DRAFT LEGISLATION TO PROVIDE A COST-OF-LIVING ADJUSTMENT IN RATES OF COMPENSATION PAID TO VETERANS WITH SERVICE-CONNECTED DISABILITIES, TO MAKE VARIOUS IMPROVEMENTS IN EDUCATION, HOUSING, AND CEMETERY PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS, AND FOR OTHER PURPOSES

HEARING

BEFORE THE

SUBCOMMITTEE ON BENEFITS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

JUNE 18, 1998

Printed for the use of the Committee on Veterans' Affairs

Serial No. 105–41

U.S. GOVERNMENT PRINTING OFFICE
51–566CC WASHINGTON : 1998

For sale by the U.S Government Printing Office
Superintendent of Documents, Congressional Sales Office Washington, DC 20402
ISBN 0-16-057753-5

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON VETERANS' AFFAIRS

BOB STUMP, Arizona, *Chairman*

CHRISTOPHER H. SMITH, New Jersey
MICHAEL BILIRAKIS, Florida
FLOYD SPENCE, South Carolina
TERRY EVERETT, Alabama
STEVE BUYER, Indiana
JACK QUINN, New York
SPENCER BACHUS, Alabama
CLIFF STEARNS, Florida
DAN SCHAEFER, Colorado
JERRY MORAN, Kansas
JOHN COOKSEY, Louisiana
ASA HUTCHINSON, Arkansas
J.D. HAYWORTH, Arizona
HELEN CHENOWETH, Idaho
RAY LAHOOD, Illinois
BILL REDMOND, New Mexico

LANE EVANS, Illinois
JOSEPH P. KENNEDY II, Massachusetts
BOB FILNER, California
LUIS V. GUTIERREZ, Illinois
JAMES E. CLYBURN, South Carolina
CORRINE BROWN, Florida
MICHAEL F. DOYLE, Pennsylvania
FRANK MASCARA, Pennsylvania
COLLIN C. PETERSON, Minnesota
JULIA CARSON, Indiana
SILVESTRE REYES, Texas
VIC SNYDER, Arkansas
CIRO D. RODRIGUEZ, Texas

CARL D. COMMENATOR, *Chief Counsel and Staff Director*

SUBCOMMITTEE ON BENEFITS

JACK QUINN, New York, *Chairman*

DAN SCHAEFER, Colorado
J.D. HAYWORTH, Arizona
RAY LAHOOD, Illinois
BILL REDMOND, New Mexico

BOB FILNER, California
FRANK MASCARA, Pennsylvania
SILVESTRE REYES, Texas
CIRO D. RODRIGUEZ, Texas

CONTENTS

OPENING STATEMENTS

	Page
Chairman Quinn	1
Hon. Bob Filner	3
Hon. Frank Mascara	4
Hon. Evans	19

WITNESSES

Egan, Nora, Deputy Under Secretary for Management, Veterans Benefits Administration, Department of Veterans Affairs; accompanied by Celia Dollarhide, Director, Education Service, Department of Veterans Affairs; Keith Pedigo, Director, Loan Guaranty Service; and William Jayne, Director, State Cemetery Grants Service, Department of Veterans Affairs	12
Prepared statement of Ms. Egan	42
Frasure, Bill, Legislative Special Assistant, Veterans of Foreign Wars	7
Prepared statement of Mr. Frasure	30
Rhea, Larry, Deputy Director of Legislative Affairs, Non Commissioned Officers ASsociation	8
Prepared statement of Mr. Rhea	32
Thomas, Harley, Associate Legislative Director, Paralyzed Veterans of America	5
Prepared statement of Mr. Thomas	22
Vitikacs, John, Assistant Director for Resource Development, National Veterans' Affairs and Rehabilitation Commission, The American Legion	6
Prepared statement of Mr. Vitikacs	26

MATERIAL SUBMITTED FOR THE RECORD

Statement of Espiridion Borrego, Assistant Secretary of Labor, Veterans' Employment and Training Service	21

DRAFT LEGISLATION TO PROVIDE A COST-OF-LIVING ADJUSTMENT IN RATES OF COMPENSATION PAID TO VETERANS WITH SERVICE-CONNECTED DISABILITIES, TO MAKE VARIOUS IMPROVEMENTS IN EDUCATION, HOUSING, AND CEMETERY PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS, AND FOR OTHER PURPOSES

THURSDAY, JUNE 18, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BENEFITS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 335, Cannon House Office Building, Hon. Jack Quinn (chairman of the subcommittee) presiding.

Present: Representatives Quinn, Hayworth, Filner, Mascara, and Rodriguez, and Evans (ex officio).

OPENING STATEMENT OF CHAIRMAN QUINN

Mr. QUINN. Good morning. Good morning, Mr. Filner.

Mr. FILNER. Good morning.

Mr. QUINN. We're here today to receive testimony on a draft omnibus bill which includes improvements to several areas of veterans' benefits. Following our witnesses this morning, we will mark-up the draft bill, which includes a revised version of H.R. 3212, addressed in our hearing here on June 11, at some quite length. I think we went through with a couple different rounds of questions.

Your legislative assistants for the members who are here were given advance copies of the bill last week and revised versions this week. They were also briefed yesterday by the committee staff. I want to note that we do not have a CBO estimate at this time. There are bound to be paygo issues that may make some of the provisions not doable. I'd like to suggest that we address those issues prior to the full committee, which will happen next week. But in an effort for us to keep going forward today, we plow through. I realize this is not necessarily routine, but we are trying to save some time because of the limited legislative calendar.

At this time, let me briefly outline the draft bill, mostly for the record. Probably everybody here who's in the room knows exactly what it's about, but it's more a formality than anything else. Let

me say that Section 101, the COLA, would provide a cost-of-living adjustment for compensation, DIC, and related benefits. It would be computed using the same percentage increases given to Social Security recipients.

Schools currently receive a $7.00 reporting fee for veterans attending under the GI bill. Section 201 would change the way schools calculate the number of veterans for whom they will be paid from the current snapshot on October 31 to the total attending throughout the full academic year.

And Section 202 would make advanced payment of 40 percent of the work study allowance optional to the veteran. Section 203 would allow the VA to consider up to 12 hours of academic credits granted for life experiences as meeting the eligibility requirements for the MGIB. Section 204 would require a veteran to hold an FAA Class II physical at the beginning and the end of VA-paid flight training. The veteran would no longer be required to maintain Class II physical throughout the entire period of flight training.

We all also know, I think, that we need to add some flexibility to the MGIB, so Section 205 would authorize a 2-month accelerated payment at the start of the academic year in addition to the normal payment process. These additional payments would reduce the total entitlement on a pro-rata basis.

We move to Section 206 and there we would exempt job training programs, typically those for law enforcement and firefighter personnel, which are operated by Federal, State, and local governments from the minimum percentage of journeyman wage requirements. Section 207 would require the VA to notify a servicemember of the eligibility requirements for the Montgomery GI Bill upon completion of the $1,200 pay reduction and periodically thereafter, as determined by the Secretary.

We have also received reports that some personnel are taking early discharges without considering whether they have accumulated enough time in service to qualify for the MGIB benefits. Therefore, Section 208 would require the services to counsel members volunteering for early discharge concerning their eligibility for these same benefits.

Title II of the draft bill includes provisions from H.R. 3212 that I mentioned just a few minutes ago, by request from the Court of Veterans Appeals. The major provisions of H.R. 3212 would authorize a staggered early retirement for several of the current judges. Without that option, the Court could experience the departure of up to five judges within about a full year, which would effectively shut down the Court. Unless a member at this point prefers to do a section-by-section of Title III, I'd like to move on to Title IV at this point. I'll send it over in the mail.

Title IV of the draft bill makes improvements to several areas of benefits. Section 401 would require full and open competition for housing management contracts for the VA portfolio for foreclosed homes, another good hearing we had. Section 402 would make the current VA loan guarantee program for Selected Reservists permanent.

Until now, members of the Selected Reserve are not eligible for a burial flag. To recognize the increased contribution to the national defense, Section 403 would authorize a burial flag for any re-

servist who dies while in the Reserves or who has completed one enlistment and has an honorable discharge.

Section 404 would change the funding formula to authorize VA to pay up to 100 percent of the cost of constructing State veterans' cemeteries and initial equipment needed to operate the same cemeteries. The current formula authorizes VA to pay up to 50 percent of the cost of the land and construction. States would continue to be responsible for the operating costs.

Under current law, Disabled Veterans Outreach Program Specialists, DVOPS, would be a Vietnam veteran era—excuse me, Vietnam era veteran. Section 405 would remove the Vietnam era requirement. The draft would also base the number of DVOPS in the State on the total number of working-age veterans, the ages between 20 and 64. This maintains the current level of total authorized DVOPS.

Section 406 would reauthorize the VA to retain pension funds in excess of $90.00 paid to dependentless veterans who are being cared for in VA nursing homes. These funds would be used to augment the operating funds of the home providing the care. Then, finally, Section 407 would change the title of the Board of Veterans' Appeals members to Veterans Administrative Law Judges and clarify employment reversion rights for Board members who are demoted and who have prior civil service as an attorney. Again, a topic that we discussed just a few weeks ago.

I believe it's a good bill. It's a bipartisan effort, for which I am grateful to the members, not only here this morning but that have been at the subcommittee hearings, as well as work by staff on both sides of the aisle. I hope that we'll be able to take all of the provisions to the full Floor of the House. And I'd like to yield to Mr. Filner, the ranking member of the subcommittee, for comments he may have at this point. Bob.

OPENING STATEMENT OF HON. BOB FILNER

Mr. FILNER. Thank you, Mr. Chairman. We have a couple of things to get through, so I'll be very brief.

Mr. QUINN. Thank you.

Mr. FILNER. The bills we are reviewing and marking up this morning will significantly improve and enhance several of the most important programs we provide for America's veterans. In recommending to the full committee a provision to increase compensation and DIC benefits, we are fulfilling our first and primary responsibility, to care for those who are disabled while serving in the military and to care for their survivors. In approving provisions which will improve veterans' education programs, we are fulfilling our commitment to the millions of young Americans who have told us that, at least in part, they volunteered to serve in our Armed Forces because of the opportunity to earn money for college through service to their country. And in approving provisions to improve the State cemetery grant program, we are fulfilling our responsibility to honor America's veterans, even at the end of their lives.

So I look forward to hearing from our witnesses. As always, your observations this morning will be very helpful and important to us. And, Mr. Chairman, I ask unanimous consent to submit for the

record a statement from the assistant secretary of labor for veterans' employment and training in support of Section 405 of the draft bill.

Mr. QUINN. Without objection, so ordered.

[The prepared statement of Mr. Borrego appears on p. 21.]

Mr. QUINN. Mr. Rodriguez, any opening comments?

Mr. RODRIGUEZ. In all honesty, I just want to thank you and I want to apologize in advance because I do have another 10 o'clock with the National Security Committee that's being held and ask that you just—if you can beep us if there's a vote coming up?

Mr. QUINN. Absolutely. And, we mentioned it to staff before we got started. We're going to take a short break in the action and page all the members to get from that important meeting back here in between the markup and when we're finished with the hearing to get you. Mr. Mascara.

Mr. MASCARA. I'd like to reserve the right to place an opening statement into the record, Mr. Chairman.

Mr. QUINN. Without objection, so ordered.

[The statement of Congressman Mascara follows:]

PREPARED STATEMENT OF HON. FRANK MASCARA

Thank you Mr Chairman. I appreciate your calling this hearing and marking up this bill I believe this bill is a fair bi-partisan measure, which affects these honored retired veterans from the moment they leave the military in their educational pursuits and in job training. It continues with a much needed cost of living increase for those brave men and women who gave their health for this country, and ends with changes in the State cemetery grant program and the burial tributes I hope this is only the beginning of the progress we can do for our esteemed veterans.

Mr. QUINN. Very well. Thank you, gentlemen. And let us move on to the first panel and invite our witnesses in the American Legion, the Paralyzed Veterans of America, the Veterans of Foreign Wars, and the Non Commissioned Officers Association to take their places at the table, please.

Gentlemen, how are you? Welcome. Nice to see you all again. Harley, last time you were here you took—we started from your end of the table. If you don't mind, I'll start that way again this morning. Give you first shot. And I want to thank you, again, for the last hearing, for staying around to answer some questions that we had later. We sort of had a second go-round and with the second panel we actually had some questions for all of you and it was very kind of you and thoughtful to stay for those questions. So we appreciate it.

As we work our way across the table, we would ask you to keep your oral comments to about five minutes or so. Of course, your full testimony is on the record and with us. So you may begin.

STATEMENTS OF HARLEY THOMAS, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; JOHN VITIKACS, ASSISTANT DIRECTOR FOR RESOURCE DEVELOPMENT, NATIONAL VETERANS' AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; BILL FRASURE, LEGISLATIVE SPECIAL ASSISTANT, VETERANS OF FOREIGN WARS; AND LARRY RHEA, DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS, NON COMMISSIONED OFFICERS ASSOCIATION

STATEMENT OF HARLEY THOMAS

Mr. THOMAS. Thank you, Mr. Chairman. On behalf of the Paralyzed Veterans of America, I appreciate this opportunity to once again address this committee on the Veterans' Benefits Improvement Act of 1998. I would like to, for the record, state that our written testimony references title III versus title IV. The copy of the draft bill that we have does not have title IV references in it. Okay.

Although PVA has no opposition to many of the provisions in this legislation, we are strongly opposed to Section 407 (a), found on page 19, line 7. PVA is opposed to allow members of the Board of Veterans' Appeals to assume the title of "veterans administrative law judges" without also undergoing the rigorous process and meeting the detailed requirements necessary to become an administrative law judge.

Four years ago, we supported increased pay for BVA members as a way of encouraging better results and as an aid to retaining experienced and qualified members. But we also urged tying increased pay to improved performance. Sadly, over 60 percent of the decisions before the Court of Veterans Appeal is remanded back to BVA for error.

BVA should not be rewarded for consistently making mistakes in the decisions it does render. To enable Board members to assume the mantle of administrative law judge without meeting the requirements mandated for administrative law judges is demeaning to administrative law judges and would not lead to any demonstrated improvements for veterans. The BVA simply cannot have it both ways.

