H.R. 69, 1986, 2997, 3159, 3240 AND 4088

HEARING

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

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THURSDAY, APRIL 28, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE,
COMMITTEE ON VETERANS AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 334, Cannon House Office Building, Hon. Chet Edwards (acting chairman of the subcommittee) presiding.

Present: Representatives Edwards, Evans, Bilirakis and Everett.

OPENING STATEMENT OF HON. CHET EDWARDS, ACTING CHAIRMAN

Mr. EDWARDS. Good morning, ladies and gentlemen. The subcommittee will come to order. Chairman Slattery cannot be with us today, but he's asked me to conduct this hearing in his behalf.

We meet today to hear testimony from the VA, veterans' service organizations, and one of our distinguished colleagues, the Honorable Tom Lewis of Florida, on several bills that affect the VA's compensation and pension programs, as well as certain personnel at the Board of Veterans' Appeals.

H.R. 4088 is this year's compensation and DIC cost-of-living adjustment legislation. It would provide a 3.0 percent increase, effective December 1 of this year, in the rates of disability compensation, for veterans with service-connected disabilities, and in the new rates of dependency and indemnity compensation for the surviving spouses of those veterans who have died as a result of these disabilities. The bill reflects the Administration's and the CBO's current estimates of the increase that will be provided later this year in Social Security and the non-service-connected VA pension program.

H.R. 69 and H.R. 3240 would each provide that BVA Board members be compensated at a rate that would be consistent with that paid to Administrative Law Judges. H.R. 3240 would also eliminate existing provisions of law which provide that these members serve a term of years, subject to reappointment.

H.R. 2997 and H.R. 3159 would codify the actions taken by the Secretary of Veterans Affairs to add certain diseases to the list of disabilities that may be presumed to be service-connected as the result of exposure to certain herbicide agents in Vietnam.

Finally, H.R. 1986 would provide that the effective date for discontinuance of an award of benefits based on the death of a veteran would be based on the date on which the veteran dies. Under cur-

rent law, the effective date for a discontinuance based on death is the last day of the preceding month. In many instances, which Mr. Lewis will point out today, this means that the veteran's widow must return the benefits check paid to the veteran, even if the veteran lived for all but one day of the month.

I look forward to hearing from each of our witnesses today, and I especially look forward to hearing from our friend, Mr. Lewis, in particular, who is the prime sponsor of H.R. 1986.

Before we begin, I would like to recognize the distinguished Ranking Minority Member of this Subcommittee, our colleague and friend, the Honorable Mike Bilirakis of Florida, for any opening remarks he may wish to make.

OPENING STATEMENT OF HON. MICHAEL BILIRAKIS

Mr. BILIRAKIS. Thank you, Mr. Chairman. I do have opening remarks and I do commend you for scheduling this timely hearing and for substituting. I know you're going to substitute very well for Chairman Slattery. I very much appreciate that you included my legislation, H.R. 69 on the subcommittee's agenda.

I'd also like to take this opportunity to welcome my good friend and colleague from Florida, Tom Lewis. Tom is retiring, as I think we all know, at the end of this Congress and will be sorely missed by the Florida delegation. I might add, will be missed by all of the Congress and by America in general. I am a co-sponsor of Tom's bill, H.R. 1986, which would allow the VA, as you've said, to prorate the amount of compensation and/or pension paid to the surviving spouse based on the date of death of the veteran. I look forward to his testimony on H.R. 1986.

There are several important bills on our agenda today, as you mentioned, Mr. Chairman, and each of them deserves our attention. However, I would like to focus on an issue that, in my opinion, poses a real threat to the timely adjudication of veterans' claims. I am referring, of course, to the exodus of members of the Board of Veterans' Appeals.

At the end of March, three more Board members resigned from the Board in order to accept Administrative Law Judge, ALJ, positions with the Social Security Administration. This means that, since July 1993, a total of six Board members have left BVA for ALJ positions. Overall, in the last 8 months, the Board has lost approximately 10 percent of its current membership to the Social Security Administration.

Perhaps even more alarming, an additional 20 Board members have submitted applications for ALJ positions. Board Chairman Charles Cragin, who will testify later, recently informed me that another eight Board members have already interviewed for ALJ positions.

Since the Social Security Administration plans to hire a total of 500 ALJs over the next 3 years, if we do not act, if this committee does not act, Mr. Chairman, losses to the Board may be expected to continue, perhaps even accelerate. If this were to happen to the VA, it will take many years to regain the knowledge, experience and expertise departing Board members take with them.

Throughout the 103rd Congress, this subcommittee has held numerous hearings on the problems plaguing the VA claims process-

ing system. Earlier this year, Chairman Cragin testified that based on the statistics from the first quarter of fiscal year 1994, the Board was looking at an average response time of 2,397 days, fully 6½ years by the end of fiscal year 1995.

While steps are being taken to address this situation, the loss of experienced Board members will only compound the problems currently facing the Board. The current cadre of Board members, as I said earlier, possess skills and experience that simply cannot be duplicated and that are essential to make judicial review work in a timely manner.

One of the main reasons members are leaving the Board is the pay differential between Board members and ALJs. At one time, the Board members were recognized as performing professional responsibilities at least comparable to those of Administrative Law Judges, particularly those GS–15s who reviewed entitlement to Social Security benefits. However, since the Federal Employees Pay Comparability Act of 1990, ALJs have been placed on a pay scale that awards them compensation averaging at least $20,000.00 more per year than that of the average Board member.

My bill, H.R. 69, simply restores pay comparability between Board members and ALJs. I am pleased that the veterans' service organizations testifying today support my legislation, and I am hopeful that the subcommittee will take action on H.R. 69 before this Congress adjourns.

In closing, I'm anxious to hear from our witnesses this morning. As always, Mr. Chairman, I look forward to working with you and the other members of the subcommittee on any suggestions the veterans' service organizations may have on the issues before the subcommittee today.

I will say that Health and Environment Subcommittee, and Energy and Commerce has a tobacco hearing at 10 a.m. today. There's also another meeting taking place at 9 a.m. today that I was supposed to be at. So, it's just a typical Congressional day up here. I'll try to stay as long as I can, possibly for the entire hearing.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mike.

At this time, I'd like to recognize our Committee colleagues for any comments they'd like to make.

Mr. Evans.

OPENING STATEMENT OF HON. LANE EVANS

Mr. EVANS. Thank you, Mr. Chairman.

Before I begin, I understand some people in attendance today have brought their daughters to work as part of National Bring Your Daughter to Work Day. I salute them and want to assure them that there are women members on this Committee, if not this subcommittee. They are distinguished legislators and strong advocates of veterans rights. I hope that young women in particular, aspire to get elected some day to Congress. We need more power in Congress.

If they would stand up, both their parents and their daughters? (Applause.)

Mr. Chairman, I want to thank you for convening today's hearing. These are important issues that we'll be considering.

I will limit my comments to two measures that I have introduced. Along with Chairman Slattery's bill, H.R. 3159 would simply codify Secretary Brown's decision to add additional diseases to the list of illnesses presumed service-connected for Vietnam veterans exposed to Agent Orange. This measure is non-controversial and needs to be passed by the subcommittee at the earliest possible opportunity. Vietnam veterans have suffered long enough and we need to do everything we can to ensure that they receive their rightful benefits.

Both H.R. 3240 and our colleague's, Mr. Bilirakis' measure, H.R. 69, would raise the salaries of members of the Board of Veterans' Affairs so that they are on par with those of the Administrative Law Judges. Such action is necessary to stem the growing number of defections from the Board. It is unreasonable to expect a Board member to do the work of an ALJ while receiving significantly less pay.

H.R. 3240 also attempts to address the fact that Board members serve fixed terms which are renewable at the recommendation of the Board's chairman. In order to ensure that veterans' claims are heard by knowledgeable and experienced Board members, we must do something about this situation. ALJs are neither appointed for set terms nor reappointed at the discretion of their bosses. Nonetheless, after speaking to many of the veterans' service organization representatives who I see here today, I am convinced that simply deleting the current statutory language dealing with fixed terms would not work.

So, I want to work with both the vets' groups as well as the Board of Veterans' Appeals Professional Association to develop a measure that would address the term issue while also establishing clear standards for the appointment of members, as well as a code of professional conduct that they would also need to comply with as they serve.

Thank you, Mr. Chairman. I appreciate the opportunity to speak.

Mr. EDWARDS. Thank you. Thank you, Lane.

Mr. Everett.

Mr. EVERETT. Thank you, Mr. Chairman.

I just want to thank the chairman and Ranking Member, Mr. Bilirakis, and also welcome Mr. Lewis to the hearing today; in addition to that, our panelists and our guests.

As you commented, this is a real busy day and we've got a number of meetings going on. I've read the opening statements and I certainly want to stay as long as I can. I'll submit for the record my additional comments.

Thank you.

[The prepared statement of Congressman Everett follows:]

PREPARED STATEMENT OF HON. TERRY EVERETT

Mr. Chairman, I would like to take this opportunity to thank you and the Ranking Member, Mr. Bilirakis, for providing this forum to examine six important measures pending before the subcommittee. I would like to begin by welcoming all of our friends from the various veterans' service organizations, the VA, and other witnesses who are here this morning as well.

As always, it is helpful for us to hear the concerns of our veterans as we consider the various proposals before us today. I have read over your advance testimony and noted your views on these bills. I won't take up any more time this morning except to extend a warm welcome to all of you. Thank you for being with us and we look forward to your testimony.

Thank you, Mr. Chairman.

Mr. EDWARDS. Without objection. Thank you, Terry.

Well, again, along with my colleagues, I'd like to welcome you, Tom, to the Committee and, at this point, would like to recognize you for any comments and statements you would like to make.

STATEMENT OF HON. TOM LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. LEWIS. Thank you, Mr. Chairman, and I appreciate you giving me the opportunity to testify before the subcommittee today.

I would like to bring to your attention an unfair policy affecting thousands of veterans' families. As you know, when a veteran passes away, his spouse will receive his final disability compensation or pension for the last full month that he lived. This seemingly simple rule has created a frustrating situation for spouses of deceased veterans.

A year ago, 73-year-old Mabel Matthews contacted my office. Her story lead me to draft H.R. 1986. On March 31 at 3 o'clock in the afternoon, Mrs. Matthews' husband, a veteran, passed away. The next day, April 1st, she received his disability compensation for the month of March, which she used to pay many of his final month's expenses. Three weeks later, the VA sent Mrs. Matthews a form letter telling her to return her husband's March check since he had not survived the entire month.

I cannot believe our Veterans' Administration would demand money from a recent widow of a veteran. As requested, Mrs. Matthews sent the VA a check for $1,212.00. The VA-sent form letter, Mrs. Matthew's response, and her cancelled check for the VA are included in the written testimony you have before you.

In an effort to cost effectively remedy this situation, I came up with the following solution. The VA would prorate the final payment providing compensation earned for each day the veteran is alive in that final month. For example, if he lives until the 15th, at least his spouse will get his compensation for the 1st through the 15th, rather than nothing at all.

Now, Mr. Chairman, in my opinion, this is the fairest way for Congress to pay the debt we owe our veterans' families. I am appalled that the spouse of one of our Nation's veterans would be penalized by the VA. During her time of grief, she is forced to return her husband's monthly compensation, the money she spent on his expenses.

Now, CBO has estimated H.R. 1986 will cost approximately $11 million. This is a small amount on behalf of the spouses of veterans who have to pinch pennies because their husbands died a few

hours too soon. Now, Mr. Chairman, we hiccup around the halls of Congress and spend more than that.

Mr. Chairman, as the Committee reviews legislation affecting veterans' benefit programs, I urge you to seriously consider how grateful veterans will be, knowing their spouses will receive fair treatment in the difficult months following their death. I am willing to work with the Committee to make any improvements in H.R. 1986 which may be needed.

I am pleased to see representatives from the VA here today. The VA has informed me that it has some concerns over implementing this legislation, but has been reluctant to explain them to me. However, I have expressed my sincere desire to work out a bill that will best serve our veterans. Frankly, I am disappointed in the VA being more concerned with the difficulty of implementing H.R. 1986 than they are with the welfare of our deceased veterans and helping their spouses, as well as in trying to make 1986 work.

Now, I understand, Mr. Chairman, the problems that the VA has with the systems that they have to set up and the millions of veterans that they have to administer to, and the problems that they're faced with. But I do feel that there's something a little bit different than the budgetary items and the bottom lines when we're looking at our veterans. And I am certain that together, we will be able to iron out the language of the bill to provide the most fair and logical solution.

This terribly unfair situation will continue if we do not do something about it through this subcommittee today. I will work with the Committee in whatever way necessary to ensure the intent of this bill, and that justice is preserved and done properly. We owe this nation and our veterans at least a fair-square shot for the spouses who survive them.

Mr. Chairman, that concludes my testimony. I'd be happy to answer any questions.

[The prepared statement of Congressman Lewis, with attachment, appears on p. 42.]

Mr. EDWARDS. First, let me just thank you for your eloquent testimony and for your sensitivity in responding to this case work. I think it is an example where individuals coming forth can make a difference in this process.

Let me ask you one brief question. Did Mrs. Matthews have any indication that she would have to return that check? I'm sure it's written in law, but I imagine the process of informing spouses of the situation isn't a very clear one. Was she totally caught off-guard?

Mr. LEWIS. Yes, she was, Mr. Chairman.

Mr. EDWARDS. She didn't have any idea she would have to return that money?

Mr. LEWIS. She was devastated. Though this is the rule, the law, or the procedure, spouses certainly don't understand this when the veteran becomes deceased.

We have the same thing with so many other things in our society. For example, an 80-year-old, 75-year-old woman or man receiving a Social Security check, for example, doesn't understand why the guy next door who worked the same period of time, gets more money. They only understand what's on the check. And we don't

expect these people to follow the laws. It certainly is a shock when you pay out this $1,212.00 in bills and then receive a form letter saying that you have to return that compensation check.

It was totally devastating to her and she brought it to our attention. Since then, we found out in my District, this has happened dozens of times and these people are not aware of this until it happens.

Mr. EDWARDS. Again, thank you very much.

Is she eligible for DIC benefits?

Mr. LEWIS. This, I do not know at this point in time.

Mr. EDWARDS. Okay, that's okay.

Mr. LEWIS. She is not. Unfortunately, she is not.

Mr. EDWARDS. Okay, just trying to see if there's any other way to help her in her particular case.

Any questions from colleagues?

Mr. Everett.

Mr. EVERETT. Just a comment, Mr. Chairman.

I appreciate what Mr. Lewis has said. You know, we have learned that one of the most stressful times in a person's life is when they lose a spouse and this seems singularly cruel that somebody would get a letter like this right after they've experienced one of the most stressful times in their life.

Mr. EDWARDS. Thank you very much.

Mr. BILIRAKIS. Mr. Chairman, just very quickly.

Even before I came to the Congress, Tom, practicing law, I used to hear similar types of horror stories and even compounded by the point where there were similar benefits, if you will, that were due to the family. Those benefits were held back to try to make up for the illegal, if you will, or undue benefits that were received by mistake.

The chairman raised a darned good point in terms of these people being notified. People are in shock, for instance, when a family member on Social Security dies on the last day of the month and then they lose the entire check. I know something supposedly, is trying to be done in the same vein as far as Social Security. It may be your legislation, for all that I can remember.

It's unfair, there's no question about it. It's costly, but everything is costly up here. If we can just repair the injustices alone, no matter what they may cost. If it's unjust, then we ought to repair it regardless of what the costs might happen to be.

A typical example of Tom Lewis. He's a lame-ducker. He's on his way out, and yet, here he is, still pitching for these people.

Mr. EDWARDS. Well, we appreciate very much your being here. I am told that, I guess, one challenge we'll have to face is finding within the VA budget, the $11 million, if that is the actual cost, because of the budget caps.

But you've certainly presented an excellent case as to why we ought to try to help, Mr. Lewis. I want to thank you for coming.

Mr. LEWIS. Well, thank you, Mr. Chairman.

I recognize the VA's problems in meeting their various budget concerns in these constraints placed upon them and us during these budget times. But I believe that as Mr. Bilirakis brought out that these people deserve a better shake. I don't know how you can—you can't send a letter to a spouse and say "when your hus-

band dies, you're not going to receive your full compensation check" or "you're going to lose part of it." You can't do that.

The only way to do it, I understand, is through a form letter, which is probably one of the cruelest ways to do it. But there isn't any better way that I know of. I do think if the VA looks real hard, they'll be able to find the difference in the delta in cost in order to implement this bill. If not, we'd certainly be able to help them if they'd like us to.

Mr. EDWARDS. Well, we look forward to working with you to try to find that money and to see if we can help. It certainly is deserving.

Thank you very much, Tom——

Mr. LEWIS. Thank you, Mr. Chairman.

Mr. EDWARDS (continuing). And for your excellent testimony.

Mr. LEWIS. Thank you.

Mr. EDWARDS. At this time, the chair would like to call our next panel. We have Mr. Charles Cragin, Chairman of the Board of Veterans' Appeals; Mr. Gary Hickman, Director of the Compensation and Pension Service, Department of Veterans Affairs; and also Mr. John Thompson from the Office of General Counsel.

If I could say to all of our witnesses today, because of time limitations and other committee hearings going on, we'd like to ask you to keep your prepared remarks within five minutes. Certainly, we can put into the record any other written remarks that you might have prepared.

Mr. Cragin, thank you for being back for the subcommittee.

STATEMENT OF CHARLES CRAGIN, CHAIRMAN, BOARD OF VETERANS' APPEALS; ACCOMPANIED BY J. GARY HICKMAN, DIRECTOR, COMPENSATION AND PENSION SERVICE, DEPARTMENT OF VETERANS AFFAIRS; AND JOHN THOMPSON, OFFICE OF GENERAL COUNSEL

STATEMENT OF CHARLES CRAGIN

Mr. CRAGIN. Thank you, Mr. Chairman. It's a pleasure to be with you and the other members of the subcommittee this morning to offer the Administration's views on H.R. 69 and H.R. 3240. Both bills would provide that members of the Board of Veterans' Appeals receive compensation and other benefits equal to those payable to an Administrative Law Judge. In addition, H.R. 3240 would eliminate the terms for appointment for members of the Board of Veterans' Appeals.

