S. HRG. 107–489

PENDING BENEFITS LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JUNE 28, 2001

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C O N T E N T S

JUNE 28, 2001

SENATORS

WITNESSES

APPENDIX

PENDING BENEFITS LEGISLATION

THURSDAY, JUNE 28, 2001

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

The committee met, pursuant to notice, at 10:29 a.m., in room SR–418, Russell Senate Office Building, Hon. John D. Rockefeller IV (chairman of the committee) presiding.

Present: Senators Rockefeller, Akaka, and Specter.

Chairman ROCKEFELLER. We have a distinguished regular panel with us today, but we also have some distinguished Senators who are going to come and talk about individual areas of interest, and I noticed one, Senator Tim Johnson from the State of South Dakota.

STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Thank you, Mr. Chairman, for accommodating my time requirements. I will be very brief, but I do appreciate this opportunity to thank you and Senator Specter for your cooperation in your hearing today on veterans' benefits issues. I also want to thank you for allowing me to speak briefly about my legislation, called the Veterans' Higher Education Opportunities Act, S. 131, that I have introduced with Senator Susan Collins to improve the Montgomery GI Bill for our Nations veterans, and I would ask consent that my full statement, along with letters of support for S. 131, be included in these records.

Chairman ROCKEFELLER. It will be done.

Senator JOHNSON. As many of you know, this bipartisan legislation has the support of Majority Leader Daschle, Republican Leader Lott, former Congressman Sonny Montgomery, the American Legion, the VFW, the DAV, and most of the higher education organizations all across our Nation. The Montgomery GI Bill has truly been one of the best investments our Nation has ever made in recruitment of the best and brightest to serve in our armed services. Since 1944, the GI Bill has allowed 21 million veterans to further their education, including 8 million each from World War II and the Vietnam War.

Unfortunately, GI Bill benefits have not kept pace with increasing costs of higher education. The current monthly benefit only covers about half of the education costs, and as a result, only about 50 percent of the active duty men and women who pay $1,200, and for them, that is a significant amount of money, only half of those

who pay in their $1,200 actually benefit from it and take any use from the GI Bill.

Recently, the House of Representatives passed legislation to increase the monthly benefit over the next 3 years, and while I applaud the House for taking steps to improve the GI Bill, I still believe that they are not quite all the way there in terms of what needs to be done over the long haul.

The Veterans' Higher Education Opportunities Act would immediately increase the GI Bill benefits to equal the average cost of a commuter student attending a 4-year public college. The House bill takes 3 years to get to that level, and by that time, it is likely that the GI Bill will no longer, again, fully cover the costs of higher education. This legislation takes, I believe, a better approach than the House bill because it also calls for GI Bill benefits to be updated annually, indexed, that is, to cover increasing college costs. This will ensure that veterans are not stuck in the current situation of not having education benefits that meet their needs and having the cost of higher education once again far outstripping the level of benefits available under the GI Bill.

Mr. Chairman, I believe this is the year when Congress will have the opportunity to make substantial and lasting improvements to the Montgomery GI Bill. In 1999, the Congressional Commission on Service Members and Veterans Transition Assistance called for dramatic enhancements to the Montgomery GI Bill to pay for the full tuition, fees, and cost of books, along with a monthly subsistence allowance, for any qualified veteran to attend any school. The chairman of that commission is now Secretary of Veterans Affairs Tony Principi. I applaud Secretary Principi on his longstanding support for veterans' education benefits. Secretary Principi's leadership on this issue is reflected in the administration's support for an improved GI Bill.

As mentioned, the House of Representatives has also expressed its support now for enhanced GI Bill benefits. I believe it is time for the Senate to take our turn, to show our support for America's veterans and our commitment to improving recruitment and retention in the armed forces. The administration and the House support improvements that are needed, but still fail to address fully the problems with the Montgomery GI Bill. With approval of S. 131, the Senate has the opportunity to truly bring the Montgomery GI Bill into the 21st century and ensure its viability for the future.

Once again, I want to thank you, Chairman Rockefeller, and the entire committee for your leadership on veterans' issues and for holding today's hearing. I look forward to working with you and the committee on my legislation in order to have the Senate act on GI Bill improvements as soon as possible. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Senator Johnson, thank you very much.

Senator JOHNSON. Thank you.

Chairman ROCKEFELLER. That was crisp, to the point, on the mark, and we thank you.

Senator JOHNSON. Thank you.

[The prepared statement of Senator Johnson follows:]

PREPARED STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Chairman Rockefeller, I would like to thank you and Senator Specter for holding today's hearing on veterans benefits and your continued leadership on behalf of veterans nationwide. I appreciate the opportunity to testify before the Senate Veterans Affairs Committee in support of my bipartisan legislation to improve the Montgomery GI Bill. For the past two years, I have worked with Senator Susan Collins and others to modernize the Montgomery GI Bill and help veterans achieve their goals of higher education. Our bill, the Veterans' Higher Education Opportunities Act (S. 131), has received broad, bipartisan support in Congress and among the veterans and higher education communities. I look forward to hearing the committee's thoughts on this legislation and encourage the committee to approve S. 131 this year.

The 1944 GI Bill of Rights is one of the most important pieces of legislation ever passed by Congress. No program has been more successful in increasing educational opportunities for our country's veterans while also providing a valuable incentive for the best and brightest to make a career out of military service. Over 21 million veterans have taken advantage of GI Bill benefits since 1944, including 8 million each from World War II and the Vietnam War.

Unfortunately, the current GI Bill can no longer deliver these results and fails in its promise to veterans, new recruits and the men and women of the armed services. The Veterans' Higher Education Opportunities Act will modernize the GI Bill and ensure its viability as education costs continue to increase.

Over 96% of recruits currently sign up for the Montgomery GI Bill and pay $1,200 out of their first year's pay to guarantee eligibility. But only one-half of these military personnel use any of the current Montgomery GI Bill benefits. This is evidence that the current GI Bill simply does not meet their needs. The main reason why military personnel no longer use the GI Bill is because GI Bill benefits have not kept pace with increased costs of education.

There is consensus among national higher education and veterans associations that at a minimum, the GI Bill should pay the costs of attending the average four-year public institution as a commuter student. The current Montgomery GI Bill benefit pays a little more than half of that cost.

The Veterans' Higher Education Opportunities Act creates that benchmark by indexing the GI Bill to the costs of attending the average four-year public institution as a commuter student. This benchmark cost will be updated annually in order for the GI Bill to keep pace with increasing costs of education.

The Veterans' Higher Education Opportunities Act is truly a bipartisan effort to address recruitment and retention in the armed forces. Cosponsors of S. 131 include Majority Leader Tom Daschle and Republican Leader Trent Lott, along with Senators: Harry Reid, Mary Landrieu, Olympia Snowe, Tim Hutchinson, Jeff Bingaman, James Inhofe, Joe Biden, Byron Dorgan, Ted Kennedy, Robert Torricelli, Jon Corzine, Joe Lieberman, Debbie Stabenow, Blanche Lincoln, and Max Cleland. In addition, the Veterans' Higher Education Opportunities Act has the overwhelming support of the American Legion and the Partnership for Veterans' Education a coalition of the nation's leading veterans groups and higher education organizations including the VFW, the American Council on Education, the Non Commissioned Officers Association, the National Association of State Universities and Land Grant Colleges, and The Retired Officers Association.

As the parent of a son who serves in the Army, these military "quality of life" issues are of particular concern to me. Making the GI Bill pay for viable educational opportunity makes as much sense today as it did following World War II. In fact, a study conducted on beneficiaries of the original GI Bill shows that the cost to benefit ratio of the GI Bill was an astounding 12.5 to 1. That means that our nation gained more than $12.50 in benefits for every dollar invested in college or graduate education for veterans.

Congress and the President took an important step last year by passing into law the Veterans Benefits and Health Care Improvement Act of 2000. This law increases the monthly education benefit to $650 and increases educational benefits of veterans survivors and dependents. The House of Representatives recently approved legislation to further increase monthly education benefits over the next three years. While the House action sends a strong signal of Congress' intent to improve veterans' benefits, I am afraid it falls short of what is necessary to truly modernize the Montgomery GI Bill. The House bill takes three years to increase monthly education benefits to the level needed right now to cover the costs of higher education. The House bill also fails to include any provisions that would ensure GI Bill benefits keep pace with increasing costs of higher education. The Veterans' Higher Edu-

cation Opportunities Act is the only bill that provides veterans with education benefits that cover the costs of higher education now and for the future.

The very modest cost of improving the GI Bill will help our military and our society. I look forward to working with members of the Senate Veterans Affairs Committee on passage of the Veterans' Higher Education Opportunities Act this year, and I once again thank the committee for holding today's hearing.

THE AMERICAN LEGION,
WASHINGTON, DC,
February 22, 2001.

Hon. TIM JOHNSON,
U.S. Senate,
Washington, DC.

DEAR SENATOR JOHNSON: The American Legion thanks you for authoring S. 131, the Veterans' Higher Education Opportunities Act of 2001. The American Legion fully supports this important legislation which seeks to establish a benchmark for determining the annual basic benefit rate of active duty educational assistance under the Montgomery GI Bill (MGIB).

The educational benefits offered, to veterans consistently fail to keep pace with the escalating costs of education in America. The provisions contained in the current MGIB program cover only a fraction of the cost of a contemporary education at an average four-year college.

The American Legion believes S. 131 will help to transform the current MGIB program into a true veterans' benefit that parallels the quality of the original "GI Bill of Rights". A strong veterans educational benefit program will not only strengthen the national defense by improving recruitment, it will also prepare veterans for a smooth transition into the civilian workforce.

Once again, The American Legion fully supports S. 131 and appreciates your continued leadership in addressing the issues that are important to veterans and their families.

Sincerely,

STEVE A. ROBERTSON,
Director, National Legislative Commission.

DEPARTMENT OF SOUTH DAKOTA,
DISABLED AMERICAN VETERANS, INC.,
SIOUX FALLS, SD, *May 1, 2001.*

Senator TIM JOHNSON,
324 Senate Hart Office Bldg.,
Washington, DC.

DEAR SENATOR TIM JOHNSON: Thank you for sponsoring The Veterans' Higher Education Opportunities Act of 2001, S. 131. I very much appreciate your recognition of the need to revise the basic benefit program of the Montgomery GI Bill and the sacrifices made by our Nation's servicemembers in the defense of our Country.

Raising the monthly benefit amount "to the average monthly costs of tuition and expenses for commuter students at public institutions of higher education that award baccalaureate degrees", will be extremely helpful.

I ask that you work to insure that the Senate Budget Resolution contain funding that will allow for the enactment of this important legislation. Please let me know if I can help you in any way.

Thank you again for your support of veterans and their efforts to reach their educational goals and for your cosponsorship of S. 131.

Sincerely,

GENE A. MURPHY,
Adjutant, Disabled American Veterans.

VETERANS OF FOREIGN WARS OF THE UNITED STATES,
WASHINGTON, DC,
April 4, 2001

Hon. TIM JOHNSON,
U.S. Senate,
Washington, DC.

DEAR SENATOR JOHNSON: On behalf of the 1.9 million members of the Veterans of Foreign Wars, we extend our deepest thanks to you for your efforts in making veterans education a priority in S. 131, legislation offered jointly by you and Senator Susan Collins.

The Montgomery GI Bill has lost ground over the last few years. It is no longer able to meet the educational needs of today's veterans. The funding level has not kept pace with the rising costs of higher education. S. 131 abates the GI Bill's loss of value by creating an index system so funding can be increased as higher education costs rise.

We also thank you for your announced intention to offer an amendment to the Senate Budget Committee to create a reserve fund for veterans education. This amendment would provide the necessary funding to implement S. 131, resulting in a significant increase in funding for the Montgomery GI Bill.

The Montgomery GI Bill is in dire need of additional resources, and we fully support your efforts, both in the original bill, and in the amendment. We are committed to working with you to make this legislation a success.

Sincerely,

DENNIS CULLINAN,
Director, National Legislative Service.

AIR FORCE SERGEANTS ASSOCIATION,
TEMPLE HILLS, MD,
January 30, 2001.

Hon. TIM JOHNSON,
502 Hart Senate Office Building,
Washington, DC.

DEAR SENATOR JOHNSON, On behalf of the 135,000 members of the Air Force Sergeants Association, I thank you for introducing S. 131, the "Veterans' Higher Education Opportunities Act of 2001." Your bill recognizes the rising costs of higher education, and the need to cover our veterans' out-of-pocket education expenses. If signed into law, S. 131 would help to alleviate the financial burden that many veterans face while pursuing their degree.

Again, we commend you for taking the initiative to modify the monthly benefit of the Montgomery G.I. Bill. As always, AFSA is ready to support you on this and other matters of mutual concern.

Sincerely,

JAMES D. STATON,
Executive Director.

NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES, INC.,
April 6, 2001.

Hon. TIM JOHNSON,
324 Hart Senate Office Building,
Washington, DC.

DEAR SENATOR JOHNSON: I'm asking for your support on a veterans issue.

The US Congress is considering restructuring the GI Bill by increasing the educational benefits it affords veterans and other eligible persons. I'm sure you are well aware of the tremendously positive impact the original GI Bill had on higher education and the nation as a whole following WW II.

It is a fact, the present Montgomery GI Bill (MGIB) falls far short of offering the level of educational assistance that the original bill provided, and doesn't compare favorably to either Korean or Vietnam era GI Bills.

At present there are a number of proposals before Congress, H.R. 320 introduced by Evans and Dingell, H.R. 1280 a companion bill to S. 131 introduced by Mr. Ronnie Shaws, MI, and H.R. 1291 introduced by Chairman Christopher Smith. In addition, Mr. Stump, former Chairman of House Committee on Veterans Affairs and the present Chairman of House Armed Services Committee, is expected to introduce a bill.

The one bill that has been introduced in the Senate is the Veterans Opportunity Act S. 131. This bill was introduced by Tim Johnson, SD and Susan Collins, ME. Co-sponsors include Tim Johnson, Susan Collins, Byron Dorgan, James Inhofe, Mary Landrieu, Jeff Bingaman, Tom Daschle, Tim Hutchinson, Edward Kennedy, Trent Lott, and Olympia Snowe.

Particularly important is your support of a budget resolution that contains funding to improve the Montgomery GI Bill. This would ensure that the necessary resources needed are available, no matter what concept of improvement to the current GI Bill is adopted.

Furthermore, your support or co-sponsorship of the Senate Veterans Opportunity Act S. 131 would very much be appreciated. In general, the need to revise the Montgomery GI Bill is long overdue (see enclosure). If the initiatives to revise the Montgomery GI Bill are successful, veterans who might not be able to afford higher education after serving their country will be given an opportunity to do so.

Thanks again for your support. If you have any questions, please contact me at your convenience.

Sincerely,

JAMES R. BOMBARD,
Chief, Bureau of Veterans Education, NYS Division of Veterans Affairs.
President, National Association of State Approving Agencies.

PARTNERSHIP FOR VETERANS' EDUCATION

FULFILLING AMERICA'S PROMISE

We the undersigned representatives of associations advocating on behalf of veterans, uniformed servicemembers, and higher education urge Congress to support a new model for the Montgomery GI Bill. Current educational realities, the eroded value of the current GI Bill benefit, and increasingly difficult challenges in meeting military recruiting goals lead us to conclude that at least minimal reform must be enacted and funded.

Our proposal is straightforward, provides meaningful educational opportunity, helps military recruiting, strengthens military retention, and has a realistic cost:

1. Establish a sensible, easily understood benchmark for the GI Bill that represents the minimum required to provide the education promised at recruitment. Base future stipends for all veterans on that benchmark.
   a. Average tuition and expenses for a commuter student at a public four-year college is a reasonable and acceptable benchmark.
   b. This benchmark, updated annually by The College Board, is $9229 for academic year 2000–01.
2. Provide the education that is promised at reasonable cost.
   a. The GI Bill now provides nine monthly $650 stipends a year for four years. The total benefit is $23,400.
   b. Monthly stipends based dn the proposed benchmark would have been $1025 for academic year 2000–01. The new total benefit would be $36,900.

Post-war experience clearly demonstrates that better educated veterans pay far more taxes and are more productive in the society and economy. If budget estimates account for these well-known facts, the benchmarking of the GI Bill benefit that we suggest will enjoy broad support. We urge you to support it.

Three signature pages attached.

Air Force Assn.
Air Force Sergeants Assn.
American Assn. of Collegiate Registrars & Admissions Officers.
American Council on Education.
American Assn. of Community Colleges.
American Assn. of State Colleges & Universities.
American Military Retirees Assn.
AMVETS.
Army Aviation Assn. of America.
Assn. of Military Surgeons of the US.
Assn. of the US Army.
Blinded American Veterans Foundation.
Blinded Veterans Assn.
Catholic War Veterans.
Commissioned Officers Assn. of the U.S. Public Health Service, Inc.
CWO, & WO Assn., USCG.
Disabled American Veterans.
Enlisted Assn. of the National Guard.
Fleet Reserve Assn.
Gold Star Wives of America, Inc.
Jewish War Veterans of the USA.
Korean War Veterans Assn.
Marine Corps Reserve Officers Assn.
Marine Corps League.
Military Order of the Purple Heart.
National Assn. for Uniformed Services.
National Assn. of Independent Colleges & Universities.
National Assn. of State Approving Agencies.
National Assn. of State Universities & Land Grant Colleges.
National Assn. of Veterans Program Administrators.
National Guard Assn. of the US.
National Military Family Assn.
National Order of Battlefield Comm.
Naval Enlisted Reserve Assn.
Naval Reserve Assn.
Navy League of the US.
Non Commissioned Officers Assn.
Paralyzed Veterans of America.
Reserve Officers Assn.
The Military Chaplains Assn. of the USA.
The Retired Enlisted Assn.
The Retired Officers Assn.
The Society of Medical Consultants to the Armed Forces.
Tragedy Assistance Program for Survivors.
United Armed Forces Assn.
USCG CPO Assn.
US Army WO Assn.
Veterans of Foreign Wars.
Veterans' Widows Intl. Network, Inc.
Vietnam Veterans of America.

Chairman ROCKEFELLER. There being no other Senators that I can immediately see, we will proceed with my statement and then we will go to the hearing. There will be, presumably, five or six Senators on and off the committee coming in to present legislative ideas, and as they do that, we will all just have to accommodate them. Don't you think that would be wise? I think that would be wise.