As we testified before this subcommittee on June 10, we are gravely concerned about Board involvement after it has rendered a decision and a veteran has appealed to the Court of Veterans Appeals. As we stated, "The BVA's clandestine participation harms veteran appellants, is not authorized by law or statute, and leads to concerns over the impartiality of the process. PVA asks that you address this troubling situation." We certainly do not think that allowing BVA members to style themselves veterans administrative law judges adequately addresses the serious matter.

PVA looks forward to a hearing on this and the possibility of legislative action to correct this matter. If Section 407(a) remains in this bill, we will find it extremely difficult to support this legislation.

The increase in rates of disability in DIC: PVA supports this proposed increase and compensation. However, PVA opposes the provision of making permanently the rounding down to the nearest

whole dollar of compensation increases. We have opposed this in the past and we will continue to do so in the future. Veterans should not be asked to do what others are not in pursuing of a balanced budget. Further, PVA asks you to bear in mind that the Consumer Price Index may not adequately reflect the true cost increase borne by disabled veterans year in and year out.

Section 201: PVA has no objection to adjusting the date for calculation of reporting fee based on total veteran enrollment from October 31 to during the calendar year. Section 404, State cemetery grants. We do not oppose this provision. We do, however, wish to draw the subcommittee's attention to a probable drafting error. Section 304 (b), page 17, line 4, should probably read "2408(e)" rather than "2408(c)." You probably already found that, but my copy had that error in it.

Section 405, DVOP Specialists. PVA has advocated for this change in previous testimony and applauds this committee for its inclusion in the bill. Section 406. We're in total agreement to restoring this provision. Again, Section 407, as I have stated, we strongly oppose Section 407(a) and call on you to remove this provision during markup.

Mr. Chairman, this concludes my testimony and I'll be happy to answer any questions you may have.

[The prepared statement of Mr. Thomas appears on p. 22.]

Mr. QUINN. Thanks very much. John, American Legion.

STATEMENT OF JOHN VITIKACS

Mr. VITIKACS. Good morning, Mr. Chairman, members of the subcommittee. I would also point out that the copy of the draft bill that we have includes three sections as opposed to four sections.

The American Legion appreciates the opportunity to testify on several measures under consideration this morning. These are: the Veterans' Benefits Act of 1998; veterans' housing, employment, and education benefit programs; and the State cemetery grants program. Mr. Chairman, the American Legion commends the subcommittee for working to ensure that the right programs and benefits are available to former members of the Armed Forces and their widows and dependents. The draft bills under consideration today will extend and advance many of the earned benefits of our nation's veterans.

The American Legion believes the draft Veterans' Benefits Act of 1998 is proper and has no objections to the measure. We would note that much-needed improvements were made to certain veterans' benefits programs through the recently enacted Transportation Equity Act. The American Legion is disappointed that Congress was only able to provide these improvements by taking away rights and compensation and medical benefits from other equally deserving veterans.

The American Legion supports Section 302 of the draft bill to make permanent a pilot program that allows former members of the Armed Forces reserves the opportunity to use VA's Home Loan Guarantee Program.

Mr. Chairman, the American Legion conditionally supports Section 305 of the draft that changes the formula by which disabled veterans outreach specialists are assigned to the States. The Le-

gion supports the change as long as the age requirement for the DVOP formula includes veterans between the ages of 18 and 62. The bill currently would include only those between the ages of 20 and up to 64.

The American Legion is thankful for this subcommittee's efforts to improve education benefits and services for veterans. As previously commented, the Legion is grateful for recent increases in veterans' education programs, however, we are disappointed about the manner in which this increase was accomplished.

Mr. Chairman, the American Legion has no major concerns with title II of the draft bill regarding veterans' education programs. The American Legion supports Section 303 of title III regarding the furnishing of flags for deceased members and former members of the Selected Reserve. We sincerely appreciate the subcommittee's efforts in this matter.

The American Legion supports the efforts to strengthen the State cemetery grants program. This program is critical in helping the national cemetery system meet the increased burial needs of America's veterans and their eligible dependents. As we have previously testified, we believe the legislative proposal was incomplete until the current plot allowance paid to the States is increased to reflect current operations and maintenance costs. In order to construct the best legislative package, we suggest that the subcommittee conduct a survey of existing State cemeteries to determine whether the current $150.00 plot allowance is adequate and also survey potential new States to assess whether this concern is truly valid.

Mr. Chairman, that concludes this statement.

[The prepared statement of Mr. Vitikacs appears on p. 26.]

Mr. QUINN. Thanks, John. My guess is the—I can guess what the survey might come back as, as you suggest.

Before you begin, Bill, let me just say that both of you have mentioned—Harley and John—that you only had three out of the four titles. The reason, of course, is that the fourth title is a whole discussion of H.R. 3212, which is the Court, which you were all here for last week and testified on. That was quite a long, helpful discussion, by the way, but I wouldn't want anyone to think that we've left anything out on purpose. By the time we got everything finished with the hearing, it only did include three, but we're looking at four and the fourth would be addition of the Court discussion, H.R. 3212.

VFW, sir.

STATEMENT OF BILL FRASURE

Mr. FRASURE. Okay. Good morning, Mr. Chairman, and members of the subcommittee. On behalf of the 2.1 million members of the VFW, I am pleased to appear before you today to provide our views on the Veterans Benefit Improvement Act of 1998. This legislation is marked by common sense and vision and stands to benefit veterans from all generations. The many technical changes proposed in this bill would serve to strengthen existing benefits by making them more applicable to society now and in the immediate future.

The VFW ardently supports this legislation, however we do have one concern that I would like to briefly expound on. Section 304 of title III greatly increases the amount of a Federal grant to State

veteran cemeteries. While this is indeed a measure we approve of, we caution that these grants should not replace or diminish the existing national veteran cemetery system. I want to reiterate that the VFW believes that, overall, this legislation is beneficial to America's veterans and we urge its swift passage.

This concludes our statement. I welcome whatever questions you and your colleagues may have. Thank you.

[The prepared statement of Mr. Frasure appears on p. 30.]

Mr. QUINN. Thank you, Bill. I appreciate it very much.

Larry, good to see you again and please begin.

STATEMENT OF LARRY D. RHEA

Mr. RHEA. Thank you, Mr. Chairman. Good morning to you. Good morning, Mr. Filner, Mr. Mascara. The Non Commissioned Officers Association is pleased to be here this morning and the Association salutes the bipartisan cooperation and leadership of this subcommittee, both on the issues under consideration today and on all of the other issues that come before this committee. We appreciate that deeply. We also appreciate your consideration of our complete statement, as presented in written form.

Generally speaking, we're very pleased with the draft bill. Several of the issues addressed in the draft represent Association initiatives or changes that NCOA has been advocating, in some cases for several years now. But first let me deal with the one area in the draft bill that causes NCOA the most concern. And I'm referring to the proposal regarding the State veterans cemetery grants program. It's no secret that NCOA is opposed to the proposal, at this time, as embodied in Section 304. Our opposition today is the same as that which we first took when the President made this proposal last year in his Fiscal Year 1998 budget submission.

It is our belief, implementing this proposal at this time is at best premature. NCOA makes that statement on the basis of a lack of a comprehensive long-range plan for the national cemetery system. As we have testified before, NCOA believes that such a plan needs to be in place before this proposal is further considered and certainly before it is enacted. And, as we have testified previously, such a long-range plan needs to include initiatives for new cemeteries in the national cemetery system complemented by a State cemetery veterans program. Absent such a plan, we are opposed to Section 305 and our request is that it be stricken from what we consider to be an otherwise excellent piece of draft legislation.

We certainly are pleased with the various proposals contained in section II relating to improvements in the education benefit. We view each of those sections in a very positive light and we would urge the subcommittee's favorable consideration of all of those sections. We did make one recommendation relative to Section 207 that deals with the education outreach services. We're inclined to believe that the general language as stated in the draft bill which would require the Secretary to provide the information as soon as practicable needs strengthening. We would suggest that the legislation provide a specific time period for the Secretary to provide that information to the members and we recommended 90 days in that regard. And it's our understanding that VA might be able to accom-

plish it within that time frame. But, in our view, that would just tighten it up just a little neater.

Relating to Section 303 of the draft, which incorporates H.R. 2887, we certainly have no objection to the contracting provisions that you're dealing with. And we're very pleased with sections 302 and 303. The Selected Reserve home loan program, in our view, has been a resounding success and Section 302, to make that program permanent, is wholeheartedly supported by NCOA. And Section 303 responds to an initiative that NCOA undertook almost two years ago and we are indeed grateful for including that in the draft and we believe the change embodied by Section 303, to modify current law regarding burial flags for certain members of the Selected Reserve who are not otherwise eligible, is clearly the right thing to do and in consonance with the total force that we now operate under.

For my final comments, Mr. Chairman, the change proposed in Section 305 relating to the disabled veterans outreach program specialists. There again, I think as everyone else at this table—we've been after those for several years now. They're right. They make good sense. And we should proceed and go ahead with it.

In closing, thanks again for this opportunity, sir. Your consideration of our written testimony and our oral comments is sincerely appreciated. Thank you.

[The prepared statement of Mr. Rhea appears on p. 32.]

Mr. QUINN. Thank you, Larry. Thank you very much. And I want to thank all of you for your testimony this morning, the written testimony as well as your comments.

And, Larry, you're kind enough and generous to thank this subcommittee. I appreciate the bipartisan nature in which we proceed. But let me also, for the record, thank all of you. I mean, many of the changes that I briefly outlined when we started and Bob and I have put together, many of them have come from you and staff and others. So we thank you as much as—it's a two-way street and we appreciate some of those technical suggestions as well as what you here, from your members all across the country, so it's more than just the bipartisan nature, I think it's the cooperative nature in which we're able to hear testimony and make changes at your suggestion. So from all of us here in the subcommittee and the full committee, thank you. Appreciate it.

I have no questions. Bob, questions? Mr. Mascara, questions at this point?

Mr. MASCARA. Thank you very much, Mr. Chairman. I did take a little bit of time last night to read the statements and I was as confused as you are because you were mentioning Section 307(a) and page 19, line 7, and I'm looking in the bill and I can't find it but I go along further and it is Section 407, so I finally reconciled the differences in the bill. I did have the latest bill. You didn't apparently. (Laughter.)

For Mr. Thomas, on page 2 of your statement, you mentioned you would oppose Section 407 of the bill or oppose the bill if it remained in the bill. While your other colleagues, in reading their testimony, don't seem to have the same problem Am I correct in saying that? The other three gentlemen——

Mr. THOMAS. We're not opposed to the whole bill, sir. We would be hard pressed to support the bill, this section of the bill, if that verbiage remains in there.

Mr. MASCARA. And the other three gentlemen, I read your statements, I don't see that you have a real problem with that?

Mr. VITIKACS. Would we clarify the subject of that section?

Mr. THOMAS. That's regarding BVA being judges.

Mr. VITIKACS. Correct.

Mr. MASCARA. So you don't have a problem, Mr. Vitikacs but you do have a problem, Mr. Thomas. Could you be more specific? We held hearings last week, and talked about this problem and you used the words "clandestine," "collusion," "cozy," and I was concerned at the last hearing about the use of those adjectives in describing the relationship between the courts and the BVA. Can you speak to what your problem is more specifically so I'll better understand what you're talking about?

Mr. THOMAS. Basically I was just referring back to what we testified on last week and there were—a lot of dialogue was brought before the committee, both from VSOs and also from the folks from the BVA. And we believe that the process that is currently utilized to pass information back and forth between the appellant and the court is not proper. We don't believe that should be done and that's why we have that type of verbiage in there.

With respect to administrative law judge titles, here again, without going through the appropriate process to be actually qualified to be an administrative judge, we don't believe someone should just arbitrarily be able to have that title. From the standpoint of the schooling required and training for judges, it just doesn't seem appropriate to be able to just assume a title without going through the proper process.

Mr. MASCARA. And you gentlemen don't have a problem with that?

Mr. RHEA. No sir. The Non Commissioned Officers Association didn't. We stated that we didn't have any objections to the provisions, but, in complete honesty, we had more of a concern with the reversion rights, that section in there. Because we couldn't sort out completely how that was going to work for these folks, okay. But that section of it has caused us more concern than, certainly, the name change. But we have no objections to any of it at this point.

Mr. MASCARA. Mr. Thomas, you spoke about the Consumer Price Index. Do you want to speak further on that? Do you have some concerns about the calculation of the CPI? Because there was some talk about reducing the CPI as being prepared by the Department of Labor and I have some concerns about it too. Can you speak to that?

Mr. THOMAS. Our biggest concern is not specifically just using the CPI as a calculation, but we believe there should be some sort of an offset taken into consideration for catastrophically injured veterans. The cost associated with equipment, day-to-day living, training, schooling, et cetera, far exceeds what the average individual is requiring and there needs to be some kind of a provision or option for those people that fit into that category. The average individual doesn't have to—is not faced with those exorbitant charges.

For those individuals that are not service-connected, the category C veterans, if you've got third party insurance, the insurance companies are getting to the point to where they will pay less and less and less. Many insurance companies will not pay for wheelchairs. Some insurance companies have a $200 limit, per year, on equipment. I spend more than $200 a month on equipment and these type of situations need to be taken into consideration.

Mr. MASCARA. So there should be some adjustments to the CPI to reflect that?

Mr. THOMAS. Yes.

Mr. MASCARA. Because the CPI—or the expenditures by those veterans are much higher than the ordinary expenditures for citizens throughout the country.

Mr. THOMAS. Yes, sir.

Mr. MASCARA. Good. Thank you. Thank you, Mr. Chairman.

Mr. QUINN. Did you—any spelling errors in your reading last night, Mr. Mascara, that we——

Mr. MASCARA. In fact, I did.

Mr. QUINN. I depend on you, you know.

Mr. MASCARA. You know, I can get through it—I'll find spelling errors. (Laughter.)

Mr. QUINN. Thank you very much. Gentlemen, thanks. We have no further questions and we appreciate it. We're going to move to our second panel from the VA now, please.

While we're doing that, the ranking member of the full committee, Congressman Lane Evans, was here and had to leave to go to another meeting. So, without objection, I would just submit his opening statement and have it become part of the record today. Without objection, it's so ordered.

[The statement of Congressman Evans appears on p. 19.]

Mr. QUINN. Thank you. I want to make sure you're in the right spot, Keith. Got the right name tag out there?

Mr. PEDIGO. I did remember my name.

Mr. QUINN. Well, it's happened to me before and I'm going to blame someone else for something you said this morning. Hi, Nora, how are you?