The Department strongly supports the pay comparability provisions of both H.R. 69 and H.R. 3240. We salute the leadership of Congressman Bilirakis and Congressman Evans in championing this crucial legislation. We believe that enactment of pay comparability will help stem the tide of Board members leaving VA for ALJ positions.

For fiscal year 1994, for example, the pay range for GS–15 Board members is approximately $69,400.00 to $90,300.00. The pay for Administrative Law Judges generally ranges from $78,400.00 to $108,500.00.

As Chairman Montgomery said during the debate on the Veterans' Judicial Review Act in 1988, the job of a Board member is im-

portant and requires extensive training which only Board members and senior attorneys employed to advise the Board possess. It has been our experience that it takes from 7 to 10 years in the area of veterans' law before an attorney has the necessary experience to serve as a Board member. It is only by reliance on such expertise that the Board can expect to decide cases in an expeditious manner with the requisite quality to meet the scrutiny of judicial review.

VA cannot afford to lose this experience. But Board members are being lost to the ranks of Administrative Law Judges, and the main reason is clear: pay. The duties of the position and the complexity of the work performed by Board members are essentially the same as that performed by Social Security Administrative Law Judges. The playing field, as Mr. Bilirakis observed, changed in 1990 and pay disparity came into being.

The result was predictable. Since July 1993, the Board has lost six of its most experienced members to the ALJ ranks. Of the 49 attorney Board members, 14 are on the ALJ register maintained by the Office of Personnel Management, and are eligible to receive offers at any time. Five more have submitted applications, and it is our understanding that another ten are in the process of completing applications.

Mr. Chairman, veterans and their families cannot afford to lose this expertise. We believe, Mr. Chairman, that making the pay of Board members equal to that of ALJs will preserve the experience that the Department needs and that veterans and their families deserve.

Mr. Chairman, Section 1 of H.R. 3240 would amend title 38 to eliminate the term limits with respect to appointment as a member of the Board of Veterans' Appeals. Current law provides that except for the chairman, members of the Board are appointed for a term of 9 years.

The term limitation on Board member appointments originated in the Veterans' Judicial Review At. The legislative history of the provision suggests that the purpose of the provision was to increase the independence of the Board from the rest of the Department.

Mr. Chairman, for two reasons, the Department cannot at this time, support the immediate elimination of terms of appointment for Board members.

First and foremost, we believe that there is a need for individual accountability at the Board. By Executive Order, Board members have been exempt from performance standards to avoid the "appearance that their decisions are affected by prospects of receiving lessor or greater remuneration in consequence of rendering determinations that are pleasing to superior officials."

There has never been, to our knowledge, a serious challenge to the independence of the Board. And while we believe that the Board should be independent of improper influence, we must not countenance performance which is below that which we are duty-bound and privileged to provide to those whom we serve.

Second, the system of term appointments is too new to accurately gauge its effect on retention. As you know, the initial appointments were staggered so that the terms of approximately one-third of the Board members expire every 3 years. The first reappointments come due in July of this year, but consist entirely of physician

Board members who, since Board membership will now be limited to attorneys, already know they will not be reappointed. The first attorney Board member reappointments will not be made until early 1995. It is the Department's view that we have time to evaluate this proposal.

While the Department cannot at this time support an end to term appointments for Board members, we are proposing that Board members, including the chairman, whose appointments have expired, be permitted—subject to the approval of the chairman or the Secretary—to hold over until their successor is appointed and confirmed.

Mr. Chairman, that concludes my testimony. My colleagues have additional testimony with respect to the other matters pending before the subcommittee. Then I'd be happy to answer the Committee's questions.

Mr. EDWARDS. Thank you, Mr. Cragin.

[The prepared statement of Mr. Cragin appears on p. 47.]

Mr. EDWARDS. Mr. Hickman.

STATEMENT OF J. GARY HICKMAN

Mr. HICKMAN. Thank you, Mr. Chairman. I am pleased to be here today to discuss the provisions of H.R. 4088, H.R. 2997, H.R. 3159, and H.R. 1986.

H.R. 4088, effective December 1, 1994, increases the rates of disability compensation for veterans and the rates of dependency and indemnity compensation for survivors of veterans who die as a result of service-connected disabilities. VA strongly supports a cost-of-living increase to provide a measure of protection from inflation to these very deserving beneficiaries. However, we would prefer the adjustment recommended in the President's budget which provides for an increase in the same percentage as the increase granted to Social Security recipients under Title II of the Social Security Act.

H.R. 2997 would add Hodgkin's disease and porphyria cutanea tarda to the list of statutory conditions for which service connection can be established on a presumptive basis due to exposure to herbicide agents. H.R. 3159 would add cancer of the lung, larynx and trachea and multiple myeloma to the same list.

These bills seek to codify what VA has already accomplished and proposed to accomplish through the regulatory process. Where VA has the authority to take action administratively, the regulatory process is preferable because it allows greater flexibility in shaping final language and for making changes where, for example, new scientific evidence becomes available. There are also differences between the provisions of these two bills and VA's final and proposed regulations. By virtue of these differences, these bills may increase direct spending under the Budget Enforcement Act.

H.R. 1986 would change the statutory effective dates for discontinuing certain awards of disability compensation and pension due to the death of the veteran, and for commencing certain awards of death benefits. We do not support this bill. It attempts to provide benefit advantages to surviving spouses not available to veterans' surviving children. We believe that it is inequitable to establish different entitlement criteria based upon dependency status.

In addition, H.R. 1986, by authorizing payment of additional benefits for the month of veterans' death, would have implications under the Budget Enforcement Act.

Mr. Chairman, this concludes my remarks. A full statement has been submitted for the record. I would be pleased to answer any questions that you or other members of the subcommittee may have.

Mr. EDWARDS. Thank you, Mr. Hickman.

[The prepared statement of Mr. Hickman appears on p. 50.]

Mr. EDWARDS. Mr. Thompson, do you have prepared remarks?

Mr. THOMPSON. No, no opening remarks. Thank you.

Mr. EDWARDS. Okay, thank you.

Let me ask, Mr. Cragin, if I could, a couple of questions. First, you indicate that the cost relating to pay comparability are not reflected in the VA's 1995 budget. Given the Administration's new official support of this initiative, would you anticipate the VA's budget for 1996, fiscal year 1996, would include funding for this area?

Mr. CRAGIN. I would anticipate that the overall GOE account would include funding. As I indicated, Mr. Chairman, the Department considers that this initiative is now a priority.

Mr. EDWARDS. Very good.

And for the record, Mr. Cragin, do you know how OMB would score the cost associated with pay comparability?

Mr. CRAGIN. I do not know that at this point, but I'd be happy to supply it for the record, Mr. Chairman.

Mr. EDWARDS. Okay, if you would. Thank you very much.

One final question, Mr. Cragin. Mr. Frank, who is president of the BVA Professional Association who will be testifying immediately has written testimony in which he raises concerns about the absence of statutory standards for appointment or reappointments of Board members. He points out in his testimony that opportunities do not now exist in law for hearings regarding reappointments or for notification.

Outside of statutory mandates, can you tell the subcommittee how the Board will conduct the process of reappointing or not reappointing Board members?

Mr. CRAGIN. Mr. Chairman, I can tell you that since I came to the Board, I have tried to make every recommendation to the Secretary based on my desire to have a Board of the highest quality professionals available. I personally conduct interviews of at least 50 percent of the candidates for initial Board membership. The last group in which we made four recommendations to the Secretary, I personally interviewed 18 applicants which was 50 percent of the 36 who originally applied.

I obviously have the ability on a daily basis, to observe the performance of Board members, their ability to work as a team, and, as you know, in a rapidly evolving area of jurisprudence. Two of the Board members who left recently to become Administrative Law Judges had terms that were expiring. I met with them and indicated that it was my intention to reappoint them, and in fact, began the reappointment paperwork process at the time that they chose to accept the ALJ positions.

Mr. EDWARDS. Mr. Bilirakis, do you have any questions?

Mr. BILIRAKIS. Well, I just wanted to get something clear, Mr. Cragin. Basically, your position is that even if H.R. 69 itself were not to be the legislation, legislation is required. That's your position, isn't it?

Mr. CRAGIN. In order for pay comparability to take effect?

Mr. BILIRAKIS. Yes, right.

Mr. CRAGIN. Yes, Mr. Bilirakis, that's correct.

Mr. BILIRAKIS. Now, but there would not be any new money, necessarily, because the money is already there? You would just shift it?

Mr. CRAGIN. The Department and the Administration are indicating that within the GOE account at the Department——

Mr. BILIRAKIS. Yes.

Mr. CRAGIN (continuing). They would find the necessary funds to pay for this increase in compensation.

Mr. BILIRAKIS. Without hurting any other significant effort in the process?

Mr. CRAGIN. As I indicated in my testimony, we would assure the Committee that this reduction would not be taken in any area that would affect the delivery of veterans' benefits.

Mr. BILIRAKIS. You furnished Mr. Brizzi with three cost estimates. Number one is H.R. 69 and then there's another one which would provide pay comparability only upon reappointment, et cetera. Then the third one assumes legislation which would provide pay comparability only upon reappointment and there's a significant difference there.

We're fighting for H.R. 69 and I want to make that clear. I certainly don't want to give the Committee any different impression. But let me ask you, if either number two or number three of your estimates were adopted in lieu of H.R. 69, how much help would that be?

Mr. CRAGIN. Well, Mr. Bilirakis, let me initially observe that we provided that information as a technical assist to the Committee at its request. We think that that represents a significant compromise that obviously would not provide the very basic assurance that I believe is necessary to retain our best and most experienced. I think the legislation proposed by you and Mr. Evans is the answer that we need, and it is an answer that we need now.

Mr. BILIRAKIS. Well, we've gotten CBO figures which are somewhat similar to your figures as far as H.R. 69 is concerned. You show $345,000.00-plus in costs for 1995. They come back with, I think, a half-a-million dollars, and then they say about a million dollars thereafter. So, it averages out, over 5 years approximately the same amount.

It's not really much money in the scheme of things, if it will help. We've expressed, as we said earlier, so much concern in this Committee with the long delay at processing the claims. Yet, we know much of the reason for it and we haven't been able to do anything about it.

Thank you, sir.

Mr. CRAGIN. You're welcome.

Mr. EDWARDS. Well, thank you all for your testimony.

Let me say to all witnesses, that any Member, without objection, has the right to submit questions that we would want you to respond to for the record, please.

Mr. CRAGIN. Be happy to.

Mr. EDWARDS. Thank you very much for being here.

Mr. EDWARDS. At this time, the chair would like to call Mr. Richard Frank, President of the Board of Veterans' Appeals Professional Association.

Mr. Frank, thank you for being here and you may proceed.

STATEMENT OF RICHARD FRANK, PRESIDENT, BOARD OF VETERANS' APPEALS PROFESSIONAL ASSOCIATION, INC.

Mr. FRANK. Well, thank you very much, Mr. Chairman and Members of the Committee. It's an honor and a privilege for us to be able to be present today and present testimony.

We've submitted written remarks for the record and I will not attempt to read them at this time. I'd just like to take these few moments to make a few points that have been occasioned by a review of some other testimony entered this morning and some of the questions you've asked earlier.

The first of these is, I'd like to emphasize that addressing the issues of pay comparability in terms of appointment is a matter of some urgency. As we indicated earlier, as we meet today, out of 49 attorney members on the Board, 14 of them are now on the register maintained by OPM and subject to receive offers at any time. We have behind that group six members—and that number has just changed within the last couple of days—that have actually submitted their written applications, another nine who are working on it. And to be perfectly blunt, another group of people who basically are watching and waiting to see what happens in the Congress in the next, literally, several weeks to decide whether they will prepare their application and get it in by the end of this summer, because we understand it's likely that they will be closing the register sometime this fall.

I would point out that those 14 who are on the register are subject to receive offers at any moment. And that quite literally, as we meet, the Social Security Administration is about to issue offers to individuals for a class that will start at the end of May. There will be another very large class in July. Basically, they have budgetary authority and fully intend to hire over 100 additional ALJs during this fiscal year. We understand they're seeking authority for at least another 100 next year, and they're looking at the out-years beyond that.

As we indicate in our testimony, I can't tell you which Board member will go at what time. But what I can tell you is that the historical record is quite clear. Board members who apply are placed on a register and are offered positions. Those who are prepared to leave Washington, D.C., will go. It's as simple as that.

I'd like to point out also that I don't think it's totally unrelated, the fact that the two attorney Board members whose terms were up this July are two of the Board members who didn't get their applications in early and have now left. I believe that it's not simply the pay comparability issue, but also the term issue which is important in formulating those decisions.

Finally, with respect to terms, I would just like to underscore the fact that we are not in a flight from accountability. Our basic position is that the status quo as it's now codified is simply unfair and in some respects, unconscionable. I think your questions to the chairman illuminated one of the aspects about that. We certainly have no dispute with the way Chairman Cragin has conducted his responsibilities with respect to reappointment, but that, of course, is non-codified. It's informal. What may be acceptable for calm seas and fair skies may not be acceptable in other circumstances. I think it's important that this be nailed down once-and-for-all.

We would emphasize again that we're quite prepared to work with any and everyone in this community with respect to a fair system of accountability, coupled with some provisions that certainly will eliminate what we call this automatic pilot feature that can have people out the door whether anyone intends that or not. And also, the fact that simply, it's inherently unfair in our view, to have absolutely no standards, no right of appearing, appeal, no right of notification for someone who essentially was in originally in a career position.

I'd be happy to answer any questions that you or the Committee may have.

[The prepared statement of Mr. Frank appears on p. 56.]

Mr. EDWARDS. Mr. Frank, thank you for your testimony.

If I could just ask one question? Would you share with the subcommittee the concepts or proposals you mention on page four of your testimony regarding the reappointment of Board members?

Mr. FRANK. Mr. Chairman, fundamentally, our position has been that we, for many decades, were fully comparable to Social Security ALJs, and what's good enough for them should be good enough for us. There is now, and has been passed by the Senate, a proposal to perform an Administrative Law Judge Corps. That bill contained provisions for accountability for Administrative Law Judges. We simply took that legislation, which again has passed the Senate, and attempted to adapt it to peculiar circumstances of the Board and its environment.

There are some problems because obviously, Social Security with in excess of, I guess, 1,300 ALJs in eight different divisions in a national scope, is a very different community from that which the Board operates in. We tried to make some adjustments according to that. But basically, our position is, if it's good enough for them, it's good enough for us.

I would emphasize that, as of today, it's not true that Board members have no accountability whatsoever. Section 7101 of title 38 provides that Board members can be removed for cause just as ALJs can under Title V. What this proposal on discipline and removal would do, it would, in fact, provide, I think, accountability for sins ranging from, in effect, misdemeanors all the way up to felonies, and would provide, I think, a fair and equitable way of resolving them and provide veterans and their representatives an avenue, a redress, that doesn't now effectively exist.

Mr. EDWARDS. Would you please submit to the Committee a written proposal?

Mr. FRANK. Most certainly, Mr. Chairman.

Mr. EDWARDS. Thank you. Thank you very much.

Mr. Bilirakis.

Mr. BILIRAKIS. Mr. Chairman, Mr. Frank has testified so very well before this Committee before, it's always great to see you here, sir.

I know we've been talking to the Committee Counsel about the pay comparability area and there is something, apparently, that we plan to do.

I don't know, John, I hate saying this publicly, but I'd like to see us get together with Mr. Frank and Mr. Cragin and the veterans' service organizations that are concerned in this room and sit down, and probably in a few minutes, get this thing worked out in terms of the position we want to follow. It may be a little outside of the scope of the way Congress usually does things, but I, frankly, think that's a good way to go. Then there's no misunderstandings after that.

Mr. Chairman, I hope I haven't taken too much license when I say that, but I'd like to suggest it might be a good way to go.

Mr. FRANK. Do that today? Does your schedule allow it?

Mr. EDWARDS. The schedule is a problem.

Yes, sir, John.

Mr. BRIZZI. If I might, Mr. Bilirakis, certainly, before we make commitments, I know that Mr. Slattery wants to look at this. I think it would be important that we confer with him first. But certainly, we are looking towards accomplishing the overall goal of retaining quality Board members. That's a very important goal. We want to accomplish that, and pay comparability would seem to be the way to do it.

Mr. BILIRAKIS. Well, Mr. Cragin tells us that no new money would be required. And yet, CBO comes back with a certain figure which takes us into the pay-as-you-go requirement, so you can see where the dilemma lies.

Mr. BRIZZI. It may be a matter of how this provision is presented.

Mr. BILIRAKIS. Exactly.

Mr. BRIZZI. How it's drafted is the key. If it's drafted as an entitlement, then we may have to deal with a scoring situation under Pay-go. If it's drafted in a discretionary fashion, then perhaps that issue goes away. So, we'll try and work on it from that perspective.

Mr. BILIRAKIS. All right. Well, I think you're right and we should not do this without Mr. Slattery being present or being aware of it. Maybe I'll ask the indulgence of the chairman, to go through the chairman, and ask you, John, to talk to him. And sometime in the next few days, hopefully, we can set up a meeting with all of these people.

Mr. BRIZZI. Absolutely. I'll do that. That would be an excellent idea.

Mr. BILIRAKIS (continuing). And see if we can get this worked up.

Thank you.

Mr. EDWARDS. Okay, any other questions?

If not, Mr. Frank, thank you very much for being here and for your testimony.

Mr. FRANK. Thank you, Mr. Chairman.

Mr. EDWARDS. The chair would now like to call Mr. John Hanson, Director of the National Veterans Affairs and Rehabilitation Commission of the American Legion; Mr. Bob Manhan, Assistant

Director of the National Legislative Service, Veterans of Foreign Wars; and Mr. Michael Brinck, National Legislative Director of AMVETS.

I want to thank all of you for being here. As mentioned before, any written testimony that you might have will be submitted without objection for the record.

If I could ask that you try to keep your remarks, as other witnesses have, as brief as possible to allow us to finish these hearings before the Members have to leave, I would appreciate that very much.

At this point, Mr. Hanson, I'd like to recognize you and then we'll proceed.

STATEMENT OF JOHN HANSON, DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; BOB MANHAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS; AND MICHAEL BRINCK, NATIONAL LEGISLATIVE DIRECTOR, AMVETS

STATEMENT OF JOHN HANSON

Mr. HANSON. Thank you, Mr. Chairman. I'll try to be somewhere between brief and instant this morning.