Anyway, I am very pleased that our witnesses are here today, Dr. Leo Mackay, the Deputy Secretary of Veterans Affairs, and representatives from four of our service organizations. As I indicated, some Senators will come and we will accommodate them, and hopefully they will be as short as Senator Johnson.

We have a lot of bills to discuss and I want to make sure that we have a chance to hear from all of our witnesses, so I will be brief, although it occurs to me my statement isn't brief. I have just said that I will be brief, but don't count on my being brief. [Laughter.]

But I certainly urge our witnesses to be brief. We will be reviewing some very important pieces of legislation that affect virtually everything within the veterans' world—burial benefits, home loan guaranties, the annual cost-of-living increase in veterans' compensation, and on and on and on, and there are a couple of items that I would like to highlight in particular.

There has been a lot of energy, and Senator Johnson just discussed it, surrounding the Montgomery GI Bill in the last several years. I am enormously pleased about the strides that we have taken toward improving the bill. At the same time, I am cognizant of the current benefits of $650 a month. It pays for about 63 percent of the average cost for a commuter student to attend a traditional public 4-year university, and we have to recognize that many veterans do not pursue traditional courses of study.

So when we discuss where the GI Bill should go from here—Senator Hutchison, we welcome you—we must ensure—please have a seat, because I am going to call right on you—when we think about the GI Bill, where it should go, we have to ensure that the benefit evolves, as Senator Johnson said, to keep up with the pace, with the career and educational choices that today's veterans want and require.

I am very gratified, by the way, that Senator Specter joined me in introducing MGIB legislation that will begin to address the need for flexibility in the use of this benefit, and I was going to go on, but Senator Hutchison, to accommodate you, which I always try to do, I will stop this and call on you for whatever comments you might have to make.

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. Thank you, Senator Rockefeller. I really appreciate your holding this hearing and all the support that you have given to the Persian Gulf veterans that my bill would try to help. You have really been a leader in this and I am hoping that my bill, along with Senator Durbin, would be a follow-on to your efforts and that is why I have introduced it.

Let me just say that the Desert Storm disease has been very controversial and many people don't think it actually exists. My view is that when 100,000 of 700,000 men and women who went to Desert Storm came back with symptoms that they did not have before they left, such as chronic fatigue, muscle and joint pain, memory loss, sleep disorders, depression, and concentration problems, that we have a duty to make sure that these people are taken care of and given the benefits of a service-related illness.

Chairman ROCKEFELLER. Senator Hutchison, you should be on this committee. [Laughter.]

Senator HUTCHISON. Well, I would love to be on this committee. I have not had that opportunity before, but I do thank you for that.

The essence of our bill is that we are trying to extend the presumptive period, which runs out December 31 of this year, to December 31, 2001 so that we will have the time to continue the research on this phenomenon. Frankly, I think there is research that is beginning to show a causal connection between some of the elements that were faced over there and the symptoms that people are feeling.

Second, we define an undiagnosed illness. We expand it and provide a list of the signs and symptoms that may be a manifestation of an undiagnosed illness, such as fatigue, muscle pain, joint pain, gastrointestinal signs and symptoms. What we are trying to acknowledge is that the veterans were exposed to a host of pharmaceuticals, chemicals, environmental toxins. Some were exposed to oil well fires, dust and sand particles that came from the places where the smoke was, petroleum fuels, possible exposure to chemical warfare nerve agents, biological warfare nerve agents, bromide pills to protect against the organophosphate nerve agents, insecticides, infectious diseases, and psychological and physiological stress.

What we are trying to do with our bill is say that we didn't document as much as we should have at Desert Storm what our people were being exposed to, and when this many—if we were talking about 50 people out of 700,000, I think we could say maybe there was something else wrong and we couldn't put it onto the service in Desert Storm. But one out of seven? Come on. I just think we have an obligation to do more than we are doing, and that is what our bill tries to do.

I consider our bill a follow-on to the bill that you originally passed and which has been very helpful, but I think we can't turn our backs on one in seven people who stepped up to the plate to serve our country. Thank you.

Chairman ROCKEFELLER. Thank you, Senator Hutchison. I know that you have been to homes in Texas and you have seen what happens to people who, over the years, when consulting with the Department of Defense, have been told that it is in their heads and been given some aspirin and told to go home. I mean, it is one of the great scandals of the last quarter century. I really appreciate your clear passion on the subject and the fact that you have come to talk to us about it, and I thank you very, very much.

Senator HUTCHISON. Thank you, Senator Rockefeller. I just want to add one more thing for the record.

Chairman ROCKEFELLER. Sure.

Senator HUTCHISON. Approximately 9,000 to 12,000 Persian Gulf veterans who filed a claim under your law were denied because the Veterans Administration did not believe the symptoms met the definition of an undiagnosed illness. So I just think we need to further clarify what an undiagnosed illness is and define the compensation while we continue to do the research, because I believe there is a causal connection and I think the research is beginning to show that. Thank you very much.

Chairman ROCKEFELLER. Thank you very much. I very much appreciate your coming.

If I can go on with my statement, I also want to thank Senator Specter again, because we are both introducing a bill that would

remove obstacles for Vietnam veterans claiming benefits related to Agent Orange exposure. Currently, Vietnam veterans suffering from respiratory cancers can claim disability benefits, but only if the disease manifested itself within 30 years of their service in Vietnam. That is kind of amazing. Our bill would eliminate this 30-year limit, recently found to have no basis in science, and I think common sense would tell us that anyway, and continue the scientific reviews to help us understand the long-term effects of dioxin and Agent Orange exposure, because the research part is necessary.

So, anyway, looking at our very ambitious agenda, I want to be clear, listing a bill for consideration at this hearing, even a bill which I introduced or Senator Specter introduced, does not signal a position on my part about that bill. I want that understood. The purpose of this hearing is to get everything out. Introducing a bill is necessary for the committee to provide an opportunity for public input. That is important in the Veterans' Committee, so I look forward to hearing from my colleagues as they wander in and from our witnesses who are here.

When Senator Specter comes, I will ask that the two bills that he talks about be added to the agenda as if originally listed and ask that witnesses please submit supplemental views if they wish to comment upon those bills.

Our first panel consists of representatives from the VA itself. Dr. Leo Mackay, the Deputy Secretary of Veterans Affairs, will be presenting VA's testimony today. He is accompanied by Joe Thompson, the Under Secretary for Benefits, and Jack Thompson, the Deputy General Counsel.

Let me say one more thing. Don't take this personally, because I know the way the world works, but the comment needs to be made. I had hoped that by providing advance notice of this hearing, that we would have draft copies of bills to be introduced, that the clearance process for VA's testimony, in particular, would have been expedited, done, and complete. Receiving VA's testimony in a timely fashion makes questions and honest dialog a lot more efficacious.

It did not happen, though. We didn't get the testimony until late yesterday afternoon. You have to give a lot of testimony a lot of places, but we need that testimony. We need it so we can read it, so our staff can read it, so we can ingest it, digest it, and take what is said and what isn't said. I recognize that OMB and all kinds of others have to clear all kinds of things, and that is one reason I am glad I don't serve in the executive branch of government. But nevertheless, I want to put that on the record, that when we have a hearing and we have folks from VA, we want the testimony before us so that there can be better followup in terms of questions than there otherwise might be.

Now, that having been said, Dr. Mackay, this is your first time of many more to come and we welcome you, so let us get down to business.

STATEMENT OF LEO MACKAY, PH.D., DEPUTY SECRETARY OF VETERANS AFFAIRS; ACCOMPANIED BY JOSEPH THOMPSON, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS; JOHN H. THOMPSON, DEPUTY GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS; AND ROBERT EPLEY, ASSISTANT DEPUTY UNDER SECRETARY FOR PROGRAM MANAGEMENT, DEPARTMENT OF VETERANS AFFAIRS

Mr. MACKAY. Mr. Chairman, I also regret that the testimony arrived late here. We are always working to constantly improve our staff operation.

Chairman ROCKEFELLER. It did not arrive late here. It was sent late here.

Mr. MACKAY. Sent late here, yes, sir. Omission noted, but we will improve that because it is our aim to work closely with you and your committee, sir.

I have a statement that times out at 5 minutes, an oral statement. I would be happy to forego that to leave more time for your questions.

Chairman ROCKEFELLER. No, you go ahead.

Mr. MACKAY. Well, good morning, Mr. Chairman and members of the committee. I am pleased to appear before you today to provide the Department's views on a number of pieces of legislation currently before the committee. With me this morning are our Under Secretary for Benefits, Mr. Joseph Thompson; his Assistant Deputy Under Secretary for Program Management, Mr. Bob Epley; and our Deputy Counsel, Mr. John Thompson.

In the short time that I have available to me, I would like to provide highlights of the administration's views on these bills and would ask that my entire written statement be submitted for the record.

We commend the committee for holding this hearing and I thank you and your staffs for the cooperation shown to the Department, to include a number of provisions that will clarify existing law and improve the benefits that we provide to our veterans and their dependents.

The committee has before it S. 1090, the Veterans' Compensation Cost-of-Living Adjustment Act of 2001. The bill would authorize a cost-of-living adjustment in VA compensation and dependency and indemnity compensation rates. The administration strongly supports this legislation and urges its speedy adoption to meet the needs of our very deserving veteran community.

S. 1091 would modify current law regarding presumption of service connection for Vietnam veterans. VA is currently studying the scientific merits of removing the 30-year respiratory cancer presumption and we defer taking a position pending the outcome of that review. We support the extension of the National Academy of Sciences for providing biennial reports to the Secretary on herbicide exposure.

S. 1088 would permit accelerated Montgomery GI Bill payments for veterans training in high-tech courses——

Chairman ROCKEFELLER. What was the 30-year review?

Mr. MACKAY. We have a current——

Chairman ROCKEFELLER. When did it start, does anybody know?

Mr. EPLEY. I believe within the last month, Senator.

Chairman ROCKEFELLER. OK. Thank you. Proceed.

Mr. MACKAY. In S. 1088, VA supports the concept of acceleration of benefits for high-cost short-term courses, but we do not believe that this should be limited to veterans in high-tech courses.

S. 1093, the Veterans' Benefits Program Modification Act of 2001, contains a number of provisions that VA is pleased to support. It would restrict compensation payments to prisoners and fugitives. It would make needed clarifying changes to the Veterans' Claims Assistance Amendments of 2000. It would remove the current 500-veteran cap on the number of vocational rehabilitation participants in a program of independent living. S. 1093 would also raise the maximum home loan guarantee from $50,750 to $63,175. Finally, it would make needed changes to the law regarding VA's need-based pension program.

S. 131 would index monthly Montgomery GI Bill rates to the average monthly cost of tuition and fees for commuter students at 4-year colleges with annual adjustments. Mr. Chairman, VA acknowledges that the monthly benefits need to be increased. We prefer, however, the step increases found in H.R. 1291, which the Secretary testified in the other body on behalf of, which was recently passed by the House of Representatives.

S. 228 would make permanent the Native American Home Loan Program. This program is slated to expire at the end of this year. We support an extension of the program through fiscal year 2005.

S. 781 would extend through fiscal year 2015 the authority to guarantee home loans for members of the selected reserve. VA also supports this bill.

S. 912 would increase various burial and plot allowances. However, this bill would increase expenditures for this program by more than three-fold, and consequently, we cannot support the bill in its proposed form. We can, however, support an increase from $1,500 to $2,000 for the burial allowance for service-connected deaths.

S. 937 would amend the Montgomery GI Bill to permit service members to transfer their entitlement to their dependents, permit a limited form of accelerated benefits, make benefits allowable for technological occupations, and permit separated reservists to use Montgomery GI Bill benefits. Since DoD would pay for the transfer of benefits and for reservists, we defer to DoD on these two issues.

Mr. Chairman, there are three bills before the committee today that VA is unable to support. S. 409, which statutorily extends until December 31, 2011, the presumptive period for undiagnosed illnesses suffered by Gulf War veterans. VA currently has the authority to extend this period administratively and that is the preferred method. This bill would also redefine undiagnosed illnesses to include poorly defined illnesses, such as fibromyalgia, chronic fatigue syndrome, and a couple of others. VA has adequate authority under existing law to establish presumptions for these conditions should scientific and medical evidence support such action.

S. 457 would establish a presumption of service connection for hepatitis C for seven different categories of veterans. VA opposes this because presumption would be overly broad and necessarily re-

sult in compensating many veterans whose hepatitis is due to illegal intravenous drug use.

S. 662 would authorize VA to provide headstones or markers for previously marked graves of veterans. VA has great concerns with this proposal. We believe the purpose of providing a headstone or marker is to ensure that no veteran grave goes unmarked, and we are particularly concerned with the concept of placing a marker at an area appropriate for the purpose of commemorating an individual. This bill represents a departure from a longstanding policy of providing headstones and markers for graves of veterans.

Mr. Chairman, this completes my opening statement. We will be happy to answer your questions and those of the other members.

[The prepared statement of Mr. Mackay follows:]

PREPARED STATEMENT OF LEO MACKAY, PH.D., DEPUTY SECRETARY OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on several legislative items of great interest to veterans. Accompanying me today is Joseph Thompson, Under Secretary for Benefits, and John Thompson, Deputy General Counsel.

Before I discuss the many bills that the Committee is considering today, I would like to note that, as you know, much of this legislation would affect direct spending and receipts and would, therefore, be subject to pay-as-you-go (PAYGO) rules. For all of the proposals and bills that VA will support today, that support is contingent on accommodating the proposals within the budget limits agreed to by the President and the Congress. The Administration will work with the Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives to reduce debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

COMPENSATION COLA

The "Veterans' Compensation Cost-of-Living Adjustment Act of 2001," S. 1090, would authorize a cost-of-living adjustment (COLA) for fiscal year (FY) 2002 in the rates of disability compensation and dependency and indemnity compensation (DIC). Section 2 of the draft bill would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans and of DIC for the survivors of veterans whose deaths are service related, effective December 1, 2001. As provided in the President's FY 2002 budget request, 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, which is currently estimated to be 2.5 percent. We estimate that enactment of this section would cost $376 million during FY 2002, $7.1 billion over the period FYs 2002–2006 and $28.5 billion over the period FYs 2002–2011. Although this section is subject to the PAYGO requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA), the PAYGO effect would be zero because OBRA requires that the full compensation COLA be assumed in the baseline. We believe this proposed COLA is necessary and appropriate in order to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

VETERANS COURT LEGISLATION

A bill under consideration by this Committee, S. 1089, would expand temporarily the U.S. Court of Appeals for Veterans Claims (CAVC) so as to facilitate staggered terms for judges on that court. VA defers to the CAVC with respect to the merits of this change.

The bill would also eliminate the current jurisdictional limitation on appeals to the CAVC based on the date of filing of a notice of disagreement. Currently, for the CAVC to have jurisdiction over a case, the administrative appeal underlying the action must have been initiated by a notice of disagreement filed on or after November 18, 1988. See Veterans' Judicial Review Act of 1988, PL 100–687, Div. A, § 402, 102 Stat. 4105, 4122.

The requirement for filing of a notice of disagreement on or after November 18, 1988, is continuing to be applied by the CAVC and to have an impact on the number of cases heard by that court. Additional issues could be pursued to the court in

claims already pending before VA, and, in addition, there would undoubtedly be a number of cases in which claimants would challenge the finality of prior VA decisions, if the impediment of the requirement for a notice of disagreement filed on or after November 18, 1988, were removed. This would have the effect of adding to the number of claims and issues pending before the court and VA. We will advise the Committee of our position on this provision once we have had the opportunity to more fully consider its potential impact.

Another bill, S. 1063, the "United States Court of Appeals for Veterans Claims Administration Improvement Act of 2001," is designed to improve the administration of the CAVC by allowing the CAVC to impose a registration fee on active participants at judicial conferences convened pursuant to 38 USC § 7286 and by adding new administrative authority. VA defers to the CAVC with respect to the merits of this bill.

AGENT ORANGE

A bill under consideration by this Committee, S. 1091, would remove the 30-year limitation on the period during which respiratory cancers must become manifest to a degree of 10-percent or more in Vietnam veterans exposed to herbicides during service in the Republic of Vietnam in order for service connection to be granted on a presumptive basis. At this time, the Department of Veterans Affairs (VA) is reviewing the findings of the recent Institute of Medicine report, Veterans and Agent Orange: Update 2000, on the issue of respiratory cancer. We are considering the scientific merits of the 30-year period.

In addition, this bill would extend the presumption of exposure to herbicides provided by 38 USC § 1116 to any veteran who served in the Republic of Vietnam during the Vietnam era. Currently, there is no general presumption of exposure for all Vietnam veterans, either for purposes of compensation or health-care eligibility. Pursuant to the Agent Orange Act of 1991, VA has established presumptions of service connection for ten categories of disease. See 38 C.F.R. § 3.309(e). A veteran who was exposed to herbicides in service and who develops one of these diseases within the applicable presumption period, if any, is presumed to have incurred the disease in service, without the necessity of submitting proof of causation. In addition, 38 USC § 1116(a)(3) provides that, if a veteran served in the Republic of Vietnam during the Vietnam era and has a disease that VA recognizes as being associated with herbicide exposure, the veteran is presumed to have been exposed to an herbicide agent during service.

This bill would also extend for ten more years the period over which the National Academy of Sciences will transmit to VA reviews and evaluations of the available scientific evidence regarding possible associations between diseases and exposure to dioxin and other chemical compounds in herbicides. As additional scientific and medical evidence continues to be developed concerning the health effects of herbicide exposure, such reviews may shed light on the effects of exposure on the health of veterans. Accordingly, VA supports this provision. However, we will inform the Committee of our position on and cost estimate for this entire bill once our review is completed.

EDUCATION

Section 1 of S. 1088 would authorize an individual to elect an accelerated payment of Montgomery GI Bill (MGIB) benefits for pursuit of certain high-technology courses. The tuition and fees for the course would have to exceed twice the aggregate basic MGIB education benefit otherwise payable for the enrollment period in order for the individual to qualify. The amount of the accelerated payment would be the lesser of 60 percent of the established charges for the course or the aggregate amount of basic MGIB educational assistance for which the individual has remaining entitlement.