Ms. EGAN. I'm fine, thank you, Mr. Chairman. How are you?

Mr. QUINN. Good to see you back here this morning. Good. Good morning, Bill.

Mr. JAYNE. Good morning.

Mr. QUINN. We're now going to hear from our second panel, the last panel this morning, from the Department of Veterans Affairs and the Veterans Benefits Administration. If you have planned on who begins your testimony today, you may begin. If not, Nora, I would suggest you may want to start. We ask that you—of course all your testimony is here and part of the record, that your opening statements be about five minutes, if you can. Thank you.

STATEMENT OF NORA EGAN, DEPUTY UNDER SECRETARY FOR MANAGEMENT, VETERANS BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY CELIA DOLLARHIDE, DIRECTOR, EDUCATION SERVICE, DEPARTMENT OF VETERANS AFFAIRS; KEITH PEDIGO, DIRECTOR, LOAN GUARANTY SERVICE; AND WILLIAM JAYNE, DIRECTOR, STATE CEMETERY GRANTS SERVICE, DEPARTMENT OF VETERANS AFFAIRS

STATEMENT OF NORA EGAN

Ms. EGAN. Yes, sir. Mr. Chairman and members of the subcommittee, it's my pleasure to appear with this panel today to represent the views of the VA on the draft bill that would impact veterans' benefits programs administered by VBA, the National Cemetery System, and the Board of Veterans' Appeals. Before I begin, I do want to apologize, Mr. Chairman. It has been brought to my attention that our testimony, our formal testimony, was not received in the most timely manner and I do apologize for that.

As you acknowledged when we sat down, accompanying me today on my right is Celia Dollarhide, who is the Director of our Education Service. To my left is Keith Pedigo, who is the Director of our Loan Guarantee Service and, to my far right, Bill Jayne, who is the Director of the State Cemetery Grants Service.

Since we did provide the formal written testimony and there are numerous provisions to this bill, I thought what I would do very briefly is just touch on them so that any time that would remain would be available for questions, that you or the other members may have. I'm going to divide it into three areas. One, the provisions which we support. Let me start with those.

Clearly, we support the cost-of-living allowance for the service-disabled veterans and the survivors of those veterans whose death is service-connected. In fact, you should have received a copy of a transmittal today that went from the Secretary to the Speaker in which we included our own recommendations on the COLA increase.

I'm also very pleased with the committee's bipartisan efforts to enhance our education program. VA's been the proud steward for over 50 years of the education program and I believe it has been the hallmark on which many other education programs, both in the Federal and private sector, have been modeled. I am pleased to support these enhancements. There are two in particular, if I may, that I would like to comment on. One is opportunity for an accelerated payment option for our veterans.

And the other one is to the Section 206, which would exempt Federal, State, and local government training establishments from meeting the incremental wage increase requirements currently in place. I believe this is important because it not only benefits our veterans who are in the program, but it offers them the opportunity to continue in public service by enrolling in programs that train police and local health care officials.

Section 404 would make State cemetery grants more attractive to States. We support these provisions and, in fact, it's very similar to legislation the VA had previously introduced. We believe that

the expansion of the opportunities for State Veterans' Cemeteries enhances and complements our National Cemetery Program.

Section 406 would make permanent VA's authority to deposit into VA medical facility revolving funds amounts of pension that are not paid to veterans as a result of payment limitations that apply to certain veterans being furnished nursing home care by VA. We absolutely do support this.

Section 407 is that which addresses both the titling of the Veterans' Administrative Law Judges and the retreat rights for certain members of the Board and the VA clearly supports this.

There is one Section that we do have some reservations on. That is Section 401, which would require the contracts for goods and services with respect to property VA acquires under the housing loan program to meet the requirements of the Federal Property and Administrative Services Act of 1949, referred to as FAR.

We understand the concerns of the committee. However, we do not believe that such coverage for our program is necessary. We believe that the provisions that we currently use in the procedures mirror those of the FAR and provide us with some flexibility in that the average repair expenditures for homes that we sell is about $2,500. We believe that most of our contractors have been very satisfied that we have a fair process. If there were complaints to be filed, as a result of the proposed legislation and they go the formal route, then we might be delayed from selling property in a timely manner. This would have an adverse impact, we believe, on the government's return on investment. That said, if the committee feels strongly about it, we would not oppose it.

There are also several provisions on which we would like to defer position at this time. Section 403 is the provision which would make permanent the Housing Loan Entitlement currently given to members of the Selected Reserved. I must say the VA's been very pleased with this program. We find that it has been beneficial to those involved. However, there are some potential PAYGO issues which we still need to address before the Department would be able to take a final position on that.

The other Section on which we defer at this time would be that in which the Secretary would provide burial flags for certain members of the Selected Reserves. Again, we support this in concept, but there are some issues regarding the impact and implementation that we would like to discuss with DOD and CBO. And we'll be working with the staff on that, primarily so we can get a handle on the number of individuals about whom we're speaking so that we can do an accurate and adequate cost estimate on it.

Mr. QUINN. May I interrupt for a second on that?

Ms. EGAN. Sure.

Mr. QUINN. And it's my time, so we'll give you some extra if you need it. I know of your concerns on the flag and there's discharge paperwork that has to be done. Just to let you know, I've talked with Steve Buyer, Congressman Buyer, who's the chairman of the National Security Subcommittee on Personnel, and I asked him to see if he could work with DOD a little bit on that. He's agreed to do that to see if we can't come up with a quicker way to do all of that.

And I understand where you're coming from. Hopefully we can, working together with Mr. Buyer and his subcommittee and those of us over here, you, with the people at DOD, before we go to conference with the Senate, we hope we're going to have something that allows us to be—for you to feel more comfortable with that.

Ms. EGAN. I appreciate that. And I look forward to it.

Mr. QUINN. Okay.

Ms. EGAN. You know, one of the last things you want to do is make a bureaucratic, administrative nightmare out of something with such good intent. So I look forward to working with him on that.

Mr. QUINN. You couldn't be more correct. I mean, that's what has built this place. Good ideas turn into bureaucratic nightmares.

Ms. EGAN. Correct.

Mr. QUINN. And we don't—but I think Mr. Buyer has expressed—understand the issue and said he'd like to give us a hand with it, so we're looking forward to that.

Ms. EGAN. Thank you, Mr. Chairman. I appreciate that. The only other two issues that I wanted to address are that we would defer also on Section 405, the disabled veterans' outreach program specialists and we, clearly, would defer to the Department of Labor on that. As well as we would defer to DOD for Section 208, which is to make sure that those who leave the service before their minimum requirement is up, at the convenience of the service, are made aware of the impact on their entitlement to education benefits. I would like to add, though, that we'd be happy to work with DOD to make sure that we provide them with whatever information they need to advise those servicemembers.

That concludes my oral statement, sir, and I'd be happy to answer any questions that you have. I have a raft of very talented and knowledgeable people here with me. I hope we will be able to address your issues and concerns.

[The prepared statement of Ms. Egan appears on p. 42.]

Mr. QUINN. Well, thanks very much. Did—Keith, we're you going to—are you just accompanying today? Or did you have a statement to make?

Mr. PEDIGO. No, I'm just accompanying.

Mr. QUINN. And the same with you Bill?

Mr. JAYNE. Yes.

Mr. QUINN. What a team. My gosh. You outnumber me. It's just me and Mr. Mascara here today, you know. But I got the best and the brightest. You're welcome. I do want to ask a couple of questions, if I may, and a couple are for the record. Bob Stump also asked me to ask questions, just to get more clarification then anything else.

In terms of the State cemetery program, is it the administration's view that—do you consider the State cemetery program as a substitute for constructing additional new national cemeteries? And I ask that all the time, but I've got to get it on the record.

Ms. EGAN. And I appreciate that. Absolutely, sir, we do not. We view the opportunities to expand State cemeteries as a complement or an enhancement of the national cemetery program.

Mr. QUINN. Thank you. Also, what are the remaining locations of high-need areas for a national cemetery? And then the follow-

up question would be: Can we expect to see any funding for them in the President's next budget? And I know that's a bit of a crystal ball for you, but have you had any discussions with the administration on this?

Ms. EGAN. I'm going to defer to Mr. Jayne, if I could, to answer that question.

Mr. QUINN. Sure.

Mr. JAYNE. In the 1994 study that we sent to Congress, we identified 10 areas of the country, Chicago, Detroit, Cleveland, and so on; there were 3 new areas in that study, compared to 1987. It was Atlanta, St. Louis, and Sacramento, California. So those three would be added to the list that are under consideration, that will be evaluated, along with Western Pennsylvania and Central Oklahoma, Detroit, and Miami, the others that have not been addressed so far. They still continue to be under evaluation and we expect that the road map that you asked for by August 21 will address those issues, by that time.

Mr. QUINN. Okay. That's fair. Thank you. Mr. Stump wanted me to just ask a little bit about the national cemetery program, if I may. And I guess the question is: How do we make certain that the National Cemetery System ensures that States understand the cost associated with operating and maintaining the State veterans' cemetery, which is built through the State program, is the responsibility of the States? We have discussed this a few times here at hearings and even one of the sections in this discussion this morning says that the State still has some responsibility. I guess—and I've talked to Bob about this myself, I mean, what are we doing to make sure that they understand that that's still their responsibility?

Mr. JAYNE. Right from the beginning in outreach, whenever we respond to questions on the phone, in writing, from veterans, we stress very, very hard that it's a real partnership with the States, that the States take on a real responsibility here. We do collect some data from the States and I don't think it's complete or totally accurate in terms of their actual costs. Many of the State cemeteries are associated with State veterans' homes, so some of their administrative overhead is not clearly identified.

But we do, right from the first, stress that it is a substantial cost. I've used, for example, recently, talking to Pete Wheeler of Georgia, the figure of at least $250,000 a year, and that's in my view pretty much a minimum it would take to operate a State cemetery. There are a couple that don't spend that much, but they're extremely small, not very active, and have some unique circumstances where they get a lot of help from another State agency. But I think the answer is that we are very, very careful to stress that fact to everybody we talk to right from the beginning.

Mr. QUINN. Thank you. And you would hear complaints to the contrary. Are you satisfied with those efforts, then?

Mr. JAYNE. Yes, I think I'm satisfied, sir, with our efforts to get that word out to people who are interested in State veterans' grants. I think that the responsibility for operating the State cemeteries does remain with the States and we have a very limited responsibility and limited authority to affect how they actually operate the cemeteries.

Mr. QUINN. And I agree. Not that we'd want to get into that whole situation, either. I guess the concern is that they understand their responsibility and you've said that they do, so that's good enough for me. I'll pass it along to Chairman Stump.

Mr. Mascara, a question?

Mr. MASCARA. Thank you, Mr. Chairman. First of all I have a version of your statement. Is there something newer than that? A completed statement, Ms. Egan?

Ms. EGAN. I believe that there was a statement that arrived here about 5 o'clock yesterday.

Mr. MASCARA. Were there any material changes from the version I have to the final statement you gave today?

Ms. EGAN. I believe that there were several changes but I think that I've addressed them in my oral testimony.

Mr. MASCARA. And I would like to amplify, for a moment, the chairman's questions regarding the cemeteries. Perhaps you have more faith in each of the States living up to their responsibilities as it relates to doing the right thing in their new-found duties of looking after our veterans' cemeteries. And I believe you said, Mr. Jayne, that we have the quote, "limited authority and responsibility," to see that that happens. And I'm just wondering who has the oversight and who has the responsibility to make sure that each of the States will do the right thing in relationship to making sure the cemeteries are properly maintained. Would anyone like to comment on that?

Ms. EGAN. Mr. Mascara, I appreciate your concern and I will defer and ask Mr. Jayne if he would address that question.

Mr. JAYNE. Sir, we do have a responsibility to—inspect maybe too formal a word—but to at least visit these cemeteries that we've assisted, every three years and we work very hard to do that. I, and people on my staff, don't always get to these cemeteries, but we have national cemeteries out around the country and area offices where we've sent people to the cemeteries.

The only problems that I've seen and that have been brought to my attention with regard to State veterans' cemeteries are the normal sorts of problems that you run into with operating cemeteries with regard to weather, with regard to emergency sorts of problems that come up. They're rather normal. I haven't seen anything that would lead me to believe that any of the States are taking that responsibility lightly. We do everything we can to make them understand that it is a big responsibility when they take it on and, as far as I can tell, they are following through on that.

Mr. MASCARA. So you're comfortable, then, with the proposal that's in the bill?

Mr. JAYNE. Yes, sir, I think it'll help us complement the national cemetery system and it'll help us bring service to a lot more veterans.

Mr. MASCARA. Because Mr. Rhea wasn't. And I don't know if he's still here or not. You were not comfortable with the setup. I'm trying to get both sides to comment on this issue. Is it all right, Mr. Chairman, to have him comment?

Mr. QUINN. It's fine with me. We can't hear him and he's not on the record, so if he could come up and speak into one of the microphones. Turn that one on, would you please? That's the problem.

You're like a phantom voice, unless you're on the record here. Alright.

Mr. RHEA. The Non Commissioned Officers would feel much more comfortable if we had a long-range plan for the national cemetery system that we could hold up, say, in our left hand and in our right hand hold up the proposal that we have here for the State program, look at them both, and see how they're going to go together. And then, in our view, when we had that, to put it together, then we could see how we're going to meet the burial requirement for our veterans. We cannot see that right now because we're only looking five years out in the national cemetery system.

Mr. MASCARA. We're looking at the unknown, then, and you want something more definite.

Mr. RHEA. Yes, sir.

Mr. MASCARA. Okay. Thank you, Mr. Rhea. I appreciate your comments.

Mr. QUINN. Would the gentleman yield for just a second?

Mr. MASCARA. Yes.

Mr. QUINN. Following a hearing that we had here, Mr. Filner and I sent a joint letter asking for that same kind of information that Mr. Rhea just talked about. We were frustrated one day at a hearing here, as you probably heard and knew. So Bob and I put together a letter, sent it over, and asked for that plan that you need in the left hand, as Mr. Rhea points out. We don't have that yet. So we wanted it to go out to 2010 and we asked for that information and it's in the works.

Ms. EGAN. Okay. As I understand, Mr. Chairman, you had requested and the Department, I believe, is committed to provide you that response in August.

Mr. QUINN. Right. Yes.

Ms. EGAN. By August of this year.