We appreciate the opportunity to come here and talk about these issues. I'd like to say that the American Legion supports nearly everything that is on the table today. Of course, we support the cost-of-living adjustment for recipients of disability compensation and DIC. We appreciate the effort to correct an inequity in pay for veterans who die while receiving compensation. And the Legion's long involvement in the fight for Agent Orange victims continues to this moment. And we'll certainly support the addition of more diseases, which will be presumed to have been caused by exposure to herbicides.

And I have to tell you, we grudgingly endorse the idea of bringing back pay comparability or pay equity to the members of the Board of Veterans' Appeals so they'll be paid at the same level as Administrative Law Judges. It's our understanding that the difference in pay has worked against the Board's members in the past and we understand that the disparity could lead to the loss of even more of the more qualified BVA members to lucrative ALJ positions.

The Board is under enough pressure now and shouldn't have to deal with further defections or distractions, but that's pretty much where our support stops.

We will not endorse the notion that members of the Board should have no limit on the length of terms they serve. They were appointed for a term, they can be reappointed for further terms under current rules. That seems fair to us and it seems perfectly easy to understand. But I'll commit to you that the American Legion will work with this subcommittee and the Committee to develop legislation that will address both the pay comparability issue and the concerns Representative Evans and others have seen with the terms for BVA members.

Our concern is that veterans receive quality and timely decisions. And that the people on the Board are the right people to drive down the backlog of cases and to improve the caliber of decisions produced by the BVA members.

That will conclude our oral presentation, Mr. Chairman. We appreciate the opportunity, and we will be glad to answer questions.

Mr. EDWARDS. Mr. Hanson, thank you very much.

[The prepared statement of Mr. Hanson appears on p. 61.]

Mr. EDWARDS. Mr. Manhan.

STATEMENT OF BOB MANHAN

Mr. MANHAN. Thank you very much, Mr. Chairman.

It's my pleasure to represent the Veterans of Foreign Wars here this morning. I will only dwell on two areas where the VFW has some criticisms of the six bills under discussion.

The first comment we have is on H.R. 3240, which deals with the Board of Veterans' Appeals. We certainly support, strongly support, the pay equity to Administrative Law Judges, but we disagree with Section I which wanted to eliminate the terms of appointment of the members of BVA. Our statement says their terms are now limited to 6 years. It should actually be 9 years. However, we are very willing to listen to other proposals to lengthen the present 9-year term limits.

The only other VFW criticism regards Mr. Slattery's bill, H.R. 4088. While we realize that the COLA proposal in the bill is the Administration's present best estimate of what the cost-of-living index or element of inflation will be for 1994. The VFW prefers Senate Bill S. 1927 because that bill has used language stating that the VA's COLA will be equal to that provided under Title II of the Social Security Act. That means it will be certain that veterans and/or widows who receive any kind of DIC or pensions will receive exactly the percentage that recipients of the Social Security receive.

Thank you very much, Mr. Chairman. This concludes our summary.

Mr. EDWARDS. Thank you, Mr. Manhan.

[The prepared statement of Mr. Manhan appears on p. 64.]

Mr. EDWARDS. Mr. Brinck.

STATEMENT OF MICHAEL BRINCK

Mr. BRINCK. Good morning, Mr. Chairman. Thanks for holding the hearing.

Regarding H.R. 4088, we support—we're grateful for the three percent, although we continue to oppose linkage of COLAs, VA COLAs, with the CPI or anything like that because of the extraordinary expenses incurred by disabled veterans.

There are a couple of related issues. One regards concurrent receipt which Mr. Bilirakis has introduced the bill. We hope that the subcommittee would address that at some point this year. We certainly would hope that the full Committee would be able to pass that.

The second related issue is one of military separation incentives being repaid prior to receipt of any disability compensation from VA. The question becomes, would a civilian have to forfeit any sev-

erance pay before they become eligible for any unemployment benefits. I really doubt that.

Regarding H.R. 2997 and 3159, we strongly support both those bills. H.R. 69 would provide reclassification for BVA members and ensure pay equity between them and ALJs, as we've heard before. 3240 would do the same, plus eliminate the term limits.

We support H.R. 69 entirely. Certainly, loss of knowledgeable BVA members is due to inequities of pay. However, we are less than supportive of 3240's provisions that limit terms. We envision that there must be a middle ground somewhere between lifetime tenure, the security that that provides an employee, and being able to hold an employee accountable. So, we look forward to working with the Committee and the Professional Association, as well as the Administration, to provide some middle ground to provide both stability and the ability to ensure adequate performance during the tenure of employment.

H.R. 1986 would provide discontinuance of compensation of pension on the date that a recipient dies rather than the last day of the preceding month. On the whole, we support the bill as a step in the right direction. But while it allows the surviving spouse to receive a fraction more compensation and pension benefit, it does not often consider the dire circumstances in which a surviving spouse is left. Therefore, we would urge the Committee to adopt legislation that would continue payment to a surviving spouse of compensation and pension following the death of a veteran for a period of 3 months. We also look forward to working with the Committee on anything that would move in that direction.

That will complete our testimony, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Brinck.

[The prepared statement of Mr. Brinck appears on p. 66.]

Mr. EDWARDS. Thank you all for succinctly, but very clearly, explaining your positions as well as your more lengthy written testimony.

I have no questions of this panel.

Mr. Bilirakis.

Mr. BILIRAKIS. Just very quickly, Mr. Chairman.

The VFW, Bob, you mentioned possibly an ideal term might be 9 years?

Mr. MANHAN. It's presently 9 years, as I understand it, for all attorneys at the Board of Veterans' Appeals, sir.

Mr. BILIRAKIS. Yes.

Mr. MANHAN. They rotate. One-third leaves first, then 3 years later, a second third depart. The VFW would support a term greater than 9 years.

Mr. BILIRAKIS. Greater than 9 years?

Mr. MANHAN. Yes. The VFW has no specific number of years in mind, however.

Mr. BILIRAKIS. Well, you all seem to be very flexible in that regard and willing to work on that end. I think this Committee certainly appreciates that.

I just wonder, very quickly, if Michael and John, have any opinions on an ideal length for the terms.

Mr. HANSON. Mr. Bilirakis, I don't know that we know that there's an ideal length, but we'd be perfectly willing to sit down

and discuss some options that exceed the 9 years, but fall somewhat short of life.

Mr. BRINCK. I'd agree with that.

Mr. BILIRAKIS. That's basically what you said, Mr. Brinck.

Mr. BRINCK. Yes, sir.

Mr. BILIRAKIS. Well, Mr. Hanson, I'm a two-time Commander of an American Legion Post, long before I even dreamed of going to Congress. It had nothing to do with politics, and so, I don't mean to pick on the Legion. But you use the word "grudgingly" here about H.R. 69, and then basically you go on and say "it is our understanding that the difference in pay has worked against the Board members in the past," et cetera, et cetera. Actually, your argument and your written testimony is contra to supporting the word "grudgingly."

Mr. HANSON. Well, Mr. Bilirakis, the American Legion is traditionally opposed to increasing the pay for BVA members, and we don't see a direct link between increased pay and better decisions. Our concern is not so much about how well the Board members are compensated or taken care of, but how well they do their jobs. We would like to make sure that that linkage is there.

For the Legion to accept the ALJ comparability is a departure from what we have said in the past, and it actually took a considerable amount of convincing to——

Mr. BILIRAKIS. To "grudgingly" go along with it?

Mr. HANSON (continuing). "Grudgingly" accept this change.

Mr. BILIRAKIS. Well, you know, I have a philosophy that we are kind of what we have been. A good worker, a good, efficient, caring worker is going to be a good, efficient, caring working regardless of what his or her pay is. If the pay is just not good enough, they're going to leave and go someplace else. But I don't think, personally, that it affects, really, their particular efficiency and their quality of their work.

I understand what you're saying, but we're losing these people. We're going to continue to lose these people. So, I would strongly suggest that "grudgingly" be taken out for that reason alone, although I understand why you used it.

Mr. HANSON. Mr. Bilirakis——

Mr. BILIRAKIS. Now I understand why you've used the word "grudgingly." I was a little disappointed that you did.

Mr. HANSON. Your point is well taken and we will certainly support the ALJ comparability and monitor the caliber of the work that the——

Mr. BILIRAKIS. We should always do that, of course.

Mr. HANSON. Yes, sir.

Mr. BILIRAKIS. Thank you, sir.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you.

Mr. Everett.

If not, thank you all for being here.

Mr. EDWARDS. The chair would now like to recognize our final panel of the morning. Mr. Russell Mank, National Legislative Director of Paralyzed Veterans of America; Mr. Rick Surratt, Associate National Legislative Director of Disabled American Veterans;

and Mr. William F. Crandell, Legislative Advocate for Vietnam Veterans of America.

At this point, Joe, I'd like to recognize you to introduce Mr. Surratt.

Mr. VIOLANTE. Thank you, Mr. Chairman.

I'll take just a moment of this subcommittee's time to introduce DAV's newest member of its legislative staff. Rick Surratt is an Army veteran who served with the 101st Airborne Division in Vietnam and was wounded by mortar fragments in 1967. Rick has been employed with the DAV since 1976. He was trained as a DAV National Service Officer in Roanoke, VA, and served in that capacity until his transfer to the DAV Board of Veterans' Appeals Office where he served briefly as a National Appeals Officer, before his transfer to the DAV Court of Veterans Appeals Office in August 1989.

In his 4 years as DAV's judicial appeals representative and a non-attorney admitted to practice in the Court of Veterans Appeals, he performed all aspects of Appellate advocacy and represented a substantial number of clients. Rick has also served on the Court's Advisory Committee on Representation. Rick joined DAV's legislative staff in March of this year.

Thank you, Mr. Chairman.

Mr. EDWARDS. Joe, thank you very much.

Mr. Surratt, welcome for the subcommittee and I'd like to recognize you first for your testimony.

STATEMENT OF RICK SURRATT, ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; ACCOMPANIED BY JOSEPH A. VIOLANTE, LEGISLATIVE COUNSEL, DISABLED AMERICAN VETERANS; RUSSELL MANK, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; AND WILLIAM CRANDELL, LEGISLATIVE ADVOCATE, VIETNAM VETERANS OF AMERICA

STATEMENT OF RICK SURRATT

Mr. SURRATT. Thank you, Mr. Chairman, and members of the subcommittee, good morning. I would like to thank you on behalf of the DAV for permitting us to present our views on the six bills under consideration here today.

First, the DAV is appreciative of H.R. 4088, which provides for a cost-of-living increase in benefits for service-connected disabilities to include the clothing allowance and dependency and indemnity compensation. This demonstrates this subcommittee recognizes that these benefits, particularly, must keep pace with the rise in the cost-of-living if disabled veterans and their survivors are to maintain an acceptable standard of living comparable to those fortunate enough not to have suffered the economic effects of service-connected disabilities.

This bill would raise compensation rates across-the-board, with the exception of the rate of special monthly compensation under Section 1114(k) of title 38, United States Code. The DAV believes the (k) award should also be adjusted for the same reason the other compensation rates are adjusted. The impact of the rise in the cost-of-living is not selective. It decreases the buying power of all com-

pensation equally. The DAV, therefore, would ask the subcommittee to consider increasing the rate of compensation for the k award also.

Two bills, H.R. 2997 and H.R. 3159 would amend Section 1116 of title 38 to expand the list of diseases which are presumed due to herbicide agents in the case of a Vietnam veteran. These four categories of disease have already been recognized by the Secretary of Veterans Affairs for this purpose. It is therefore appropriate to amend the statutory presumption to include these disabilities, and the DAV supports these bills.

There are also two bills providing for making the salary and benefits of members of the Board of Veterans' Appeals equal to that of Administrative Law Judges. These are H.R. 69 and H.R. 3240. Mr. Chairman, I have practiced before Administrative Law Judges, and I've practiced before members of the Board of Veterans' Appeals also. I can assure you that the complexity and the level of knowledge required to decide the medical and legal issues that come before the Board are equal to, or greater than, that presented by the factual and legal issues Administrative Law Judges decide. Equal pay for Board members is justified.

We're already seeing that Board members are being selected for appointments as Administrative Law Judges, and we've heard testimony on that here this morning. Therefore, this goes beyond the matter of equity pertaining to pay. It also becomes important from the standpoint of maintaining an experienced group of Board members to competently decide veterans' issues. Experience has taught that there are a limited number of people who are knowledgeable in veterans' law. Training in this special area of law is no doubt time-consuming, and we suspect, expensive. Experienced Board members are an asset that should be preserved. H.R. 3240 would also change appointments to the Board from the current nine-year term to a permanent career appointment. This is a measure which would also be beneficial in the recruitment and retention of high quality Board members. The DAV, therefore, supports these bills.

Finally, H.R. 1986 would change the effective date for the discontinuance of compensation and pension by reason of the veteran's death. Currently, these benefits are discontinued the last day of the month preceding the veteran's death. This bill would provide for discontinuance of compensation and pension on the date of death in the case of a veteran with a surviving spouse. The apparent objective of this bill is to extend the payment of compensation or pension through the portion of the month the veteran lived so that a partial month's benefit can be paid to the surviving spouse. That goal is a meritorious one.

However, the DAV believes the better approach would be to amend the law to provide for discontinuance of compensation and pension, effective the last day of the month of the veteran's death. There is an inequity in current law where one group of surviving spouses receive benefits for the entire month of death, while other surviving spouses receive nothing for that month. Rather than only partially correcting that inequity by awarding the surviving spouses who now receive nothing, a partial month's benefit, an end-of-the-month rule for discontinuance would pay all surviving spouses the same full month's benefit.

Mr. Chairman, these several bills all have beneficial provisions. The DAV sincerely appreciates the efforts of this subcommittee to make improvements in veterans' programs. This concludes our statement, Mr. Chairman. I'd be happy to respond to any questions you or the members of the subcommittee may have.

Mr. EDWARDS. Mr. Surratt, thank you very much for your testimony.

[The prepared statement of Mr. Surratt appears on p. 70.]

Mr. EDWARDS. We'd like to hear the testimony of the other two witnesses here. Then we'll open it up for any questions.

Mr. Crandell.

STATEMENT OF WILLIAM CRANDELL

Mr. CRANDELL. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, Vietnam Veterans of America appreciates the opportunity to present its views on six pending bills.

On H.R. 4088, VVA supports a cost-of-living adjustment reflecting the consumer price index. Under no circumstances should veterans be treated to a cost-of-living value lower than that accorded to Social Security recipients.

On H.R. 2997 and H.R. 3159, VVA commends Chairman Slattery as well as Mr. Evans and your colleagues for taking the initiative to codify Secretary Brown's administrative rulings to make Hodgkins disease, PCT, respiratory cancers and multiple myeloma compensable on the basis of service-connected exposure to Agent Orange. This is an important step that VVA has advocated since the issuance of the 1993 NAS report, in order to prevent future injustice to Vietnam veterans with these conditions.

However, Secretary Brown has failed to rule favorably to compensate for prostate cancer, though the NAS report cited "limited/suggestive evidence of an association" to dioxin exposure, the same evidentiary category as respiratory cancers and multiple myeloma. The legislation before us today also fails to compensate victims of prostate cancer who were exposed to Agent Orange during the course of their service to this country.

After close evaluation of the NAS report, National Veterans Legal Services Project has filed suit against Secretary Brown on the basis that his findings of "no positive association" with dioxin exposure for prostate cancer, hepatobiliary cancers, and nasal/nasopharyngeal cancer were "arbitrary, capricious, or contrary to law." VVA suggests that the legislation before this subcommittee be amended to add these three diseases to the list of statutorily compensable conditions based upon service-connected exposure to Agent Orange.

With respect to H.R. 69 and H.R. 3240, VVA testified last October before this subcommittee in support of Mr. Evans' bill as a managerial step toward resolving the disgraceful backlog of cases at the Board of Veterans' Appeals. Mr. Bilirakis has presented a similar bill in H.R. 69. Both of them ensure pay equality between members of the Board of Veterans' Appeals. We urge the subcommittee to adopt the best features of both bills.

Mr. Chairman, there remains a great deal to be done to resolve the growing backlog at BVA. We were urged, along with the other

veterans' service organizations, to agree upon recommendations for resolving the adjudication problems at BVA. We did so last summer, detailing 17 suggestions for improving the quality and timeliness of decisions in the regional offices in the Board of Veterans' Appeals. We all agreed that the problem was largely at the regional offices. It is worth noting that a number of the VSO's unanimous recommendations appear in the Administrative experiment being conducted now by VA in the New York City Regional Office "Prototype Unit" which Vice President Gore honored earlier this year for typifying the reinventing government campaign.

BVA has been informed by subcommittee staff that the VSO recommendations have not significantly changed the Veterans' Appeal Act of 1993, subject of the Subcommittee's October 13 hearing, which is now headed toward markup with no further input being sought or accepted. Many of our recommendations were adopted by the Senate Committee on Veterans' Affairs on April 14 in S. 1904 and S. 1908. We strongly urge the subcommittee to consider these measures.

On H.R. 1986, Vietnam Veterans of America supports this sensible bill.

This concludes our testimony, Mr. Chairman.

Mr. EDWARDS. Mr. Crandell, thank you for your excellent testimony.

[The prepared statement of Mr. Crandell appears on p. 74.]

Mr. EDWARDS. Mr. Mank.

STATEMENT OF RUSSELL MANK

Mr. MANK. Mr. Chairman, in the interest of time, I'd like to summarize my written statement.

On behalf of the Paralyzed Veterans of America, I appreciate this opportunity to testify. PVA supports four of the six bills in their entirety. But I'd like to address two issues. One, PVA supports the pay comparability proposal in H.R. 69; however, we would be opposed to lifting term limits. At this time, we do not believe that proposal is necessary. We believe that there may be other ways to entice these Board of Veterans' Appeals judges to remain aboard, but lifting term limits is not the key.

Finally, I'd like to address H.R. 1986. During the 102nd Congress, PVA testified on this particular issue. We would like to see the effective date for discontinuance of compensation or pension on the death of a veteran be the last day of the month in which the veteran dies. PVA supports this position for two reasons. First, the obligations of a veteran and his/her family do not end with the veteran's death. This form of transitional assistance, albeit small, would better enable families to cope with what is always a tragic occurrence. And second, the administrative costs would certainly be lower in providing benefits to the last day of the month in which the veteran dies, than in trying to set up tables for prorating.