VA supports the accelerated-payment concept and we believe the provisions of this section are a step in the right direction. For example, many educational and training programs, including technical certification programs such as those offered by Microsoft, Cisco, and others, are of extremely high cost, but short duration. Under the current benefit payment method, an individual may receive $650 to $1300 in monthly MGIB benefits for a program of a few months' duration that costs $5000 to $10,000, or more. Plainly, in such a case, the benefit pay-out is not structured in relation to course length, cost or value. Thus, the individual's educational needs when pursuing such short-term, high-cost courses frequently may not be met. The accelerated provision contained in this bill would cover a substantially greater proportion of the actual course cost to the veteran.

We have not yet estimated costs of the education-benefit enhancements in S. 1088 or certain other bills on today's agenda, but will gladly supply them for the record.

Section 2 of S. 1088 would amend the definition of "educational institution" to include any entity that provides, directly or under agreement, training required for a license or certificate in a vocation or profession in a technological field. It would become effective the date of enactment.

The law defines a "program of education" as a curriculum or combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary for the attainment of a predetermined and identified educational, professional, or vocational objective. A program of education may be offered at either an institution of higher learning or a non-college degree school. Presently, the law does not permit VA to award benefits for courses offered by commercial enterprises whose primary purposes are other than providing educational instruction. Certified Network Administrator (CNA) and Certified Network Engineer (CNE) courses offered by Novell, Microsoft, and other companies, for example, are offered either through educational institutions or by designated business centers. Although the courses are identical regardless of where offered, only those veterans pursuing the courses at an educational institution may receive educational assistance.

This bill would allow VA to award benefits to those veterans taking these courses at a business site. This would permit approval of courses offered by businesses only when the courses are needed to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a technological occupation. We believe providing educational benefits for pursuit of these courses is fully consonant with MGIB purposes, and, given the bill's conditions on VA's approving the courses, adequate safeguards would exist against potential abuse. Consequently, we would support this provision of the bill.

Section 8 of S. 1093, the "Veterans' Benefits Programs Modification Act of 2001," would respond to the recent decision of the United States Court of Appeals for Veterans Claims (*Ozer* v. *Principi*) which held that the relevant statute placed no limit on the length of time an eligible spouse had to use Survivors' and Dependents' Educational Assistance under chapter 35 of title 38, United States Code. First, this section would clarify the spouse's opportunity to select the date from which his or her eligibility period for using chapter 35 benefits would commence. Such date could be any date between the effective date from which VA rated the veteran as having a total service-connected disability permanent in nature and the date VA notified the veteran of that rating. Second, the section would expressly provide that the spouse would have a fixed ten-year period, beginning on the selected date or otherwise applicable date, to use the available chapter 35 benefits.

The stated intent of Congress in establishing the chapter 35 program was to assist eligible spouses and surviving spouses in preparing to support themselves and their families at a standard of living which the veteran, but for his or her service-connected death or the total and permanent disablement from a disease or injury incurred or aggravated in the Armed Forces, could have expected to provide for his or her family. In view of the need for many spouses and surviving spouses to train for a productive place in society, Congress provided financial assistance for spouses and surviving spouses in training programs above the secondary level.

The law contemplates providing such assistance to the spouse or surviving spouse during the period following onset of the veteran's disability or death in order to timely assist the eligible spouse in adjusting to the loss of aid and support from the veteran. It is appropriate, therefore, to direct and limit the availability of this educational assistance to a period reasonably needed to achieve the statutory purposes. We note that provisions applicable to other eligible persons under chapter 35, as well as all veterans under the GI Bill and vocational rehabilitation benefit programs administered by VA limit benefit eligibility to a circumscribed period. We believe it is fair and reasonable to do so here, particularly with the flexibility that also would be afforded for the spouse to select, within an appropriate range, the date when the eligibility period would begin. Consequently, we support this section of the draft bill which would apply a ten-year period for spouses to use their Dependents' Educational Assistance benefits.

INCARCERATED PERSONS & FUGITIVE FELONS

The "Veterans' Benefits Programs Modification Act of 2001," S. 1093, would limit the provision of benefits for fugitive and incarcerated veterans. Section 7 of this bill would place a limit on compensation payments for veterans incarcerated on October 7, 1980, for felonies committed before that date who remain incarcerated for conviction of that felony after the date of the enactment of this provision. Section 5313

of title 38, United States Code, currently provides for the reduction of service-connected disability compensation for veterans confined in a Federal, State, or local penal institution as a result of conviction of a felony. The law was enacted on October 7, 1980, and applies to those veterans who were convicted and incarcerated for a felony committed after the date of enactment, as well as those who were incarcerated on or after October 1, 1980, and are awarded compensation after that date. VA recently became aware of approximately 230 veterans who were incarcerated prior to enactment of the 1980 law, who remain incarcerated, and who were drawing compensation as of 1980. These veterans, who are not within the scope of the current benefit-reduction provision, are receiving some $2.5 million per year in compensation benefits. These 230 veterans also do not have in effect an apportionment of their award for support of their dependents. Payment of benefits to these veterans, in our view, is contrary to the purpose for which service-connected disability benefits are awarded, since these veterans are being supported in prison by the government and are not capable of gainful employment by reason of their incarceration.

+We estimate annual PAYGO cost savings of approximately $2.2 million would be achieved and that there would be a one-time administrative cost for the reduction of the benefits to the approximately 230 incarcerated veterans who would be affected by this provision.

Section 6 of this bill would prohibit the payment of certain benefits for veterans who are fugitive felons. Under current law, a fugitive is generally not subject to reduction of compensation, pension, education, or vocational rehabilitation benefits under 38 USC §§ 1505, 3034, 3108, 3482, or 5313, as is the case with many incarcerated veterans. A prohibition on payment of benefits for fugitive felons would be a logical extension of the current limits on payments to incarcerated felons. VA supports this provision.

We note, however, as a technical matter, that the draft bill would not appear to authorize payment of benefits to a veteran's dependent by apportionment, as is the case with veterans whose benefits are subject to reduction by reason of incarceration. We note also that the draft bill would bar the provision of life insurance benefits and benefits under the home loan guaranty program under title 38, chapters 19 and 37, to fugitive felons, although incarcerated felons are not barred from receipt of such benefits under current law. We recommend that reference to chapter 19 and 37 benefits be deleted from section 6 of the draft bill.

Because this proposal would raise unique information-development issues, no data are available to establish cost-savings estimates. In FY 1999, VA, working with the Bureau of Prisons, identified fewer than 1,000 cases where VA beneficiaries were incarcerated and subject to an administrative reduction in their benefit payments. This translates to less than one percent of the total Federal prison population. Based on this experience, we expect that the number of fugitive felons who might be identified as VA beneficiaries will be small.

CLAIMS ASSISTANCE ACT AMENDMENTS

The Veterans Claims Assistance Act of 2000 (VCAA), PL 106–475, struck out sections 5102 and 5103 of title 38, United States Code, added new sections 5100, 5102, 5103, and 5103A, and amended section 5107, relating to VA's duty to assist claimants in presenting claims for benefits. Certain of the provisions, as enacted, raise questions regarding congressional intent with respect to the handling of incomplete applications and the applicability of the new provisions to undecided claims filed prior to November 9, 2000, the date of enactment of the VCAA, and claims not finally decided prior to November 9, 2000. The issue regarding undecided claims was addressed in a precedent opinion of the VA General Counsel, VAOPGCPREC 11–2000.

With respect to incomplete applications, prior section 5103(a) provided that, if a claimant's application for benefits under the laws administered by the Secretary of Veterans Affairs was incomplete, the Secretary was required to notify the claimant of the evidence necessary to complete the application. In addition, section 5103(a) provided, in its second sentence, that, if the evidence requested was not received within one year from the date of the notification, no benefits could be paid or furnished by reason of the application. As added by section 3 of the VCAA, new section 5102(b) states that, if a claimant's application for a benefit is incomplete, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application. However, no provision comparable to the second sentence of former section 5103(a), regarding the effect of a failure to provide evidence to complete an incomplete application, was included in new section 5102 or elsewhere in chapter 51 as amended. Thus, if a claimant were to submit an application for benefits and receive notification from VA that the application

is incomplete, it does not appear that VA would be authorized to close or deny the claim based on an applicant's failure to respond. Further, if the claimant submits the requested information at any time in the future, and if a benefit were granted, VA would be required to establish an effective date for an award of benefits based on the date the incomplete application was filed without regard to whether the applicant responded to VA's request for further information to "complete" the application in a timely fashion. We do not believe this result was intended by Congress.

Section 4 of the "Veterans' Benefits Programs Modification Act of 2001" would remove the one-year period for the submission of information from new section 5103 and restore it to new section 5102. In other words, this provision has the effect of establishing a one-year period for the submission of information necessary to complete an application, while eliminating the one-year period for the submission of information and evidence necessary to substantiate a claim. Establishing a one-year period for the completion of applications, rather than for the substantiation of claims, will allow VA to decide a claim based on a claimant's failure to respond to a request for information or evidence. This decision would be based on evidence VA has obtained on behalf of the claimant. Essentially, this provision restores the statute to its former status. This will enhance our ability to process claims in a timely manner. VA supports this modification. (We note as a technical matter that the new section 5102(c)(1), proposed to be added by section 4, contains an apparently erroneous reference to "section 5103(a)" that should be changed to "section 5102(a)".)

Section 5 of the "Veterans' Benefits Programs Modification Act of 2001" would amend section 7 of the VCAA to require VA, upon the request of a claimant or on the Secretary's own motion, to readjudicate in accordance with the VCAA claims that did not become final prior to November 9, 2000. Claimants whose claims did not become final prior to November 9, 2000, would have two years from that date to request readjudication, just as those claimants covered by current section 7(b) whose claims were finally denied as not well grounded prior to November 9, 2000.

Section 7(a) of the VCAA may be construed to create an unlimited duty on VA to locate and readjudicate claims filed before November 9, 2000, that were not finally decided by VA as of that date. Section 7(b)(4), by contrast, specifically states that VA is not obligated to locate and readjudicate claims found to be not well grounded in which VA's decision became final prior to November 9, 2000. Because section 7(a) does not contain such a limitation, this provision may be interpreted as requiring VA to locate and readjudicate all claims in which VA issued a decision that was not final prior to November 9, 2000. Because of the onerous consequences of such an interpretation, we do not believe that Congress intended to impose a duty on VA to undertake an unlimited review of these cases.

In FY 2000, VA adjudicated approximately 601,000 claims for service connection, claims to reopen based upon new and material evidence, increased rating claims, and claims alleging clear and unmistakable error. In addition, VA rendered decisions regarding issues such as dependency status, income adjustments, and eligibility for hospital care in an additional 1 million claims in FY 2000. Also, in FY 2000, VA processed 246,000 cases for purposes of appellate review, adjusting VA benefits based upon a beneficiary's receipt of Social Security benefits, review required by recently-enacted legislation, matching VA records with Social Security records on deaths of beneficiaries, and reviewing ongoing benefit awards to determine if they are correct. If such a massive review of previously-decided claims were required, VA would be unable to adjudicate claims in which a decision has not yet been issued. The ultimate consequence of such an interpretation of section 7(a) would be delayed payment of benefits to veterans and their dependents. We therefore believe that a technical amendment to section 7 to clarify Congress' intent in this regard, as included in section 5 of the draft bill, is appropriate.

Also, section 7(a) of the VCAA currently specifies that section 5107 as amended applies to any claim filed on or after the date of enactment of the VCAA or filed before that date but not finally decided as of that date. However, the VCAA does not address the applicability to newly filed or pending claims of the other provisions of title 38, United States Code, created by that statute. The General Counsel has concluded in a precedent opinion, VAOPGCPREC 11–2000, that all of the provisions added by the VCAA apply to claims filed on or after November 9, 2000, and to claims filed before that date but not finally decided as of that date. Nonetheless, we believe a technical amendment to section 7 to clarify Congress' intent in this regard is appropriate.

VOCATIONAL REHABILITATION

Section 9 of S. 1093 would remove the cap on the number of vocational rehabilitation participants in the "independent living services" program under chapter 31 of

title 38, United States Code. The limitation of 500 veteran participants was set when the program was being evaluated as a pilot. When the merit of the program subsequently was established, Congress made it permanent. However, the limit on the number of participants was not changed. The program has proved its worth over time and we are proud of the successful independent living outcomes achieved by participants who represent some of our neediest, most deserving veterans. Consequently, we strongly support eliminating the cap so that more qualifying veterans may receive this assistance.

If the cap is lifted, we project that, even though the number of independent living cases will rise, net savings will accrue to VA and other federally funded service providers effectively achieving cost avoidance. Many of the veterans who completed programs of independent living are able to move from institutionalization back to family life or group homes. These individuals are able to maintain themselves in the community with significantly less reliance on others and community service providers.

VA estimates that, if enacted, this section would result in benefit costs of about $7.4 million in FY 2002, with 5-year PAYGO costs of about $15.6 million for FYs 2002–2006.

HOUSING LOANS

Section 10 of the "Veterans' Benefits Program Modification Act of 2001" would increase the maximum VA housing loan guaranty from $50,750 to $63,175. VA believes such an increase is justified and favors its enactment.

Neither the law nor regulations set a maximum principal amount for a VA guaranteed home loan, so long as the total loan amount does not exceed the reasonable value of the property securing the loan, and the veteran's present and anticipated income is sufficient to afford the loan payments. As a practical matter, requirements set by secondary market institutions limit the maximum VA loan to four times the guaranty. The guaranty increase proposed by section 10 of the bill would have the effect of increasing the maximum amount lenders are willing to finance from the current $203,000 to $252,700.

The VA guaranty has not been increased since October 1994. Housing prices have increased significantly during the past six-and-a-half years. Today, in a number of higher-cost areas, such as Atlanta, Anaheim/Santa Ana, Boston, Denver, Honolulu, Los Angeles, New York City, San Diego, San Francisco, and Seattle, the median home purchase price exceeds the effective VA maximum loan.

Increasing the effective maximum VA home loan to $252,700 is consistent with recent increases in the loan limits for other housing programs. For example, the limit for a loan insured by the Federal Housing Administration of the Department of Housing and Urban Development was increased this year to $239,250. The conventional conforming loan limit for the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") was increased effective January 1, 2001, to $275,000.

VA estimates that, under the provisions of current law, increasing the guaranty to $63,175 would increase the loan subsidy PAYGO costs to the Veterans Housing Benefit Program Fund by $4.3 million in FY 2002, and have 10-year subsidy PAYGO costs of approximately $140.9 million. It is important to note that our cost estimate is based, in part, on the fact that certain cost-saving provisions originally enacted as part of the OBRA will expire on September 30, 2008. We fully expect that these provisions will be extended prior to their scheduled expiration. Assuming that those OBRA provisions are extended until at least September 30, 2011, the 10-year subsidy PAYGO costs of the guaranty increase would be $83.5 million.

PENSION

Section 2 of the "Veterans' Benefits Programs Modification Act of 2001" would add to 38 USC § 1503(a) a new paragraph (11), which would exclude proceeds of a veteran's life insurance policy, and a new paragraph (12), which would exclude "any other non-recurring income from any source," from determinations of annual income for pension purposes. Section 3(b) of this draft bill would amend subparagraph (A) of 38 USC § 5112(b)(4) to provide that the effective date of a reduction or discontinuance of pension by reason of a change in recurring income will be the last day of the calendar year in which the change occurred, with the pension rate for the following year to be based on all anticipated countable income. Section 3(a) of this draft bill would repeal the provision of 38 USC § 5110(d)(2) that provides that the effective date of an award of death pension for which application is received within 45 days from the date of the veteran's death is the first day of the month in which the death occurred.

VA disability pension is payable to low-income wartime veterans who cannot work due to permanent and total disability. Death pension is payable to low-income surviving spouses and dependent children of wartime veterans. Both programs are based on need, and VA improved pension is offset dollar-for-dollar by income from other sources (unless specifically excluded by statute). The current statute, 38 USC § 5112(b)(4)(A), requires improved pension to be reduced or discontinued effective the last day of the month in which the beneficiary's income increased. In addition, under current 38 USC § 5110(d)(2), an award based on a claim for death pension received within 45 days of the veteran's death is effective the date of death. An award based on a death pension claim received more than 45 days after the veteran's death is effective the date of claim. This effective date provision was added by the "Deficit Reduction Act of 1984", PL 98–369, Title V, 98 Stat. 494, 854–901, as a cost-saving measure.

The practical effect of Public Law No. 98–369 in many cases has been to exclude insurance proceeds from countable income for pension claimants who file more than 45 days after the date of the veteran's death. By waiting to file claims until after receipt of insurance proceeds, those claimants can receive pension effective from the date of claim, without regard to the recently received insurance proceeds. However, claimants who receive insurance proceeds and then file pension claims within 45 days of the veteran's death have those proceeds counted as income for the following 12 months. We understand that section 3(a) of the draft bill is intended to address this issue. We understand that section 3(b) of the draft bill is intended to address the concern that the existing end-of-the-month adjustment requirements complicate beneficiary income and effective-date calculations and often result in adjudication errors. Such errors occur most often in cases involving frequent income changes and overlapping income counting periods. We further understand that section 2 of the bill is intended to reflect the principle that life insurance proceeds and other similar types of non-recurring income are most appropriately addressed by application of net worth limitations.

Certain aspects of the proposed amendments raise technical issues with respect to income determinations. We would be pleased to work with Committee staff on the technical aspects of these provisions to develop mutually acceptable language.

S. 131

S. 131, the "Veterans' Higher Education Opportunities Act of 2001," would provide for an increase in the education assistance benefit rate under the MGIB to take effect on October 1, 2001. This measure would provide that an MGIB participant whose obligated period of service is three or more years would receive an education benefit under that program equal to the average monthly costs of tuition and expenses for a commuter student at a public college that awards baccalaureate degrees. Service members with an obligated period of less than three years would receive 75 percent of that amount.

VA would determine not later than September 30th each year the average monthly costs of tuition and expenses for the succeeding fiscal year based upon information obtained from the College Board provided in its annual survey of institutions of higher education.

The President strongly supports the MGIB benefits program and acknowledges its great importance to veterans and the Nation. The President's FY 2002 Budget includes the annual cost-of-living increase for education benefits for veterans and service members, but does not include an additional MGIB benefit rate increase. However, the President would support MGIB program improvements, to include a reasonable increase in rates, if those improvements can be accommodated within the overall budget limits agreed to by the President and Congress. In this regard, the Secretary recently testified before the House Veterans Affairs Subcommittee on Benefits that VA supports, within the framework of those spending limits, the stepped increases contained in H. R. 1291.