Mr. QUINN. But we asked to have it—actually, Bob and I were thinking about it before the Fourth of July parade, but then we got rational and figured that if we could get it during August, it'd be ready for us when we returned in September for us to sit down and have the subcommittee take a look at it. And that's more fair, frankly, for you to get us better information.

Mr. MASCARA. Thank you, Mr. Chairman. Thank you, Ms. Egan.

Mr. QUINN. I just wanted to—thank you, Mr. Mascara. Jill, I don't know if you want the opportunity to ask any questions for Mr. Filner in his absence? We'll—if we needed anything we'll get to him. Okay.

Finally, the Department estimates the cost of the accelerated education benefits provision to be about $2 million over 5 years or so and I just wanted to ask if you could give us a ballpark figure or discuss a little bit about how you arrived at that figure, that number.

Ms. EGAN. Yes, sir. I'm going to ask Ms. Dollarhide to—if she will address that, please.

Mr. QUINN. Sure. Celia.

Ms. DOLLARHIDE. How are you this morning?

Mr. QUINN. Good, good morning.

Ms. DOLLARHIDE. We currently have roughly two percent of our veterans who take an advanced pay and we were working with fig-

ures such as those when we did the costing. I understand that there have been some other assumptions and we would be happy to work with the committee on those. Those may be a little low, but between $2 and $4 million would probably be the cost for the current proposal to accelerate the benefits.

Mr. QUINN. Okay. Well, we'd be happy to work with you. Thank you. Good morning, Mr. Hayworth. Thanks for joining us. I'd give you the opportunity, if you wished, for an opening statement or comment at this time.

Mr. HAYWORTH. I'm pleased to be here. Appreciate your leadership. Thank the panel for coming to offer their testimony. Look forward to the markup and thank you very much.

Mr. QUINN. Good. Thanks for coming. Thank you. No further questions from me. Okay. Thanks for being here.

Ms. EGAN. Okay. Thank you.

Mr. QUINN. Appreciate it. Now we had—you're excused, of course. I'll knock on something. Originally we had planned to move right to the markup, but we're missing some members who are at another meeting and I told them all that we would recess briefly for about 10 minutes so that they can be paged and get themselves over here if they're able to. So I'm going to declare the subcommittee in recess for 10 minutes. We'll reconvene at 11:05.

[Whereupon, at 10:54 a.m., the subcommittee adjourned subject to the call of the chair.]

APPENDIX

OPENING STATEMENT OF THE

HONORABLE LANE EVANS

SUBCOMMITTEE ON BENEFITS – JUNE 18, 1998

I WANT TO WELCOME ALL OF YOU THIS MORNING. THE BILL WE ARE REVIEWING AND MARKING-UP TODAY IS PARTICULARLY IMPORTANT TO THE VETERAN COMMUNITY.

THE BILL IS A COMPREHENSIVE BILL COVERING CHANGES WHICH WILL IMPROVE THE TIMELY, FAIR AND APPROPRIATE DELIVERY OF SERVICES TO VETERANS. THE DRAFT BILL MAKES CHANGES IN COMPENSATION, EDUCATION, AND CEMETERY PROGRAMS, DVOP SPECIALISTS, THE BOARD OF VETERANS APPEALS AND THE RETIREMENT PROGRAM OF THE COURT OF VETERANS APPEALS.

IT WILL ALSO SUBJECT THE VA HOME LOAN GUARANTY PROGRAM TO THE REQUIREMENTS OF THE COMPETITION IN CONTRACTING ACT. IN THOSE CASES WHERE A SIGNIFICANT

51-566 98 - 3

CONTRACT IS TO BE AWARDED, THIS PROVISION WILL ASSURE THAT THOSE DEALING WITH THE VA CAN RELY ON FAIR PROCEDURES AND REMEDIES FOR ANY VIOLATIONS OF LAW.

THANK YOU FOR BEING HERE THIS MORNING. I LOOK FORWARD TO HEARING YOUR TESTIMONY.

STATEMENT OF
ESPIRIDION (AL) BORREGO
ASSISTANT SECRETARY OF LABOR FOR THE
VETERANS' EMPLOYMENT AND TRAINING SERVICE

FOR THE HOUSE VETERANS' AFFAIRS COMMITTEE

JUNE 18, 1998

Mr. Chairman and Distinguished Members of the House Veterans' Affairs Committee. It is an honor for me to present the views of the Veterans' Employment and Training Service (VETS) regarding proposed changes in qualification and calculation of the number of positions related to the Disabled Veteran Outreach Program (DVOP). These changes are contained in the proposed "Veterans Benefits Improvement Act of 1998".

In the selection process of DVOPs, current law gives preference to disabled "Vietnam era" veterans. One proposed change would provide preference to all disabled veterans, as well as the disabled "Vietnam era" veterans, for these DVOP positions.

Since disabled veterans, and especially transitioning disabled veterans, have a disproportionally high level of unemployment or have become discouraged and no longer seek employment, broadening the category of disabled veteran would provide employment opportunities not currently available.

Moreover, the intent of the DVOP program is to provide disabled veterans with a "peer-consulting" capability This proposed change would allow our State partners an opportunity to hire a broader range of disabled veterans to serve their current disabled veteran clientele.

Also under consideration by the Committee is a modification in how the number of DVOPs would be calculated. Currently, the number of DVOPs is established on the basis of one DVOP position per 6,900 Vietnam era veterans, those serving in the military after May 7, 1975, and disabled veterans residing in a state. The formula currently yields authority for a total of 2,081 DVOPs.

The proposed legislation would substitute an age definition for the State veteran count per DVOP position as 7,400 veterans who are between the ages of 20 and 64 residing in such State. The resulting number of DVOPs authorized under this calculation would be 2,072. This authorized level would be roughly the same as under the current formula and thus would not affect services to veterans.

The Veterans' Employment and Training Service of the Department of Labor acknowledges that these modifications would be consistent with the current needs and changing mix of our disabled veteran clients and the disabled veteran population as a whole.

STATEMENT OF

HARLEY THOMAS, ASSOCIATE LEGISLATIVE DIRECTOR

PARALYZED VETERANS OF AMERICA

BEFORE THE

SUBCOMMITTEE ON BENEFITS

OF THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

CONCERNING

"VETERANS BENEFITS IMPROVEMENT ACT OF 1998"

JUNE 18, 1998

Chairman Quinn, Ranking Democratic Member Filner, Members of the Subcommittee, on behalf of the Paralyzed Veterans of America (PVA) I appreciate this opportunity to testify regarding the Discussion Draft of the "Veterans Benefits Improvement Act of 1998 "

Although PVA has no opposition to many of the provisions in this legislation, we are strongly opposed to section 307 (a), found on page 19, line 7. PVA is opposed to allowing members of the Board of Veterans' Appeals (BVA) to assume the title of "veterans administrative law judges" without also undergoing the rigorous process, and meeting the detailed requirements, necessary to become an administrative law judge.

Four years ago, we supported increased pay for BVA members as a way of encouraging better results, and as an aid to retaining experienced and qualified members But we also urged tying increased pay to improved performance. Sadly, over 60 percent of decisions before the Court of Veterans Appeals are remanded back to the BVA for error. BVA

should not be rewarded for consistently making mistakes in the decisions it does render To enable Board members to assume the mantle of administrative law judges without meeting the requirements mandated for administrative law judges is demeaning to administrative law judges and would not lead to any demonstrated improvements for veterans The BVA simply can not have it both ways.

As we testified before this Subcommittee on June 10, 1998, we are gravely concerned about Board involvement after it has rendered a decision and a veteran has appealed to the Court of Veterans Appeals As we stated "[t]he BVA's clandestine participation harms veteran appellants, is not authorized by law or statute, and leads to concerns over the impartiality of the process PVA asks that you address this troubling situation." We certainly do not think that allowing BVA members to style themselves "veterans administrative law judges" adequately addresses this serious matter. PVA looks forward to a hearing on this, and the possibility of legislative action to correct this matter. If section 307(a) remains in this bill, we will find it extremely difficult to support this legislation.

The remainder of the Discussion Draft of the "Veterans Benefits Improvement Act of 1998" will be discussed very briefly below.

Section 101. Increase in Rates of Disability Compensation and Dependency and Indemnity Compensation. PVA supports the proposed increase in rates of disability compensation and dependency and indemnity compensation However, PVA opposes the provision making permanent the rounding down to the nearest whole dollar of compensation increases. We have opposed this in the past, and will continue to do so in the future Veterans have done their share to balance the budget and support transportation, they should not be asked to accept permanent compensation cuts. Veterans should not be asked to do what others are not in the pursuit of balancing our federal budget. Further, PVA asks that you bear in mind that the Consumer Price Index (CPI) may not adequately reflect the true cost increases borne by disabled veterans year in and year out.

Section 201 Calculation of Reporting Fee Based on Total Veteran Enrollment During a Calendar Year PVA has no objection to adjusting the date for calculation of reporting fee based on total veteran enrollment from October 31, to "during the calendar year"

Section 202 Election of Advance Payment of Work-Study Allowance PVA has no objection to this change

Section 203 Alternative to Twelve Semester Hour Equivalency Requirement PVA has no objection to this change

Section 204. Medical Evidence For Flight Training Requirements PVA has no objection to this change

Section 205 Optional Increase In Amount of Advance Payment of Initial Educational Allowance PVA has no objection to this change

Section 206 Waiver of Wage Increase and Minimum Payment Rate Requirements for Government Job Training Program Approval. PVA has no objection to this change.

Section 207 Expansion of Education Outreach Services PVA has no objection to this change

Section 208 Information on Minimum Requirements for Education Benefits for Members of the Armed Forces Discharged Early From Active Duty for the Convenience of the Government PVA has no objection to this change

Section 301 Applicability of Procurement Law to Certain Contracts of Department of Veterans Affairs PVA has no objection to this provision

Section 302 Permanent Eligibility of Former Members of Selected Reserve for Veterans Housing Loans PVA has no objection to this change

Section 303 Furnishing of Burial Flags for Deceased Members and Former Members of the Selected Reserve PVA has no objection to this change

Section 304. State Cemetery Grants Program PVA does not oppose this provision We do, however, wish to draw the Subcommittee's attention to a probable drafting error Section 304(b), page 17, line 4 should probably read "2408(c)" rather than "2408(c) "

Section 305 Disabled Veterans Outreach Program Specialists PVA has advocated for this change in previous testimony and applauds the committee for its inclusion in this bill

Section 306 Permanent Authority to Use for Operating Expenses of Department of Veterans Affairs Medical Facilities Amounts Available by Reason of the Limitation on Pension for Veterans Receiving Nursing Care PVA is in total agreement to restoring this provision

Section 307 Members of the Board of Veterans' Appeals As I have stated, we strongly oppose section 307(a) and call on you to remove this provision during markup

Mr Chairman, this concludes my testimony I will be happy to answer any questions you or members of the committee may have

STATEMENT OF JOHN VITIKACS, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
VARIOUS LEGISLATIVE PROPOSALS
JUNE 18, 1998

Mr. Chairman and Members of the Subcommittee

The American Legion appreciates the opportunity to present testimony on issues important to the Legion and the 2.8 million members it represents.

The proposed legislation would provide a cost-of-living adjustment in rates of compensation paid to veterans with service-connected disabilities. It would also make various improvements in education, housing, and cemetery programs administered by the Department of Veterans Affairs (VA). I will now comment on each of these programs areas.

1.Veterans Benefits Act of 1998

Mr. Chairman, The American Legion supports the proposed cost-of-living adjustments (COLA) in the monthly rates of VA disability compensation, clothing allowance, and Dependency and Indemnity Compensation, if that percentage is the same increase awarded to Social Security beneficiaries and becomes effective as of December 1, 1998.

Mr. Chairman, The American Legion believes it is important that this subcommittee take the required action to ensure that the general welfare and well-being of veterans who are service-connected, as well as their families and survivors be provided periodic cost-of-living adjustments in the benefits they are entitled. The American Legion also believes it is important for this subcommittee to continue holding hearings on COLA legislation. These hearings provide an excellent forum to discuss issues concerning compensation and DIC programs that might not otherwise be available for veterans' advocates.

Mr. Chairman, I would like to bring one such issue to the attention of this committee. A provision within the recently enacted Transportation Equity Act, authorize the reinstatement of DIC to certain surviving spouses whose benefits were terminated under OBRA 90. The American Legion has actively lobbied on behalf of this action since 1990. However, the Legion strongly believes that VA must implement an "aggressive" outreach program in order to identify those beneficiaries as quickly as possible. Many surviving spouses continue to experience financial hardships as a result of OBRA 90. Moreover, The American Legion believes VA should act expeditiously to implement this long over-due change in the law.

Mr. Chairman, The American Legion has no objection to the Title III proposal that would give VA permanent authority to pay pension in excess of the currently authorized monthly limit of $90 for those veterans receiving nursing home care and putting the money in an account for use by the VA medical facility providing the care. These funds would be used to defray the overall operating expenses of the VA medical facility.

Title 111 has also proposed to make certain changes at the Board of Veterans Appeals. Under this proposal, Board Members titles would be changed to Administrative Law Judges, and each member would be required to be an attorney. Moreover, the proposal would provide certain employment reversion rights for attorneys at the Board.

Finally, Mr. Chairman, The American Legion has long supported legislation that would provide a salary comparable to that of Administrative law judges in the Social Security Administration. Thus, the Legion believes the proposed title change and professional qualifications' requirements are consistent with the Board Member's function, duties and current pay level. The American Legion supports the proposed reversion rights for certain attorneys of the Board.

2a. Veterans Housing

Mr. Chairman, I will now comment on those parts of the legislation that addresses an issue of paramount importance to The American Legion.

Section 302 of Title III makes permanent a pilot program that would allow former members of the Armed Forces Reserves the opportunity to take advantage of VA's Home Loan Guaranty Program. With the reserves and National Guard components now providing a significant portion of the military capability of the US Armed Forces, The American Legion believes that enhancing the recruiting efforts of the Reserves is important to the national security of the nation. The American Legion supports making this pilot program a permanent program administered by VA.

2b. Employment

Mr. Chairman, Section 305 changes the formula by which DVOPs are assigned to the states by raising the number required for each DVOP from 6900 to "one DVOP for each 7,400 veterans who are between the ages of 20 and 64 residing in the State." The American Legion would begrudgingly support this change, but is concerned about the age requirement which begins at 20.