Those are our only two exceptions to these six bills and we thank you for your time.

Mr. EDWARDS. Thank you, Mr. Mank, for your excellent testimony.

[The prepared statement of Mr. Mank appears on p. 79.]

Mr. EDWARDS. Members, any questions of these witnesses?

Mr. BILIRAKIS. I don't really have any questions. I assume that all three of you are as flexible and open-minded on the length of terms. Assuming that we don't throw out the term limits, are you flexible in terms of that? Do you have any strong feelings as to what might be a proper length?

Mr. MANK. PVA would be willing to discuss it, but at this point, we think 9 years may be appropriate.

Mr. BILIRAKIS. I see.

Mr. CRANDELL. VVA is prepared to see them longer, and we'd be willing to discuss an appropriate length.

Mr. BILIRAKIS. Yes, sir, Mr. Surratt.

Mr. SURRATT. The DAV's position is that we do not oppose removal of the term limits.

Mr. BILIRAKIS. Oh, you don't oppose removal of terms.

Mr. SURRATT. We believe with provisions in place for removal for cause, that a renewable term really is unnecessary. As a matter of fact, it may lead to a situation where if you had a member who wasn't performing adequately, and you say, "well, his term ends in a year or so," you know, it would be easier to keep him——

Mr. BILIRAKIS. I believe yours is the only service organization that has taken that position, is that correct?

Mr. SURRATT. I'm not sure.

Mr. BILIRAKIS. Thank you. Thank you very much.

Mr. EDWARDS. Thank you.

Again, I want to thank all of you for being here and for your written testimony, as well as your oral comments today.

As a final point, if I could just reflect for the record that the Committee will be receiving written submissions from the Gold Star Wives and the Non Commissioned Officers Association on the bills that we covered today.

I want to thank all of you for coming. For those that are in this room that deeply care as you do about veterans' programs, particularly veterans' medical care, I might point out to you that the chairman's bill, Mr. Montgomery's bill, to exempt the cuts in VA personnel and the VA medical system is up before the House today, just in case you happen to run into any House members between now and this afternoon.

Thank you all very, very much for being here.

The subcommittee stands adjourned.

[Whereupon, at 10:47 a.m., the subcommittee was adjourned.]

APPENDIX

103D CONGRESS
1ST SESSION

H. R. 69

To amend title 38, United States Code, to provide reclassification of members of the Board of Veterans Appeals and to ensure pay equity between those members and administrative law judges.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. BILIRAKIS introduced the following bill; which was referred jointly to the Committees on Veterans' Affairs and Post Office and Civil Service

A BILL

To amend title 38, United States Code, to provide reclassification of members of the Board of Veterans Appeals and to ensure pay equity between those members and administrative law judges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLASSIFICATION AND PAY OF MEMBERS OF BOARD OF VETERANS' APPEALS.

(a) IN GENERAL.—Section 7101(b)(2)(A) of title 38, United States Code, is amended by adding at the end the following: "A member of the Board (other than the Chairman and Vice Chairman) shall receive compensation under

the provisions of section 5372 of title 5 and other benefits equal to those payable to an administrative law judge.".

(b) SAVINGS PROVISION.—The rate of basic pay payable to an individual who is a member of the Board of Veterans' Appeals on the date of the enactment of this Act may not be reduced by reason of the amendment made by subsection (a) below the rate payable to such individual on the day before the effective date specified in subsection (c).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first pay period beginning after the date of the enactment of this Act.

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103D CONGRESS
1ST SESSION

H. R. 1986

To amend title 38, United States Code, to provide that the effective date for discontinuance of compensation and pension paid by the Secretary of Veterans Affairs shall be the date on which the recipient dies, rather than the last day of the preceding month, in the case of a veteran with a surviving spouse, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1993

Mr. LEWIS of Florida (for himself, Mr. BILIRAKIS, Mr. JOHNSON of Florida, Ms. ROS-LEHTINEN, Mr. BACCHUS of Florida, Mrs. THURMAN, Mr. HASTING, and Mr. MILLER of Florida) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to provide that the effective date for discontinuance of compensation and pension paid by the Secretary of Veterans Affairs shall be the date on which the recipient dies, rather than the last day of the preceding month, in the case of a veteran with a surviving spouse, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EFFECTIVE DATE OF DISCONTINUANCE OF CERTAIN VETERANS' BENEFITS BY REASON OF DEATH OF RECIPIENT.

(a) IN GENERAL.—Section 5112(b)(1) of title 38, United States Code, is amended to read as follows:

"(1) by reason of—

"(A) the marriage or remarriage of the payee, shall be the last day of the month before the month during which such marriage or remarriage occurs; and

"(B) the death of the payee, shall be (i) the last day of the month before the month during which the death occurs, or (ii) in the case of a payee who was in receipt of compensation or pension and who has a surviving spouse, the date on which the death occurs;".

(b) PAYMENT OF BENEFIT FOR FINAL MONTH.—Section 5112 of such title is further amended by adding at the end the following new subsection:

"(d) In the case of discontinuance of payment of compensation or pension covered by subsection (b)(1)(B)(ii), the payment for the final calendar month (or any portion thereof) for which such benefit is payable shall (notwithstanding any other provision of law) be payable to the surviving spouse.".

(c) COMMENCEMENT DATE FOR DIC.—Section 5110(d) of such title is amended by adding at the end the following new paragraph:

"(3) Notwithstanding paragraph (1), the effective date of an award of dependency and indemnity compensation for which application is received within one year from the date of death shall, in the case of a surviving spouse to whom an amount is payable pursuant to section 5111(d) of this title, be the day following the date on which the death occurred.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the death of compensation and pension recipients occurring after the later of (1) September 30, 1993, or (2) the date of the enactment of this Act.

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103D CONGRESS
1ST SESSION

H. R. 2997

To amend title 38, United States Code, to codify the addition by the Secretary of Veterans Affairs of certain additional diseases to the list of diseases occurring in veterans that are considered to be service-connected.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1993

Mr. SLATTERY (for himself, Mr. MONTGOMERY, Mr. STUMP, Mr. APPLEGATE, Mr. BILIRAKIS, Mr. EVANS, Mr. EVERETT, Mr. KENNEDY, Mr. STEARNS, Mr. SANGMEISTER, Mr. TEJEDA, and Mr. KING) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to codify the addition by the Secretary of Veterans Affairs of certain additional diseases to the list of diseases occurring in veterans that are considered to be service-connected.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CODIFICATION OF CERTAIN ADDITIONAL SERVICE-CONNECTED PRESUMPTIONS.

Section 1116(a)(2) of title 38, United States Code, is amended by adding at the end the following new subparagraphs:

"(D) Hodgkin's disease becoming manifest to a degree of 10 percent or more.

"(E) Porphyria cutanea tarda becoming manifest to a degree of 10 percent or more.".

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 shall take effect on the date on which a final regulation prescribed by the Secretary of Veterans Affairs as required by section 1116(c) of title 38, United States Code, takes effect establishing a presumption of service connection for the disabilities specified in that amendment.

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103D CONGRESS
1ST SESSION

H. R. 3159

To amend title 38, United States Code, to codify the addition by the Secretary of Veterans Affairs of certain additional diseases to the list of diseases occurring in veterans that are considered to be service-connected.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1993

Mr. EVANS (for himself, Mr. KENNEDY, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to codify the addition by the Secretary of Veterans Affairs of certain additional diseases to the list of diseases occurring in veterans that are considered to be service-connected.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CODIFICATION OF ADDITIONAL SERVICE-CONNECTED PRESUMPTIONS.

Section 1116(a)(2) of title 38, United States Code, is amended by adding at the end the following new subparagraphs:

"(D) Cancer of the lung, of the larynx, or of the trachea.

"(E) Multiple myeloma.".

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 shall take effect on the date on which a final regulation prescribed by the Secretary of Veterans Affairs as required by section 1116(c) of title 38, United States Code, takes effect establishing a presumption of service connection for the disabilities specified in that amendment.

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103D CONGRESS
1ST SESSION

H. R. 3240

To amend title 38, United States Code, to eliminate the terms for appointment for members of the Board of Veterans Appeals and to ensure pay equity between those members and administrative law judges.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1993

Mr. EVANS introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to eliminate the terms for appointment for members of the Board of Veterans Appeals and to ensure pay equity between those members and administrative law judges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELIMINATION OF TERMS OF APPOINTMENT FOR MEMBERS OF THE BOARD OF VETERANS APPEALS.

Section 7101(b) of title 38, United States Code, is amended—

(1) by striking out the second sentence of paragraph (2);

(2) by striking out paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

SEC. 2. PAY OF MEMBERS OF THE BOARD OF VETERANS APPEALS.

(a) Section 7101(b) of title 38, United States Code, as amended by section 1, is further amended by adding at the end the following:

"(4) A member of the Board (other than the Chairman and Vice Chairman) shall receive compensation and other benefits equivalent to those payable to an administrative law judge under section 5372 of title 5.".

(b) The rate of basic pay payable to an individual who is a member of the Board of Veterans Appeals on the date of the enactment of this Act may not be reduced by reason of this Act below the rate payable to such individual on the day before the effective date specified in section 3.

SEC. 3. EFFECTIVE DATE.

The amendments made by sections 1 and 2 shall take effect on the first day of the first pay period beginning after the date of the enactment of this Act.

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103D CONGRESS
2D SESSION

H. R. 4088

To amend title 38, United States Code, to provide a cost-of-living adjustment in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1994

Mr. SLATTERY introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to provide a cost-of-living adjustment in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Compensation Rate Amendments of 1994".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. DISABILITY COMPENSATION.

Section 1114 is amended—

(1) by striking out "$87" in subsection (a) and inserting in lieu thereof "$89";

(2) by striking out "$166" in subsection (b) and inserting in lieu thereof "$170";

(3) by striking out "$253" in subsection (c) and inserting in lieu thereof "$260";

(4) by striking out "$361" in subsection (d) and inserting in lieu thereof "$371";

(5) by striking out "$515" in subsection (e) and inserting in lieu thereof "$530";

(6) by striking out "$648" in subsection (f) and inserting in lieu thereof "$667";

(7) by striking out "$819" in subsection (g) and inserting in lieu thereof "$843";

(8) by striking out "$948" in subsection (h) and inserting in lieu thereof "$976";

(9) by striking out "$1,067" in subsection (i) and inserting in lieu thereof "$1,099";

(10) by striking out "$1,774" in subsection (j) and inserting in lieu thereof "$1,827";

(11) by striking out "$2,207" and "$3,095" in subsection (k) and inserting in lieu thereof "$2,273" and "$3,187", respectively;

(12) by striking out "$2,207" in subsection (l) and inserting in lieu thereof "$2,273";

(13) by striking out "$2,432" in subsection (m) and inserting in lieu thereof "$2,504";

(14) by striking out "$2,768" in subsection (n) and inserting in lieu thereof "$2,851";

(15) by striking out "$3,093" each place it appears in subsections (o) and (p) and inserting in lieu thereof "$3,185";

(16) by striking out "$1,328" and "$1,978" in subsection (r) and inserting in lieu thereof "$1,367" and "$2,037", respectively; and

(17) by striking out "$1,985" in subsection (s) and inserting in lieu thereof "$2,044".

SEC. 3. ADDITIONAL COMPENSATION FOR DEPENDENTS.

Section 1115(1) is amended—

(1) by striking out "$105" in subparagraph (A) and inserting in lieu thereof "$108";

(2) by striking out "$178" and "$55" in subparagraph (B) and inserting in lieu thereof "$183" and "$56", respectively;

(3) by striking out "$72" and "$55" in subparagraph (C) and inserting in lieu thereof "$74" and "$56", respectively;

(4) by striking out "$84" in subparagraph (D) and inserting in lieu thereof "$86";

(5) by striking out "$195" in subparagraph (E) and inserting in lieu thereof "$200"; and

(6) by striking out "$164" in subparagraph (F) and inserting in lieu thereof "$168".

SEC. 4. CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.

Section 1162 is amended by striking out "$478" and inserting in lieu thereof "$492".

SEC. 5. DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.

Section 1311 is amended—

(1) in subsection (a)(1), by striking out "$769" and inserting in lieu thereof "$792";

(2) in subsection (a)(2), by striking out "$169" and inserting in lieu thereof "$174";

(3) in subsection (a)(3), by striking out the table therein and inserting in lieu thereof the following:

"Pay grade	Monthly rate	Pay grade	Monthly rate
E–7	$805	O–3	$908
E–8	849	O–4	959
E–9	[1] 886	O–5	1,055
W–1	823	O–6	1,188
W–2	855	O–7	1,282
W–3	880	O–8	1,403
W–4	931	O–9	1,503
O–1	823	O–10	[2] 1,647
O–2	849		

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $954.

"[2] If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $1,764.";

(4) in subsection (c), by striking out "$195" and inserting in lieu thereof "$200"; and

(5) in subsection (d), by striking out "$95" in subsection (c) and inserting in lieu thereof "$97".

SEC. 6. DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.

(a) DIC FOR ORPHAN CHILDREN.—Section 1313(a) is amended—

(1) by striking out "$327" in paragraph (1) and inserting in lieu thereof "$336";

(2) by striking out "$471" in paragraph (2) and inserting in lieu thereof "$485";

(3) by striking out "$610" in paragraph (3) and inserting in lieu thereof "$628"; and

(4) by striking out "$610" and "$120" in paragraph (4) and inserting in lieu thereof "$628" and "$123", respectively.

(b) SUPPLEMENTAL DIC FOR DISABLED ADULT CHILDREN.—Section 1314 is amended—

(1) by striking out "$195" in subsection (a) and inserting in lieu thereof "$200";

(2) by striking out "$327" in subsection (b) and inserting in lieu thereof "$336"; and

(3) by striking out "$166" in subsection (c) and inserting in lieu thereof "$170".

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall take effect on December 1, 1994.

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STATEMENT

of

THE HONORABLE TOM LEWIS

Of Florida

Before the

HOUSE VETERANS AFFAIRS SUBCOMMITTEE

ON

COMPENSATION, PENSION AND INSURANCE

April 28, 1994

I appreciate having the opportunity to testify before the Subcommittee on behalf of hundreds of thousands of veterans' families across the U.S. who are subject to a practice I find most unfair.

As you know, for disability compensation and disability pension, when a veteran passes away, his spouse will be paid his final compensation check through the end of the last month he lived. This seemingly simple rule has created a very frustrating situation for spouses of deceased veterans.

A year ago, 73-year-old Mabel Matthews contacted my office. Her story prompted the drafting of this legislation, H.R. 1986. On March 31st, Mrs. Matthews' husband died at three o'clock in the afternoon. The next day, April 1, she received his disability compensation for the month of March, which she used to pay many of his final month's medical expenses. Then, on April 21, the VA sent Mrs. Matthews a form letter telling her to return the money she had received. The VA revoked her husband's entire compensation for the month of March, all $1,212.

In an effort to pursue the most cost effective way to remedy this situation, with the help of the Congressional Budget Office I came up with a solution. The VA would pro-rate the final payment, providing compensation earned for each day the veteran is alive in that final month. For example, if he lives until the 15th, at least his spouse will get his compensation for the 1st through the 15th, rather than nothing at all.

Mr. Chairman, in my opinion, this is the fairest way for Congress to pay the debt we owe our veterans' families. I find it appalling that the spouse of one of our nation's veterans would be penalized by the VA. During her time of grief, she is forced to return her husband's monthly compensation, the money she spent on his living expenses.

CBO has informally estimated H.R. 1986 will cost $11 million dollars a year, a very small sacrifice for the spouse of a veteran who might be without income for a month because her husband died a few hours too soon.

Mr. Chairman, as the committee reviews legislation affecting veterans' benefit programs, I urge you to seriously consider how grateful veterans will be, knowing their spouse will receive fair treatment in the difficult months following their death. I am willing to work with the Committee to make any improvements to H.R. 1986 which may be needed.

I am pleased to see representatives from the VA here today. The VA has informed me it has some concerns over implementing this legislation, but has been reluctant to explain them to me, although I have expressed my sincere desire to work out a bill that will best serve our veterans. Frankly, I am disappointed in the VA for being more concerned with the difficulty of implementing H.R. 1986, than they are with the welfare of our deceased veterans' spouses. If we all agree that an injustice is occurring, then we must work together to find a solution.

I am certain that together, we will be able to iron out the language of the bill to provide the most fair and logical solution to this terribly unfair situation. I will work with the committee in whatever way necessary to ensure that the intent of this bill is preserved and justice is done. We owe this much to our nation's veterans.

Debt Management Center
Bishop Henry Whipple
Federal Building
P.O. Box 11930
St. Paul MN 55111

Department of Veterans Affairs

APRIL 21, 1993

In Reply Refer To: 389
File Number: 05789364
Payee Number: 00
Person Entitled: AFMATT
Deduction Code: 30

REPRESENTATIVE OF THE ESTATE OF:
MABEL MATTHEWS
SPOUSE OF
ARCHIE F MATTHEWS
649 ATLANTIC RD
NORTH PALM BEACH FL 33408

4/26/93 -
4 DM ck# 532
for $1,212.00. mailed to

1. We are sorry to learn of the death of A F MATTHEWS and wish to express our deepest sympathy.

2. VA benefits are not payable for any part of the month in which death occurs. Therefore, any Department of the Treasury checks which were not endorsed by the deceased should be returned to the Department of the Treasury, Bureau of Government Financial Operations, Division of Disbursement, P.O. Box 2940, Austin, TX 78769.

3. If any Department of the Treasury checks were received and negotiated after the payee's death, refund should be made by personal check or money order made payable to the Department of Veterans Affairs (VA) and mailed to the VA Regional Office & Insurance Center, P.O. Box 11930, St. Paul, MN 55111. Please include the payee's full name and VA file number on the check or money order and return it with the bottom portion of this letter.

4. If any Direct Deposit/Electronic Funds Transfer (DD/EFT) payment(s) were credited to the payee's bank account after death and then withdrawn, a refund should be made to the Department of Veterans Affairs in the same manner as explained in paragraph 3 above. If any DD/EFT payment(s) are being retained by the deceased payee's financial organization, please advise them to return these funds through their normal channels.