Our preliminary cost estimate indicates that S. 131, if enacted, would result in PAYGO costs of about $777 million in FY 2002, with a 5-year cost of about $4.6 billion for FYs 2002–2006 and a 10-year projection of $12.4 billion.

S. 228

S. 228 would make permanent the direct loan program for Native American veterans living on trust lands. VA strongly supports this program, which currently has a sunset of December 31, 2001. We would recommend, however, that the current program be extended until September 30, 2005, rather than being made permanent.

The Native American veteran direct loan program, which was enacted in October 1992, has enjoyed limited success. VA has made over 200 loans under this program

to Native American veterans. The majority of these loans have been to Native Hawaiians.

VA recently participated in the Executive Branch's One-Stop Mortgage Initiative, which was an effort to develop a more consistent approach to delivering home ownership opportunities to Native Americans. VA is hopeful that this initiative will increase opportunities and remove barriers to participation in the VA loan program for Native American veterans living on trust lands. VA is also aware of efforts by the Federal National Mortgage Association to increase private-sector lender willingness to make loans on tribal lands.

VA believes a four-year extension of the Native American veteran direct loan program would give both the Executive Branch and the Congress an opportunity to see how various initiatives regarding Native American housing loans affect the ability of these veterans to obtain VA financing, and whether further program modifications are indicated.

In addition, we urge the Committee to amend S. 228 to make the following three changes to current law.

First, we recommend modifying the law to permit VA to make loans to members of a Native American tribe that has entered into a memorandum of understanding (MOU) with another Federal agency if that MOU contemplates loans made by VA and the MOU conforms to the requirements of the law governing the VA program. Current law requires a tribe to enter into an MOU with VA before we can make loans to members of that tribe.

We also suggest modifying the current requirement that all VA loan and security instruments contain, on the first page of each such document, in letters two-and-a-half times the size of the regular type face used in the document, a statement that the loan is not assumable without the approval of VA. We recommend that the law require that this notice appear conspicuously on at least one instrument (such as a VA rider) under guidelines established by VA in regulations.

Those two amendments would implement recommendations by the One-Stop Initiative. These changes would reduce the administrative burden on Indian housing authorities and bring more uniformity in federal loan program processing procedures. Eliminating the requirement for a separate MOU between each tribe and VA should expand the number of Native American veterans eligible for VA financing. The extremely strict loan assumption notice requirement in the current law has prevented VA from approving the use of uniform loan instruments now used in FHA, "Fannie Mae," and "Freddie Mac" transactions.

Finally, we recommend repealing the requirement that VA outstation, on a part-time basis, Loan Guaranty specialists at tribal facilities if requested to do so by a tribe. We have consolidated loan processing and servicing operations from 46 regional offices to nine Regional Loan Centers, and do not have the resources to outstation loan personnel at various tribal locations. VA continues to make periodic outreach visits to all tribes, and provides training to tribal housing authorities. We believe that we can provide all necessary services to Native American veterans seeking VA housing loans without outstationing employees in remote tribal locations.

We would be pleased to work with your staff in drafting language to implement our suggested amendments.

We estimate that enactment of S. 228 would not require any additional appropriation of loan subsidy. Public Law No. 102–389 appropriated $4.5 million "to remain available until expended" to subsidize gross obligations for direct loans to Native American veterans of up to $58.4 million. We estimate that sufficient funds would be available to cover projected Native American veteran loan volume until at least FY 2005.

S. 409

S. 409, or the "Persian Gulf War Illness Compensation Act of 2001," would modify provisions in 38 USC §§ 1117 and 1118 governing compensation for certain Gulf War veterans. We oppose the enactment of this bill.

Currently, 38 USC § 1117 provides that the Secretary of Veterans Affairs may pay compensation to any Gulf War veteran suffering from a chronic disability resulting from an undiagnosed illness (or combination of undiagnosed illnesses) that became manifest during active service in the Southwest Asia theater of operations during the Gulf War or became manifest to a compensable degree within a presumptive period (currently ending on December 31, 2001) as determined by regulation. Section 1118 of title 38 provides for the establishment of presumptive service connection for diagnosed and undiagnosed illnesses associated with Gulf War service.

Section 3(a) of the bill would establish a statutory presumptive period under 38 USC § 1117 extending to December 31, 2011. The Secretary of Veterans Affairs

would be authorized to extend that date by regulation. Section 3(b) would amend 38 USC § 1117 by adding a new subsection to clarify that the term "undiagnosed illness" for purposes of presumption of service connection includes "poorly defined" illnesses such as fibromyalgia, chronic fatigue syndrome, autoimmune disorder, and multiple chemical sensitivity. Section 3(c) would amend 38 USC § 1118 to reflect the modification of the meaning of the term "undiagnosed illness."

In our view, the current provision of 38 USC § 1117(b) authorizing the Secretary to prescribe by regulation the presumptive period for undiagnosed illnesses associated with Gulf War service is appropriate and should be retained. The Secretary's determinations regarding the presumptive period are made following a review of any available credible medical or scientific evidence and the historical treatment afforded disabilities for which manifestation periods have been established and take into account other pertinent circumstances regarding the experiences of veterans of the Gulf War. We plan to consider whether the current presumptive period should be extended administratively based on these factors.

With regard to fibromyalgia, chronic fatigue syndrome, and autoimmune disorder, as referenced in section 3(b) of this bill, under current law, service connection may be established on a direct basis for disability resulting from one of these conditions. With regard to multiple chemical sensitivity, this condition is not recognized under VA's schedule for rating disabilities. VA has adequate authority under existing law to establish presumptions for these conditions should we conclude that scientific and medical evidence support such action. Under current 38 USC § 1118, the Secretary may determine and prescribe in regulations which diagnosed and undiagnosed illnesses warrant such a presumption of service connection. Accordingly, we do not support the inclusion of reference to these conditions in 38 USC §§ 1117 and 1118.

S. 457

S. 457 would amend 38 USC § 1112 to establish a presumption of service connection for certain veterans suffering from hepatitis C. We oppose the enactment of this bill.

S. 457 would add a new subsection (d) to 38 USC § 1112, providing a presumption of service connection for certain veterans who suffer from hepatitis C to a degree of disability of 10 percent or more, notwithstanding that there is no record of such disease during the period of active military, naval, or air service. The presumption would apply where a veteran experienced one of the following during service: (1) transfusion of blood or blood products before December 31, 1992; (2) blood exposure on or through the skin or a mucous membrane; (3) hemodialysis; (4) needle-stick accident or medical event involving a needle, not due to the veteran's own willful misconduct; (5) unexplained liver disease; (6) unexplained liver dysfunction value or test; or (7) service in a health-care position or specialty.

We recognize that, because there is such a prolonged period between acute hepatitis C virus infection, which is typically asymptomatic or results in mild illness, and the development of symptomatic liver disease, it is difficult, in the absence of a medical history, to determine the source of infection for hepatitis C. However, epidemiologic research establishes that the highest incidence of hepatitis C infection occurs in persons who placed themselves at risk through destructive lifestyle choices. A May 1999 Centers for Disease Control and Prevention (CDC) fact sheet, "Hepatitis C Virus and Disease," reports that injecting drug use accounts for about 60 percent of hepatitis C cases. According to an October 16, 1998, CDC report, "Recommendations for Prevention and Control of Hepatitis C Virus (HCV) Infection and HCV-Related Chronic Disease," 47 Morbidity and Mortality Weekly Report 5 (Oct. 16, 1998) (hereinafter "CDC Report"), injection of drugs currently accounts for a substantial number of hepatitis C transmissions and may have accounted for a substantial proportion of hepatitis C infections in the past. According to the CDC report, after 5 years of injecting drugs, as many as 90 percent of users are infected with hepatitis C. Although the contemplated presumptions would be rebuttable, in practice it would be unlikely in most cases that reliable evidence of past intravenous drug abuse would be readily available.

We feel strongly that veterans' disability compensation should not be paid to individuals who incurred hepatitis C infection through drug abuse. Yet creation of presumptions as contemplated by S. 457 would certainly result in payment of compensation to persons who most likely incurred hepatitis C infection in that manner.

The CDC report indicates that there is a very low risk of infection associated with certain of the risk factors included in proposed new subsection (d)(2) of 38 USC § 1112. New subsection (d)(2)(B) would provide a presumption of service connection if a veteran who has hepatitis C was "exposed to blood on or through the skin or a mucous membrane." New subsection (d)(2)(G) would establish a presumption

based on service in a health-care position or specialty. The CDC report indicates that hepatitis C is transmitted primarily through large or repeated direct percutaneous, i.e., through the skin, exposures to blood. According to the CDC, the prevalence of hepatitis C infection among health-care workers, including orthopedic, general, and oral surgeons, who are at risk for being infected as a result of exposure to blood, is no greater than the general population. In addition, the CDC reports that there are no incidence studies documenting transmission associated with mucous membrane or nonintact skin exposures, although transmission of hepatitis C from blood splashes to the conjunctiva (membrane lining the eyelid) have been described. Thus, it appears likely that hepatitis C infection would only occur if blood permeated a veteran's skin, such as through an open wound or skin puncture. Based upon this CDC data, we believe that the risk of hepatitis C infection for veterans based upon exposure to blood on or through the skin or a mucous membrane is so small as to make a presumption on this basis unnecessary.

New subsections (d)(2)(E) and (d)(2)(F) would provide a presumption of service connection for hepatitis C based on unexplained liver disease or unexplained liver dysfunction value or test. We are unaware of any evidence showing that, since testing became available for hepatitis C, unexplained liver disease diagnosed during service or unexplained liver dysfunction value or test performed during service would indicate a veteran had an hepatitis C infection which was not diagnosed while the veteran was on active service. We believe that serology testing is routinely performed when a service member is diagnosed with unexplained liver disease or has an unexplained liver dysfunction value or test and that that testing would reveal at the time whether the service member was infected with hepatitis C. As a result, a presumption of service connection for unexplained liver disease or liver dysfunction value or test is not warranted.

We acknowledge that accurate serologic testing was not available until 1992. However, many causes of liver dysfunction value or test in patients whose serologic tests are negative for hepatitis A and hepatitis B are non-viral. These non-viral causes include liver toxins (e.g., alcohol, prescription and non-prescription drugs), non-viral infections (e.g., malaria, rickettsia), environmental factors (e.g., heatstroke), and malignancies.

The Seattle VA Epidemiologic Research Institute has initiated a study involving 4000 veterans who receive care at 20 VA medical centers that will allow a better understanding of the risk factors associated with hepatitis C. Results of this study are expected in the summer of 2002.

We oppose S. 457 because it is overbroad and would undoubtedly result in the payment of compensation to many individuals whose hepatitis C infection resulted from drug abuse. Moreover, establishment of a presumption of service connection for hepatitis C infection based on certain risk factors identified in S. 457 cannot currently be supported by medical or epidemiologic data. VA is committed to the careful and compassionate adjudication of these claims, to include assistance in the development of evidence to establish benefit eligibility. Case-by-case determinations of entitlement based on the merits of individual claims continue to be, with respect to hepatitis C cases, preferable to adopting the broad presumptions called for by S. 457.

We do not currently have a cost estimate for S. 457, but would be pleased to provide one to the Committee for the record. However, based on a similar proposal, we estimate that PAYGO costs would be $168 million over the period FYs 2002–2006, at a minimum.

S. 662

S. 662 would authorize the Secretary of Veterans Affairs to furnish headstones or markers for marked graves of certain individuals and to allow placement at a location other than a gravesite. We oppose the enactment of S. 662.

Section 1(a) of the bill would amend 38 USC § 2306, to require the Secretary of Veterans Affairs to furnish, upon request, a Government headstone or grave marker for placement at the grave of a veteran or other eligible individual, or at another area appropriate for the purpose of commemorating the individual, regardless of whether the individual's grave is currently marked with a privately purchased headstone or marker. Under current law, Government headstones or markers are furnished only for the unmarked graves of veterans and certain other eligible individuals. Pursuant to section 1(b) of the bill, the new requirement would be made applicable to burials occurring "on or after November 1, 1990."

We are particularly concerned with the concept of placing a marker at an "area appropriate for the purpose of commemorating" an individual. This provision represents an unwarranted departure from the longstanding policy of providing headstones and markers for the "graves" of veterans. This purpose is reflected in

38 USC § 2306(a), which requires VA to furnish, upon request, appropriate headstones or markers at Government expense for the unmarked "graves" of various classes of individuals. An exception to this policy is reflected in 38 USC § 2306(b)(1), which authorizes the provision of a headstone or marker in a case in which the remains of an individual are unavailable for interment. Pursuant to this authority, if the remains of an individual are unavailable, an appropriate memorial headstone or marker will be furnished for placement in a national cemetery area reserved for that purpose, in a veterans' cemetery owned by a State, or, for veterans only, in a State, local, or private cemetery. In the context of this bill, we believe the requirement that a marker be provided for placement in an "area appropriate for the purpose of commemorating the individual" could be interpreted to include areas not located at grave sites, or even within cemeteries, which would be inconsistent with the current longstanding policy regarding the provision of headstones and markers. We believe that an individual's grave site is the appropriate area in which to memorialize an individual by placement of a headstone or marker and that a cemetery is the appropriate place to memorialize an individual whose remains are unavailable.

We estimate the cost of enactment of S. 662, which includes removing the "unmarked" restriction and is retroactive to November 1990, to be $6.6 million in FY 2002 and $20.7 million during the period FY 2002–2006. Because this bill would affect direct spending and receipts, it is subject to PAYGO requirements.

S. 781

S. 781 would extend the sunset for housing loan entitlement currently granted to persons whose only qualifying service was in the Selected Reserve, including the National Guard. Currently, housing loan entitlement for reservists expires on September 30, 2007. This bill would extend the expiration date until September 30, 2015. We favor the enactment of this bill.

Extending home loan benefits to reservists recognized the important role the Reserves play in our National Defense. Reservists are often called upon to perform vital and dangerous missions all around the world. The availability of these benefits serves as an important recruiting incentive for the National Guard and Reserves.

Because reserve entitlement is now set to sunset in six years, persons entering reserve service today have no assurance these benefits will still be available once they have fulfilled their six years of qualifying service. Therefore, an extension of the sunset at this time is justified.

S. 912

S. 912, the "Veterans Burial Benefits Improvement Act of 2001," would increase the amount payable for several burial benefits for veterans. Section 2(a) of the bill would amend 38 USC §§ 2302(a) and 2303(a)(1)(A) by increasing the burial and funeral-expense allowance for nonservice-connected deaths from $300 to $1,135, and amend 38 USC § 2307 by increasing the burial and funeral-expense allowance for service-connected deaths from $1,500 to $3,713. Section 2(b) would amend 38 USC § 2303(b) by increasing the plot allowance payable for veterans buried in State or private cemeteries from $150 to $670. Section 2(c) would add a new section 2309, which would index these amounts based on the percentage increases of the Consumer Price Index. The initial increases in the various rates would be applicable to deaths occurring on or after the date of enactment of this legislation.

S. 912 would immediately increase expenditures for this program by more than three-fold. In total the bill would increase spending by $680 million in FYs 2002–2006 and $1.5 billion over ten years. VA cannot support this bill at this time. We believe that increases should correlate to the overall burial program, and VA is conducting a program evaluation and analyzing the report on burial benefits that was submitted to Congress last February. Once this evaluation is complete, we will offer further comment on increases to the burial program.

The Government has responded to veterans' burial needs in recent years by establishing several new national cemeteries and by significantly enhancing the grant program under which state veterans cemeteries are established. The State Cemetery Grants Program now provides up to 100 percent of the costs of construction associated with the establishment, expansion, or improvement of state veterans cemeteries. This partnership between VA and the states ensures meeting our goal that 88 percent of veterans will live within seventy-five miles of a burial option by 2006. Since the 1988 enactment of Public Law No. 105–368, which in effect increased the permissible grant amount from 50 to 100 percent of construction costs, there has been an increased interest from the states in the program, as reflected in the increased number of pre-applications received.

Given the expanding availability of burial options within both national and state veterans cemeteries, and the competing demands for scarce VA resources, we can at this time support only an increase to $2,000 in the burial and funeral-expense allowance for service-connected deaths. The last increase (from $1,000 to $1,500) occurred in 1988. The greatest obligation is owed to the families of those who have paid the ultimate price for their service, and we believe such an increase is warranted in their case. Once VA's evaluation and analysis is complete, we will be able to comment further on other burial benefit increases.

The Secretary previously expressed support for the $2,000 increase in his testimony before the House Veterans' Affairs Committee on H.R. 801. We estimate the new burial allowance would cost $5.3 million in FY 2002 and $31.7 million over the 2002–2006 period. The new benefit would increase direct spending and under the PAYGO provision of the 1990 Omnibus Budget Reconciliation Act would trigger a sequester if not fully offset. Assuming offsetting savings are found to prevent a sequester, VA would support this alternative increase.

S. 937

S. 937, the "Helping Our Professionals Educationally (HOPE) Act of 2001," provides for several significant improvements to the MGIB. This bill would permit service members to transfer MGIB entitlement to their spouse and/or children, allow for accelerated payment of MGIB benefits, make MGIB benefits available for technological occupations, and permit certain members of the Selected Reserve to use MGIB benefits after separation from the Reserve. Section 2 of S. 937 would amend the MGIB to permit certain service members to elect to transfer up to one-half of their entitlement to their dependent spouse and/or children. The implementation of this provision would be at the discretion of the Secretary of the military department concerned.

Service members who have a critical military skill, or are in specialties requiring critical military skills and who agree to serve four or more years could make an election to transfer no more than 18 months of entitlement. Individuals selected to use this option would designate to whom and how much of the entitlement would be transferred.

Subject to the applicable delimiting date, a transfer of entitlement could be made while the service member is on active duty or after the individual's release from that duty. The terms of the transfer could be modified or revoked by the service member at any time. The spouse could use the transfer after the service member completes six years of active duty. In the case of a child, the transfer could be used after the service member completes ten years of service and the child completes the requirements for a secondary school diploma or equivalency certificate, or the child attains age 18. A transfer to a child would end upon that child attaining the age of 26.

