merchant seamen only.

To this point, the chronicle contains the fact that after four previous efforts, the Senate and the House in 1996 passed S. 281 by voice vote—a bill that established the start of the Vietnam conflict as February 28, 1961, not the August 4, 1964 date following the Tonkin Bay incident. This legislation, spearheaded by Senator D'Amato of New York, belatedly recognized some 16,000 service men who had been serving in Vietnam during that time period. The Congressional Budget Office indicated that this act would have no significant impact on the Veterans' Affairs Budget. These men fully and richly deserved belated government recognition and re-

sponse for their service, and their service-related injuries. We believe the merchant marine veterans of WWII also deserve a positive response for their service. Of some 250,000 seamen at the end of WWII, it is estimated that less than 10,000 are still alive, and there are fewer each year.

We ask for your help in passing S. 961. Only those seamen recognized by a Federal court decision in 1987 received limited medical benefits. The remaining Denied Seamen recognized by Pub. L. 105–368 receive no medical benefits. All they are entitled to is a tombstone and a burial flag. If they want a medal they are entitled to, they must pay for it. They must also pay the Coast Guard $30 for their Honorable Discharge papers. We believe it is time all eligible WWII Merchant Marine Veterans be treated as equal veterans. While S. 961 does not grant educational or medical benefits to remaining seamen, it does partially compensate them for the benefits they never received. The Federal court and Congress have recognized merchant seamen of WWII as veterans. We are proud of that. We are not proud that we are still not treated a veterans. We read in the chronicle that only a few people we contacted in our 10-year legislative effort were knowledgeable about what the merchant marine did to help defeat the enemies of democracy. It was as difficult then as it is now to explain incidents of history and to illustrate that without the men who manned the merchant fleet, final victory would not have been possible. Some understanding of history is important to appreciate the significance of S. 961.

Over the years, we found few people who knew that thousands of young men were actively recruited by the government to join the merchant marine in 1945 so they could man the ships that would invade Japan in November 1945. The two planned invasions of Japan would have resulted in an estimated one million American casualties. Included in these casualties would have been merchant seamen. It is difficult to communicate these issues that are now 62 years old. It is also hard for us to overcome the effect of misinformation that has been repeated over and over and thus, has prevented the passage of S. 961.

Certain issues have come up year after year to support denying merchant seamen the requested relief. Among them are the disparity in the pay scales and the contention that there were strikes by merchant seamen. With respect to the often-mentioned strike, the truth is that the strike resolved around some longshoremen labor issues in the summer of 1946 in New York City. This was a dock labor management issue, not a merchant seamen issue. What is important to this discussion is that during WWII, no ship did not sail, or sailed late due to a strike by seamen. Admiral Emory Land, Administrator of War Shipping Administration, stated this fact in his last report to Congress on January 15, 1946. This fact is never mentioned. Failing to correct the misperception that the merchant seamen went on strike is, at least, an affront to the men who served and died for their country.

No invasion failed or was delayed as merchant ship crews reportedly took off for coffee hour, or refused to load or unload cargo on the weekends. We have found that few people knew that when a ship was sunk, and the seaman was in the water, his pay ceased the minute he abandoned ship and did not start again until he signed on to a new ship. If he was injured, this could have been weeks or months. If he lost all his clothing he had to buy new clothing himself, if he survived. He was not provided free gear. Yet, seamen came back out of the cold or burning water, and sailed again. The pay issue that is used again and again against merchant seamen never really existed. Unfortunately these facts are not well known.

The men of the Naval Armed Guard and the merchant seamen sailed together on the ships, ate the same food, manned the same guns, fought the same enemy, died or were wounded on the same ships. They deserved this. The surviving WWII merchant seamen are still waiting.

We are here again, discussing things that have been settled before in our favor both in Federal court and in Federal legislation. We are, however, at a disadvantage in presenting facts to Members of Congress regarding S. 961. All the other services have historical research centers staffed by professional historians, all paid by the government that produce data for you, the public, and as records of their particular service. Congress also has military liaison personnel available who present their version of issues. The merchant marine has no such historical center to present credible testimony on our behalf, or government personnel to speak for us.

S. 961 is a belated, yet welcomed, attempt to recognize the efforts of men of a service that has its name engraved on the new National World War II Memorial, in the same size as the other services. The merchant marine's name would not be there, carved forever in stone along with other services, if it were not considered a service equal to all others.

Finally, S. 961 could also help in a small way to acknowledge the Merchant Marine of WWII as the other services were relegated to menial tasks, African-Americans in the merchant marine graduated from the United States Maritime Academy

at Kings Point. African-American seamen shipped out as masters, officers, and crews of ships serving in harm's way the entire war.