5. If you have any questions concerning this letter, you may call 1-800-827-0648 for assistance.

Chief of Operations, Debt Management Center

bottom portion removed & returned w/check

649 Atlantic Road
N. Palm Beach,
Fl. 33408
April 9, 1993

Department of Veterans Affairs
P. O. Box 1437
St. Petersburg, Fl. 33731

Attention: Mr. T. Ivers,
Adjudication Officer

Re: Archie F. Matthews
5-789-364/00

Dear Mr. Ivers:

My husband, Archie F. Matthews, died on Wednesday, 3/31/93, and I am enclosing a Certified Death Certificate for him.

His V.A. pension check in amount of $1,212.00 was received on 4/1/93 via direct deposit, to Community Savings, 660 U.S.#1, North Palm Beach, Fl. 33408, to account #722579.

I have supplied the bank with a a Certified Death Certificate also and instructed them regarding his V.A. pension and Social Security checks, which I am assuming should be returned, as his death was in March.

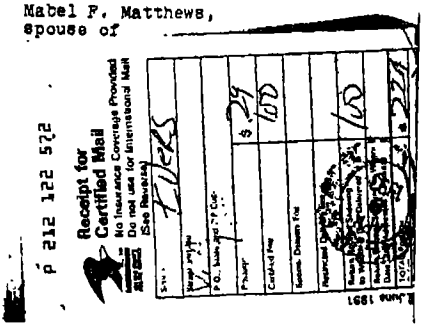
If I am entitled to any portion of his pension as his widow, I would appreciate you forwarding the necessary forms.

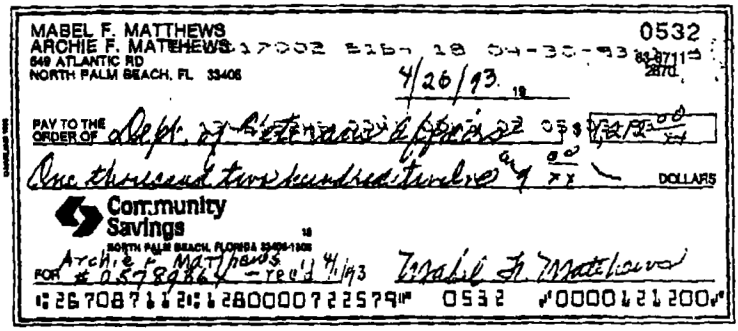
Very truly yours,

Mabel F. Matthews,
spouse of [redacted]

encl - Certified copy of
Death Certificate

L. - Ed Chase





MABEL F. MATTHEWS
ARCHIE F. MATTHEWS
649 ATLANTIC RD
NORTH PALM BEACH, FL 33406

0532

4/26/93

PAY TO THE ORDER OF Dept. of Veterans Affairs $ 1,212.00

One thousand two hundred twelve and 00/xx DOLLARS

Community Savings
NORTH PALM BEACH, FLORIDA 33406-1305

FOR Archie F. Matthews # 0578986 - rec'd 4/1/93

Mabel F. Matthews

⑆267087112⑆128000072257 9⑈ 0532 ⑈0000121200⑈

13461524 05-03-93
0660-0010-9
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VETS ADMIN
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FRB MPLS
MPLS MN
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0910-0006-0 043093
DOS 0521 04/30/93 0578986 0121200

STATEMENT OF THE HONORABLE CHARLES L. CRAGIN
CHAIRMAN, BOARD OF VETERANS' APPEALS

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

April 28, 1994

Thank you, Mr. Chairman. It is a pleasure to be with you and the other members of the Subcommittee this morning to offer the Administration's views on H.R. 69 and H.R. 3240. Both bills would amend title 38, United States Code, to provide that a member of the Board of Veterans' Appeals (other than the Chairman and Vice Chairman) would receive compensation and other benefits equal to those payable to an administrative law judge. In addition, H.R. 3240 would amend title 38 to eliminate the terms for appointment for members of the Board of Veterans' Appeals.

Pay Comparability

The Department strongly supports the pay comparability provisions of both H.R. 69 and H.R. 3240, and salutes the leadership of Congressman Bilirakis and Congressman Evans in championing this crucial legislation. We believe that enactment of pay comparability will help stem the tide of Board members leaving VA for ALJ positions.

Under current law, members of the Board of Veterans' Appeals--with the exception of the Chairman, Vice Chairman and Deputy Vice Chairman--are compensated at level 15 of the General Schedule. For fiscal year 1994, the pay range for GS-15 is approximately $69,400 to $90,300. The pay for Administrative Law Judges currently ranges from approximately $78,400 to $108,500 for most judges, with some supervisory judges receiving as much as $120,600.

As Chairman Montgomery said during the debate on the Veterans' Judicial Review Act in 1988, the job of a Board member is important and requires extensive training which only Board members and senior attorneys employed to advise the Board possess. It has been our experience that it takes from seven to ten years in the area of veterans' law before an attorney has the necessary experience to serve as a Board member. It is only by reliance on such expertise that the Board can expect to decide cases in an expeditious manner with the requisite quality to meet the scrutiny of judicial review.

Nor has judicial review lessened the importance of the individual Board member. In the four years since the Court of Veterans Appeals began deciding cases, less than 10% of appealable Board decisions have been taken to the Court. Thus, for the vast majority of veterans and their families, the Board is the court of last resort.

VA cannot afford to lose this experience. But Board members are being lost to the ranks of Administrative Law Judges and the main reason is clear: pay.

The duties of the position and the complexity of the work performed by Board members are essentially the same as that performed by Social Security administrative law judges. When VJRA was signed in 1988, the similarity of these positions was reflected by the classification by the Office of Personnel Management of both positions, with few exceptions, at the GS-15 level.

In 1990, the playing field changed. Congress passed the "Federal Employees Pay Comparability Act," raising the pay of ALJs to its present level--from thirteen to twenty percent above the GS-15 level. At the same time, Social Security began looking for more administrative law judges to handle appeals involving disability claims. Board members, with their extensive knowledge of and experience in both medicine and law, were natural candidates.

The result was predictable.

Since July 1993, the Board has lost six of its most experienced members to the ALJ ranks. Of the 49 attorney Board members, fourteen are on the ALJ register maintained by the Office of Personnel Management and are eligible to receive offers at any time. Five more have submitted applications, and it is our understanding that another ten are in the process of completing applications.

Veterans and their families cannot afford to lose this experience.

We believe, Mr. Chairman, that making the pay of Board members equal to that of ALJs will preserve the experience that the Department needs and that veterans and their families deserve.

The costs related to the initiative are not reflected in VA's 1995 budget. We believe, however, that this initiative is now a priority that will need to take precedent over other, lower priority activities. To that end, we will identify items in the GOE budget that will be reduced if this bill is enacted. We assure the Committee that this reduction will not be taken in any area that would affect the delivery of veterans benefits.

Elimination of Terms for Board Members

Mr. Chairman, section 1 of H.R. 3240 would amend title 38 to eliminate the term limits with respect to appointment as a member of the Board of Veterans' Appeals. Current law, section 7101(b)(2)(A) of title 38, provides that, except for the Chairman, members of the Board are appointed for a term of nine years.

The term limitation on Board member appointments originated in the Veterans' Judicial Review Act, Pub. L. No. 100-687. Prior to that time, Board appointments were not subject to term limitation. The legislative history of the provision, such as it is, suggests that the purpose of the provision was to increase the independence of the Board from the rest of the Department.

Mr. Chairman, for two reasons, the Department cannot at this time support the immediate elimination of terms of appointment for Board members.

First and foremost, we believe that there is a need for individual accountability at the Board. By Executive Order, Board members have been exempt from performance standards to avoid the "appearance that their decisions are affected by prospects of receiving lesser or greater remuneration in

consequence of rendering determinations that are pleasing to superior officials, that is, favorable to the Government." *Report of the President to Congress on Exclusions and Revocations of Exclusions of Agencies of the Government from the Performance Management and Recognition System* (October 30, 1985), *reprinted in* S. Rep. No. 418 (S. 11), 100th Cong., 2d Sess. 165, 167 (July 7, 1988). With the elimination of term limits and the exemption from performance standards, there is virtually no way to exert management influence over a Board member whose performance adversely affects the service we provide veterans and their families.

There has never been, to our knowledge, a serious challenge to the independence of the Board. And while we believe the Board should be independent of improper influence, we must not countenance performance which is below that which we are duty-bound and privileged to provide to those whom we serve. Because the unilateral removal of term limits would essentially exempt members from any accountability, we cannot support the proposal in section 1 of H.R. 3240.

Second, the system of term appointments is too new to gauge accurately its effect on retention. As you know, the initial appointments were staggered, so that the terms of approximately one-third of the Board members expire every three years. The first reappointments come due in July of this year, but consist entirely of physician Board members, who, since Board membership will now be limited to attorneys, already know they will not be reappointed. The first attorney Board member reappointments will not be made until early 1995. It is the Department's view that we have time to evaluate this proposal.

While the Department cannot at this time support an end to term appointments for Board members, we are proposing that Board members, including the Chairman, whose appointments have expired be permitted--subject to the approval of the Chairman, or, in the case of the Chairman, the Secretary--to continue serving until a successor has been approved. Under current law, it appears that, when a Board member's term expires, he or she is no longer a VA employee. Even if reappointment were intended, administrative delay in the reappointment process could result in a logistical problem because the member could not be continued as, for example, an acting Board member, since acting Board members must be employees of the Department. Similarly, current law does not appear to provide for the position of "Acting" Chairman, leaving in doubt, for example, the ability of the Board to assign cases and decide motions for reconsideration. Because of the nonpolitical nature of these positions, and because of the importance of a functioning Board to insure that appeals are decided on a timely basis, the Chairman and other Board members should be able to continue to serve until a successor is prepared to take office, if requested to do so by the Secretary. Our research has shown that there are more than 200 term positions in the Executive Branch where appointees are permitted to hold over until their successors are prepared to take office.

We look forward to working with you and with Committee staff as we strive to put veterans first.

That concludes my prepared statement, Mr. Chairman. I will be pleased to answer questions which you or other members of the Subcommittee may have.

STATEMENT OF

J. GARY HICKMAN

DIRECTOR, COMPENSATION AND PENSION SERVICE

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON COMPENSATION, PENSION

AND INSURANCE

HOUSE OF REPRESENTATIVES

APRIL 28, 1994

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the provisions of H.R. 4088, the "Veterans' Compensation Rate Amendments of 1994", H.R. 2997 and H.R. 3159, which would codify the addition by the Secretary of Veterans Affairs of certain diseases to the list of diseases which may be presumed to be service connected as a result of exposure to certain herbicide agents, and H.R. 1986, which would, in certain cases, alter the effective dates for discontinuance of VA compensation and pension upon death and for commencement of death benefits.

H.R. 4088

H.R. 4088 would, effective December 1, 1994, increase the rates of disability compensation for veterans and the rates of dependency and indemnity compensation (DIC) for survivors of veterans who die as a result of service. By our calculations, the increase for most rates would be three percent rounded down to the nearest dollar. The exceptions are the rates for "grandfathered" DIC recipients based on pay grade, which would be increased by $11.00 per month, or one half of the increase provided under the new DIC rates

rounded down to the nearest dollar. Enactment of H.R. 4088 would result in estimated savings of $33.5 million in fiscal year 1995 and $200 million over a five-year period through 1999 in direct spending under the Budget Enforcement Act.

VA strongly supports a cost-of-living increase to provide a measure of protection from inflation to these very deserving beneficiaries. However, we would remind the Committee that the "grandfathered" DIC recipients would be provided a full increase in the President's budget for fiscal year 1995. Also, we would prefer the adjustment recommended in the President's budget, which provides for an increase in the same percentage as the increase granted to Social Security recipients under title II of the Social Security Act. Amounts of $0.50 or more would be rounded up to the nearest dollar, and amounts under $0.50 would be rounded down to the nearest dollar. We urge that this alternative approach be adopted.

H.R. 2997 and H.R. 3159

H.R. 2997 would add Hodgkin's disease and porphyria cutania tarda (PCT) to the list of conditions in section 1116(a)(2) of title 38, United States Code, for which service connection can be established on a presumptive basis due to exposure to herbicide agents. H.R. 3159 would add cancer of the lung, larynx, and trachea and multiple myeloma to the list in section 1116(a)(2). Pursuant to the authority granted in the Agent Orange Act of 1991, Pub. L. No. 102-4, the Secretary of Veterans Affairs amended Department of Veterans Affairs (VA) regulations on February 3, 1994, to establish presumptive service connection for Hodgkin's disease and PCT based on exposure to herbicides. Proposed regulations for the addition of cancer of the lung, bronchus, larynx, and trachea and multiple myeloma were pub-

lished in the Federal Register on February 3, 1994. H.R. 2997 and H.R. 3159 seek to expand eligibility beyond the current and proposed regulations and codify what VA has already accomplished and proposed to accomplish through the regulatory process.

Mr. Chairman, changing eligibility requirements for Agent Orange compensation that are based on scientific and medical data undermines a process established by the Agent Oranbe Act of 1991. We believe that this would be an undesirable precedent. Furthermore, the Secretary has moved swiftly and responsibly in accordance with that statute. In our view, codification of what has already been accomplished or is being accomplished through the regulatory process is neither necessary nor practical. The desire to assure that what has been given to the veteran is not taken away is laudatory. However, VA does not foresee changing its regulations in the future to delete a condition already determined to be associated with herbicide exposure in the absence of significant new scientific evidence. Further, we believe that, where VA has the authority to take action administratively and is doing so, the regulatory process is preferable to legislation because the former allows greater flexibility in shaping final language and for making changes where, for example, new scientific evidence becomes available. Therefore, while we fully support creation of appropriate presumptions of service connection based on exposure to herbicide agents, we oppose legislative expansion of these benefits as being inconsistent with scientific and medical data as well as the concept of ratifying regulations legislatively.

Although VA opposes enactment of these two bills, we would like to specifically point out differences between the bills and VA's proposed and final regulations.

H.R. 2997 would authorize presumptive service connection for PCT becoming manifest to a degree of ten percent at any time after military service. VA's final regulation requires that PCT become manifest to the specified degree within one year of the date of the veteran's last exposure to herbicide agents. Since the scientific evidence indicates that the onset of PCT occurs soon after exposure, we have concluded that a one-year manifestation period is warranted. It is noteworthy in this regard that the evidence for the appearance of chloracne following herbicide exposure supports a similar manifestation period, and Congress, in the Agent Orange Act of 1991, adopted a one-year presumptive period for chloracne.

VA's proposed rule on respiratory cancers requires that such diseases become manifest to a degree of ten percent within thirty years of a veteran's exposure to herbicide agents. H.R. 3159 does not include such a requirement. We have found that the weight of the evidence indicates that chemically-induced respiratory cancers occur within a definite period following exposure, after which there is little effect from the exposure. The longest manifestation period noted for a respiratory cancer following herbicide exposure is about thirty years. Therefore, we believe it is reasonable to adopt that time frame as an outer limit for the occurrence of respiratory cancers following exposure to herbicides used in Vietnam. VA's proposed rule would authorize service connection on a presumptive basis for cancer of the bronchus, in addition to cancer of the lung, larynx, and trachea. H.R. 3159 does not refer to cancer of the bronchus.

H.R. 3159 also does not include a requirement that respiratory cancers and multiple myeloma occur to a degree of at least ten percent following herbicide exposure. Since

this omission is inconsistent with the requirements of Public Law No. 102-4 and VA's regulations for all other diseases associated with exposure to herbicide agents, we believe that the "ten-percent" requirement should be retained.

Both H.R. 2997 and H.R. 3159, by virtue of the differences we have cited with our final and proposed regulations, will increase direct spending under the Budget Enforcement Act.

H.R. 1986

H.R. 1986 would amend title 38 to change the statutory effective dates for discontinuance of certain awards of disability compensation and pension due to the death of the veteran and for commencement of certain awards of death benefits.

Section 1(a) of the bill would amend 38 U.S.C. § 5112(b)(1) to provide that termination of the disability compensation or pension award of a veteran who has a surviving spouse would be effective the date of death of the veteran. Section 1(b) would add a new section 5112(d) to title 38 to provide that, in situations where disability compensation or pension is discontinued as of the date of death, the compensation or pension payable for the final calendar month or portion of the month shall be made to the surviving spouse. Section 1(c) would add a new paragraph (3) to section 5110(d) to provide that the effective date of an award of DIC for which application is received within one year of the date of death in the case of a surviving spouse to whom an amount is payable pursuant to section 5112(d) shall be the date following the date of death. We assume that the reference to section 5111(d) in

section 1(c) is a typographical error. The apparent effect of these amendments would be to permit a surviving spouse to receive the amount of disability compensation which would have been payable to the veteran for the portion of the month preceding the date of the veteran's death in situations where the surviving spouse's death-benefit rate does not exceed the monthly rate of disability compensation previously received by the veteran.

VA cannot support this bill. The bill would, in effect, reinstate certain benefits for the month of a veteran's death which were withdrawn as a cost-saving component of a budget-reconciliation measure considered necessary in an earlier year. We do not consider it advisable to expend funds in this manner at the same time the Subcommittee is considering limiting compensation and DIC cost-of-living adjustments under H.R. 4088.
Mr. Chairman, we cannot agree with this allocation of resources. In addition, the bill would create an inequity by providing benefit advantages to surviving spouses not available to veterans' surviving children in cases where there is no surviving spouse. Finally, this provision will increase direct spending under the Budget Enforcement Act.

This concludes my statement, Mr. Chairman. I would be pleased to answer any questions that you or other members of the Subcommittee may have.

STATEMENT OF RICHARD B. FRANK,
PRESIDENT, BOARD OF VETERANS' APPEALS
PROFESSIONAL ASSOCIATION, INC.
BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION, AND
INSURANCE, COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 28, 1994

Mr. Chairman and members of the Subcommittee, on behalf of the Board of Veterans' Appeals Professional Association, I wish to thank the Subcommittee for this opportunity to appear.