Section 306 of this proposed legislation would effectively remove the requirements that employment assistance programs and the appointment of Disabled Veterans Outreach Program Specialist (DVOPs) give preference to veterans of the Vietnam Era. The average age of most Vietnam Era veterans is over 40 years. Since most veterans of this era have been a part of the national work force for many years, many are already retired.

The American Legion has long advocated the entry of younger veterans into these programs on a preferential basis. Therefore, we strongly support the provision of the legislation which would open up the veterans employment program to veterans of other than the Vietnam Era.

Mr. Chairman, there are veterans who leave the military prior to age 20 with some type of service-connected disability. If this provision of the legislation becomes law, these veterans, who would need employment, would not count against the formula for assignment of DVOPs. Similarly, at the present time, a person can begin drawing Social Security at age 62, and many veterans opt to do so. That being the case, why count people who are currently on social security against the formula? As an alternative, The American Legion suggests that the age requirement for the assignment of DVOPs to each state be changed to "one DVOP for each 7,400 veterans between the ages of 18 and 62."

3. Education Benefits

Mr. Chairman, with regard to Title II of the draft bill for education benefits, The American Legion is grateful for this subcommittee's efforts to improve education benefits and services for veterans.

Montgomery GI Bill benefits are currently distributed based on an education plan at an accredited four year college or university. Some formal training schools, especially in the high technology fields, are conducted in an accelerated manner. The American Legion believes veterans should receive accelerated benefits for courses which are conducted in a shorter length of time but with a higher intensity of course work. Benefits should be subjected to the learning material covered based on the quantity and quality of the learning experience.

In addition, many veterans leave the military with college courses already completed. Accelerated payments would allow these veterans to receive more of their earned benefit during their shortened college career. Under the current program, these veterans are essentially penalized with regard to their benefit because they have taken the initiative to complete some of their college while in service. That is grossly unfair and correcting this inequity only makes sense.

Liberalizing current rules and regulations with regards to the twelve semester hour equivalency requirement is also beneficial. Mr. Chairman, allowing colleges and universities to grant college credit for certain military training and employment experiences for veterans not possessing a high school diploma or GED will provide these veterans the opportunity to receive their MGIB benefits sooner. The American Legion believes this provision of the draft bill also makes sense.

The American Legion supports providing veterans eligible for work study the option to elect how and when they receive their work study payments. The American Legion believes veterans are responsible citizens serious about receiving an education to improve their quality of life. This provision will allow veterans to better utilize their work study payments to meet financial needs during a period in life when their earning power is greatly reduced.

The American Legion supports having the Department of Veterans Affairs perform education outreach, as well as providing adequate education benefits information to veterans receiving early discharges at the convenience of the government. Arming veterans with the appropriate knowledge about their benefits will allow them to better prepare for their future and greatly assist in their transition efforts. Mr. Chairman, The American Legion has no opposition with regard to the other provisions of Title II of the draft bill.

4. State Cemetery Grants Program

Title III - Section 303

The American Legion supports the furnishing of burial flags for deceased members and former members of the selected reserve.

Title III - Section 304

The American Legion supports the effort to strengthen the State Cemetery Grants Program. Providing 100 percent of new construction and initial equipment costs could attract the development of new state veterans cemeteries. However, until state cemetery maintenance operations are addressed by increasing the current $150 plot allowance, the preferred impact of the proposal may not be attained. The proposal recognizes that it is easier to obtain increases in discretionary construction funding

than it is to increase mandatory benefits funding. Although the legislation recognizes a need to promote the State Cemetery Grants Program, without a complete proposal, the measure may not contribute to meeting the burial needs of the veteran population.

The State Cemetery Grants Program is critical to meeting the increased burial needs of America's veterans and their eligible dependents. The program can reduce by two-thirds the time it takes to design, fund and construct national cemeteries It is recommended a study be conducted to determine what factors are critical to the States with regard to expanding the State Cemetery Grants Program in the most underserved areas of the country. This data is related to constructing the best possible proposal

Mr. Chairman, that concludes this statement.

STATEMENT OF
WILLIAM T. FRASURE, SPECIAL ASSISTANT
NATIONAL LEGISLATIVE SERVICE

BEFORE THE

SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO
THE "VETERANS BENEFITS IMPROVEMENT ACT OF 1998"

WASHINGTON, DC **JUNE 18, 1998**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.1 million members of the Veterans of Foreign Wars (VFW) I am pleased to appear before you today to provide our views on the "Veterans Benefit Improvement Act of 1998 " This comprehensive legislation is far-reaching in scope, and will bear a palpable effect on veterans of all ages hailing from different eras.

Title I of this bill would increase the rates of disability compensation and dependency and indemnity compensation for those veterans who are receiving or stand to receive these benefits In light of today's increasing expenses for such necessities as housing, food and clothing, this cost-of-living adjustment (COLA) is definitely needed. These rate adjustments will allow many disabled veterans whose service-connected injuries and illnesses render them unable to work, to live with dignity and self-sufficiency. While continuing to oppose the "rounding down" of the COLAs to the lowest dollar, the VFW wholeheartedly endorses Title I of this bill

Title II of the "Veterans Benefit Improvement Act of 1998" puts in place some much needed technical changes to education benefits for veterans. Section 202 of Title II grants a student veteran who is participating in the Work Study Program (section 3485, chapter 34, title 38, USC) the *option* of selecting advance payment. Currently, a Work Study participant must receive a portion of the entire allotted payment (for participation in the program) at the beginning of the program. We believe that the student veteran should receive pay in a manner that is most effective and convenient towards the financing of the veteran's education.

In order for a veteran to currently receive the full amount of his or her education benefit, the veteran is required to take a course load of at least twelve semester credits. Section 203 does away with this onerous requirement by mandating that the veteran must be enrolled in a course of study *equal* to twelve semester credits. The VFW believes that Section 203 will grant veterans a greater choice in where they select to receive post-secondary education. Many legitimate institutions of higher learning today do not operate on a traditional semester-hour credit system. This section will make it easier for the veteran to utilize his or her benefits at such schools.

Section 205, which grants a veteran the option to receive an accelerated payment equal to two months payment, will help the veteran better meet the up-front costs of attending school The VFW approves of Section 207, as this section would mandate that those members of the Armed Forces who are participating in the GI Bill will be kept fully informed of the education benefits due to them and the eligibility requirements for these benefits These participants invest $1200 of their hard-earned money into the GI Bill, it is only right that they receive timely and thorough information regarding their investments.

Title II of this legislation seeks to provide veterans greater flexibility in how and where they use their education benefits, and seeks to make their dollars stretch further. In this era of soaring education costs and an increasing public and private emphasis on a post-secondary education, the VFW firmly believes that this nation's separating servicemembers deserve a GI Bill of maximum efficacy

Title III of the "Veterans Benefit Improvement Act of 1998" is an amalgam of changes to veterans benefits. Section 302 would make permanent the eligibility of members of the selected Reserves for veterans housing loans. Section 303 would mandate that the Secretary furnish a flag to the next of kin of deceased members or former members of the selected Reserves. Both of these sections recognize the vital role that the Reserves fill in today's military and seek to appropriately honor the sacrifices of America's citizen-soldiers.

The number of deceased veterans will continue to sharply rise well into the next century. There is an urgent need for burial space and section 304 addresses this need. This section increases the amount of a federal grant to a state veterans' cemetery to 100 percent of the cost of the land to be converted to a cemetery, and the cost of initial equipment needed to operate a cemetery. While this is indeed a measure we approve of, we caution that these grants should not *replace* or diminish the existing national veterans cemetery system.

The VFW lauds section 305 as it makes some long requested changes to chapter 4103A of Title 38, United States Code, which governs Disabled Veterans Outreach Program Specialists (DVOPs). Section 305 would ensure that DVOPs are proportionately located state by state according to the number of veterans in the actual workforce of each state. It only makes common sense to concentrate this valuable resource (DVOPs) where it is most needed. Currently, a veteran of Desert Storm, Grenada, Somalia or the numerous other modern conflicts this nation has engaged in, is not eligible to work as a DVOP. Eligibility for this position is restricted to veterans of the "Vietnam era." Section 305 would amend this by ridding this position of this requirement and opening up eligibility for DVOP positions to all veterans. This change will allow the Disabled Veteran Outreach Program to bring in a pool of talented, young veterans with the necessary technology skills, knowledge and vigor that is needed to merge separating and disabled veterans into the next century's complex and demanding job market.

This is a bill of common sense and foresight, and the VFW urges its passage. Thank you, Mr. Chairman, for inviting the VFW to this hearing. This concludes our statement. I welcome whatever questions you and your colleagues may have.

Non Commissioned Officers Association of the United States of America
225 N. Washington Street • Alexandria, Virginia 22314 • Telephone (703) 549-0311

STATEMENT OF

LARRY D. RHEA
DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS

BEFORE THE

SUBCOMMITTEE ON BENEFITS

COMMITTEE ON VETERANS AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

ON

DRAFT LEGISLATION
ENTITLED
THE VETERANS BENEFITS IMPROVEMENT ACT
OF 1998

JUNE 18, 1998

Chartered by the United States Congress

Non Commissioned Officers Association of the United States of America

225 N. Washington Street • Alexandria, Virginia 22314 • Telephone (703) 549-0311

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Non Commissioned Officers Association of the USA (NCOA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts All of the Association's activities and services are accomplished completely free of any federal funding

The Non Commissioned Officers Association of the USA (NCOA) is grateful for the opportunity to appear today and present testimony on a draft bill that would make various changes in veteran's education, housing, and cemetery programs and other veteran's benefits. The Association thanks the Distinguished Chairman for your invitation and, as always, NCOA appreciates deeply the leadership of both the Chairman and Distinguished Ranking Member on these and other important veteran's issues.

Overall, NCOA is satisfied with the draft bill since several of the issues addressed in the proposed legislation represent Association initiatives or changes that NCOA has been advocating for several years. On the other hand, the Association is opposed to the recommendations pertaining to the State Veterans Cemetery Grants Program. NCOA's comments relative to each section of the draft are provided below. The Association trusts that our testimony will be helpful to the Subcommittee as you consider The Veterans Benefits Improvement Act of 1998.

Draft Bill Entitled

The Veterans Benefits Improvement Act of 1998

Title I – Compensation Cost-of-Living Adjustment

Title I would authorize, effective December 1, 1998, an increase in the rates of veterans disability compensation, additional compensation for dependents, dependency and indemnity compensation and the clothing allowance for veterans. Each of these would be increased by the same percentage as the increase applied to benefits payable under the Social Security Act. NCOA supports each of these increases.

Title II – Education Benefits

Section 201 – Calculation of Reporting Fee Based on Total Veteran Enrollment during a Calendar Year. Section 201 proposes a technical amendment to 38 USC 3684(c) relating to the calculation of reporting fees based on total veteran enrollment during a calendar year. NCOA has no objections to this change.

Section 202 – Election of Advance Payment of Work-Study Allowance. Current law stipulates that under the Department of Veterans Affairs work-study program, an individual shall be paid in advance an amount equal to 40% of the total amount of the work-study allowance agreed to under the entered into agreement. Section 202 proposes to amend 38 USC 3485(a)(1) to allow an individual employed under the work-study program to elect to be paid in advance, in a manner prescribed by the Secretary, if the individual so chooses. NCOA supports this change.

Section 203 – Alternative to Twelve-Semester Hour Equivalency Requirement. It is NCOA's understanding that the intent of the change proposed by Section 203 is to allow the Department of Veterans Affairs the widest possible latitude to establish eligibility for the basic education benefit. Changing the language of existing law from "successfully completed" to "successfully completed (or otherwise received academic credit for)" would permit VA to credit the veteran's life experiences toward establishing eligibility. NCOA views this proposal very positive and fully supports this alternative for the Chapter 30 benefit.

Section 204 – Medical Evidence for Flight Training Requirements. Section 204 proposes clarifying amendments to 38 USC 3034(d)(2) and 3241(b)(2) regarding flight training requirements under the basic education assistance program. NCOA has no objections to these changes.

Section 205 – Optional Increase in Amount of Advance Payment of Initial Education Allowance. Section 205 would permit, on an optional basis, a veteran to

elect an increase in the amount of advance payment of initial education allowance. Under the proposed change, the eligible veteran could elect 2 months advance payment and the change structures the benefit so no gaps in payment occur during the early months of the academic year. NCOA believes this change would be attractive to many veterans and the Association endorses this added optional feature.

Section 206 – Waiver of Wage Increase and Minimum Payment Rate Requirements for Government Job Training Program Approval. 38 USC 3677 (b) establishes minimum wages and wage increases required to be paid to participants in approved on-the-job training programs. Currently, upon entrance into training, wages must be not less than wages paid non-veterans in the same training position and not less than 50% of the wages paid for the job for which the veteran is to be trained. Also, such wages shall be increased in regular increments until, not later than the last full month of the training period, the wages are at least 85% of the wages paid for the job for which the veteran is being trained. The change, proposed by Section 206, would exempt training establishments operated by the United States or by a State or local government. NCOA is not opposed to this change.

Section 207 – Expansion of Education Outreach Services. This section would amend 38 USC 3034 by adding a requirement for the Secretary of Veterans Affairs to furnish specific educational benefits information to each service member as soon as practicable after the member has made his or her $1200 Montgomery GI Bill contribution. Among the information the Secretary would be required to provide would be information with respect to the benefits, limitations, procedures, eligibility requirements, and other important aspects of the basic educational assistance program, including application forms for the basic benefit. Further, the Secretary would also be required to furnish application forms to educational institutions, training establishments, and military education personnel.

NCOA views these proposed changes in a positive light. The Association believes, however, that this section would be strengthened if the Secretary were required to furnish such information within a specified period of time. Rather than the general language "as soon as practicable", NCOA believes the information should be furnished within 90 days following completion of the $1200 enrollment fee.

Section 208 – Information on Minimum Requirements for Education Benefits for Members of the Armed Forces Discharged Early from Duty for the Convenience of the Government. Section 207 is closely related to Section 208, and like the previous section, NCOA views the proposed changes in Section 208 very positive. NCOA is aware of some cases wherein the service member did not understand the education benefit consequences of their decision to take an "early out." If enacted, members of the Armed Forces, discharged early for convenience of the government, would have the consequences of failing to meet the minimum active duty requirements for entitlement to educational assistance, including forfeiture of the $1200 enrollment fee, explained to them. The Secretaries of the military services would be required to provide this information. NCOA fully supports Section 208.