The Merchant Marine Veterans of WWII respectfully asks you to finally recognize them for their participation in the war, as all other services have been previously recognized by their government for their wartime service. We ask you to pass S. 961. We believe it is the right thing to do, and we believe this is the right time to do it. America will respect that.

Thank you.

PREPARED STATEMENT OF MR. BURT YOUNG, LINCOLN, NE

S. 961, BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2007

Members of the Veterans' Affairs Committee: It is indeed an honor to be able to express our views on S. 961, "Belated Thank You to the Merchant Mariners of World War II Act of 2007." We are here because we were not treated the same as the other services at the end of WWII. We have found we had the highest death rate of any of the services. Our death rate was 1 in 26; the Marines were 1 in 32; the Army 1 in 48; the Navy 1 in 114; and the Coast Guard 1 in 408. Does that sound like we were civilians? Apparently the enemy didn't think so. As my friend Captain Matt Drag stated, "At no time during the war was I called a civilian; only afterwards." My friend Matt Drag also wrote, "On Pearl Harbor Day, I was third officer aboard an American Merchant Vessel. At this time I held a Commission as Ensign in the USNR. At the first Port of Call, I reported to naval headquarters for duty. I was told, 'Stay where you are. That is where we need you.' So, for following orders I was cheated out of my veteran recognition and benefits; not only this, but for my service to my country. I am insulted by being termed a civilian."

At a Missouri Valley Merchant Marine meeting in Des Moines, we were told there were about 36 in line to be sworn into the Navy. An officer came by and said, "We need three of you to step out of line and join the Merchant Marine." Look how unfair they have been treated since the end of WWII compared to those that stayed in the Navy.

At the time of the attack, the Merchant Marine had to supply one or two men to assist the Navy Armed Guard. When the war ended, the Navy Armed Guard walked down the gangway as veterans. The Merchant seamen on the same ship were not considered veterans.

If Congress would have followed the law at the end of the WWII I don't think we would have to be here today. I am referring to the Merchant Marine Act of 1936. It states, "The United States shall have a Merchant Marine serve as a naval or military auxiliary in time of war or national emergency." We did our part. Did the government honor their part? No, they did not. I ask you with the history you know. Did we serve as a naval or military auxiliary in WWII? President Roosevelt thought that we did and asked Congress to do likewise for the men of the Merchant Marine when the GI Bill was passed. Our military leaders felt the same way. I'll quote our military leaders of WWII:

> General of the Army, Dwight D. Eisenhower, "When final victory is our there is no organization that will share its credit more deservedly than the Merchant Marine."
>
> Fleet Admiral Chester W. Nimitz said, "The Merchant Marine has repeatedly proved its right to be considered as integral part of our fighting team."
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> General A.A. Vandergrift, "The men and ships of the Merchant Marines have participated in every landing operation by the United States Marine Corps from Guadalcanal to Iwo Jima—and we know they will be on hand with supplies and equipment when American amphibious forces hit the beaches of Japan itself. We of the Marine Corps salute the men of the merchant fleet."
>
> Field Marshall Sir Bernard Montgomery, "Their contribution was just as important as that of the troops."
>
> Fleet Admiral Ernest J. King Commander in Chief of the fleet and Chief of Naval Operations, "Because the Navy shares life and death, attack and victory with men of the United States Merchant Marines, we are fully aware of their contribution to the victory which must come."
>
> General of the Army Douglas MacArthur, "I wish to commend to you the valor of the merchant seamen participating with us in the liberation of the Philippines. With us they have shared the heaviest enemy fire. On these islands I have ordered them off their ships and into foxholes when their

> ships became untenable targets of attack. At our side they have suffered in bloodshed and in death * * *. They have contributed tremendously to our success. I hold no branch in higher esteem than the Merchant Marine Service."
>
> The head of the draft, General Hershey said, "Service in the Merchant Marines was tantamount to the other Services."

I am one of those that started sailing after August 15, 1945 and there are those among you who seem to feel that I don't deserve full veteran status. I say, nonsense. I do not know any in this group that enlisted after August 15, 1945. We all enlisted during a hot shooting war with no knowledge of an atomic bomb that might bring an early end to the war. When I enlisted on July 13, 1945 at age 17, I was given a service number and issued a dog tag. Who has the power to issue service numbers besides the United States government during war time?

I think you will also agree that if you were issued a service number and dog tag you would consider yourself part of the Armed Forces and expect to be treated honored as a veteran when the war ended. So, why aren't our service numbers honored and our training time counted? More shameful treatment.

From the above you can see that President Roosevelt and all of our military leaders thought we should be included in sharing the victory which we helped win. While the other services were receiving benefits we've gone over 42 and 52 years receiving nothing. Passage of this bill will help to let people know that our service was appreciated and it was something we earned during WWII.

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