Mr. Chairman, it now appears very likely that the Congress will pass legislation this year in accordance with the request of Secretary Brown to confer single member decisional authority on members of the Board of Veterans' Appeals. We believe that this step is not only appropriate but essential to assist us in meeting the timeliness crisis in the adjudication process. We are also convinced that single member decisional authority will only improve timeliness if we have experienced Board Members who can function efficiently as independent decision makers. We therefore support both H.R. 69 and H.R. 3240, which are vital to assuring the retention of qualified and experienced Board Members.

As of July 1993, there were 55 attorney members of the Board. Since then, six of our number will have departed to become Administrative Law Judges (ALJs). These individuals were all veterans and they possessed a combined total of over 100 years of experience at the Board. Of the remaining 49 attorney Board Members, 39, or 80 percent, have indicated they intend to apply to become ALJs. Of this 39, nine are currently working on their application, no fewer than 20 have already completed and submitted the arduous written application, and 14 are currently on the register maintained by the Office of Personnel Management (OPM). These 14 Board Members include six veterans.

If Board Members apply to become ALJs, they will be placed on the register maintained by the OPM and they will be offered positions. The historical record on these points is clear. Between 1980 and 1990, nine Board Members applied to become ALJs. Of the Board Members who did not severely restrict their geographical availability, all were offered and accepted ALJ positions. During this period, Board Members enjoyed pay comparability with ALJs, and the Social Security Administration was forming new classes of ALJs on a fairly regular basis.

Between the Federal Employees Pay Comparability Act of 1990 (Pay Act) and last summer, the OPM list for ALJs was effectively closed and extremely few new ALJs were hired. Six Board Members had applied to get on the list prior to its closure and the effective hiring freeze. Every one of them was placed on the list. In July 1993, the Social Security Administration (SSA) formed its first class of 21 new ALJs from the current list. Out of a pool of over 400 names, two of the six Board Members on the list were selected. These two Board Members between them had over 40 years of experience at the Board; both were veterans; one was rated as 70 percent disabled due to combat-incurred wounds. Between January and April 1994, 90 more ALJs were hired. Four of them were Board

Members, all of whom were veterans with a combined total of over 60 years of experience at the Board.

With respect to future hiring of ALJs by the SSA, we have been informed by our former colleagues who are currently ALJs that SSA has authority to hire over 100 new ALJs during this Fiscal Year and has projected large classes in May and July. Moreover, SSA is projecting large additional hiring of ALJs in Fiscal Year 1995. These hiring plans certainly conform with the Administration's announced intentions to reduce backlogs at SSA.

It is also pertinent that in 1994, the terms of the seven medical members of the Board will end, and the Chairman has indicated that he intends to replace them with attorneys. By statutory limitation, there are 63 Board Member positions, not counting the Vice Chairman and the Deputy Vice Chairmen. This translates into the need to fill 15 vacancies on the Board in July 1994, regardless of any other event. Thus, almost a quarter of the Board Member positions are guaranteed to turn over within three months. With the formation of new classes of ALJs between May and July, experienced Board Members will be leaving in numbers that will be impossible to replace. Moreover, in a December 1992 letter, the Chief Judge of the Social Security Administration Office of Hearings and Appeals stated to serving ALJs that the selection of women, minorities and disabled persons would be a priority in the future. If these priorities apply among Board Member applicants, we will suffer tremendous losses in diversity and among disabled veterans. Under the best of current circumstances, the Board will barely have the ability to replace the 15 vacancies that will occur within the next three months. Any further erosion in our cadre of experienced Board Members can not be made good.

The departure of experienced Board Members will cause irreparable damage to the claims adjudication process and severely aggravate the timeliness crisis. Without a high level of experience among Board Members, literally thousands of claimants will not receive every benefit due. Without a high level of experience among Board Members, every appellant bringing a claim to the Board will be directly affected because inexperienced Board Members will not be able to operate with the high productivity required to maintain timeliness. We believe that the loss of large numbers of experienced Board Members will more than offset any productivity gains through automation, single member decisional authority or administrative reforms. At least a quarter of the veterans' population is 65 or over. Thus, where claims for veterans' benefits are involved, the phrase "justice delayed is justice denied" has a special sting, for the grim reality is that ever more protracted delays in claims adjudication mean that many claimants will literally die before they receive answers to their appeals.

There are two basic reasons why Board Members are preparing to leave to become ALJs: the ill-considered legacy of the Veterans Judicial Review Act of 1988 (VJRA) which placed Board Members on terms of appointment, and the Pay Act of 1990 which severed the decades old status and compensation equity between Board Members and ALJs. I will address each of these in turn, and then discuss their impact on Board Member retention.

TERMS OF APPOINTMENT

Under the VJRA, members of the Board for the first time were placed on terms of appointment. As a result of this legislation, the Board Members are now the only Federal workers under the General Schedule who have had their civil service career positions converted to terms of appointment. The VJRA established a standard nine-year term and provides that a member may be reappointed; however, the enabling legislation mandated that the initial set of 66 appointments would be divided into three groups with inaugural terms of respectively three, six and nine years. The initial set of appointments were made effective in July 1991. Thus, after allowing for attrition from retirements and resignations, approximately one-third of the Board will reach the end of their inaugural terms in July 1994, July 1997 and July 2000.

The VJRA dictates that members of the Board will be appointed by the Secretary with approval of the President, based upon recommendations of the Chairman. 38 U.S.C. Section 7101(b)(2). The language of the VJRA does not provide:

ANY standard or criteria for appointment or reappointment

ANY requirement for an opportunity for hearing or presentation to the Chairman or Secretary by a member seeking reappointment

ANY requirement that a member be provided notice prior to the end of a term that he or she will not be reappointed

Moreover, the statutory language does not contemplate that any other official may act for those expressly identified as participating in the appointment process. Accordingly, under the current statutory scheme, if for any reason whatsoever proximate to July 1994, July 1997 or July 2000, there is no incumbent Secretary or Chairman, approximately one-third of the members of the Board will be automatically dismissed, regardless of their performance, and with devastating effect on the Board's ability to conduct hearings and issue timely and correct dispositions on pending appeals. While the Association in no way wishes to become embroiled in partisanship, we must note the simple facts that the round of appointments in July 1997 will follow a presidential election in November 1996 and the end of the term of the incumbent Chairman in early March 1997. Should there be a change of Administration, or internal change within an Administration, and if any misadventure then transpires during the first few months of 1997 in the process of the nomination and Senate confirmation of the Secretary or the Chairman, or in the subsequent process of recommendation and appointment of members of the Board, there would be a very grave danger that nearly one-third of the Board would be dismissed--not for cause, but as a result of an unintended effect of the VJRA.

While the extremely terse legislative history of the VJRA suggests that terms of appointment for Board Members were intended to enhance their independence, the actual scheme now in place has exactly the opposite effect and the imposition of terms on these previously career appointments has profoundly negative ramifications for appellants as well. For sixty years, the reality and perception has been that members of the Board have decided cases by applying the law to the facts found, regardless of any other considerations. The creation of what is effectively a term at whim opens the adjudication process to politicization and

manipulation. While any single Administration may find satisfaction in the belief in, or the reality of, its ability to tug the substantive outcome of appeals in any direction, once this process starts it will be hard, if not impossible, to check. Tides that rise, also fall. When individual merits no longer control the outcome of appeals, we will have a lottery, not an adjudication process and veterans and their dependents will lose both justice and faith in the system.

Terms of appointment, per se, will not preclude the recruitment of individuals to become members of the Board, but they already have and will continue to drain the pool of candidates of precisely those individuals best qualified to serve. Stated plainly, the fact is that no one without recent extensive experience in adjudicating claims for veterans' benefits can function with competence and with the requisite degree of dispatch as a member of the Board. The law governing veterans' benefits has always been complex and arcane. The advent of judicial review has had an exponential impact on the recondite nature of the field. The Board has recruited almost entirely from within because we believe that no written test, set of paper credentials or interview skills will guarantee the high level of performance we demand to keep the appellate system operating with our immense case load. We believe it takes from seven to ten years for an individual to master the law and the medicine central to the veterans' benefit program. Then only those who have competitively demonstrated their ability by actual performance on the job are selected for membership on the Board.

The organization of the Board around a small cadre of very highly skilled subject matter experts has been demonstrably cost effective. It is a system, however, dependent upon stability and the ability of the Board to retain high quality counsel to train and ultimately promote. The prospect now is that a counsel will work very hard for seven to ten or more years before qualifying for an appointment. That appointment, however, is no longer a career position, but a term with no guarantee that merely doing the job well will secure reappointment. This leaves a counsel facing the prospect that in typically the seventeenth to twentieth year of a career in the Federal government, at a time when there may well be a family to consider, he or she will be cast out without notice. This scenario has already exacted its toll. There are now at least seven counsel, most of them senior counsel, who were acknowledged by Board Members as likely candidates for the Board who have left the Board for other Federal agencies. In each case, a major, if not the sole reason for their departure has been the term issue.

We do not believe that there is any defense on the merits of the current statutory scheme of terms of appointment for members of the Board. If the status quo is maintained, there is no doubt that we will sustain devastating loses of experienced and qualified Board Members. We fully support H.R. 3240 which eliminates terms at whim. At the same time, we would emphasize that we are not opposed to any reasonable and fair form of accountability. In our discussions with Veterans Service Organizations, several concepts have been advanced to provide for standards for reappointment and to eliminate the current "automatic pilot" feature under which Board Members could be dismissed because of vacancies in the offices mandated in the appointment process or sheer bureaucratic inertia. We have also presented a discipline and removal procedure modeled after provisions in the Administrative Law Judge Corps Bill which passed the Senate in November 1993. We would be most happy to participate in further dialogue on such proposals.

STATUS AND PAY COMPARABILITY

The second major reason why Board Members are preparing to depart in large numbers to become ALJs is because they had their responsibilities and the complexity of their work substantially increased by the VJRA, and then they lost the equality of status and pay with ALJs they had enjoyed under the Pay Act. For a great many years, Board Members were compensated equally as GS-15s with the very great majority of ALJs, including all of the over 800 who adjudicated claims for Social Security benefits. The Pay Act dramatically changed this situation by placing ALJs on a separate compensation scale. Speaking in simple terms, the Pay Act alters the compensation of ALJs to such an extent that they will be receiving at least $20,000 per year more than members of the Board. This differential will only increase with cost of living adjustments, not to mention the equally dramatic differences in retirement and insurance benefits. We must emphasize that the Pay Act in no way changed the duties or responsibilities of ALJs; it only changed the compensation deemed worthy of that work.

In conclusion, we believe that pay comparability between Board Members and ALJs is a matter of equal pay for equal work and simply involves a restoration and reaffirmation of the equality between the adjudication of claims for veterans' benefits and claims for other government benefits usually earned under far less arduous circumstances.

STATEMENT OF JOHN HANSON, DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE SUBCOMMITTEE ON
COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

APRIL 28, 1994

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Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates the opportunity to share its views with you regarding several legislative proposals affecting certain veterans' disability and death benefits and the status of members of the Board of Veterans Appeals.

H.R. 4088 would provide a 3.0 cost-of-living adjustment (COLA) in veterans' disability compensation and survivor's dependency and indemnity compensation (DIC) benefits, effective December 1, 1994.

The American Legion wishes to commend you, Mr. Chairman, for your efforts and those of this Subcommittee in helping to ensure that service disabled veterans and their survivors continue to receive an annual adjustment in their monthly benefits which fairly reflects the increased cost of living.

In addition, we are relieved that this proposal does not seek to automatically index future adjustments in disability compensation and DIC benefits to any adjustment in the benefits provided for Social Security (SSA) and VA pension recipients. We take this opportunity to express our continuing opposition to the concept of indexing the VA disability compensation and DIC COLA to the SSA COLA. Our position in this matter is based on the long-standing belief that hearings on the subject of proposed adjustments in disability compensation and DIC before the House and Senate Veterans Affairs Committees provide an important and necessary forum in which issues related to the needs of service disabled veterans and their survivors can be presented for discussion. This valuable opportunity would be lost, if future compensation and DIC COLAs were to be automatically indexed to adjustments in SSA benefits.

H.R. 1968 would amend 38 USC 5112 to change the effective date of the discontinuance of certain benefits based on death of the veteran who was in receipt of disability compensation or pension and who has a surviving spouse from the last day of the month before the month of death to date on which death occurs. This provision would authorize the payment of disability compensation or pension for the calendar month in which the veteran's death occurs or any portion thereof to the surviving spouse.

This measure would also amend 38 USC 5110 to change the effective date for the payment of DIC benefits from the first day of the calendar month following the month of the award of DIC to the day following the date on which the veteran's death occurred.

The American Legion supports the additional benefits to the surviving spouses of certain deceased veterans that would be payable under this proposal. Presently, not only does the economic support represented by the veteran's monthly compensation or pension check abruptly stop at the time of the veteran's death, but the surviving spouse is not entitled to any part of the veteran's benefits for the month in which death occurs. We believe this change will overcome an inequity which exists in the current law and provide a small measure of support and assistance at a time of increased family financial need.

H.R. 2997 and H.R. 3159 would amend 38 USC 1116 to include six additional diseases associated with exposure to certain herbicide agents which will be presumed to be service connected. These measures codify determinations by the Secretary of Veterans Affairs that an association exists between exposure to herbicides used in Vietnam during the Vietnam era and the subsequent development of Hodgkin's disease, porphyria cutanea tarda, cancer of the lung, larynx, or the trachea, and multiple myeloma.

Since the late 1970s, The American Legion has been in the forefront on the issue of the long-term health effects of exposure to Agent Orange. Consistent with our continuing efforts to ensure that any veterans who were exposed to Agent Orange and who may have developed a disease which has been recognized as being related to such exposure is properly compensated, we strongly support codification of these diseases into the provisions of title 38, United States Code.

Mr. Chairman, we have an additional concern related to this legislation. The American Legion, at the 1992 National Convention, adopted a resolution setting forth its policy on Agent Orange. Among the issues addressed in this resolution is the inequity which exists in the current statute which requires that service in Vietnam, for the purpose of the presumption of service connection under 38 USC 1116 for those diseases associated with exposure to certain herbicide agents, must have been during the Vietnam era. Our position is based on the fact that Agent Orange was used in Vietnam prior to August 5, 1964 and U. S. armed forces personnel may have been exposed. As it stands now, those veterans who served in Vietnam during the early 1960s who may have subsequently developed or died of a disability which has now been identified with exposure to Agent Orange are not eligible for either disability compensation or

DIC benefits. The American Legion would like to see this restriction removed.

With regard to H.R. 69 and H.R. 3240, these measures propose the reclassification of the positions of members of the Board of Veterans Appeals to the same level and pay status as an administrative law judge (ALJ) under 5 USC 5372. In addition, terms of appointment for members of the Board would be eliminated.

Mr. Chairman, The American Legion will grudgingly accept the need to bring pay equity back to the members of the Board of Veterans Appeals, and pay them the equivalent rate of an administrative law judge. It is our understanding that the difference in pay has worked against the Board's members in the past, and we also understand that the disparity could lead to the loss of even greater numbers of the more qualified and experienced Board members to the more attractive and lucrative ALJ positions. The Board is under enough pressure now, and should not have to deal with or be distracted by the continuing prospect of the loss of its better personnel.

However, The American Legion cannot and will not, under any circumstances, accept the notion that members of the Board of Veterans Appeals should have no limit on the terms they serve. Under the statute, individuals have been appointed as members of the Board for a set term. The statute also provides that they may be reappointed for additional terms. That seems fair. It also seems perfectly easy to understand that the members, when they accepted their positions on the Board, knew just how long their appointments were for.

Why now should they expect to be given lifetime appointments? I realize we are not here today to discuss the merits of similar appointments of ALJs elsewhere in the Federal government. However, I will tell you quite frankly that The American Legion sees no sense in doing it in VA. Furthermore, we will use every resource at our disposal to fight the idea.

We do not believe this proposal, if enacted, will in any way ensure that veterans receive better or more timely service. It will not help drive down either the mounting backlog of pending cases at the Board, or the number of poor decisions made by the Board's members. What it does ensure is that nearly 70 attorneys will have jobs for life. Mr. Chairman, I must tell you that is not a compelling argument.

If you have any doubts about how much we oppose the notion of lifetime appointment for Board members, I will be delighted to answer your questions.

Mr. Chairman, that concludes our statement.

STATEMENT OF

BOB MANHAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

COMPENSATION AND PENSION PROGRAMS AND PERSONNEL AT THE BOARD OF VETERANS' APPEALS

WASHINGTON, DC APRIL 28, 1994

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for inviting the Veterans of Foreign Wars of the United States (VFW) to participate in this very important hearing this morning. It is my professional and personal pleasure to present my organization's views on this subject. The great majority of our 2.2 million members have been or are presently involved in the claims process at either the regional office (RO) level or the Board of Veterans Appeals (BVA). Also, many of our members are recipients of annual cost-of-living adjustments (COLA). Each of the six bills under consideration this morning is addressed in its numerical order.

H.R. 69, introduced by Congressman Bilirakis (R.FL), proposes to pay members of the Board of Veterans' Appeals (BVA) other than the Chairman and Vice Chairman at salaries presently paid to administrative law judges. The VFW supported this action earlier as a member of the Independent Budget for Department of Veterans Affairs, Fiscal Year 1995. At that time the VFW said, in essence, that to ensure the BVA can retain trained, qualified Board Members, the members should be paid equal to Administrative Law Judges (ALJs). The BVA Board Members work performance standards are comparable to Social Security ALJs, in our opinion.

H.R. 1986, introduced by Congressman Tom Lewis (R.FL), is designed to allow Department of Veterans Affairs (VA) to prorate the amount of compensation and/or pension money paid to the surviving spouse based on date of death of the veteran. The VFW absolutely supports this very reasonable and long overdue action. At the present time no compensation or pension money is forthcoming unless the veteran dies literally at the stroke of midnight on the last day of any given month. Hence, no monies are presently paid for any portion of the veteran's last month of life.

H.R. 2997, introduced by this subcommittee's chairman, Mr. Slattery (D.KS), and immediately cosponsored by eight other subcommittee members is strongly supported by the VFW. This bill proposes to add two diseases to the list of VA presumed service-connected diseases associated with exposure to herbicide agents used in the Vietnam combat theater of operations. This bill adds both Hodgkin's disease and porphysia cutanea tarda if either is determined to be at least 10 percent disabling.