TITLE III – Other Matters

Section 301 – Applicability of Procurement Law to Certain Contracts of Department of Veterans Affairs. This section would amend 38 USC 3720 to require certain contracts of the Department of Veterans Affairs to be subject to the same procurement law applicable to other departments and agencies of the Federal Government. The change would apply title III of the Federal Property and Administrative Services Act of 1949 to any contract for services or supplies acquired by the Department. NCOA has no objections to this section, which is identical in nature to H.R. 2887.

Section 302 – Permanent Eligibility of Former Members of Selected Reserve for Veterans Housing Loans. The change proposed in Section 302 would make the Selected Reserve Home Loan Program, authorized by 38 USC 3702(a)(2)(E),

permanent. NCOA fully supports this change as being in consonance with the Total Force.

Section 303 – Furnishing of Burial Flags for Deceased Members and Former Members of the Selected Reserve. Section 303 would modify current law regarding the presentation of burial flags to include additional members of the National Guard and Reserve Components. Current law limits the presentation of a burial flag to the survivors of some reserve component members to death occurring during authorized periods of military duty, or the member must be retired or retirement eligible.

The change proposed in Section 303 is identical to H.R. 3668, introduced on April 1, 1998, by Representatives Paul McHale and Steve Buyer. If enacted, burial flags would be authorized to drape the casket and be presented to the next of kin of each deceased member or former member of the Selected Reserve, whose character of service was honorable, who is not otherwise eligible, and who:

- Completed at least one enlistment or period of initial obligated service
- Was discharged, by reason of disability incurred or aggravated in the line of duty, before completion of the enlistment period or period of initial obligated service, or
- Died while a member of the Selected Reserve.

NCOA fully supports this change and notes with satisfaction that this change represents an Association initiative started almost two years ago. The change clearly is in consonance with the Total Force and recognizes the valuable, and oftentimes hazardous, missions performed by Selected Reservists in an other than active duty status. Section 303 clearly merits favorable consideration by the Subcommittee and NCOA is grateful that this provision was included in the draft bill.

Section 304 – State Cemetery Grants Program. The change proposed in this section embodies the Administration's proposal for the State Veterans Cemetery Grants Program that was contained in the President's budget for Fiscal Year 1998 and again this year for Fiscal Year 1999. NCOA has testified previously in opposition to the President's proposal and nothing has transpired that would cause the Association to drop our opposition and support the change at this time. At best the change is premature in view of the lack of a comprehensive long-range strategic plan for the National Cemetery System. At worst, it likely will lead to complete abandonment of the federal responsibility.

Since its inception ten years ago, the state program has been marginally successful, less than 50% of the states have established state veterans' cemeteries. It is NCOA understands that the States have shown little interest in the Administration's proposal and the Association is somewhat perplexed that the Subcommittee is advancing the proposal. With ten years of experience in the state cemetery grants program, NCOA believes it is safe to conclude that the added federal funding will not attract substantially more participation, certainly not enough State participation to meet projected burial demands. State officials can count and they can readily compute the long-term costs that would be incurred.

More fundamentally, NCOA believes it is wrong to shift away from the national obligation that this proposal so transparently represents. No other conclusion can be reached when this proposal is balanced against the strategic plan - more appropriately, the lack of any plan - for the National Cemetery System. A long-range strategic plan needs to be in place, a plan that calls for new cemeteries in the national system, complimented and not replaced by the state veterans cemetery program. Absent such a plan, NCOA is opposed to Section 304 and asks that it be stricken from an otherwise excellent piece of draft legislation.

Section 305 – Disabled Veterans Outreach Program Specialists. Section 305 proposes two changes to 38 USC 4103A(a)(1) relating to Disabled Veterans

Outreach Program Specialists. The formula for funding DVOP positions would be changed to authorize the appointment of one DVOP specialists for each 6,900 veterans who are between the ages of 18 and 60 residing in a particular State. NCOA believes this proposed formula change, that rightfully encompasses all veterans, is much more preferable than the current formula that is tied heavily to the Vietnam Era. Further, it is NCOA's understanding that this change would not alter appreciably the number of DVOP specialists currently authorized. However, the Association believes the proposed formula would provide the flexibility needed in adjusting to future changes in the veteran population. This change makes sense and NCOA fully supports it.

Secondly, Section 305 would remove the current stipulation that DVOP specialists are appointed from qualified disabled veterans of the Vietnam era. For some time now, NCOA has been of the opinion that 38 USC 4301A(a)(1) should be changed to allow the appointment of any qualified service-connected disabled veteran, without regard to military service era. This, too, is a common sense approach and NCOA fully supports this change.

Section 306 – Permanent Authority to Use for Operating Expenses of Department of Veterans Affairs Medical Facilities Amounts Available by Reason of the Limitation on Pension for Veterans Receiving Medicaid-Covered Nursing Care. Currently, where any veteran having neither spouse nor child is being furnished nursing home care by the Department of Veterans Affairs, the pension of such veteran is limited to $90 per month. Through September 30, 1997, any amounts in excess of $90 were deposited in the revolving fund of the VA medical facility providing nursing care to the veteran and such amounts were used to help defray operating expenses of that facility. The change proposed by Section 306 would remove the September 30, 1997, limiting date and thereby make the pension limitation permanent. NCOA supports this change.

Section 307 – Members of the Board of Veterans' Appeals. This section proposes three changes relative to the members of the Board of Veterans' Appeals: (1) Members of the Board (other than the Chairman) shall become known as veterans administrative law judges; (2) adds a requirement that each member of the Board shall be a member in good standing of the bar of a State; and, (3) adds stipulations regarding employment reversion rights for Board members NCOA is not opposed to any of these proposed changes.

CONCLUSION

In closing, NCOA again thanks the Distinguished Chairman for this opportunity. Your consideration of our comments and concerns on The Veterans Benefits Improvement Act of 1998 is sincerely appreciated.

Thank you.

Statement of Nora Egan

Deputy Under Secretary for Management

Veterans Benefits Administration

Department of Veterans Affairs

Before the

House Committee on Veterans' Affairs

Subcommittee on Benefits

June 18, 1998

Mr Chairman and Members of the Subcommittee, I am pleased to be here this morning to provide the views of the Department of Veterans Affairs (VA) on a draft bill to provide a cost-of-living adjustment in rates of compensation paid to veterans with service-connected disabilities and to make various improvements in education, housing, cemetery, and other programs benefiting veterans.

Title I - Compensation Cost-of-Living Adjustment (COLA)

Section 101 of the draft bill would direct the Secretary of Veterans Affairs to increase administratively, effective December 1, 1998, the rates of compensation for service-disabled veterans and of dependency and indemnity compensation (DIC) for the survivors of veterans whose deaths are service related The rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients In determining the new rates, the Secretary would be required to round any fractional dollar amounts to the next lower whole dollar We believe this proposed COLA is necessary and appropriate in order to protect the benefits of these very deserving recipients from the eroding effects of inflation Accordingly, VA strongly supports this provision

Title II - Education Benefits

Title II of the draft bill would make several amendments to improve VA's educational assistance programs In general, we support these provisions

Section 201 of the draft bill would make an adjustment to the manner in which VA calculates the reporting fees it pays to educational institutions and training establishments as compensation for reports and certifications they are required by law to submit to VA Currently, the reporting fees paid to these entities are computed for each calendar year based upon the number of veterans receiving VA educational assistance who are enrolled on October 31st of that year This amendment would provide for the reporting fee to be calculated based on the veteran enrollment during the entire year Many educational institutions now offer courses during accelerated or nonstandard terms This amendment would allow educational institutions to be reimbursed for each veteran they certify to VA instead of being reimbursed only for those veterans enrolled on October 31 This provision would allow VA to make its reporting fee payments on a more equitable basis This section also would make the reporting fees mandatory Currently, these fees are paid from the general operating expenses discretionary account Thus this proposal would increase direct spending Preliminary estimates indicate that this proposal would cost approximately $4 million each year, starting in Fiscal Year (FY) 2000

Section 202 of the draft bill would allow advance payments under VA's work-study program to be at the option of the individual receiving the payment Under current law, VA contracts for the services of certain individuals who are pursuing VA vocational rehabilitation, education, or training programs to work in various areas such as VA outreach or preparing and processing documents at educational institutions or VA regional offices For these services, VA pays the individuals in the program an additional educational assistance allowance consisting of pay at the minimum wage for each hour worked Current law directs that VA make an advance payment of this work-study allowance to the individual

in an amount equal to 40 percent of the total amount agreed upon under the work-study contract The individual then would work without further compensation until the advance is paid off

A number of individuals in the work-study program have indicated that they do not want to receive an advance payment of their allowance They would prefer reimbursement for work as it is performed so they may receive payment on a regular basis and, thus, avoid periods during which they receive no work-study allowance under the current system This section would allow the individual the option of receiving the advance payment of work-study allowance

Section 203 of the draft bill would amend the Montgomery GI Bill (MGIB)-Active Duty program (chapter 30) eligibility requirements to allow veterans who successfully complete or are granted academic credit for the equivalent of 12 or more semester hours to participate in that program Generally under current law, an individual must among other requirements for entitlement to chapter 30 education assistance, have completed the requirements of a high school diploma (or its equivalent) or have completed 12 standard college degree credits (This requirement must be met either before the individual's completion of the initial obligated period of active duty or before applying for benefits, depending on the qualifying criteria applicable to the individual) Today however, many institutions of higher learning will admit students without a high school diploma and grant credit toward a degree for an individual's knowledge and life experience This practice particularly affects veterans and servicemembers who gain considerable life experience in their military careers

This section would allow an individual to satisfy the prior education requirement when the individual has been granted 12 or more credits toward a standard college degree based on the individual's knowledge and previous life experience VA supports this change, believing that an individual who has acquired collegiate credit through such means has manifested a level of knowledge, maturity, and ability that is necessary to successfully pursue postsecondary education and is at least equal to that of individuals who otherwise qualify

for benefits under the current eligibility requirements Our preliminary estimates indicate that there would be some small costs associated with this proposal.

Section 204 of the draft bill would amend the flight training provisions of the MGIB to clarify the criteria for complying with that program's medical requirements Under current law, VA education benefits may be paid for flight training provided that, among other things, the individual continuously meets the medical requirements for a commercial pilot's license during the course of flight training This section would require that the individual submit evidence at the beginning of training showing that he or she meets the medical requirements for the license sought We see this change as beneficial to program operation since it would reduce the administrative burden on trainees and schools while still providing adequate assurance that trainees can qualify for the objective for which they are training

Section 205 would provide, in addition to the current advance payment opportunity, a new accelerated payment option for veterans and eligible persons under the chapter 32 contributory GI Bill, the MGIB, and the chapter 35 Dependents' and Survivors' Educational Assistance programs The individual would have the choice of receiving either an advance payment for the beginning and subsequent months of the enrollment period or an accelerated payment consisting of two times the rate of monthly allowance payable during the enrollment period, with entitlement charged accordingly The accelerated payment would be subject to the same terms and conditions on eligibility, application, and delivery as currently apply to advance payments This change seems conceptually consistent with comments received from VA focus groups which have indicated that, due to increased educational costs, more "up front" money is needed to pay tuition Preliminary estimates indicate that this proposal would increase direct spending by approximately $2 million over the period FY 1999 - FY 2003

Section 206 of the draft bill would exempt Federal, state, and local government training establishments from meeting the incremental wage increase requirements currently in place for approval of on-job training for veterans Un-

der current law, to receive approval for a training program, a training establishment must certify that, among other criteria, wages paid to a trainee will be regularly increased until they equal not less than 85 percent of the full wage ordinarily paid for the job before the end of the training program We have been advised by many State Approving Agencies (SAAs), which approve programs of job training for VA, that some worthwhile programs run by State or local governments, such as those leading to a career in law enforcement, health, or public safety, cannot be approved because the trainee, in accordance with Federal, State, or local civil service regulations, does not receive the first pay increase until after the training program is completed This provision would allow approval, for VA education benefit purposes, of such beneficial government-operated training programs Preliminary estimates indicate that this proposal would increase direct spending by approximately $2 5 million in FY 1999, and almost $13 million during FYs 1999-2003

Section 207 of the draft bill would promote improved education outreach to servicemembers who have elected to participate in the MGIB by providing for the distribution of information concerning benefits, limitations, requirements, and procedures to those individuals as soon as possible after they have met their $1,200-basic-pay-reduction-eligibility requirement It would also provide for the distribution of like materials to educational institutions training establishments, and military education personnel

MGIB usage rates are currently lower than VA would like to see It has come to our attention that many individuals do not fully understand the MGIB eligibility requirements that must be satisfied to receive their education benefits under that program, such as the requirement for obtaining a secondary school diploma or its equivalent within a specified timeframe (a requirement that section 203 of this draft bill would modify) Still others believe they will receive a lump sum to defray the cost of their education rather than the monthly allowance that they actually receive

Placing this outreach provision within chapter 30 obviously would focus such efforts on MGIB participants Moreover, by expanding chapter 30 outreach to include active-duty MGIB participants, the provision would promote early dissemination of information to them about the MGIB benefits available, including pertinent requirements and limitations This also likely would encourage servicemembers to seek further information and assistance to better prepare them to maximize the benefits of the MGIB to meet their educational or vocational goals We believe this provision, if enacted, would have a beneficial impact on MGIB participants Preliminary estimates indicate that this proposal would increase direct spending by approximately $1 2 million over the period FY 1999 – FY 2003

Section 208 of the draft bill would amend sections 3011 and 3012 of title 38, United States Code, to require that the Department of Defense (DOD) inform each member of the Armed Forces who indicates an intent to request early discharge or release from his or her initial obligated active duty period, for the convenience of the Government, of the minimum active duty service required for entitlement to educational assistance under the MGIB-Active Duty program Apparently, this section would seek to assure that members are aware that their early discharge or release possibly may affect MGIB entitlement A report describing the effect of the new information requirements imposed by this section must be submitted to Congress within 18 months of the date of enactment of this provision Since DOD would be responsible for administering this provision, we would defer to that Department's views on its merits

Title III - Other Matters

Section 301 of the draft bill would subject contracts for goods and services with respect to properties VA acquires under the housing loan program to the Federal contracting requirements in title III of the Federal Property and Adminis-

trative Services Act of 1949 This section is similar to H R 2887, 105th Congress, which is also on today's agenda