Further, under section 2 of S. 937, the dependent would receive the same MGIB basic benefit as the veteran and the death of that veteran would not interfere with the use of the transfer. The dependent and the individual making the transfer would be jointly liable for overpayments. If the individual failed to complete the terms of the agreement, the amount of transferred entitlement used by the dependent would be treated as an overpayment, unless the individual died or was released from active duty for medical reasons.

Section 2 further would require that the Secretary of the military department concerned approve transfers of entitlement only to the extent that appropriations are available in a fiscal year and would furnish an annual report on the use of such transfers to Congress. The Department of Defense (DOD) would fund MGIB payments made to dependents under this section and prescribe regulations for this purpose.

VA has not yet developed a PAYGO cost estimate for this bill, but we will gladly supply one for the record, in conjunction with DOD. Since this provision involves matters within DOD's jurisdiction and would be funded by that Department, VA defers to DOD's views on this section.

Section 3 of S. 937 would permit the election of an accelerated MGIB payment in a lump-sum amount equal to the lesser of the initial month plus the allowance for the succeeding four months; or the amount payable for the entire quarter, semester, or term; or where applicable for the entire course. VA favors accelerated payment of MGIB benefits. However, we prefer a broader provision covering high-cost, short-term courses.

VA estimates section 3 of S. 937, if enacted, would result in PAYGO costs of approximately $307 million in the first year with no additional costs in the out years.

Section 4 would amend section 3452(c) of title 38, United States Code, to include in the term "educational institution" any entity that provides directly or under an agreement with another entity, a course to fulfill the requirements for the attainment of a required license or certificate. This provision would become effective October 1, 2001.

This provision is similar to section 2 of S. 1088, which VA supports. However, we suggest that the definition of "educational institution" found in section 3501(a)(6) be included in this amendment, as it is in section 2, so that the new definition could work to the advantage of individuals receiving Dependents' Educational Assistance under chapter 35.

Our preliminary estimate is that section 4 of S. 937 would result in PAYGO costs of about $3.4 million in FY 2002, with 5-year costs of about $17.6 million for FYs 2002–2006.

Section 5 of the bill contains an amendment to the chapter 1606 MGIB-Selected Reserve program that would extend the amount of MGIB entitlement an individual who continues to serve in the Selected Reserve would receive. Under current law, MGIB entitlement for an individual in the Selected Reserve commences on the date the individual makes a commitment to serve 6 years and expires at the end of a ten-year period following the date of that commitment or the date the individual is separated from the Reserve, whichever first occurs. This section provides that the individual's entitlement would expire 5 years after the individual is honorably separated from the Selected Reserve. VA has not developed a PAYGO cost estimate for this bill, but we will gladly supply one for the record, in conjunction with DOD. Since this provision involves matters within DOD's jurisdiction and would be funded by that Department, VA defers to DOD's views on this section.

The Veterans Benefits Administration estimates that enactment of H.R. 3256 would result in an annual cost of $2.1 million during fiscal year (FY) 2001 and $10.5 million over the period FYs 2001–2005.

The Veterans Benefits Administration estimates that enactment of H.R. 3256 would result in an annual cost of $2.1 million during fiscal year (FY) 2001 and $10.5 million over the period FYs 2001–2005.

Mr. Chairman, this concludes my statement.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ARLEN SPECTER TO LEO MACKAY

S. 1113 AND S. 1114

Question 1. I introduced two bills: S. 1113 and S. 1114. Please provide me the Administration's views on each of these bills.

Answer. This will be supplied under separate cover.

[The information referred to follows:]

THE SECRETARY OF VETERANS AFFAIRS,
WASHINGTON,
October 26, 2001.

Hon. ARLEN SPECTER,
Ranking Member,
Committee on Veterans' Affairs,
U.S. Senate,
Washington, DC.

DEAR SENATOR SPECTER: I am pleased to provide the Committee with the views of the Department of Veterans Affairs (VA) on S. 1113, 107th Cong., a bill "[t]o amend section 1562 of title 38, United States Code, to increase the amount of Medal of Honor Roll special pension, to provide for an annual adjustment in the amount of that special pension, and for other purposes." VA supports enactment of S. 1113.

S. 1113 would amend section 1562 to increase the Medal of Honor special pension from $600 per month to $1,000 per month. This bill would also provide for annual increases in the rate of the pension, to be effective December 1 of each year (not including 2001), based on the rate of annual Social Security rate adjustments. VA supports the increase in the special pension to $1,000 and annual increases based on cost-of-living adjustments in Social Security.

The Medal of Honor is considered the highest decoration for valor available to men in the Armed Forces, and was originally established during the Civil War. H.R. Rep. No. 87–12, at 2, 3 (1961). In 1916, Congress established the Army and Navy Medal of Honor roll, which was to include the name of each surviving person "who ha[d] served in the military or naval service of the United States in any war, . . .

who ha[d] been awarded a medal of honor for having in action involving actual conflict with an enemy distinguished himself conspicuously by gallantry or intrepidity, at the risk of his life above and beyond the call of duty, and who ha[d been] honorably discharged from service. . . .'' Act of April 27, 1916, ch. 88, 39 Stat. 53. Each surviving person whose name was entered on the Medal of Honor roll was entitled to receive a special pension of $10 per month for life. *Id.,* 39 Stat. at 54. The special pension was intended by Congress to serve as a ''recognition of superior claims on the gratitude of the country'' and to ''reward[ ] in a modest way startling deeds of individual daring and audacious heroism in the face of mortal danger when war is on.'' S. Rep. No. 64–240, at 2, 8 (1916).

Pursuant to section 1562(a) of title 38, United States Code, this special pension is paid ''monthly to each person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll, and a copy of whose certificate has been delivered to the [Secretary of Veterans Affairs] under [38 U.S.C. § 1561 (c)].'' It is a benefit that is payable ''in addition to all other payments under laws of the United States.'' 38 U.S.C. § 1562(b).

Congress has periodically increased the special pension in an amount it has deemed to be appropriate for this benefit. In 1961, the rate of pension was increased by Pub. L. No. 87–138 to $100 per month from its original rate of $10 per month. Congress recognized that, although ''it is impossible to place a price tag on valor, honor, patriotism, or other virtues. . . . in some cases holders of this highest award are in destitute circumstances and several have had to go on relief or resort to applying for welfare payments from the States in which they reside.'' H.R. Rep. No. 87–12, at 1–2 (11961). Congress believed that ''this pension is fully warranted in view of the outstanding, unusual, and distinguished service rendered to the Nation by each and every holder of the Congressional Medal of Honor.'' *Id.* at 2.

The rate was increased to $200 from $100 in 1978, effective January 1, 1979, by Pub. L. No. 95–479. Congress recognized that the Consumer Price Index had more than doubled since the previous increase in 1961 ''and thus the enhancement which the special pension represents ha[d] been seriously diminished.'' S. Rep. No. 95–1054, at 34 (1978).

The rate was then increased to $400 from $200 in 1993 by Pub. L. No. 103–161. Congress believed the increase in this special pension to $400 was ''justified in light of the changes in the purchasing power of the benefit that ha[d] occurred since 1979,'' and recognized that the ''increase [wa]s consistent with increases that ha[d] been provided in the average rates of service-connected disability compensation since that time.'' H.R. Rep. No. 103–313, at 2 (1993).

The Medal of Honor pension was last increased in 1998 by Pub. L. No. 105–368 from $400 to $600. Congress recognized that the increase, though still quite modest, was more generous when adjusted for inflation than the amount originally authorized in 1916. 144 Cong. Rec. H10,399 (daily ed. Oct. 10, 1998) (statement of Rep. Quinn). One reason Congress supported a more generous increase was to help defray some of the costs incurred by living Medal of Honor recipients, who are often asked to participate in patriotic ceremonies all over the country, which they frequently do at their own cost. *Id.*

S. 1113 would increase the special pension rate monthly from $600 to $1,000 and annually based on cost-of-living adjustments. When you introduced the bill on June 27, 2001, you expressed concern that, among the 149 surviving Medal of Honor recipients, a number of the recipients may be struggling financially and living near the poverty line. 147 Cong. Rec. S6999 (daily ed. June 27, 2001) (statement of Sen. Specter). Moreover, taking into consideration the expenses borne by many Medal of Honor recipients to ''make frequent trips to provide accounts of their act of valor and, more importantly, to speak of the lessons learned in battle and the vigilance that freedom requires to this day,'' you opined that ''[t]he current $600 monthly amount is simply too small . . . to afford a minimum standard of living for our Nation's heroes given their expenses.'' *Id.* In light of your remarks, although we cannot verify the financial status of the surviving Medal of Honor recipients, VA shares your concerns and supports enactment of S. 1113.

The costs associated with the enactment of this bill would be $715,200 for Fiscal Year (FY) 2002, $4 million for the five-year period from FY 2002 through FY 2006, and $9.2 million for the ten-year period from FY 2002 through FY 2011. These costs would be subject to the PAYGO requirements of the Omnibus Budget Reconciliation Act of 1990.

For all of the proposals that VA supports, that support is contingent on accommodating the proposals within the budget limits agreed upon by the President and the Congress. The Administration will work with the Congress to ensure that any unintended sequester of spending costs does not occur under current law or the enact-

ment of any other proposals that meet the President's objectives to reduce debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

The Office of Management and Budget has advised us that, from the standpoint of the Administration's program, there is no objection to this submission of this report.

Sincerely yours,

ANTHONY J. PRINCIPI.

THE SECRETARY OF VETERANS AFFAIRS,
WASHINGTON,
September 7, 2001.

Hon. ARLEN SPECTER,
Ranking Member,
Committee on Veterans' Affairs,
U.S. Senate,
Washington, DC.

DEAR SENATOR SPECTER: Pursuant to your letter of June 28, 2001, I am pleased to provide the Committee the views of the Department of Veterans Affairs (VA) and our cost estimate on S. 1114, 107th Congress, which would "increase the amount of education benefits for veterans under the Montgomery GI Bill." VA's answers to your questions for the record will be sent to you under separate cover, as will our views on S. 1113.

S. 1114 would provide for stepped education assistance benefit increases under the Montgomery GI Bill (MGIB) for Fiscal Years 2002 through 2004. Individuals whose obligated period of active duty is three or more years would receive full-time monthly benefits of $800 for 2002, $950 for 2003, and $1,100 for 2004. Individuals whose obligated period of service is less than three years would receive monthly benefits of $650 for 2002, $772 for 2003, and $894 for 2004. Proportionately lesser amounts would be payable for less than full-time training.

This measure, further, would suspend the statutory annual CPI-based adjustment in MGIB rates beginning in Fiscal Year 2002 and would reinstate that adjustment beginning in Fiscal Year 2005.

The President's FY 2002 Budget includes the annual cost-of-living increase for education benefits for veterans and servicemembers, but does not include an additional MGIB benefit increase. However, the President would support MGIB program improvements, to include a reasonable increase in rates, if they can be accommodated within the overall budget limits agreed to by the President and Congress. In this regard, as mentioned in my June 7, 2001, testimony before the House Committee on Veterans' Affairs Subcommittee on Benefits, VA does support, within the framework of those spending limits, the stepped MGIB rate increases contained in H.R. 1291, a bill similar to S. 1114.

Enactment of S. 1114, as drafted, would result in an increase in benefits cost subject to the pay-as-you-go (PAYGO) requirement of the Omnibus Budget Reconciliation Act of 1990. VA estimates the benefits cost increase at approximately $250 million in FY 2002, a 5-year total of $3.2 billion over the period FYs 2002–2006, and a projected 10-year total of $8.3 billion over the period FYs 2002–2011. We are enclosing a detailed 10-year cost estimate, together with the assumptions and methodology used in arriving at this estimate.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

ANTHONY J. PRINCIPI.

Methodology

a) Identification—S. 1114.

b) Highlights—This proposal provides for increases to the Montgomery GI Bill monthly benefit payments in Fiscal Years 2002, 2003, and 2004, The full-time rates for a participant whose obligated period of service is three or more years would increase from $650 to $800 in 2002, to $950 in 2003, and finally to $ 1,100 in 2004. For participants with an obligated period of service of less than three years, the full-time rate would increase from $528 to $650 for 2002, to $772 for 2003, and $894 for 2004. Proportionally lesser amounts would be payable for less than full-time training.

c) Estimated Benefit Costs and Trainee Estimate—

	Trainees (suction)	Obligations ($'s in 000)
2002	800	$250,000
2003	1,700	510,000
2004	4,200	779,000
2005	7,700	8,07,000
2006	11,700	833,000
2007	17,200	872,000
2008	24,100	946,000
2009	31,000	1,020,000
2010	38,200	1,105,000
2011	45,300	1,162,000
Five-Year Obligations	.....	3,179,000
Ten-Year Obligations	.....	8,284,000

d) Administrative Costs—We assume that any additional employment requirements or administrative costs will be absorbed with current resources.

e) Benefits Methodology—In costing this proposal, we increased the 2001 annual average rate shown in the 2002 Congressional Budget submission by the proposed 23.1 percent rate increase (rounded to the nearest dollar) to compute the revised annual average benefit payment in 2002, by 18.8 percent in 2003, and 15.8 percent in 2004, in lieu of automatic CPI adjustments. Commencing in fiscal year 2005, educational rate increases would once again be tied to the CPI. To compute the cost, we multiplied the revised annual average benefit payments by the number of chapter 30 trainees included in the 2002 Congressional Budget submission. The costs generated from this calculation were subtracted from the costs that were already included in the 2002 budget submission for the annual CPI increase to arrive at the additional monthly benefit payments. To compute the additional trainees from suction (i.e., the effect of new individuals being drawn into the program as a result of the proposed increased benefits), we assumed that the trainees from the 2002 Congressional Budget submission would gradually increase as the monthly benefit rose to make attending a four-year in-state public institution of higher learning more affordable. In the first year, we estimate that trainees would increase by .002 percent, with incremental increases reaching 13 percent by 2011.

f) Other Assumptions—Enactment date October 1, 2001.

EDUCATIONAL ASSISTANCE BENEFITS INCREASES

Question 2. Yesterday, I introduced a bill which is identical to H.R. 1291—a bill which passed the House on June 19, 2001. That bill—as you know—would increase the basic Montgomery GI Bill benefits by $150 per month in each of the next three years. The Administration has stated that it supports my bill "if [its benefits increases] can be accommodated within the overall budget limits agreed to by the President and the Congress." Is there any reason for you to believe that those increases cannot be so "accommodated?" Is it not the case that the budget resolution made room for precisely these increases?

Answer. It is our understanding that the House Budget Resolution did make funding available for paying the stepped increases contained in H.R. 1291 which, as you indicate, is the same as S. 1114. Provided these funds are not withdrawn, there is no reason to think that the increases contained in H.R. 1291 and S. 1114 cannot be accommodated.

Question 3. I have also co-sponsored a bill with Chairman Rockefeller—S. 1088—which would authorize the payment of an accelerated "up-front" benefit to assist veteran-students who wish to take courses leading to "high tech" certifications that—I am told—are "tickets" to high-paying computer industry jobs. Do you support this measure? Should we enact it and a measure increasing the basic monthly MGIB benefit?

Answer. We support the broad acceleration concept contained in S. 1088, but believe consideration should be given to high-cost courses, not merely high-tech courses. Although providing for accelerated payment would be a significant improvement to the MGIB, we believe priority should be given to an appropriate rate increase that can be accommodated within agreed budget limits.

Question 4. The Administration has stated that—subject to budget limitations—it supports my proposed increase in Montgomery GI Bill benefits, but I do not know whether the Administration believes that the increases I have proposed—increases of $150 per month in the basic benefit during each of the next three years—would be the preferred course of action. Is an increase in the basic benefit what veterans

need? Would you devote all budgetary allowances available to us to increases in the monthly benefit? Or do you believe that we should reserve some of those allowances—if we cannot do all that we would like to do—to enhance program flexibility by, for example, allowing accelerated benefits for high technology courses?

Answer. As stated above, we believe it preferable that available resources be used for monthly rate increases.

Question 5. The MGIB's monthly education benefit has been increased substantially over the past four years. What has been the impact—if any—of these increases on the percentage of veterans who use their education benefits? Are more utilizing the benefit than before? Are benefits increases the key to getting more veterans to use their benefits?

Answer. Over the last four years or so, the usage rate has been as follows: 49.0 percent in Fiscal Year 1996; 52.8 percent in Fiscal Year 1997; 54.0 percent in Fiscal Year 1998 and 55.6 percent in Fiscal Year 1999. Currently the usage rate is 55.1 percent. While there has been some upward movement in the usage rate due to increased benefit rates, we would have to say that it has not been substantial. More veterans are using their benefits than before. We do believe that substantive rate increases such as those contained in S. 1114 and H. R. 1291 would have an impact on benefit usage. While benefit increases are important to the use of benefits, other factors such as advertising and outreach also play a role.

Question 6. Of those eligible to use the various GI Bill education benefits we have had since the end of World War II, when were usage rates the highest? Is the VA's goal to get usage rates for Montgomery GI Bill eligibles up to that level? In your estimation, what would it take to encourage more eligible veterans to use their benefit?

Answer. Since World War II, the greatest usage has occurred among those with Vietnam Era Service between August 5, 1964, and December 31, 1976, for the period of time from June 1966 to September 1988. That usage rate was 65.9 percent. We would like to return at least to that level of usage and hopefully even higher. The proposed increases contained in S. 1114 and H. R. 1291 would drive the usage rate toward that level.

Question 7. What do you believe the appropriate education benefit level should be for the survivors of service members killed in action? Should education benefits for survivors be in the same amounts as those we provide to veterans?

Answer. We believe it is only fair that these benefits should be at the same level as those provided to veterans.

Question 8. Yesterday, I sent a letter to the GAO asking that it provide me an analysis of the dollar value of the various educational assistance benefits—Pell grants, student loans, Hope Scholarships, tax deductions for tuition expenses and student loan interest payments, etc.—provided to students (and students' parents) who have not served. My thinking is that these are necessary and good programs—but the benefits provided to those who have served ought to exceed—and exceed by a substantial margin—the benefits provided to those who have not. Do you agree with that thinking? Has VA ever attempted to calculate the worth of assistance provided to "ordinary" students? Do the benefits that VA administers offer sufficient reward for service—and sufficient incentive to serve?