H.R. 3159, introduced by Mr. Lane Evans (D.IL), also a member of this subcommittee is strongly supported by the VFW. This bill will add to the list of presumptive VA recognized diseases cancer of the lung, the larynx, or of the trachea and also the disease of multiple myeloma, a result of exposure to various herbicides used in Vietnam.

H.R.3240 was introduced also by Congressman Lane Evans (D.IL). This is a two part bill that affects BVA personnel. The VFW does not support SECTION 1. ELIMINATION OF TERMS OF APPOINTMENT FOR MEMBERS OF THE BOARD OF VETERANS APPEALS. Our rationale is that unlimited tenure would lead to varying degrees of professional stagnation in the BVA appeals processing life cycle. Conversely, periodic changes, based on term limitation, would provide for fresh views and different approaches to their routine work cycle. However, the VFW is not opposed to a different, longer term of service at BVA than the present 6 year limitation. The overall intent of the VFW position is to ensure a high degree of trust and professionalism within the BVA.

The VFW does support SECTION 2. PAY OF MEMBERS OF THE BOARD OF VETERANS APPEALS. The VFW rationale for our support is the same as provided for bill H.R. 69 previously cited.

H.R. 4088, introduced by Mr. Slattery, has the short title "Veterans Compensation Rate Amendments of 1994" and deals with the cost-of-living adjustment in the rates of VA pensions, service-connected disability compensation, dependency and indemnity compensation for surviving spouses and children, as well as the special clothing allowance for certainly categories of severely disabled veterans. The effective date cited in this bill is December 1, 1994. While this is a good COLA bill, and is using the Administration's best estimate of what the consumer price index (CPI) will be next year, the VFW prefers bill S. 1927, introduced on March 11, 1994, by Senator Rockefeller and cosponsored by every member of the Senate Committee on Veterans Affairs. As recently as March 24 it was my privilege to appear before that Senate committee and present the VFW's endorsement to bill S. 1927 which clearly proposes that the COLA increase to take effect on December 1, 1994, will be at least (emphasis added) equal to that provided for Title II of the Social Security Act. This means, for all practical purposes, widows and disabled pensioners as well as disabled veterans who receive service-connected disability will receive a COLA equal to the computed CPI determined at the end of this calendar year. In concluding our remarks on this bill the VFW asked further that the senate committee consider increasing the 1995 COLA rates to something more than the determined CPI figure, estimated to be 3 percent at this time. We cited the fact that because widows and pensioners derive the majority of their income from VA monies this would be a compassionate thing to do. Our suggested source of the increased money could come from the peace dividend cited in VFW Resolution No. 613. A copy is attached to this statement for your consideration.

Thank you once again, Mr. Chairman, for inviting the VFW to this important hearing. This concludes our statement. I shall answer whatever questions you and the committee members may have.

STATEMENT OF

MICHAEL F. BRINCK
AMVETS NATIONAL LEGISLATIVE DIRECTOR

Thank you, Mr. Chairman, for holding this hearing and for inviting AMVETS to testify on several bills affecting Department of Veterans' Affairs (VA) compensation and pension programs and also concerning the members of the Board of Veterans' Appeals. We will address the bills in the order in which they appeared in your letter of invitation for this hearing.

H.R. 4088 - the Veterans' Compensation Rate Amendments of 1994

AMVETS is grateful for the proposed three percent cost-of-living adjustment (COLA) increase in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for their survivors. But we continue to oppose linkage of the consumer price index rate and VA COLAs as enacted under the Omnibus Budget Reconciliation Act (OBRA) of 1990. To accept such a link is to ignore the extraordinary daily living expenses incurred by disabled veterans that often far exceed those of non-veterans. AMVETS again urges you, Mr. Chairman, and your colleagues to break the link between VA COLA and the CPI, and to consider the needs of America's disabled veterans and their families on their own merits.

Concurrent receipt is another issue which concerns AMVETS. VA disability compensation is paid for injury or illness incurred in or aggravated by military service and is based on lost earning potential caused by the disabilities. Military retired pay is based strictly upon honorable service. It is AMVETS' firm belief that these two benefits are separate and distinct, and the receipt of one has neither bearing on nor relationship to the other, and we urge you, Mr. Chairman, and your colleagues to join us in supporting H.R. 65, a bill introduced by Congressman Bilirakis that would restore concurrent receipt of military retired pay and VA disability compensation.

Yet retired veterans who subsequently are awarded VA disability compensation have their retired pay offset by an amount equal to the amount of VA compensation they receive. That a retired veteran with service-connected disabilities should receive less military retired

pay than a peer without disability defies logic. Concurrent receipt must be restored, and AMVETS is reaffirms our commitment to work to rectify this unjustified inequity.

Similarly, military separation incentives to accomplish the defense drawdown are unrelated to any other benefit or entitlement. A veteran in this category must repay the full amount of a separation incentive prior to receipt of VA disability compensation. This is particularly disturbing, since military separation incentives are instrumental in helping veterans to bridge the economic gap between the military and civilian life. What is most distressing is the fact that disabled veterans trying to find a place in the private sector are being made to suffer twice for their disabilities. AMVETS supports H.R. 3731, introduced by Congresswoman Corrine Brown, which would protect the integrity of military separation incentives. We ask for your support for it and any legislation that would ensure that receipt of VA compensation is not contingent upon forfeiture or repayment of any other entitlement.

In spite of our concern for Congress' overall approach regarding Department of Defense and VA entitlements, AMVETS is pleased to support H.R. 4088.

H.R. 2997 and H.R. 3159

H.R. 2997 adds Hodgkin's disease and Porphyria cutanea tarda to the list of service-connectable disabilities associated with exposure to certain herbicide agents. H.R. 3159 would similarly add cancer of the lung, larynx or trachea and multiple myeloma to the same list of service-connectable diseases. AMVETS is pleased to support both of these bills.

H.R. 69 and H.R. 3240

H.R. 69 would provide for reclassification of members of the Board of Veterans' Appeals (BVA) and to ensure pay equity between them and administrative law judges. H.R. 3240 would eliminate the terms of appointment for BVA members and ensure pay equity between them and administrative law judges. AMVETS supports both of these bills. For many years BVA has lost highly qualified board members to the more lucrative pay structure of administrative law judges and because of the limited duration of appointments.

This loss of knowledgeable BVA members is partly responsible for the declining productivity at the board. Pay equity will help slow the revolving door at BVA. However,

a lifetime tenure of appointment brings risks associated with loss of accountability. AMVETS believes there is a reasonable middle ground between lifetime tenure and capricious removal at the end of an appointment. We envision BVA's adoption of accountability standards allowing the chairman to make the hire and fire decisions regarding members of the board based on their performance, as is the current policy for administrative law judges. We are optimistic that these improvements will not only stabilize the work force, but will also provide much needed continuity and uniformity to begin the task of reducing the case backlog. AMVETS is hopeful that the changes contained in these two bills will ensure both short-term and long-term benefits to both BVA and America's veterans.

H.R. 1986

H.R. 1986 provides that the effective date for discontinuance of compensation and pension paid by the Secretary of Veterans' Affairs shall be the date on which the recipient dies, rather than the last day of the preceding month, in the case of a veteran with a surviving spouse. On the whole, AMVETS views this bill as a step in the right direction. While it allows a surviving spouse to receive a fraction more of compensation and pension benefit, it does not consider the often dire circumstances encountered by surviving spouses following the veteran's death.

The instantaneous loss of income in the interim during the transition from compensation and pension to dependency and indemnity compensation (DIC) forces many surviving spouses into devastating financial circumstances. The interim between these entitlements varies depending on how soon VA is notified of the veteran's death, how long the surviving spouse waits to apply for DIC, the amount of time required to verify entitlement, the DIC award authorized and payments initiated. Frequently overpayments to the surviving spouses are created by delays in notifying VA of the veteran's death. Also consider the fact that the quality of life of the surviving spouse is most often significantly reduced following the loss of the veteran. This is true partly because the DIC benefit is generally less than the combined total family income prior to the veteran's death including compensation and pension. Surviving spouses deserve a period during which they can make reasonable adjustments to a scaled-down lifestyle.

Mr. Chairman, AMVETS urges you and the members of the subcommittee to consider legislation that would continue payment to a surviving spouse of VA compensation and pension following the death of the veteran beneficiary for a period of three months. AMVETS looks forward to working with members and staff of this subcommittee toward enactment of this important issue.

Thank you again for allowing AMVETS to participate in this hearing. We look forward to continuing our cooperative efforts on behalf of America's veterans. Mr. Chairman, this concludes my statement.

STATEMENT OF
RICK SURRATT
ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
APRIL 28, 1994

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than 1.4 million members of the Disabled American Veterans (DAV) and its Women's Auxiliary, I am pleased to appear here today to present our views on a bill providing a cost-of-living adjustment for service-connected disability and death benefits and on several other bills which affect the service connection of disabilities, the status of members of the Board of Veterans' Appeals, and the effective date of discontinuance of compensation or pension as a result of death of the veteran.

The actions of the Subcommittee on these bills are of great importance to the constituents of the DAV and this Subcommittee. We appreciate your affording us the opportunity to share our views on these matters.

H.R. 4088

Mr. Chairman, you introduced H.R. 4088, a bill to provide veterans with service-connected disabilities and surviving spouses receiving dependency and indemnity compensation (DIC) a cost-of-living adjustment. The bill would also adjust the allowances for dependents of beneficiaries under these programs as well as the clothing allowance. The adjustment would result in a three-percent increase in the rate of these benefits, effective December 1, 1994.

If enacted, this bill would offset against the increase in the cost of living incurred by disabled veterans who have incomes part or all of which are fixed and whose buying power would otherwise be eroded. Insofar as the provisions of this bill would accomplish that purpose, we applaud it and the Subcommittee's efforts on behalf of disabled veterans, their dependents, and survivors. This is certainly a positive and beneficial measure.

The cost-of-living adjustment is based on a projected three-percent rise in the cost of living. We are confident that, should the increase in the cost of living prove to be more than three percent, appropriate measures would be taken to equalize the raise.

We are concerned that the bill provides for no adjustment under section 1114(k), of title 38, United States Code. The economic impact of a given disability increases proportionate to the increase in the cost of living. If this is true for all other disabilities, it is true for those compensated under section 1114(k).

We therefore strongly urge that the Subcommittee remedy this matter by making the necessary changes in the bill.

H.R. 2997

Mr. Chairman, you also introduced H.R. 2997. This bill would amend section 1116 of title 38, United States Code, by adding two additional diseases, Hodgkin's Disease and porphyria

cutanea tarda, to the list of disabilities which may be presumptively service connected in the case of a veteran exposed to a herbicide agent while serving in the Republic of Vietnam. This would serve to codify these diseases, already added to the list by the Secretary of Veterans Affairs.

The effective date of this amendment would be the effective date of the final regulation of the Secretary.

The DAV supports this technical amendment.

H.R. 3159

Similarly, Mr. Chairman, H.R. 3159 would include two additional categories of disabilities under Section 1116 of title 38, United States Code. This bill would add cancer of the lung, larynx, or trachea, and multiple myeloma to the statutory list of specified disabilities for which presumptive service connection may be established when the affected veteran was exposed to herbicide agents in Vietnam.

Mr. Chairman, we believe it is preferable for the specified list of disabilities codified in the statute to be regularly amended to expressly include additional named disabilities recognized by the Secretary rather than merely have them codified by reference to the Secretary's regulations. H.R. 2997 and H.R. 3159 would accomplish that preferred course.

H.R. 69

Mr. Chairman, Mr. Bilirakis introduced H.R. 69, a bill which would amend section 7101 of title 38, United States Code, to equate the pay and benefits of members of the Board of Veterans' Appeals to that of administrative law judges (ALJs).

The DAV is already on record as supporting legislation to establish pay comparability between Board members and ALJs. This was a recommendation of the DAV and other veterans' organizations in the Independent Budget presented to Congress for Fiscal Year 1995. The reasons for this legislation are compelling. The demands placed on Board members are very heavy, and maximum productivity without compromising quality requires the retention of trained, experienced Board members. Thus, it is essential that measures be instituted to prevent the flight of highly qualified members to ALJ positions with other agencies. We simply cannot afford to lose these Board members at a time when Board personnel and resources are already severely strained.

As this Subcommittee no doubt is already aware, the substantive and procedural aspects of veterans' law are unique; the traditional approach and legal analyses often do not serve VA appellants in the way Congress intended. Therefore, a background in veterans law, as opposed to a general legal background, is indispensable. There is no substitute for Board experience when it comes to the special dedication and insight that are cultivated in the setting of the Board. The loss of that special talent is very detrimental to the special mission of the Board and therefore the mission of the Department of Veterans Affairs (VA). This loss must be prevented. Accordingly, this bill is not only a measure to bring equitable treatment to dedicated members of the Board, itself a worthy goal, but is also essential to maintaining an acceptable level of services to veterans.

The DAV reaffirms its support for the principle of pay equity embodied in this bill.

H.R. 3240

Mr. Chairman, H.R. 3240, introduced by Mr. Evans, includes a provision for pay equity for Board members which is functionally identical to that in H.R. 69. Thus, for the same reasons, the DAV commends and appreciates that initiative in this Bill.

H.R. 3240 would also eliminate the current nine-year term of appointment for Board members. Under its provisions, these appointments would be permanent. The DAV supports the institution of career appointments for Board members. Again, the ability to recruit and retain high quality personnel is essential if continuity within the membership and process of the Board is to be maintained.

With career appointments, it is necessary to have authority for removal of a member for cause, however. We observe that this Bill would keep in place the existing authority for removal in section 7101 of title 38, United States Code.

The DAV believes that the amendments in this Bill establishing pay equity and career appointments are a very reasoned approach to the task of maintaining experienced and quality members in the Board of Veterans' Appeals. This is an important element in the larger goal of making VA's claims processing more efficient.

H.R. 1986

Mr. Chairman, Mr. Lewis introduced H.R. 1986, a bill that would provide for discontinuance of compensation or pension on the date the veteran dies rather than the last day of the preceding month as is now the case.

As we understand it, this bill would benefit two classes of surviving spouses: the surviving spouse who has no entitlement to survivors' benefits from the VA and the surviving spouse whose own monthly benefit is greater than that the veteran was receiving. Under current law, neither of these two classes of surviving spouses receive any benefits for the month in which the veteran died.

The interplay of several sections of current law result in these two classes of surviving spouses receiving no benefits for the month of death. Only the surviving spouses of veterans whose monthly compensation or pension was greater than the survivor's monthly benefit receive monetary payment for the month in which the death occurred.

Under section 5112(b)(1) of title 38, United States Code, the veteran's benefits are discontinued the last day of the month preceding his or her death. Thus, there is no benefit payable for the month or any part of the month of death to the surviving spouse who has no entitlement to survivors' benefits. Under section 5110(d)(1) of title 38, United States Code, the effective date of an award of Dependency and Indemnity Compensation (DIC), for example, for the surviving spouse is the first day of the month of death. However, under section 5111(a) of title 38, United States Code, the general rule is that the effective date from which the monetary entitlement begins to run based on an award is the first day of the month following the month in which the award was effective. Under section 5111(c)(1), this general rule is limited to situations in which the surviving spouse's monthly monetary entitlement is greater than that which the veteran was receiving, the result being that this surviving spouse receives no benefits for the month of death. If the veteran's monthly rate was greater than the surviving spouse's monthly DIC rate, then, under section 5310 of

title 38, United States Code, that surviving spouse will receive for the month in which the veteran died the same rate the veteran would have received but for his or her death. Accordingly, by that twist in the law, the surviving spouse of a veteran whose monthly benefit rate is greater than the spouse's monthly benefit rate receives benefits for the entire month of death where the other classes of spouses receive nothing.

This Bill would partially alleviate that inequity in some cases. Under the proposed amendments in H.R. 1986, section 5112(b)(1)(B) would discontinue the veteran's award of compensation or pension effective the date on which death occurs. The partial monthly benefit due the veteran would be paid to the surviving spouse except where the spouse is entitled to a full month's benefits at the veteran's rate as provided under section 5310.

Therefore, those surviving spouses who, under current law, receive no benefits for the month of the veteran's death would, under this amendment, receive a partial amount of the veteran's benefit proportionate to the number of days the veteran lived in that month.

Mr. Chairman, while this bill would partially remedy the inequity in the existing law, it, at the same time, not only leaves in place part of that inequity but also superimposes yet another inequity. Under existing law, surviving spouses receive unequal treatment solely on the basis of whether the veteran's monthly benefit rate was greater or less than the surviving spouse's benefit rate.

Under this Bill, the spouse whose own monthly rate is higher than that of the veteran will now receive benefits for some part of the month of death. However, that could be from one to thirty-one days. The residual inequity is that one spouse receives a full month of benefits while another receives less than a full month. The added inequity is that two spouses entitled to a partial month's benefits under these amendments might yet be affected very differently although, other than the date of death, situated identically. One spouse might receive benefits for the one day that the veteran lived within that month while a second spouse might receive essentially a full month's benefits if the veteran lived twenty-nine or thirty days out of that month, for example. It is quite unlikely that the real adverse economic impact upon the two surviving spouses because of the veteran's disabilities and deaths would be significantly different, however.

Mr. Chairman, the DAV supports and appreciates the apparent goal underlying this bill. However, the DAV believes that the simpler and more appropriate remedy would be to amend section 5112 to provide an end of the month rule for discontinuance of compensation or pension with corresponding amendment of section 5111. Section 5111 should be amended to provide for commencement of the payment period for a surviving spouse's benefits to be the first day of the month following the month of death. Section 5310, which now provides for payment of the veteran's rate for the month of death, when greater than the surviving spouse's rate, would become unnecessary because the veteran's benefit would be paid for the month of death by reason of the end of the month rule.

Mr. Chairman, these several bills all have beneficial provisions. The DAV sincerely appreciates the efforts of this Subcommittee to make improvements in veterans' programs.

This concludes our statement, Mr. Chairman. I would be happy to respond to any questions you and the members of the Subcommittee may have.