In most instances where a VA guaranteed loan is foreclosed, the loan holder has a statutory election to convey the property to the Secretary If VA forecloses a loan that it made or acquired, then VA would normally acquire the property at the foreclosure sale In either event, VA then sells the property to the general public in an effort to recoup a portion of the Government's loss on the loan termination VA s goal is to be able to sell each property as quickly as possible for the most favorable price

Before selling a property, VA often contracts for a variety of goods or services with respect to the property, such as routine maintenance, repairs necessary for safety or structural soundness, and other minor repairs VA determines to be necessary in order for the property to compare favorably with similar properties on the market VA may also contract for property management and legal services Most contracts are relatively small As of November 1997, VA's average expenditure for contractual services per property was $2,553 This sum may represent several contracts per property, i e painting, cutting the grass, repairing the furnace or plumbing, and replacing the carpeting

Current law authorizes the Secretary to exercise the powers granted by section 3720 of title 38 regarding VA-owned properties without regard to any other law governing the expenditure of public funds That section, however, requires VA to comply with the advertising requirements of section 5 of title 41, United States Code, with regard to contracts in excess of $25,000

When Congress exempted VA acquired properties from other Federal laws relating to contracting more than 50 years ago, Congress apparently recognized the unique nature of these properties They are not Federal facilities Rather, they are single-family residences that are sold as quickly as possible to return money to the loan fund and reduce the loss to the Treasury on the loan transaction

Nevertheless VA strives to let contracts in a fair and competitive manner, and regional offices follow procedures for obtaining goods and services for our acquired properties that very closely mirror the FAR Therefore, in most cases, section 301 of the draft bill would not have a significant impact on VA

We are concerned, however, that some sales could be adversely impacted Any delay in a sale may increase the loss through vandalism to the property In addition, we are concerned about the adverse impact our vacant properties have on the surrounding neighborhood

We are also concerned that occasional bid protests for relatively small procurements could cause additional delays In certain situations agencies are required to stay contract award or performance until resolution of a protest If VA's decision to buy carpeting or a refrigerator for a home were protested by a losing bidder, VA's ability to market that property could be delayed for several months while the bid protest was being considered Meanwhile, that property would sit vacant

VA believes the current law, which requires reasonable advertising for larger procurements, and under which VA's actions voluntarily mirror FAR requirements, has been fair and adequate for over 50 years From all indications we have received, contractors and potential contractors are generally satisfied with the manner in which VA obtains goods and services for our properties We appreciate the concerns of the Committee, but based on past performance, VA questions the need for this amendment However, if the Committee believes this provision is in the best interest of the VA housing loan program, VA would not oppose section 301

Section 302 of the draft bill would make permanent the housing loan entitlement currently given to persons whose only service was in the Reserves, including the National Guard

Prior to 1992, only persons who had served on active duty, other than active duty for training, (and certain spouses or surviving spouses of POW/MIAs and persons who died from a service-connected cause) qualified for VA housing

loan benefits Public Law 102-547, enacted October 28 1992, granted loan entitlement to persons who had at least 6 years of honorable service in the Selected Reserve Entitlement for Reservists expires October 27, 1999

Reservists pay a loan fee that is generally 75 basis points higher than other veterans For example, on a no-downpayment loan which is the veteran's first use of VA housing loan entitlement, most veterans would pay a fee equal to 2 percent of the loan amount Reservists would pay a fee of 2 75 percent of the loan amount for the same loan

The Armed Forces continue to rely heavily on the Reserve Components, including the National Guard They are asked to perform a number of duties and are given assignments that were previously conducted only by active duty personnel VA has noticed, so far, that loans made to Reservists have a lower default rate than loans made to veterans with active duty Further, 67 2 percent of Reservists who obtained VA guaranteed loans were first-time homebuyers

We believe it is important to recognize the valuable contributions of members of the Selected Reserve However since the current authority does not expire until October 28 1999, the Department would like to defer comment on this provision

Section 303, which was recently added to the draft bill, would amend section 2301 of title 38, United States Code to require the Secretary to furnish a burial flag for a deceased member or former member of the Selected Reserve who is not otherwise eligible for a burial flag, and who (1) completed at least one enlistment as a member of the Selected Reserve or in the case of an officer completed the period of initial obligated service as a member of the Selected Reserve, (2) was discharged before completion of the person s initial enlistment as a member of the Selected Reserve, or in the case of an officer, the initial period of obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in line of duty, or (3) died while a member of the Selected Reserve A flag would not be furnished in the case of a person whose last dis-

charge from service in the Armed Forces was "under conditions less favorable than honorable "

At this time, the Department wishes to defer comment on this provision While we believe it is important to recognize the valuable contributions members of the Selected Reserve have made to insure the security of this Nation, we need additional time to assess the impact of this proposal, including its fiscal implications We would be pleased to work with the subcommittee staff to fully address this matter

Section 304(a) of the draft bill would amend section 2408(b) of title 38, United States Code, to make state cemetery grants more attractive to States We view the State Cemetery Grants Program as a complement to, and not a replacement for, the construction of new national cemeteries VA supports the provisions of the proposal to enhance that program

Section 2408(b) authorizes the Secretary to make grants to States to assist them in establishing, expanding, or improving State veterans' cemeteries Currently the amount of a State cemetery grant is limited to 50 percent of the total of the value of the land to be acquired or dedicated for a cemetery and the cost of improvements to be made on the land The remaining amount of the cost must be contributed by the State receiving the grant Pursuant to the amendments proposed in this section, the amount of a State cemetery grant could not exceed, in the case of the establishment of a new cemetery, the total of the cost of improvements to be made on land to be converted into a cemetery and the initial cost of equipment necessary to operate the cemetery In the case of the expansion or improvement of an existing cemetery, the amount of the grant could not exceed the total of the cost of improvements to be made on any land to be added to the cemetery combined with the cost of improvements to be made to the existing cemetery If the amount of a grant should, for any reason, be less than the amount of those costs, the State receiving the grant would be required to contribute the remaining amount, in addition to providing any land necessary for the cemetery project

Also, under current law, if at the time of a grant the State receiving the grant dedicates for the cemetery land which it already owns, the value of the land may constitute up to 50 percent of the State's contribution Once that land value is so used, it may not constitute part of the State's contribution for any subsequent grant under section 2408 Under the amendments proposed in section 304(a) of this draft bill, a State would be responsible for providing any land required for a cemetery project, since the grant amount would no longer be based partly on the value of land to be acquired or dedicated for a cemetery

We believe that excluding the value of land to be acquired for a cemetery from the basis of a grant would not discourage States from participating in the State Cemetery Grants Program In our experience, in every case, the State has dedicated land that was donated or transferred for that purpose, or land that it already owned Further, any reduction of the basis from which a grant is calculated may be offset by an increase from 50 percent to up to 100 percent in the proportion of the amount of a project's cost that could be assumed by the Federal Government Moreover since under the proposal, a grant may cover the entire cost of improvements (and initial cost of equipment in certain cases), a State may not have to contribute cash toward the initial cost of a project

Another feature that would make grants more attractive to States is the inclusion in the basis of a grant of the initial cost of equipment necessary to operate the cemetery Providing funds to acquire the equipment necessary to operate a cemetery will, we believe, be a critical financial incentive to encourage States to establish new cemeteries Such equipment is as essential to the establishment of an operational cemetery as are the land and the improvements made on it However, because the proposed amendment includes only the *initial* cost of equipment for the *establishment* of a cemetery, the State would retain the responsibility for long-term maintenance and operation of the cemetery including costs associated with the acquisition of replacement equipment Each Federal grant would assist in the establishment and activation of new veterans' cemeter-

ies, or in the expansion or improvement of existing cemeteries, but the States would bear the costs of continuing operation and long-term maintenance

VA wishes to provide every eligible veteran with the option of burial in a veterans' cemetery Statistics indicate that about 80 percent of veterans interred in national cemeteries resided within 75 miles of the cemetery closest to them We believe it is not practicable for VA to build and operate national cemeteries in sufficient numbers to ensure that all eligible veterans reside within 75 miles of a national cemetery Increasing the number and size of State veterans' cemeteries would foster an enhanced partnership with the States in satisfying our Nation's obligations to those who served VA supports section 304 (a), which is similar to legislation proposed by this Department

Section 304(b) would authorize "no-year" appropriations for the State Cemetery Grants Program Under 38 U S C § 2408(e), funds appropriated for State cemetery grants remain available only until the end of the second fiscal year following the fiscal year for which they are appropriated However, in Public Law 104-204, Congress appropriated funds for State cemetery grants, "to remain available until expended " Section 304(b) would amend section 2408(e) to reflect this no-year-funding policy, which VA supports

Finally, section 304(c) would authorize to be appropriated $10 million for each of the next six fiscal years (FY 1999 - 2004) to fund the State Cemetery Grants Program VA supports this authorization

Section 305 of the draft bill would amend subsection 4103A(a)(1) of title 38, United States Code, to revise the formula for determining the number of disabled veterans' outreach program specialists to be appointed pursuant to that subsection in support of the Disabled Veterans' Outreach Program That program is administered by the Department of Labor (DOL) Accordingly, VA defers to DOL's views on this provision

Section 306 of the draft bill would amend section 5503(a)(1)(B) of title 38, United States Code, effective October 1, 1997, to make permanent VA's authority to deposit into VA medical facility revolving funds amounts of pension that are

not paid to veterans as the result of payment limitations that apply to certain veterans being furnished nursing home care by VA Section 5503(a)(1)(B) provides that where any veteran having neither spouse nor child is being furnished nursing home care by VA, no pension in excess of $90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care In 1992 Congress amended this section to provide that, through September 30, 1997, any amount in excess of $90 per month that is not payable to a veteran shall be deposited into a revolving fund at the VA medical facility which furnished the veteran nursing home care These funds are then available without fiscal year limitation to help defray the operating expenses of the particular facility VA supports this provision

Section 307 of the draft bill would amend pertinent provisions in chapter 71 of title 38, United States Code, to (1) provide that Board of Veterans' Appeals (Board) members (other than the Chairman) also be known as "veterans administrative law judges," (2) require that members of the Board be members in good standing of the bar of any State, and (3) clarify that Board members who were civil-service attorneys prior to appointment to the Board, and whose appointments are not continued, may, at their option, "revert" to attorney status with the Board, if qualified VA supports each of these amendments

Under chapter 71 of title 38, United States Code, persons making determinations in proceedings before the Board, other than the Chairman and the Vice Chairman, are known only as "members" of the Board Section 307(a) would amend section 7101(a) of title 38 to provide that members of the Board shall also be known as veterans administrative law judges Individuals deciding appeals at the administrative level in many other Federal agencies who perform essentially the same functions as members of the Board are known as "administrative law judges," or, in some cases, "administrative judges " The draft bill would more accurately convey a Board member's function to veterans than the term "member " In addition, the change would enhance the confidence of veterans in the administrative appellate process by providing recognition that appeals

in the VA system are adjudicated by legal professionals, as are benefit appeals in other administrative systems

Chapter 71 of title 38 does not currently specify qualifications for members of the Board Section 307(b) would amend 38 U S C § 7101A to provide that all members of the Board shall be members in good standing of the bar of a State

Historically, members of the Board were either licensed attorneys or physicians In *Colvin v Derwinski,* the United States Court of Veterans Appeals held that the Board may only consider independent medical evidence to support its findings and that Board members may not use their own unsubstantiated medical opinion in deciding appeals Because of the growing legal emphasis in the adjudication of appeals for veterans' benefits, it is essential that Board members be trained in the law

Section 307(c) would amend 38 U S C § 7101A to clarify the "reversion" rights for Board members who are not recertified Section 7101A of title 38, added by Pub L No 103-446, provides that members of the Board must be periodically recertified in their positions Section 7101A(d)(2) provides that a member who is noncertified shall revert to the civil service grade and series he or she held before appointment as a Board member, provided that the member was a "career or career conditional employee in the civil service" prior to commencement of service as a Board member

Attorneys in the Federal civil service are not "career or career-conditional employees " Rather, they hold what are referred to as "excepted service" appointments Almost all members of the Board were appointed to that position while serving as attorneys for the Board. Virtually all Board members were serving as attorneys in the Federal civil service at the time of their appointment Most Board members have spent their entire civil service careers as attorneys

In supporting passage of what became section 7101A, it was the Department's intention that Board members who were noncertified under 38 U S C § 7101A(d)(1), and who had previously served as Board attorneys, would revert to Board attorney status On September 20, 1996, VA's General Counsel opined

that only Board members who had held career or career-conditional positions would be entitled to reversion under section 7101A(d)(2) Because most Board members have spent their entire careers in the "excepted " or "non-career" service, they would not benefit from the current reversion provision

This legislation would further what we believe was the original intent of section 7101A(d)(2) by providing that a noncertified Board member who previously served as an attorney in the Federal civil service shall be appointed to an attorney position at the Board, with grade and step protection for those whose immediate prior position was as an attorney at the Board VA has no objection to the provision that the Secretary is not required to appoint a noncertified member to an attorney position if the individual is not qualified

We do note that, although many provisions aimed at improving veterans benefits are included in this bill, our proposal in the President's FY 1999 Budget to merge "H" policyholders into the larger National Service Life Insurance fund's "V" program is not included We think this proposal is worthy of your consideration for inclusion in this bill and would be glad to provide you the required bill language

Mr Chairman, this concludes my prepared testimony on this draft legislation

STATEMENT OF
PHILLIP A. RIDLEY
LEGISLATIVE ASSISTANT
FOR THE
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON BENEFITS
HOUSE VETETANS' AFFAIRS COMMITTEE
JUNE 18, 1998

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than one million members of the Disabled American Veterans (DAV) and its Auxiliary, I am pleased to present our views on draft legislation that would provide a cost-of-living adjustment and an array of other issues affecting service-connected disabled veterans and their families.

This draft legislation would also authorize several technical corrections to certain veterans education benefits to include: change the procurement procedures regarding Department of Veterans Affairs (VA) Home Loan Guaranty contracts, provide permanent eligibility to members of the selected reserve for veterans' housing loans, furnish burial flags for deceased members of the selected reserve, enhance the state cemetery grants program, make permanent the authorization for use of operating expenses of VA medical facilities for veterans on pension receiving nursing home care and designate members of the Board of Veterans' Appeals as "veterans administrative law judges."