Answer. We strongly agree with the thinking that educational assistance for those who have served in the military should exceed that offered to those who have not served. We have not undertaken a calculation of the worth of the assistance you describe that, although generally available, is not strictly targeted to those who have served. However, it is clear that MGIB benefits have not kept pace with increases in education costs so that, at current levels, the program is not optimally meeting its recruitment and readjustment objectives. At this time, the current level of benefits does not offer sufficient reward for service, nor are they sufficient incentive or reward for service. We believe the stepped rate increases contained in S. 1114 and S. 1291 would be a good first step toward improving this situation.

PERSIAN GULF VETERANS—UNDIAGNOSED ILLNESS

Question 9. As I understand it, a Persian Gulf War veteran who suffers an "undiagnosed illness" is entitled to a legal presumption of service-connection—i.e., he or she does not have to prove that the illness was caused by service—but only if the malady has manifested on or before December 31, 2001. Is that understanding correct?

Answer. Yes, that is correct.

Question 10. Does the Administration have authority to extend, by regulation, the "presumptive period" applicable to Persian Gulf War veterans who exhibit undiagnosed illnesses? If so, does VA intend to use that authority to extend the pre-

sumptive period? Or if legislation—such as S. 409 introduced by Senator Kay Bailey Hutchison—necessary to extend that presumptive period?

Answer. Under 38 U.S.C. § 1117(b), VA has the authority to extend, by regulation, the "presumptive period" applicable to Persian Gulf War veterans who exhibit undiagnosed illnesses. We are considering whether the "presumptive period" should be extended by regulation, and we will notify you and the other members of the Committee when we complete our assessment of this issue.

Question 11. I am advised that three out of four claims for service-connection based on an "undiagnosed illness" are denied by VA. Is this so? If veterans are entitled to a legal presumption of service connection (assuming their symptoms have appeared on or before December 31, 2001) how can it be that three of four claims are denied?

Answer. As of January 15, 2001, in claims for service connection of undiagnosed illness(es), service connection for at least one such illness was granted in 26.12% of the cases, and service connection was denied in 73.88% of the cases. Examples of the reasons for these denials include:

- No showing that the veteran has a current disability,
- The veteran has a diagnosed, rather than undiagnosed, illness (many of these veterans are service-connected for their diagnosed illness), or
- The veteran did not serve in the Southwest Asia theatre of operations (e.g. served in Turkey).

It should also be noted that the Gulf War cohort has a higher than average percentage of veterans in receipt of VA service-connected disability compensation. Additionally, Gulf War veterans have a higher than average number of disabilities per veteran.

Question 12. Am I correct in concluding that VA is being excessively stringent in processing Gulf War veterans' claims for compensation based on "undiagnosed illness?" How else can you account for a 75% denial rate in cases where the veteran has the benefit of a legal presumption?

Answer. VA Service Centers' decisions in undiagnosed illness claims for service connection involve relatively little discretion. We apply the criteria in 38 U.S.C. § 1117 and 38 C.F.R. § 3.317 to the facts of each case. As stated above, the Gulf War cohort has a higher than average percentage of veterans in receipt of VA service-connected disability compensation.

Question 13. By what standard does VA adjudicate claims for compensation based on "undiagnosed illness?" Are those standards consistently applied in the field? How does VA ensure the quality of its medical examinations and decisions on these claims?

Answer. As stated above, we apply the criteria in 38 U.S.C. § 1117 and 38 C.F.R. § 3.317 to the facts of each case. Our Compensation and Pension Service reviews undiagnosed illness claims decisions as part of its quality assurance program, known as the Systematic Technical Accuracy Review (STAR). This process includes a review of the adequacy of the medical examination done in each claim reviewed. STAR not only allows VA to compare the performance of Veterans Service Centers; it also allows VA to provide valuable feedback to these Centers to help them avoid future errors. In addition to STAR, we have also formed a joint VBA/VHA project to analyze and improve the Compensation and Pension examination process.

VIETNAM VETERANS—LUNG CANCER

Question 14. S. 1091—a bill that I have cosponsored with Senator Rockefeller—would eliminate the current requirement that respiratory cancers manifest within 30 years of a veteran's departure from Vietnam in order for such cancers to be presumed to have been caused by exposure to Agent Orange. This legislation is based on the Institute of Medicine's finding that the 30-year limitation has no scientific foundation and that it was, therefore, arbitrary. Do you agree that we should eliminate the 30-year "delimiting period" for Agent Orange-induced lung cancer?

Answer. At this time, the Department is reviewing the findings of the recent Institute of Medicine report, Veterans and Agent Orange: Update 2000, on the issue of respiratory cancer. We are considering the scientific merits of the 30-year period and we will notify you and the other members of the Senate Veterans Affairs Committee when we complete our assessment of this issue.

Question 15. How many claims for VA compensation based on post-Vietnam lung cancer have been denied for failure to satisfy the 30-year limit? Is there a way to identify these claimants? If we repeal the 30-year limit, should we allow veterans who were denied compensation an opportunity to re-file their claims for benefits? Should we award denied benefits retroactively?

Answer. A search of VA databases identified 883 in-country Vietnam living veterans whose claims for service connection for respiratory cancer have been denied. VA does have the capability to identify the 883 claimants. Unfortunately, we do not have data regarding the denial reason.

When claims for dependency and indemnity compensation are denied, the claimed condition is not entered into VA databases, so this information is not available. If the 30-year limit were repealed, veterans who were denied would be permitted to re-file their claims, under 38 U.S.C. §5110(g) and 38 C.F.R. §3.114. VA has not yet had the opportunity to analyze the merits of the provision of S. 1091 which would call for retroactive awards of benefits.

Question 16. Are you aware of other "presumptive period" limitations within title 38 which—like the one applicable to Agent Orange-induced lung cancer—lacks scientific foundation?

Answer. We are not aware of any limitations that lack a scientific foundation.

Question 17. S. 1091 would, among other things, create an explicit presumption of exposure to herbicide for veterans who served in Vietnam. It had been my understanding that VA had already presumed exposure. Was this not the case? If so, do we need to create a statutory presumption now?

Answer. S. 1091 would expand the presumption of exposure to herbicide agents to include all Vietnam veterans; the current statute allows this presumption only for those Vietnam veterans who have one of the diseases linked to herbicide exposure in Sec. 1116(a). VA does not object to the expansion of this presumption. There appears to be no basis for distinguishing veterans who have diseases not necessarily recognized by VA as being associated with herbicide exposure for purposes of determining whether they have been exposed to herbicides in service.

Question 18. If a Vietnam veteran appears at a VA Regional Office and provides proof of Vietnam service and proof of a presumptive "Agent Orange" disease—e.g., non-Hodgkins lymphoma or lung cancer—does he need to prove that he was exposed to herbicides? If so, how can he prove that?

Answer. As stated in response to question 17, a Vietnam veteran with one of the presumptive Agent Orange diseases is presumed to have been exposed to herbicides in Vietnam, and need not provide any proof of exposure.

VIETNAM VETERANS—HEPATITIS C

Question 19a. What is VA's current practice on adjudicating claims for service-connection where the veteran claims that he or she contracted Hepatitis C virus while in service?

Answer. VA currently processes a claim for service connection for hepatitis C as follows:

A. When VA receives a substantially complete application for benefits based on hepatitis C infection, VA sends the claimant a letter notifying him or her of the information and evidence necessary to substantiate this claim. This notice is required by the Veterans Claims Assistance Act of 2000. This letter informs the claimant of the medically recognized risk factors for contracting hepatitis C.

B. In this notice letter to the claimant, VA informs the claimant what information and evidence VA will try to obtain on the claimant's behalf, and what information and evidence the claimant must submit. VA requests that the claimant submit information describing which medically recognized risk factors apply to him or her and the circumstances related to how the claimant contracted hepatitis C, if known. VA also requests that the claimant identify any medical treatment received for hepatitis C, advising the claimant that VA will request these medical records on the claimant's behalf to help substantiate the claim. The claimant is also requested to submit any evidence he or she may have relevant to this claim, including evidence of current hepatitis C infection, evidence of risk factors or hepatitis C infection in service, and evidence of any post-service treatment for the condition.

C. VA makes reasonable efforts to obtain any evidence adequately identified by the claimant from federal and non-federal records custodians.

D. VA reviews records received and determines if service connection can be granted on the evidence of record. This may be possible if the evidence shows that the claimant currently has a confirmed diagnosis of hepatitis C that was incurred in service (other than due to drug abuse), or shows a confirmed medically-recognized risk factor for hepatitis C infection (other than drug abuse) in service.

E. If a medical examination or medical opinion is necessary to decide the claim, VA requests the examination or opinion. Examination is necessary to determine the veteran's current diagnosis if the proper confirmatory testing for hepatitis C is not of record. An examination or medical opinion would be necessary when the evidence shows there are conflicting risk factors—for example, blood transfusion in service

as well as a history of drug abuse or tattooing in service with history of post-service blood transfusion—and there is no medical opinion in the record as to which risk factor is "at least as likely as not" the source of the hepatitis C infection. A VA medical examination would also be necessary to evaluate the current status of a hepatitis C infection if the evidence of record is inadequate to determine this.

F. Adjudicate the claim, determining if service connection is warranted based on all the medical and lay evidence of record.

Question 19b. If Hepatitis C were presumed to have been caused by exposure to certain risk factors—as is proposed by S. 457 now before the Committee—what adjudication processing steps would no longer be necessary?

Answer. A. In all claims, VA would still provide the notice required by the Veterans Claims Assistance Act of 2000 upon receipt of a substantially complete application for benefits based on hepatitis C infection. This notice would notify a claimant of the information and evidence necessary to substantiate this claim. If S. 457 were enacted, VA would inform the claimant in this letter of the in-service risk factors that are presumed to cause hepatitis C infection.

B. If S. 457 were enacted, this notice letter to the claimant would still inform the claimant what information and evidence VA will try to obtain on the claimant's behalf, and what information and evidence the claimant must submit. VA would request that the claimant submit information describing which risk factors, if any, apply to him or her and the circumstances related to how the claimant contracted hepatitis C, if known. VA would also request that the claimant identify any medical treatment received for hepatitis C, advising the claimant that VA will request these medical records on the claimant's behalf to help substantiate the claim. The claimant would also be requested to submit any evidence he or she may have relevant to this claim, including evidence of current hepatitis C infection, evidence of risk factors or hepatitis C infection in service, and evidence of any post-service treatment for the condition.

C. If the claimant submits necessary information and evidence with the substantially complete application for benefits or in response to VA's notice letter, and the evidence confirms that the veteran was exposed to one of the risk factors proposed by S. 457, VA may not have to develop for further evidence. Alternatively, if the claimant responds to VA's notice letter by identifying sources of evidence that may confirm that he or she was exposed to one of the risk factors as proposed by S. 457, VA would develop for those records.

D. If VA's review of these records confirms that the claimant was exposed to one of the risk factors proposed by S. 457, then a medical opinion on the etiology of any currently diagnosed hepatitis C may not be necessary. A VA examination may still be necessary to establish the current status of any hepatitis C infection.

Question 20a. Am I correct that intravenous drug use is the leading cause of individuals newly infected with Hepatitis C?

Answer. Yes.

Question 20b. If that is so—and if Congress were to create a presumption of Hepatitis C service-connection for veterans who, for example, received a blood transfusion before December 31, 1992—how would VA determine whether a veteran with post-service history of drug use is entitled to compensation?

Answer. Service connection for hepatitis C due to blood transfusion would be granted on a presumptive basis unless there was affirmative evidence to the contrary to rebut the presumption (38 U.S.C. 1113), which in the this example is the evidence of post-service history of drug use. The source of hepatitis C infection is a medical determination. If the source of hepatitis C infection is not apparent in the medical evidence of record, a claims examiner schedules a VA examination and asks the physician to give an opinion whether it is at least as likely as not that the hepatitis C infection is due to the blood transfusion rather than the post-service drug use.

Question 20c. Would he or she be denied the benefit of presumption? Should he or she be denied that benefit?

Answer. The benefit of the presumption would be denied if the medical evidence proves that the hepatitis C infection stems from drug use rather than the in-service blood transfusion. VA must deny the benefit of the presumption in such instance as directed by 38 U.S.C. §§ 1110, 1113 and 1131.

Question 21a. S. 457 would presume that Hepatitis C is service-connected—and that the veteran, therefore, is entitled to compensation—in cases where the veteran was tattooed or body-pierced in service. Do you agree that Hepatitis C can be caused by tattooing or body piercing?

Answer. Yes, but the risk of contracting hepatitis C due to tattooing or body piercing is very minimal.

Question 21b. Do you think we should compensate persons for diseases that have resulted from such activities?

Answer. In a case where it is shown that the veteran's hepatitis C was the result of these activities in service (direct service connection), VA would compensate the veteran. But we do not believe these activities should be the basis for presumptive service connection. According to the U.S. Centers for Disease Control and Prevention, there are no studies in the United States demonstrating that individuals with a history of tattooing or body piercing are at increased risk for hepatitis C infection based on those risk factors alone.

Question 22. I note your support for increasing the VA loan Guaranty amount so that veterans in high cost areas can take advantage of their home loan entitlement. Are there other enhancements which could be made to the home loan program that would enable more veterans to realize the dream of home ownership? Do you support the idea of adding an adjustable rate mortgage feature to the program?

Answer. We believe that increasing the guaranty amount on VA loans will help veterans in high cost areas realize the dream of home ownership. We also believe that adjustable rate mortgages will help more veterans use their home loan entitlement to become homeowners.

Under the provisions of 38 USC 3707, VA was authorized to conduct a demonstration project to guarantee adjustable rate mortgages (ARMs) during fiscal years 1993, 1994, and 1995. This authority was allowed to expire for reasons of cost during a time when the Government was running large budgetary deficits. VA supports restoring VA's authority to guarantee ARMs, and also would support authorization for VA to guarantee a relatively new mortgage product referred to as a hybrid ARM.

Hybrid ARMs are mortgages having an interest rate that is fixed for an initial period of more than 1 year. After the initial fixed rate period ends, these mortgages are subject to interest rate adjustments, typically on an annual basis and indexed to the corresponding term treasury bond yield. The most popular hybrid ARMs are those with the initial interest rate set for 3 years, 5 years, 7 years, or 10 years, and annual adjustments afterwards. These loan products are referred to in the mortgage industry as 3/1, 5/1, 7/1, and 10/1 ARMs, respectively. Among these hybrid ARMs, the 5/1 and 10/1 products are the most popular.

The availability of ARMs as a financial option would expand veterans' ability to qualify for a mortgage, as some borrowers can qualify for the lower initial payments on an ARM that could not qualify for the payments on a fixed rate loan for the same dollar amount. The availability of hybrid ARMs would give veterans the additional option of having a fixed monthly payment for a certain number of years before payment adjustment would be a possibility.

A VA-guaranteed ARM could be especially useful to a veteran who is a first-time homebuyer unable to qualify for a fixed rate loan to purchase the home of his or her choice. It would also be useful to veterans purchasing homes when fixed interest rate loans are high, as well as veterans who are buying in higher cost areas or who need to buy a larger home to accommodate the needs of the family. Adjustable rate loans are currently available through FHA and conventional mortgage programs. Veterans should not be forced to choose between either using their earned VA loan guaranty benefit or obtaining a loan with an adjustable interest rate.

Question 23. By how much would the current VA backlog be reduced if the Congress were to enact the various VA-requested clarifications contained in Section 5 of S. 1091 of the Veterans Claims Assistance Act of 2000? Of those claims where a previous decision had been made by the Secretary prior to the enactment of that statute, how many have been readjudicated using the new adjudication standard? Has the readjudication of those claims resulted in decisions different than the original decisions? If so, in how many claims?

Answer. The backlog of claims is, in part, due to the notice and development provisions of the Veterans Claims Assistance Act (VCAA) which the technical amendments proposed by VA do not address. However, the technical amendments would clarify that the VCAA applies to claims filed after the date of its enactment and to any claim VA had received but had not adjudicated as of the date of enactment. They would change current law by providing that VA would not be required to readjudicate any claim already decided by a VA regional office but for which the appeal period had not expired on the date of VCAA's enactment unless the claimant requests readjudication, or the Secretary moves for it, within two years of the date of the VCAA's enactment. Included within this class of claims are many claims denied as not well grounded but for which the appeal period had not expired on the date of VCAA's enactment.

VA has made significant progress readjudicating these claims. VA has identified more than 98,000 claims where at least one issue was denied as not well grounded between the time period when the *Morton* v. *West* decision was rendered and the

date of enactment of the Veterans Claims Assistance Act (VCAA). VA has completed the readjudication of 24,007 of these claims, and another 36,272 of these claims are currently under review. VA will not stop readjudicating them even if the technical amendments were enacted. However, the technical amendments will allow VA to refrain from sending the VCAA notice and development letters in claims which VA has fully developed and adjudicated prior to the VCAA, even though they were ultimately denied as not well grounded.

A preliminary review conducted by the Compensation and Pension Service of 147 claims previously denied as not well grounded and readjudicated under the VCAA show that 6 claims were granted after the new procedures in the VCAA were applied to those claims.

In addition, the proposed technical amendment, which would remove the prohibition on the payment of benefits if a claimant does not submit evidence within one year of the date it was requested, would remove an ambiguity in the current language. If the ambiguity were resolved against VA, section 5103(b) could be interpreted as precluding VA from deciding a claim before the expiration of one year from the date it requested evidence. The proposed technical amendment prevents this potential problem that would add to the backlog.

Question 24. How many loans have been made under the Native American Veteran Direct Home Loan Program? Of those loans, how many are in default?

Answer. Through Fiscal Year 2000, 233 loans were made under the Native American Veteran Direct Loan Program. As of the end of April 2001, 24 of these loans were more than 90 days delinquent. VA has not foreclosed on any loan made under this program.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN NIGHTHORSE CAMPBELL TO LEO MACKAY

Question 1. In 1998, Congress passed and the President signed into law, an omnibus appropriations measure that gives the Secretary the authority to determine what symptoms are compensable for illnesses that the Secretary determines to warrant such a presumption based on exposure to chemicals in service during the Persian Gulf War. And, the law further allows the Secretary to make such determinations in consultation with the National Academy of Sciences. Is it necessary to pass S. 409 which would extend the presumptive period and further define symptoms worthy of compensation? What steps are currently being taken to make these determinations?