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STATEMENT OF

VIETNAM VETERANS OF AMERICA

Presented by

William F. Crandell
Legislative Advocate

Before the
House Veterans Affairs Committee
Subcommittee on Compensation and Pension

on

H.R. 4088, H.R. 2997, H.R. 3159,
H.R. 69, H.R. 3240 and H.R. 1986

TOPICS: COLA Adjustment, Agent Orange-related Disabilities, Adjudication, Date of Death

April 28, 1994

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INTRODUCTION

Mr. Chairman and members of the Committee, Vietnam Veterans of America (VVA) appreciates the opportunity to present its views on six pending bills, H.R. 4088, H.R. 2997, H.R. 3159, H.R. 69, H.R. 3240 and H.R. 1986.

H.R. 4088

Vietnam Veterans of America continues to believe that it is unfair to ask disabled veterans and the widows and children of those who fought for this country to take the lead in halting inflation. We support a cost-of-living adjustment (COLA) reflecting the consumer price index (CPI). Under no circumstances should veterans be treated to a cost of living value lower than that accorded to Social Security recipients.

H.R. 2997 and H.R. 3159

VVA commends you, Chairman Slattery, as well as Mr. Evans and your colleagues, for taking the initiative to codify Secretary Brown's administrative rulings to make Hodgkin's disease, porphyria cutanea tarda (PCT--a liver disorder), respiratory cancers (lung, larynx and trachea) and multiple myeloma (a cancer involving the bone marrow) compensable on the basis of service-connected exposure to Agent Orange/dioxin. This is an important step that VVA has advocated since the issuance of the 1993 NAS report, in order to prevent future injustice from falling on the Vietnam veterans who are victims of these conditions.

We must note with concern, however, that Secretary Brown failed to rule to favorably compensate for prostate cancer even when the NAS report cited "limited/suggestive evidence of an association" to dioxin exposure -- the same evidentiary category as the now compensable diseases of respiratory cancers and multiple myeloma. VVA is disappointed that the legislation before us today also fails to compensate victims of prostate cancer who were exposed to Agent Orange/dioxin during the course of their service to this country.

Additionally, based upon close evaluation of the NAS report, National Veterans Legal Services Project (NVLSP) has filed suit against Secretary Brown on the basis that his findings of no "positive association" with dioxin exposure for the diseases prostate cancer, hepatobiliary (liver and bile) cancers, and nasal/nasopharyngeal cancer were "arbitrary, capricious, or contrary to law". VVA suggests that the legislation before this Subcommittee be amended to add these three diseases to the list of conditions which are statutorily compensable based upon service-connected exposure to Agent Orange/dioxin.

While there are numerous conditions for which future scientific study will surely show an association to Agent Orange/dioxin exposure, current data almost unquestionably indicates a correlation with these three diseases. Since Secretary Brown has negatively adjudicated the cases of veterans effected by prostate cancer, hepatobiliary cancers, and nasal/nasopharyngeal cancer in one clean sweep, statutory language is the only way to achieve justice and prevent a second victimization of these Vietnam veterans who are afflicted with these life-threatening diseases as a result of their military service.

H.R. 69 and H.R. 3240

Last October, in testimony before this subcommittee, we testified in support of Mr. Evans' H.R. 3240 as a managerial step toward resolving the terrible backlog of cases at the Veterans Benefits Administration (VBA). H.R. 3240 would eliminate terms of appointment for members of the Board of Veterans Appeals, giving Board members a greater degree of independence than they have under current law, and would set their compensation and benefits at levels comparable

to administrative law judges, which would recognize their value and slow down their exodus from the system.

VVA has supported the Evans bill vigorously. It is important to recognize that not all of the solutions at the BVA can come from shortcuts in adjudication. Mr. Bilirakis has presented a similar bill in H.R. 69. Both of them ensure pay equity between members of the Board of Veterans Appeals, an important step toward giving BVA the ability to retain skilled and seasoned personnel.

But in comparing the two measures, VVA prefers H.R. 69. Eliminating the terms of appointment seems to us an unnecessary step, one that is capable of giving members of the Board of Veterans Appeals more freedom than is warranted. We prefer H.R. 69, but we urge the Subcommittee to adopt the best features of both bills.

Mr. Chairman, there remains a great deal to be done to resolve the growing backlog at BVA. You have directly and forthrightly urged us and other veterans service organizations (VSOs) to agree upon recommendations for resolving the adjudication problems in the VBA, and we took you up on it. Most of the veterans service organizations met several times and sent this committee a letter last summer detailing 17 suggestions for improving the quality and timeliness of decisions of the Regional Offices (ROs) and the Board of Veterans Appeals (BVA).

This kind of unanimity among the VSOs is a rare thing, and it ought to be taken seriously. Mr. Chairman, when you asked the veterans service organizations where the problem was and what to do about it, we all agreed that the problem was at the Regional Offices. It is worth noting that a number of the VSOs' unanimous recommendations appear in the administrative experiment being conducted now by VA in the New York City Regional Office's "Prototype Unit," which Vice President Gore honored on March 13 of this year for typifying the "Reinventing Government Campaign."

Unaware of the New York City experiment, the VSOs reached many of the same conclusions, drawing upon our experience with the claims system. Both the VSOs and the "Prototype Unit" put forward the importance of the team concept, both cut down on steps and shifted the focus from paperwork to veterans. The "Prototype Unit" cut 25 steps down to 8, recognizing that existing work rules reward case-shuffling rather than work well done. Not only are claims handled more quickly, they seem to actually be resolved in the Regional Offices, where they should be resolved.

We have yet to see the problem of the Regional Offices addressed in legislative proposals put before the Subcommittee on Compensation and Pension. VVA has been informed by Subcommittee staff that the VSO recommendations have not significantly changed the Veterans Appeals Act of 1993, subject of the Subcommittee's October 13 hearing, which is now headed towards markup with no further input being sought or accepted. Many of our recommendations were adopted by the Senate Committee on Veterans Affairs on April 14 in S. 1904 and S. 1908. We strongly urge this Subcommittee to consider these measures sympathetically and soon.

H.R. 1986

There is a simple, straightforward fairness to H.R. 1986. The surviving spouse of an American veteran -- male or female -- has already given our society a great deal and has suffered an irreparable loss. The current system which fixes discontinuance of compensation and pension to a monthly cycle is outmoded, capricious and cruel.

H.R. 1986 provides that the effective date of discontinuance of

compensation and pension in the case of a surviving spouse shall be the date on which the recipient dies rather than the last day of the preceding month. Vietnam Veterans of America supports this sensible bill.

Mr. Chairman, this concludes our testimony.

STATEMENT OF

RUSSELL W. MANK, NATIONAL LEGISLATIVE DIRECTOR

PARALYZED VETERANS OF AMERICA

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

OF THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

April 28, 1994

H.R. 4088 - TO PROVIDE A 3 PERCENT COST-OF-LIVING ADJUSTMENT IN RATES OF SERVICE-CONNECTED DISABILITY COMPENSATION AND DIC.

H.R. 69 - TO PROVIDE FOR THE RECLASSIFICATION OF MEMBERS OF THE BOARD OF VETERANS' APPEALS AND TO ENSURE PAY EQUITY BETWEEN THESE MEMBERS AND ADMINISTRATIVE LAW JUDGES.

H.R. 3240 - TO ELIMINATE THE TERMS FOR APPOINTMENT FOR MEMBERS OF THE BOARD OF VETERANS' APPEALS AND TO ENSURE PAY EQUITY BETWEEN THESE MEMBERS AND ADMINISTRATIVE LAW JUDGES.

H.R. 2997 - TO CODIFY THE ADDITION BY THE SECRETARY OF VETERANS AFFAIRS OF HODGKIN'S DISEASE AND PORPHYRIA CUTANEA TARDA TO THE LIST OF DISABILITIES WHICH MAY BE PRESUMED TO BE SERVICE-CONNECTED AS THE RESULT OF EXPOSURE TO CERTAIN HERBICIDE AGENTS.

H.R. 3159 - TO CODIFY THE ADDITION BY THE SECRETARY OF VETERANS AFFAIRS OF CANCER OF THE LUNG, LARYNX OR TRACHEA AND MULTIPLE MYELOMA TO THE LIST OF DISABILITIES WHICH MAY BE PRESUMED TO BE SERVICE-CONNECTED AS THE RESULT OF EXPOSURE TO CERTAIN HERBICIDE AGENTS.

H.R. 1986 - TO PROVIDE THAT THE EFFECTIVE DATE FOR DISCONTINUANCE BASED ON DEATH OF AN AWARD OF COMPENSATION OR PENSION SHALL BE THE DATE ON WHICH THE RECIPIENT DIES.

Mr. Chairman, and Members of the Subcommittee, the Paralyzed Veterans of America (PVA) appreciates this opportunity to express our views on the following bills.

PVA supports H.R. 4088, which provides for an equitable increase, effective December 1, 1994, in the compensation cost-of-living adjustment (COLA) paid to veterans with service-connected disabilities and survivors receiving Dependency and Indemnity Compensation (DIC). PVA notes that the estimated annualized rate of inflation, based upon the Consumer Price Index (CPI), is currently 3.3 percent. Last year the figure was 2.7 percent. H.R. 4088 would provide a 3 percent COLA. We further note that the COLA

contained in the companion bill in the Senate (S. 1927) is targeted to Social Security. If Social Security recipients receive an increase larger than 3 percent, we too, for the sake of fairness and equity, would hope to have our rate increased.

PVA remains opposed to permanently indexing veterans' compensation COLAs. We believe in Congress' historic authority to annually determine what an equitable COLA is. This permits Congress to consider all factors in determining the necessary increase to maintain veterans' compensation at current levels. The CPI may or may not accurately reflect all the economic and social actions and interactions that affect veterans. At the very least the CPI may not be accurate as it relates to the catastrophically disabled individual, and his or her special needs.

PVA supports the concept behind H.R. 69, a bill that would provide for reclassification of members of the Board of Veterans' Appeals (BVA) and ensure pay equity between Board members and other federal employees compensated in accordance with section 5372 of title 5. PVA emphasizes that the position of a member of the Board of Veterans' Appeals and that of an Administrative Law Judge (ALJ) is not analogous. We do believe that the important work of the Board requires increasing the compensation accorded to them. We do not wish to reward past inadequacies in Board decisions; however, in light of the mandated changes in the decision-making process employed by the BVA, we offer no objections to the passage of this proposal.

PVA remains shocked and concerned over the severe backlog of cases now facing the BVA, and suggests that, as the scriptures instruct us, to those whom much is given, much is required. In a similar vein, PVA supports the pay equity component of H.R. 3240, which is markedly similar to H.R. 69, but expresses some concerns over the abolition of terms of appointment for Board members contained in section 1 of H.R. 3240.

PVA believes that, at the present time, there are no compelling reasons to change the status quo. In fact, the push for single-member Board decisions, which is currently nearing a crescendo, would seem to argue for the retention of the statutory nine-year terms presently in place. To bring the salary of Board members up to the level of ALJs would seem, to PVA, to ameliorate many of the supposed pressures causing members to seek other employment or to otherwise sever their ties to the Board of Veterans' Appeals.

PVA believes strongly in accountability, and those members handling a sufficient number of cases and reaching a just decision on the merits in a quality fashion in line with the decisions of the Court of Veterans Appeals should be retained. In the final analysis PVA believes that if life terms are to be granted, they should only be granted to the most competent and accomplished. Guidelines of professional conduct should be established and adhered to, and a mechanism established to re-evaluate a current member's qualifications for a life appointment before one is granted. PVA is opposed to any precipitous action which would remove term limitations without first assuring that the incumbents are re-qualified. This is an area where PVA believes that further study would be most beneficial.

PVA supports both H.R. 2997 and H.R. 3159, bills that seek to codify actions previously taken by the Secretary of Veterans Affairs. PVA's consistent concern is that these determinations be based upon valid medical studies, and that there be a correlation shown between the malady and "herbicide agents." Once this correlation is shown, the VA should move rapidly to compensate all veterans so afflicted. PVA notes that the final regulation on the diseases covered by H.R. 2997 was dated February 3, 1994 (59 Fed. and that the final rule on the diseases covered by H.R. 3159 is due in the near future. PVA would like to thank the entire House Committee on Veterans' Affairs for their diligent work in this area

and their attention to the plight of Vietnam-era veterans, and to all veterans.

PVA supports the underlying premise behind H.R. 1986 - that of taking care of veterans and alleviating the harsh results that oftentimes occur with the present law. PVA testified during the 102nd Congress on the need for reform in this area. PVA would like to see the effective date for discontinuance based on death of an award of compensation or pension be the last day of the month in which the veteran dies. PVA supports this position for two reasons: first, the obligations of a veteran and his or her family do not end with the veteran's death, and this form of transitional assistance, albeit small, would better enable families to cope with what is always a tragic occurrence, and second, the administrative costs would certainly be lower in providing benefits to the last day of the month in which the veteran dies than in pro-rating the benefit.

Thank you, Mr. Chairman. That concludes my testimony. I will be happy to answer any questions that you, or this Subcommittee, might have.

THE
RETIRED
OFFICERS
ASSOCIATION

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April 25, 1994

The Honorable Sonny Montgomery
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515-2403

Dear Mr. Chairman:

I am writing to clarify The Retired Officers Association's position on H.R. 4088, introduced by Rep. Jim Slattery, which offers proposed FY1995 cost-of-living adjustments (COLAs) for Dependency and Indemnity Compensation (DIC) annuitants.

In our testimony at the March 25 joint hearing of the House and Senate Veterans' Affairs Committees, we expressed our strong opposition to the COLA limitation imposed on "grandmothered" DIC widows in FY1994 and to the provision of H.R. 3456 which would repeat that limitation for FY1995.

In our verbal testimony, we expressed support for H.R. 4088, based on our initial understanding that this bill would provide a full-inflation COLA for all widows. A full reading of that bill indicates that, in fact, it would impose the same COLA penalties on the "grandmothered" DIC widows as H.R. 3456.

We ask that this letter be appended to the transcript of our verbal testimony of March 25 to correct the record to reflect TROA's strong disagreement with H.R. 4088. TROA supports a full-inflation COLA for all DIC widows, as reflected in S. 1927.

A similar letter is being provided to the Chairman of the Senate Veterans' Affairs Committee, with copies to all members of both Committees.

Sincerely,

Paul W. Arcari
Colonel, USAF (Ret)
Director, Government Relations

Gold Star Wives of America, Inc.

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Statement of

Ms. Rose E. Lee, Legislative Director
Gold Star Wives of America, Inc.

for the

Subcommittee on Compenstion, Pension, and Insurance
Committee on Veterans' Affairs
United States House of Representatives

Concerning H.R. 4088 to Provide
the Dependency and Indemnity Compensation Program
a Cost-of-Living Adjustment

Hearing of April 28, 1994

Mr. Chairman and Members of the Subcommittee:

On behalf of the members of Gold Star Wives of America, Inc., I wish to thank you for the opportunity to present some of the views of our organization. I would like to bring these views to the attention of members of the Subcommittee and made a part of the written hearing record inasmuch as Gold Star Wives of America, Inc. was not invited to the hearing concerning H.R. 4088, the cost-of-living adjustment (COLA) on the Dependency and Indemnity Compensation (DIC) program. We appreciate and understand that the hearing was fully scheduled with several issues and that the COLA was considered a "cut and dry" issue.

The legislation contained in H.R. 4088 concerning Compensation COLA is extremely important to members of Gold Star Wives. The improvements in the revision of DIC to a flat rate in the DIC Compensation Reform Act of 1992, effective January 1, 1993, have been welcomed by a large number of compensation recipients who were greatly helped after being on the bottom ranks. However, it is apparent that the reformed DIC program is now a two tier program which treats widows of killed-in-action (KIA) service members different and less than the widow of the veteran with at least eight years of severe disabilities. *It is a slap in the face to KIA widows to be treated less so.*

H.R. 4088 continues the two tier system as it provides for a COLA increase of $23 per month to the flat rate of $769 to $792 and a COLA increase of $5 per month for the add-on from $169 to $174 for severely disabled veterans surviving spouses. Compare this with the KIA surviving spouse who was "grandfathered" in under the DIC old law which uses rank as the DIC basis. Under H.R. 4088, DIC old law recipients will receive a COLA increase of only $11 per month. This is less than half a COLA of the DIC new law flat rate due to the dropping off of the amount of fifty cents.

We would like to bring to your attention that the DIC new law rate with add-on totals $966 per month for previous E-1 through E-6 rates. Under H.R. 4088, E-1 through E-6 rates with add-ons would receive more than E-7 through O-4 KIA surviving spouses. An O-4 pay grade KIA surviving spouse would receive $959, which is $7 less than the $966 for E-1 through E-6 with add-on.

The vast majority of the "grandfathered" KIA widows received only $10,000 to $15,000 life insurance proceeds as opposed to the $100,000 to $200,000 that is now available to those who are widowed under the new law. The "grandfathered" widows suffer the worst of both the old DIC program and the new DIC program. These are the widows who did not have access to adequate Government sponsored life insurance policies and these are the same widows now selected to receive lower COLA rates. Does the inferior treatment of the older widow reflect Congress's antipathy toward the unpopular Korean and Vietnam Conflicts? Or is the disparate treatment due to discrimination against older women?

Gold Star Wives of America is pleased that there is an add-on for the surviving spouse of a severely disabled veteran. *But it is an insult to KIA widows to be considered less than a disabled* veteran widow. What could be more disabled than dead? In many cases, the disabled veteran surviving spouse was not even married to the veteran during his active military service, but instead, married him after he became disabled. She did not experience the military wife's trauma, problems and fears as her husband was sent off to war.

We recognize that the Senate did not choose to listen to those who have lived the KIA

widow's experience and did not listen to the many problems encountered as a KIA single parent. The point is, our organization would like the Congress to treat KIA no less than the severely disabled veteran and provide for the same add-on and the same full COLA to all DIC recipients and eliminate the two tier DIC payment system.

Killed-in-action surviving spouses did not have their husband around like a disabled veteran for at least eight years to help make decisions and to be a father to his children. Ask any KIA surviving child who was left orphaned at age one if it would have been nicer to have known his or her Daddy if only until age nine, an age the child would remember knowing Daddy around in a whole family unit albeit disabled.

We understand that there are Federal Deficit considerations. Gold Star Wives will be willing to contribute to reducing the deficit if all Federal compensation recipients are treated the same across the board. However, we must state that this is agreed to with reluctance on behalf of those who are dependent on the income from compensation alone.

Mr. Chairman, this concludes this statement on H.R. 4088. Again, thank you for your consideration of our views,

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