COST-OF-LIVING ADJUSTMENT FOR VETERANS BENEFITS

Mr. Chairman, DAV appreciates the fact that you intend to introduce legislation, effective December 1, 1998, to increase the rates of veterans service-connected disability compensation, the rates of Dependency and Indemnity Compensation for the survivors of certain veterans and additional compensation benefits paid for certain dependents and the annual clothing allowance payments to certain service-connected disabled veterans. These benefits would be paid in the same manner as Social Security benefits under title 42, United States Code, §§ 401 and 415.

If enacted, this legislation would offset against the increase in the cost-of-living incurred by disabled veterans, many of whom have fixed incomes and whose buying power would otherwise be eroded. This is a positive and beneficial measure on behalf of service-connected disabled veterans and their families and therefore, we applaud the subcommittee for its efforts.

SECTION 201

This measure would amend title 38, United States Code, to allow educational institutions to report enrollment of eligible veterans at any time during the calendar year. This change would take effect December 31, 1998.

This provision would allow affected academic institutions to report veteran students who enroll after October 31, 1998, for the purposes of calculating their annual reporting fee. This provision may serve as an incentive for affected academic institutions to recruit and enroll eligible veteran students. This provision does not adversely affect disabled veterans and DAV is not opposed to its enactment.

SECTION 202

This measure would amend title 38, United States Code, § 3485 to authorize an eligible veteran to elect an advance payment for work study allowance. This change would be effective January 1, 1999.

Historically, eligible veterans have been automatically paid an advance payment for work study hours in advance of actually participating in the work study program. This often resulted in

the veteran working for an extended period of time with no pay at the end of his or her work study contract.

In recognizing that eligible veterans may find it advantageous to elect receipt of an advance payment or delayed payment, this provision is both thoughtful and beneficial to veterans. The DAV does not oppose the enactment of this provision.

SECTION 203

This measure would amend title 38, United States Code, to allow for the acceptance of equivalent alternative academic credits for certification for enrollment in education benefits for certain active duty service personnel, veterans and the selected reserve personnel.

In that many veterans selected reserve personnel and active duty personnel receive advanced training in medical and technical fields such as nursing assistant, heavy equipment mechanics, radiologist technician and air traffic controller and have as yet been unable to transfer that training to civilian certification, training or education this provision would assist these individuals in gaining valuable credit hours for training received while on active military service in their given military operations specialty. This provision would allow many former service members to meet prior education requirements for enrollment in academic institutions.

This measure would aide in easing the burden on veterans and servicemembers who are making an often hard transition to civilian employment and training. The DAV applauds this measure and would not oppose its enactment.

SECTION 204

This measure would amend title 38, United States Code, §§ 3034 and 3241, by requiring an eligible veteran to meet the medical requirements necessary to obtain a commercial pilot's license prior to beginning a course of flight training. If enacted this change would be affective October 1, 1998.

This measure is targeted at preventing those veterans who are incapable of meeting the medical requirements to obtain a commercial pilot's license from participating in the flight training program, thereby ensuring that the training program operates much more effectively and efficiently.

It is the DAV's opinion that careful consideration should be given to this change and to those service-connected disabled veterans who may be prevented from pursuing gainful employment as a commercial pilot. One example of this scenario is an otherwise eligible veteran who applies for flight training and at the time of enrollment in a flight training course he or she does not meet the medical criteria to obtain a commercial pilot's license, but is capable of completing the course of training. It is a fact that service-connected disabilities vary in nature and may improve with time or medical treatment. Although a veteran upon entrance into a flight training course may not meet the medical requirements for a commercial pilot's license, his or her condition may be such that it would improve and allow the veteran to meet the criteria at a later date.

The DAV believes that prior to recommending this change in law, the subcommittee consider the adverse affect this may have on a portion of the disabled veterans community.

SECTION 205

This measure would amend title 38, United States Code, § 3680 (d), to allow eligible veterans and certain eligible dependents to elect an accelerated payment in lieu of an advanced payment at a rate two times the rate of allowance payable for a full month in pursuit of the program of education. This payment would be in addition to the payments of basic educational assistance otherwise due the veteran. This change would take effect July 1, 1999.

This provision is beneficial in that it assists eligible veterans and certain eligible dependents in pursuit of academic training by offsetting potential financial burdens often endured upon

enrollment to meet the expenses of books, travel, deposits, payments for living quarters, initial installments on tuition and other special expenses which are usually incurred at the beginning of a school term.

The DAV applauds the subcommittee's recommendation of this measure and does not oppose its enactment.

SECTION 206

This measure would amend title 38, United States Code, § 3677(b), to exempt Federal, state and local government's training establishment from adhering to current wage increase requirements to certain eligible veterans.

This section does not adversely affect veterans and their families, therefore, the DAV would not oppose its enactment.

SECTION 207

This measure would expand title 38, United States Code, § 3034, to provide education counseling to Armed Forces members who have elected a basic pay deduction to enroll in education assistance under title 38, United States Code, § 5102, or the Montgomery GI Bill.

Through our National Service Program, the DAV employs a professional staff of 270 National Service Officers who are specially trained in veteran's benefits law, guidelines and regulations. These dedicated professionals provide free representation and assistance to veterans and their families in pursuit of compensation and education benefits before the VA and other government agencies. Our National Service Officers have noted, just as the VA has, that most eligible veterans do not participate in the Montgomery GI Bill. One of the primary concerns voiced by these veterans seeking to use their education benefits is a lack of knowledge needed to make an initial application for benefits. Many veterans relinquish their entitlement to education benefits because they are unaware of the time limits involved in utilizing an education benefit.

The DAV believes this expansion would provide an excellent compliment and much needed improvement to current active military transition assistance programs and disability transition assistance programs. This program would require the servicemember be supplied with the appropriate forms and other educational materials needed to make informed decisions regarding enrollment in educational institutions, training establishments and military educational entities to assist him or her in pursuit of viable gainful employment. The DAV urges the enactment of this worthy provision.

SECTION 208

This measure would amend title 38, United States Code, §§ 3011 and 3012, to require the Armed Forces to inform members who are separated or released from active duty for the convenience of the Government of the minimum active duty requirements for entitlement to educational assistance.

Mr. Chairman, the DAV believes that, like other provisions of this bill which would require that members receive timely notification and thorough explanation of the educational benefits due upon discharge; this is a positive improvement for these future veterans who seek academic training and subsequent gainful employment. The DAV supports the enactment of this provision.

TITLE III—OTHER MATTERS

SECTION 301

This section would amend title 38, United States Code, § 3720 (b), to revise the method of procurement for certain contracts (Home Loan Guaranty) of the Department of Veterans Affairs.

The DAV has no position on this change.

SECTION 302

This measure would amend title 38, United States Code, § 3702 (a)(2)(E) by making permanent the eligibility of members of the selected reserve for veterans housing loans. This section would be beneficial to many future veterans thus, the DAV would not oppose its enactment.

SECTION 303

This section would amend title 38, United States Code, § 2301, by providing deceased members and former members of the selected reserve with burial flags.

While our delegates to our last National Convention did not pass a resolution on this matter and as it provides a much deserved salute to the men and women of our Selected Reserve, the DAV does not oppose the enactment of this section.

SECTION 304

This section would amend title 38, United States Code, § 2408 (b), to enhance the State Grant Program to cover 100 percent of the initial cost and equipment associated with building of a new state cemetery or expansion or improvement of an existing state cemetery. This section would provide an additional $10 billion in fiscal year 1999 and for each subsequent fiscal year through fiscal year 2004 for the purpose of making grants under this section.

The National Cemetery System (NCS) is faced with a number of growing and serious challenges. Chronic underfunding remains the most serious of these and presents a great threat to the NCS completing its mission of providing compassionate and timely burial service to each eligible veteran and their family members. The proposed increase in the state cemetery grant of 100 percent from 50 percent provides a reasonable and accessible alternative to many veterans who desire burial in a national cemetery but because of distance must forego the burial benefit. Recent state governments have participated heartily in this cost sharing program.

While the State Grant Program is indeed a welcomed and much needed alternative to the NCS, in no way should it relieve the NCS of its obligation to provide adequate burial services to our Nation's veterans and their families.

Mr. Chairman, this subcommittee must ensure that the NCS, through ongoing and future construction projects, keep burial space available for eligible veterans and their families. This Congress should further ensure that the funding level for the State Grant Program is adequate to cover all state funding requests. The DAV does not oppose enactment of this section.

SECTION 305

This measure would amend title 38, United States Code, § 4103A, to expand the responsibility of state Disabled Veterans Outreach Program Specialist (DVOPS) to provide employment assistance to disabled veterans of the post- and pre-Vietnam era between the ages of 20 and 64.

Mr. Chairman this change in law would allow thousand of eligible veterans to receive much needed assistance in the development of jobs and job training opportunities. The development and outreach program currently conducted under the DVOPS program in cooperation with VA personnel in providing counseling or rehabilitation services is exemplary. This provision

would ensure the maximum assistance to disabled and eligible veterans from virtually every era since the Korean War

SECTION 306

This section would amend title 38, United States Code, § 5503 (a)(1)(B), to make permanent provisions which restrict a veteran who resides in a VA nursing home and who is without spouse or dependent from collecting a pension in excess of $90 per month

Mr. Chairman the DAV adamantly opposes this proposal Any attempt to permanently change the law is unjust Making this measure permanent now is premature and unwarranted

SECTION 307

This measure would provide that members of the Board of Veterans' Appeals shall be referred to as "veterans administrative law judges " The bill also requires development of objective standards governing reappointment

The DAV is cognizant of the large workload of the Board and the necessity to retain experienced qualified Board members if the Board is to meet the challenges which face it The DAV has previously testified that it does not advocate any changes regarding the title and subsequent reference to members of the Board. The DAV does not believe that designating Board members as veterans administrative law judges is essential or even beneficial to their mission The Board of Veterans' Appeals is a non-judicial, administrative tribunal that performs an appellate review function for and under the jurisdiction of the Secretary of Veterans Affairs Congress has delegated the Secretary's jurisdiction to decide claims to the Board in title 38, United States Code, § 7104 The Board, through its Chairman, is directly responsible to the Secretary of Veterans Affairs, as provided in title 38, United States Code, § 7101 The Board makes an "institutional" decision in the name of the Secretary, to whom the veteran has appealed. The decision is the product of an agency, not an individual, as with a judge The Board is not independent in its organization, function, and powers are not of a judicial nature or flavor. Nor should they be

The public, grateful for the patriotic contributions of its veterans, has always wanted benefits administered to veterans in a very protective, paternalistic, and informal way Adjudicators at all levels are charged with a special duty to assist veterans, unlike any other agency The system is nonadversarial, and a traditional judicial or legalistic context is inappropriate

Judicial review of veterans' claims begins at the Court of Veterans Appeals level That is the demarcation between the informal, nonadversarial process and the formal, adversarial process. When judicial review legislation was being debated, there was concern among some that it would result in formalization of the VA claims adjudication system As a result, a common theme that runs throughout the legislative history from both the House and Senate is the intent to ensure certain procedural protections while preserving the informality that characterizes the existing system at the administrative level

Among similar statements on this issue, the Senate said.

> As discussed earlier, the Committee was guided in its decisions relating to procedural matters by a sense that existing VA procedures are generally fair and workable and that any changes should be made with the intent of preserving such procedures and the informal atmosphere of VA adjudication proceedings while providing claimants with statutory assurance of a full opportunity to have their arguments and evidence presented to the Board.

S. Rep No 418, 100th Cong , 2d Sess. 38 (1988)

The House characterized the informal system and the intent to maintain it as follows.

> Congress has designed and fully intends to maintain a beneficial nonadversarial system of veterans' benefits This is particularly true of service-connected disability

compensation where the element of cause and effect has been totally by-passed in favor of a simple temporal relationship between the incurrence of the disability and the period of active duty.

Implicit in such a beneficial system has been an evolution of a completely ex-parte system of adjudication in which Congress expects VA to fully and sympathectically develop the veteran's claim to its optimum before deciding it on the merits

Even then, VA is expected to resolve all issues by giving the claimant the benefit of any reasonable doubt. In such a beneficial structure, there is no room for such adversarial concepts as cross examination, best evidence rule, hearsay evidence exclusion, or strict adherence to burden of proof.

H R Rep. No 963, 100th Cong., 2d Session 13, reprinted in 1988 U S C C.A N. 5782, 5795 The House Veterans Affairs Committee said· "The Committee believes that the existing system achieves a high degree of accuracy and fairness and intends that no changes be made to the system unless it would enhance the achievement of these two goals." H R Rep No , 963 at 15, reprinted in 1988 U S C C.A.N at 5797

Increased efficiency does not necessarily follow from increased formality, the need is to improve efficiency, not increase formality. Elevating the title of Board members to judges may change their own perception of their role and status, but veteran's perception are more important than the Board's perception. To refer to Board members as judges connotes an adversarial, impersonal, and litigious process While veterans' claims are still being pursued through informal advocacy, it is not desirable to have adjudicators whose demeanor and title is that of a judge. This might be the first step in erosion of the informal, user-friendly environments that sets VA apart from other bureaucracies

Moreover, the Board of Veterans' Appeals is still a Board not a court It is a discrete element of VA, unlike the the administrative law judge corps. A board is comprised of board members, not judges Although the work of administrative law judges is similar to that of administrative boards, for example, the Merits Systems Protection Board, and although administrative law judges are structurally part of the agency, they function independent of the agency in their decision-making The administrative law judge must be impartial As noted, Board members act as the Secretary's appellate decision-makers Within the VA adjudication process, unlike other proceedings, there is a declared "pro-claimant bias " H R Rep No 963 at 25, reprinted in 1988 U.S C.C A.N. at 5807 The distinctions between judges and members of the Board of Veterans' Appeals are therefore more than matters of perception, and those beneficial distinguishing characteristics of the Board's members should be maintained

The DAV does not support designating members of the Board of Veterans' Appeals as veterans administrative law judges. The law should not dictate the Board members will be referred to as "veterans administrative law judges" and addressed as "your honor" perhaps, merely to artificially change their status or heighten there esteem Matters of perception, respect, and public confidence should correlate to the degree of professionalism in their decisions and conduct rather that their titles

Mr Chairman, I thank you for this opportunity to express the views of the DAV regarding these proposed changes in legislation which directly affects the lives of so many disabled veterans Be assured of our continued interest on behalf of America's wartime service-connected disabled veterans and their families.

○

ISBN 0-16-057753-5