Answer. Currently, 38 U.S.C. § 1117 provides that the Secretary may pay compensation to any Gulf War veteran suffering from a chronic disability resulting from an undiagnosed illness (or combination of undiagnosed illnesses) that became manifest during active service in the Southwest Asia theater of operations during the Gulf War or became manifest to a compensable degree within a presumptive period (currently ending on December 31, 2001) as determined by regulation. S. 409, "Persian Gulf War Illness Compensation Act of 2001," would define "undiagnosed illness" as "illness manifested by symptoms or signs the cause, etiology, or origin of which cannot be specifically and definitely identified, including poorly defined illnesses such as fibromyalgia, chronic fatigue syndrome, autoimmune disorder, and multiple chemical sensitivity".

With regard to fibromyalgia, chronic fatigue syndrome and autoimmune disorder service connection may be established on a direct basis under current law. With regard to multiple chemical sensitivity, this condition is not recognized under VA's schedule for rating disabilities. VA has adequate authority under existing law to establish presumptions for these conditions should [VA] conclude that scientific and medical evidence support such action. Under 38 U.S.C. § 1118, the Secretary may determine and prescribe in regulations which diagnosed and undiagnosed illnesses warrant such a presumption of service connection. Therefore, VA does not support adding those illnesses to 38 U.S.C. §§ 1117 and 1118. Regarding S. 409's inclusion of "poorly defined illnesses", this is a very vague term and would result in great uncertainty regarding proper implementation. In addition, we do not believe that current scientific or medical evidence supports creation of a presumption of service connection for such conditions. The Department is pursuing multiple research initiatives intended to identify diseases or conditions that may be associated with service in the Gulf War. The results of this research will provide a scientific foundation for decisions on possible presumptive service-connection of diseases or conditions found in veterans of the Persian Gulf War.

S. 409 would also extend the presumptive period applicable to Gulf War veterans' disabilities due to undiagnosed illnesses that became manifest through December

31, 2011. Under 38 U.S.C. § 1117(b), VA has the authority to extend, by regulation, the presumptive period applicable to Gulf War veterans who exhibit undiagnosed illnesses. We are considering whether the presumptive period should be extended by regulation, and we will notify you and the other members of the Committee when we complete our assessment of the issue.

Question 2. I am a strong supporter of the Native American Veteran Housing Loan Program. In fact I supported legislation to not only extend the Demo Project but to require the VA to work with Indian country in making loans. I know the VA cannot knock on every door in Indian communities, but there are groups like the Native American Housing Council (NAIHC) and the National Congress of American Indians (NCAI) that can serve as conduits to Native Vets. What progress has been made in actually making home loans to Native Veterans?

Answer. VA continues to make progress implementing the Native American Veterans Housing Loan Program. As we reported in VA's Annual Report to Congress for FY 2000, VA negotiated and entered into Memoranda of Understanding (MOUs) with 2 more tribes, to bring our total of participating governments up to 59. During FY 2000, VA field offices issued commitments and/or closed 21 loans, for a total of 233 loans made under this pilot program since its inception.

VA also continues its efforts to develop positive working relationships with Native American groups and tribes and relevant government entities and to provide program information and materials to these parties. VA field station personnel meet with tribal representatives across the country to provide program information.

The Department actively participates in coordinated training and outreach seminars for potential homeowners and tribal representatives sponsored by the U.S. Department of Housing and Urban Development (HUD)'s Office of Native American Programs (ONAP). In addition, VA continues to distribute copies of its video, "Coming Home; Native American Veteran Home Loans". This video shows Native American veterans and tribal officials how the Native American Veterans Housing Loan Pilot Program may be used to help them achieve their homeownership goals.

The Department has also been an active participant in the One-Stop Mortgage Center Initiative Task Force, created in 1998 to promote homeownership in Indian country. This Task Force is working to identify barriers that limit homeownership opportunities in Indian country, to make recommendations for actions to address the barriers, and to present a plan to implement the recommendations. The final report was issued in October 2000. The Task Force continues its efforts to implement its recommendations.

Chairman ROCKEFELLER. Thank you. A couple of things. The Montgomery GI Bill, $650, all kinds of things and suggestions to be done with it. There are different requirements now for service people who come home, become veterans, and they need different kinds of training than they used to.

I wonder, Dr. Mackay, where you see the GI Bill going. What should we be adjusting in order to serve the veteran better? There is a traditional model, right——

Mr. MACKAY. Yes, sir.

Chairman ROCKEFELLER [continuing]. That we have all become accustomed to over these past years and that model has to be changing because the economy is changing and the job market is changing. How do you see it evolving? I am not talking about a price tag right now, I am talking about what people get to do.

Mr. MACKAY. Right. Let me offer a few brief comments and then I will ask Joe Thompson, as well.

The purpose of the GI Bill originally, and continues to be the purpose of the Montgomery GI Bill, is, from our standpoint at VA, the readjustment of the veteran. There is a great opportunity cost involved with service. One obviously can't go to a full-time educational institution. You can't avail yourself of other opportunities. Once service is completed, the purpose of this educational benefit is to aid in readjustment and enhancement of the veteran as they go on to the subsequent parts of their lives.

The original purpose of the GI Bill was to provide for 4-year college, all the funds and books and tuition for that, and that would certainly be a reasonable goal to seek to reinstate. But as the work world changes and as people evolve and as training courses become different, there are other accommodations other than that strict 4-year higher educational model that I think are appropriate, and a number of the bills that are before this body recognize that, with features like accelerated benefit payments to pay for high-cost short-duration courses that lead to licenses or certificates or other types of professional qualifications that pertain increasingly to the high-technology sector, but to other sectors, as well. VA supports——

Chairman ROCKEFELLER. Well, if you do the high-technology sector, sometimes that is going to mean a different way of doing your training, different certification, different types of test preparation, et cetera. Again, flexibility. I am looking for flexibility.

Mr. MACKAY. Right. That is certainly a key enhancement that can come to the Montgomery GI Bill. Our priorities are in an overall enhancement of the purchasing value of the benefit, and I think as I stated in my statement, H.R. 1291 does a good job of stepping up in a fairly aggressive manner, consistent with the budget reconciliation, budget strictures that we have, to increase those benefits. Accelerated payments, other things that enhance flexibility, as you noted, are desirable to enhance the Montgomery GI Bill.

Joe?

Mr. JOSEPH THOMPSON. I would have very little to add to that. I think the two things that the bills contain primarily, are an increase in the benefits so that education is more affordable and more flexibility so that we can pay for the ways people get educated in the year 2001.

Chairman ROCKEFELLER. I have shattered protocol, which I am going to explain in a minute and apologize for, but you would also agree that this is going to cost more and that then necessarily, because of the tax bill that we have just passed, do you believe we are going to have more to spend on the Montgomery GI Bill?

Mr. MACKAY. Mr. Chairman, I know that one of the reasons for the support, the Secretary's testimony in support of H.R. 1291 is that it can be reconciled within the budget strictures that we have.

Chairman ROCKEFELLER. Everything can be until it comes down to all those things that have to be. Are you quite certain that this one will be?

Mr. MACKAY. That, of course, is left to the discretion of this body and the other. It is a very high priority, I think. One of the——

Chairman ROCKEFELLER. No, it starts with you all. It is what you are willing to fight for at the VA.

Mr. MACKAY. Yes, sir. We certainly support——

Chairman ROCKEFELLER. Support——

Mr. MACKAY [continuing]. The provisions to enhance the overall payment rates——

Chairman ROCKEFELLER. The funding itself.

Mr. MACKAY [continuing]. In the Montgomery GI Bill.

Chairman ROCKEFELLER. OK.

Mr. MACKAY. That is our testimony here today.

Chairman ROCKEFELLER. And part of the test, I think, of you all is how hard you fight for it. That is what I said to Secretary Principi at the very beginning. I mean, my test of anybody who works in the executive government, anybody that works where Senator Akaka and I work, is how hard we fight for what we are meant to be doing. So I will expect strong words from you all.

Now, my horrifying breach of protocol is that I failed to recognize my dear friend, Senator Akaka, when he came in, and I should have interrupted and I have performed a breach of protocol, but hopefully not a breach of friendship. If you have any comments, Senator Akaka, we would be delighted to hear them.

Senator AKAKA. Thank you very much, Mr. Chairman. If it is all right with you, I will make my opening statement here.

Chairman ROCKEFELLER. Certainly.

Senator AKAKA. But before I do that, I just want to tell our witnesses that usually the Senate, whenever we have two similar names, we name what State they are from, you know, whether it is Thompson from Illinois or Thompson from Utah. It is difficult if I said J. Thompson. We have two Js here, so I hope we will have some distinction. Otherwise, we can say counsel or Secretary.

Mr. Chairman, it is an honor for me to join you and my colleagues on the committee at this hearing. I would like to welcome all of you and your colleagues from the Department and representatives of veterans' service organizations.

Earlier this month, President Bush signed into law a limited bill to improve veterans' benefits. Among other things, the legislation expands health insurance coverage for survivors and dependents of veterans with service-connected disabilities and extends life insurance coverage to the spouses and children of service members. While I appreciate the expeditious enactment into law of legislation to assist survivors of service members and veterans, there remain a number of pending measures which strive to enhance other benefits and programs administered by the Veterans' Benefits Administration.

In particular, I am pleased that today's agenda includes two bills that I introduced, VA home loan programs. S. 228 would permanently authorize the Native American Veteran Housing Loan Program. This program has enabled Native American veterans who reside on trust lands to qualify for VA home loan benefits. The authority to issue new loans under this successful program will end on December 31, 2001.

The other measure is S. 781, which would extend the authority of the VA Home Loan Guarantee Program to issue home loans to members of the selected reserve. The program has made it possible for thousands of reservists to fulfill their dream of home ownership. Since authority for the program expires on September 30, 2007, this benefit can no longer be used as a recruiting incentive, since reservists must serve for at least 6 years to qualify for the program. S. 781 would extend the program's authority through September 30, 2015, so that this benefit can continue to serve as a recruiting incentive.

I look forward to receiving your testimony. It is important to hear from our veterans and the organizations that serve them in

order to ensure that benefits address the needs of veterans. Our Nation's veterans deserve no less.

Mr. Chairman, I look forward to working with you, as I have always done, and other members of the committee on legislation that will provide our Nation's veterans with the benefits they deserve. Thank you very much, Mr. Chairman.

Chairman ROCKEFELLER. Thank you, Senator Akaka.

Before I continue my questioning, and you may have some questioning yourself, Senator, I want to say to any staff members of Senators of this committee who belong to this committee but are not here, if they are writing letters or making telephone calls or whatever in their offices, they ought to be here. I think that Senator Specter and I are going to keep up a drum beat. I have done this with Senator Simpson. I have done this with Senator Murkowski. It is the overall question which needs to be addressed firmly and frankly—why is it that Senators do not turn out for the Veterans' Committee?

Everybody gives the lip service. Senator Akaka is always here. Senator Wellstone is usually here. Senator Thurmond often comes, and Senator Specter is here. But we share a mutual frustration in the lack of attendance. We have had meetings with staff, trying to figure out how we can do this. Can we threaten people? Can we plant devices in their offices? I mean, what is it that we need to do?

But the point is, we need to get Senators that belong to this committee to come to this committee, because if they don't come to this committee, what they are saying is that what they—and if they are chairing some other committee or whatever, that is fine—but there is just a pattern here of attendance which has been for 17 years distressing to me. I am sometimes guilty of it myself, but not as much as others. It is not appropriate, it is not respectful, and it is not professional.

We are going to keep count of who comes, and we may from time to time put out lists of hearings and those who showed up and those who didn't. There is nothing like a little accountability to catch people's attention, not only internally, but also the veterans organizations and the rest of it. We are serious about this, we have talked about it, and we are tired of dealing with empty chairs and good witnesses.

Senator Specter is here and I would welcome, sir—I have already put your bills in the record, but I would welcome hearing whatever you have to say, as well as your description of your bills, or anything else you want to say.

Senator SPECTER. Thank you very much, Mr. Chairman. I concur with your sentiments about the difficulties on attendance. For 4½ years, I chaired the committee and you were ranking member, and it was the same problem then. One of the grave difficulties on the Senate side, unlike on the House side, is that we have three major committees, really four major committees. Right now, the Senate is very heavily engaged in the Patients' Bill of Rights, a subject which will impact very substantially on veterans, as the citizenry generally. I am trying to work out a complex amendment on Federal versus State court jurisdiction, and our other colleagues have other assignments as well. But it is a relative rarity that there is any-

body here beyond the chairman and the ranking member; Senator Rockefeller is correct about that.

The legislation which I have proposed now relates to the GI Bill. The GI Bill has been an enormous boom to America, from the education of World War II veterans to the present. Not too many people in this room, as I look around, are World War II veterans. I had GI Bill benefits from service during the Korean War, and I visited a community college in Harrisburg a couple of weeks ago and it is really gratifying to see so many veterans there. Of a student body of about 600, about 400-and-some are claiming GI Bill benefits, and those benefits do not stretch far enough. The House has taken the lead on this, and I think GI Bill improvements would be a way to show veterans that there really is recognition of their service. And it would be a way to add to the educational level of the American citizenry, and to the Nation's productivity.

I have also introduced legislation patterned after a bill introduced by Congressman Weldon which relates to Congressional Medal of Honor winners. Such veterans have achieved the Nation's highest accolade, but they receive very little monetary compensation. We had a good legislative package last year; Senator Rockefeller, Senator Akaka, and some of our other colleagues have been very attentive to our veterans' interests.

We have been successful in increasing the amounts which the administration, both Democrat and Republican, have put up. So to that extent, veterans' interests have been protected.

I talk with some frequency about the first veteran I knew, my father, Harry Specter, who was disappointed when they broke their promise to give him a $500 bonus during the Depression. I note one of the blackest days in American history was when the veterans marched on Washington; today, if there is a demonstration, they roll out the red carpet. Then, they rolled out the cavalry and a major named George Patton with sabers drawn and they killed some veterans that day. So things are not as bad as they used to be, but they need to be a lot better.

There is a lot more I could say, Mr. Chairman, but let that suffice for the moment.

Chairman ROCKEFELLER. Well, that is pretty potent. Let me continue with the line of questioning.

The question of compensating Gulf War veterans for their disabilities has been around for a long time, and the question of scientific evidence and all the rest of it. We went through the same thing with Agent Orange in the Vietnam war, and frankly, it wasn't scientific evidence that tipped the balance, it was when Admiral Zumwalt came up when his son got cancer and changed the political dynamic of the situation, and all of a sudden people started paying attention.

So, yes, I recognize the importance of scientific evidence. I also recognize the people I see, in West Virginia, the people's homes I go into, and Senator Specter and Senator Akaka see the same. You have kind of a catch-22 at work under our current laws. Doctors are trained to assign a diagnosis, but a diagnosis makes the veteran ineligible for benefits. That is more than a catch-22, that is sort of a contradiction.

For example, a veteran who is found to have headaches or a muscle ache would be eligible for benefits under the undiagnosed illness authority. However, a veteran diagnosed with migraines or fibromyalgia would not be eligible. Those are fairly serious conditions. What do we do about that kind of situation?

Mr. MACKAY. Mr. Chairman, that is a wonderful question and an excellent exposition. The predicament we find ourselves in with regard to Persian Gulf veterans is, indeed, regrettable. We are $150 million and 10 years in medical research down the path, and still we do not have—it has been elusive to be able to get the kind of credible scientific and medical evidence that we need, in conjunction with the consideration of other circumstances, that would allow us to service-connect these disabilities, these illnesses.

We have, as you noted, taken the step to compensate people based on disabilities, real disabilities, real hardships in their lives that are manifested by undiagnosed illnesses. I am in the same quandary that you are, but our approach has been, and the approach that we support is that we have adequate authorities in existing statute to service-connect these illnesses—fibromyalgia, chronic fatigue, the others that you mentioned and that are contained in S. 409 whenever and wherever the scientific and medical evidence presents itself and the research bears fruit and establishes a causal link.

We have received one report from the National Academy of Sciences last year. There will be ongoing biennial reports from the Institute of Medicine, which has a very active research program with regard to Persian Gulf illnesses.

I would ask our Under Secretary, Mr. Thompson, to comment further.

Mr. JOSEPH THOMPSON. Mr. Chairman, we have the authority within law to service-connect on a direct basis those conditions, fibromyalgia and the rest of them. We also have done, I think, some pretty comprehensive reviews of the claims we have received to this point. Now, for Gulf War veterans who file claims for undiagnosed illnesses, about 26 percent of them have been granted service connection on that basis. About another 28 percent have been found to be entitled to some compensation or pension on other grounds. So more than half that have come to us receive either compensation or pension.

I think there is a misperception that the agency is perhaps not being as attentive as it needs to be to veterans of the Gulf War or the Gulf War era. That cohort of veterans receive compensation at a greater rate than veterans of any other war in the 20th century. They are, we believe, being given a fair shake by the agency and the administrative claims process.

Chairman ROCKEFELLER. Yes, I think the three Senators here might probably add at this point that a lot of that came from some unrelenting pushing, shoving, anger on the part of this committee, embarrassment of the Department of Defense of an unprecedented nature, which I think had an effect on all of you. The registry got going. We discovered children and spouses of returning veterans, et cetera. All of these things, I think, encouraged that, and that is the way government is meant to work. The branches of government are meant to work together.

For me, a diagnosed illness not being compensated is just a very interesting concept when you are dealing with a veteran and not a very pleasant one.

My time is up. Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

I am interested to hear that a higher percentage of Gulf War veterans are being compensated. What do you base that statistical conclusion on, Mr. Thompson?

Mr. JOSEPH THOMPSON. Those are the statistics from our payment system. If I can, and I am going from memory on some of this, around 5 percent of all Korean veterans receive compensation. The numbers for Vietnam and World War II are very close, around 9 to 10 percent. The numbers for the Gulf are between 16 and 17 percent.

Senator SPECTER. Well, the Department of Defense has a spotty record, at best, in responding to veterans' claims. But it was particularly bad for the Gulf veterans, for the exposures to chemicals at Khamisiyah. This committee ran a major investigation, brought in outside counsel, and an enormous number of claims were made and many of them could not be documented.

I had a series of hearings in my State and we had hearings here on Gulf War syndrome and trauma. One of the really serious things we learned was that many officials ridiculed the claims. It was very hard to establish that the Gulf War veterans had been exposed to chemical substances at Khamisiyah. It was really sort of a fluke that it was discovered. We found the Department of Defense had just not told the truth about that.

And when we have very laboriously created these presumptions, it has been quite a battle. When I was elected in 1980, the big issue was Agent Orange. Nobody could prove causation. But those people had been subjected to very adverse conditions—they had been subjected to a lot of Agent Orange—and so we created the presumptions. And it was very difficult to see people who had served being scoffed at.

What about the question as to the level of proof which is required for a veteran to claim compensation, illustrative of Agent Orange in Vietnam or exposure to chemicals at Khamisiyah? If veterans have to fight those cases out, the Department of Defense and the Veterans' Administration can always find a bigger, better battery of doctors who will say that there is no causation. They will say that they don't know, but in the absence of affirmative proof, to what extent, Dr. Mackay, should the traditional burden of proof be on the veteran to prove that a specific exposure caused a specific ailment?

Mr. MACKAY. My understanding, and I acknowledge that we are proceeding in a broadly similar vein with respect to Persian Gulf illnesses that we did with Agent Orange, we have now, subsequent to the Agent Orange Act of 1991, we have established ten different categories of disease where the presumption holds that if these diseases are manifested in the prescribed period, that Agent Orange is presumed to be the cause. That was established by, it is my understanding, through scientific and medical evidence with the Institute of Medicine, using fairly lenient standards of causality.

Senator SPECTER. Of presumption?

Mr. MACKAY. To establish the presumption.

Senator SPECTER. Well, when you establish a presumption, it means you don't require any proof.

Mr. MACKAY. But in order to establish a presumption, you have to establish that there is some causality, that exposure to Agent Orange causes these diseases.

Senator SPECTER. I don't think you do. When you establish a presumption, you say that it will be presumed that X caused Y, not that it is proved that X caused Y.

Mr. MACKAY. Perhaps Under Secretary Thompson can explain this better than I can, but my understanding——

Senator SPECTER. I will turn it over to you, Under Secretary Thompson.

Mr. JOSEPH THOMPSON. I will take a shot. I think the difference is how you go about deciding that a condition is a presumptive condition, that standard versus a veteran who now presents symptoms that would be a presumptive service-connected condition, and I think——

Senator SPECTER. I can't understand you.

Mr. JOSEPH THOMPSON. Dr. Mackay, we have standards on when you put a particular disease as a presumptive condition. For example, next month, diabetes, type two diabetes will become a presumptive condition under the Vietnam veterans dioxin regulations. We had to meet a standard——

Senator SPECTER. Meaning it is presumptively caused by what?

Mr. JOSEPH THOMPSON. Exposure to dioxin. That will be effective July 9?

Mr. EPLEY. Correct.

Mr. JOSEPH THOMPSON [continuing]. So that regulation is almost there. But you need a standard to decide which disabilities rise to that level, to become a presumptive condition, and I believe that is what Dr. Mackay was referring to. What is the standard——

Senator SPECTER. What is that standard?

Mr. JOSEPH THOMPSON. Positive association, I believe, is the standard.

Mr. EPLEY. Significant statistical association.

Senator SPECTER. What did you say, Mr. Epley?

Mr. EPLEY. I am sorry. Significant statistical association is the standard that we used for Vietnam veterans.

Senator SPECTER. Statistical association?

Mr. JOSEPH THOMPSON. Right.

Senator SPECTER. How high does the statistical association have to be to warrant a presumption?

Mr. EPLEY. The scenario that is in existence came about under the Agent Orange Act and under litigation for Vietnam veterans and exposure to Agent Orange. We have set up a system with the National Academy of Science where they review the literature and look to try to estimate a level of association. There are four or five levels that they try to categorize it in, based on their findings, which they submit to VA. A determination is made by the Secretary as to whether or not it rises to the level of a presumption.

Senator SPECTER. So you are saying there is no fixed standard?

Mr. EPLEY. The standard is based on a court case back in the early 1990's, the Nemor case, which told us that the causal effect

standard that we had been using at VA was too strict and told us that we should abide by a significant statistical association, which is——

Senator SPECTER. That significant statistical association is determined by the National Academy——

Mr. EPLEY. That is what they use——

Senator SPECTER [continuing]. As they review the number of those exposed and the number who contracted a given ailment?

Mr. EPLEY. Yes, sir, and the earlier reference to legislation passed within the last 2 years for Gulf War was paralleled on the Agent Orange Act and the arrangement that we have with the National Academy.

Senator SPECTER. OK. Thank you very much. I am glad that Senator Alan Simpson is no longer a member of this committee. [Laughter.]

Chairman ROCKEFELLER. Senator Akaka?

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

Mr. Secretary, I am glad to hear your testimony. In particular, I want to focus on S. 228. I am happy to know that the VA strongly supports this program. I knew the data that there were more Hawaiians who were taking advantage of the program than other Native Americans, but that was the reason for this bill.

Several years ago, I was amazed to learn that no Native American veteran applied for housing. And, of course, the question was why, and we discovered that, apparently, there was no mechanism for them to do this because they were living on trust lands, so that was a problem. So we put forth this bill to take care of that and it has worked to some extent. It has worked well for the Hawaiian veterans, but it has not worked well for the other Native Americans and that is my question.

You point out here in your statement that efforts are made to outreach to Native Americans. That causes me to wonder why, then, are the statistics so low for Native Americans who are taking advantage of the program? So my question to you is, what outreach efforts are being made at this time toward Native American veterans in this program?

Mr. MACKAY. Senator, that is a good question. I am going to have to—I am not cognizant of that and I am going to have to ask Joe to answer your question.

Mr. JOSEPH THOMPSON. Senator, on the first part, as to why the rate is low, among other things, one of the major contributors, of course, is the difficulty of building on tribal land because the ownership of the land issues tend to present difficulties in a lot of places.

We do try to outreach. We make a number of efforts, working through the tribal communities. Last year, we produced a film trying to capsulize how you would go about securing a home loan on tribal lands. We also are really making some more significant efforts to work with other government agencies that have agreements with tribes. We are trying to capitalize on those agreements. Instead of VA going in and negotiating memorandums of understanding with each tribe, we will use the ones that HUD has negotiated, for example, as long as they are consistent with our laws.

So we are expanding it. It still is not what it should be. I think we do need to continue to make efforts in that regard. But we are trying to increase Native American home ownership.

Senator AKAKA. Can you also make a comment about out-stationing? In the statement, it is suggesting that out-stationing would be based on the tribe requesting services.

Mr. JOSEPH THOMPSON. Right now, that is very difficult for us in the home loan program. We have been shrinking considerably in terms of staff. We have now in fact, consolidated what used to be in virtually every State to nine regional loan centers. So out-basing is a very expensive proposition for us in that regard. But we do believe that we make people available whenever a tribe expresses a need to have some VA employee there to help them with whatever aspect of home loan guarantee they may be concerned about. If there are issues where needs aren't being met, we are very open to hearing from anyone and we will see what we can do to expand that.

Senator AKAKA. I think you know the reason why more Hawaiians are requesting the program. It is because we have lands, trust lands that belong to the State that they can work out, so that works well.

Mr. JOSEPH THOMPSON. Right.

Senator AKAKA. But for the American Indians, as you point out, we have those problems. But I am hoping that we can continue to outreach and try to help increase that number.

Mr. JOSEPH THOMPSON. I think there are some initiatives that the U.S. Government is approaching in a more collective way, instead of every branch that is in the housing industry going about it in their own way. I think that may bear some fruit.

Senator AKAKA. My time is up, Senator Specter.

Senator SPECTER [presiding]. Thank you very much, Senator Akaka.

Thank you very much, Dr. Mackay, Mr. Thompson, Mr. Thompson, Mr. Epley.

Senator SPECTER. We will turn now to the second panel, Mr. John Vitikacs, Mr. Sidney Daniels, Mr. Rick Surratt, and Mr. David Tucker, if you gentlemen would come forward.

Our first witness is Mr. John Vitikacs. He began his service with the American Legion on November 1, 1982. He was a field service representative with the National Veterans' Affairs and Rehabilitation Commission. He was born in Frederick, MD, and graduated from Brownsville High School in Pennsylvania. He served on active duty. He has a master's degree in public administration from George Mason. Thank you for joining us, and the floor is yours.

STATEMENT OF JOHN R. VITIKACS, DEPUTY DIRECTOR, NATIONAL ECONOMICS COMMISSION, THE AMERICAN LEGION

Mr. VITIKACS. Good morning, Mr. Chairman. Mr. Chairman, to my left at the table with me is Mr. C. Smithson, who is our Assistant Director for the American Legion Task Force for Persian Gulf Veterans, and Mr. Smithson will be available to answer any technical issues related to the Persian Gulf and S. 409.

Mr. Chairman, in the interest of time, I would be willing to forego my written oral remarks this morning and go straight to questions, but I will leave that up to the chair.

Senator SPECTER. OK, that would be fine.

[The prepared statement of Mr. Vitikacs follows:]

PREPARED STATEMENT OF JOHN R. VITIKACS, DEPUTY DIRECTOR, NATIONAL ECONOMICS COMMISSION, THE AMERICAN LEGION

Mr. Chairman and Members of the Committee:

The American Legion appreciates the opportunity to provide testimony on various veterans' benefit legislation and several draft bills that directly affect the 24 million veterans—past, present and future. The American Legion continues to be deeply concerned about the future of veterans' earned entitlements and deeply appreciate the leadership of this Committee for addressing these important issues.

S. 131—the Veterans' Higher Educational Opportunities Act of 2001, would amend title 38, United States Code, to modify the annual determination of the basic benefit of active duty educational assistance under the Montgomery GI Bill (MGIB). The measure would change the amount of veterans' educational assistance allowance under MGIB from a fixed amount adjusted for inflation to an amount equal to the average monthly costs of tuition and expenses for commuter students at public institutions of higher education that award baccalaureate degrees (75 percent of such amount for veterans whose initial obligated period of active duty is two years). The proposal requires the Secretary of Veterans Affairs to determine such average monthly costs each year and to publish such amounts in the Federal Register.

The American Legion commends the Committee for its most recent actions, which resulted in improvements to the current Montgomery GI Bill (MGIB) through enactment of Public Law 106–419. In particular, the provision on licensure and credentialing greatly enhances the benefits available under the MGIB. Nonetheless, a stronger MGIB is necessary to provide the nation with the caliber of individuals needed in today's armed forces. S. 131 is a good starting point to address the overall recruitment and retention needs of the armed forces and to focus on current and future educational requirements of the All-Volunteer Force.

Over 96 percent of recruits currently choose to enroll in the MGIB and pay $1,200 out of their first year's pay to guarantee eligibility. However, only one-half of these military personnel use any of the current MGIB benefits. This is due in large part because current MGIB benefits have not kept pace with the increasing costs of education. Costs for attending the average four-year public institution as a commuter student during the 1999–2000 academic year were nearly $9,000. Public Law 106–419 recently raised the basic monthly rate of reimbursement under MGIB to $650 per month for a successful four-year enlistment and $528 for an individual whose initial active duty obligation was less than three-years. The current educational assistance allowance for persons training full-time under the MGIB—Selected Reserve is $263 per month. Although extremely useful, the MGIB educational allowance improvements enacted under Public Law 106–419 have not addressed the fundamental shortcomings of the program. Data today suggests that only one-fourth of all enlistees, who enroll in MGIB, actually complete a four-year degree of higher education.

The Servicemen's Readjustment Act of 1944, the original GI Bill, provided millions of members of the armed forces an opportunity to seek higher education. Many of these individuals may not have taken advantage of this opportunity without the generous provisions of that law. Consequently, these servicemen and servicewomen made a substantial contribution not only to their own careers, but also to the well being of the nation. Of the 15.6 million World War II veterans eligible for the original GI Bill, 7.8 million took advantage of the education and training provisions. The total education costs of the original GI Bill (terminated on July 25, 1956) were estimated to be approximately $14.5 billion. The Department of Labor estimated that the federal government actually made a profit because veterans earned more income and therefore paid higher taxes. Today, a similar concept applies. The educational benefits provided to members of the armed forces must be sufficiently generous to have an impact. The individuals who use MGIB educational benefits are not only taking the necessary steps to enhance their own careers, but also, by doing so, will make a greater contribution to their community, state, and nation.

In determining the costs of tuition and expenses under S. 131, the Secretary would take into account tuition and fees, the cost of books and supplies, the cost of board, transportation costs, and other non-fixed educational expenses.

The American Legion strongly supports the provisions of S. 131. Increasing the educational benefit available through the MGIB will provide a better incentive to

veterans to complete a program of higher education. Conversely, several important enhancements are not incorporated into the bill. Among these are eliminating the required $1,200 "buy-in" payment. The American Legion believes that veterans earn this benefit through the risks, sacrifices, and responsibilities associated with military service. Eliminating the "buy-in" provision would automatically enroll veterans' in the MGIB. Veterans would become eligible to receive the earned benefit through meeting the terms of their enlistment contract and by receiving an honorable discharge.

The American Legion is concerned that S. 131 does not increase the rate of educational benefits earned by members of the Select Reserves. Today, the All-Volunteer military relies on the National Guard and the Reserves to meet its force requirements. Individuals serving in the Select Reserves can be activated to duty at a moment's notice. Oftentimes, these units reinforce the active-duty military around the globe, as is presently the case in the Balkans. The American Legion believes that members of the National Guard and the Reserves should also receive a substantial increase in MGIB educational benefits.

Additionally, The American Legion supports House Veterans' Affairs Committee Chairman Chris Smith's veterans' education bill, H.R. 1291—the 21st Century Montgomery GI Bill Enhancement Act. The provisions contained in H.R. 1291 which seek to raise the monthly rate of GI Bill entitlements to $1,100 by 2004 will help bring current entitlements closer to the actual cost of education in America today. While The American Legion supports both S. 131 and H.R. 1291, it is our hope that efforts will continue to restore the benefits afforded through the Montgomery GI Bill to the level of the original Servicemember's Readjustment Act of 1944.

The American Legion advocates that the following provisions must become part of any successful overhaul of the current MGIB:

• The dollar amount of the entitlement should be indexed to the average cost of a college education including tuition, fees, textbooks, and other supplies for a commuter student at an accredited university, college, or trade school for which they qualify. The American Legion supports indexing the monthly MGIB payment to the average costs of a college education or trade school tuition. The MGIB would then be adjusted on an annual basis to include tuition, and other associated costs, and includes a separate monthly stipend. With these provisions, veterans would be provided educational benefits on par with the first recipients of the original GI Bill.

• The educational cost index should be reviewed and adjusted annually. The Chronicle of Higher Education Almanac annually publishes the average costs at four-year public and private colleges for commuter students and at two-year colleges.

• A monthly tax-free subsistence allowance indexed for inflation must be part of the educational assistance package. Veterans must receive a monthly income stipend in addition to tuition assistance.

• Service members would no longer have to elect to enroll in the MGIB upon enlistment. Enrollment in the MGIB would become automatic upon commencement of active duty service, or active duty service for training purposes. Veterans would still have to meet the MGIB eligibility criteria in order to receive educational benefits.

• The current military payroll deduction ($1200) requirement for enrollment in MGIB must be terminated. The MGIB would rightly become an earned benefit rather than a participatory benefit.

• If a veteran enrolled in the MGIB acquired educational loans prior to enlisting in the Armed Forces, MGIB benefits may be used to repay existing educational loans.

• If a veteran enrolled in MGIB becomes eligible for training and rehabilitation under Chapter 31, of Title 38, United States Code, the veteran shall not receive less educational benefits than otherwise eligible to receive under MGIB.

• If a veteran becomes eligible for vocational rehabilitation training, they would not receive less educational assistance than under the provisions of Chapter 30 of Title 38, United States Code.

• A veteran may request an accelerated payment of all monthly educational benefits upon meeting the criteria for eligibility for MGIB financial payments, with the payment provided directly to the educational institution.

• Separating servicemembers and veterans seeking a license or credential must be able to use MGIB educational benefits to pay for the cost of taking any written or practical test or other measuring device. The American Legion commends the action taken in Public Law 106–419 that enables veterans to use MGIB eligibility to enroll in certified education courses to obtain state licenses and certification in specialty occupations.

• The American Legion strongly encourages Congress to increase the rate of MGIB payments to members of the National Guard and the Reserves. Today's Total

Force Concept places a greater reliance on the National Guard and the Reserves. Citizen soldiers who choose to enlist in the Select Reserves must be provided additional compensation to further their individual education.

The American Legion believes that all of these provisions are equally important to providing the appropriate and necessary enhancements to the current MGIB.

S. 228—would amend section 3761 of title 38, United States Code, to make permanent the Native American veterans housing loan program, which currently terminates on December 31, 2001. The purpose of such loans is to permit Native American veterans who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances to purchase, construct, or improve dwellings on trust land.

The American Legion recognizes the sacrifices made by Native American veterans and has no objection to permanently extending the Native American housing loan program. Every man and women who has worn the uniform in honorable service to this country deserves the rights afforded them through that service.

S. 409—the Persian Gulf War Illness Compensation Act, would clarify the standards for compensation for Gulf War veterans suffering from certain undiagnosed illnesses and to extend Gulf War compensation presumption.

Shortly after returning home from the 1991 Gulf War, thousands of Gulf War veterans began complaining of unexplained multiple symptom illnesses that alluded diagnosis or clear definition. At the time, VA was precluded from compensating veterans for service-connected disabilities unless the claimed condition had been clearly diagnosed. Aware that thousands of disabled Gulf War veterans were ineligible for disability compensation because Gulf War veterans' illnesses remained ill defined and poorly understood, Congress developed legislation that would permit VA to compensate these veterans. In 1994, hallmark legislation in the form of PL 103–446 was enacted to ensure compensation for ill Gulf War veterans suffering from unexplained conditions commonly referred to as Gulf War veterans' illnesses. Yet most Gulf War veterans who have filed a claim for undiagnosed illness compensation have been denied service connection for those conditions. PL 103–446 looked good on paper, but a dismal seventy-five percent denial rate is the current reality for our sick Gulf War veterans trying to receive VA service connection for Gulf War-related undiagnosed illness.

Although the final product contained ambiguities in the language that permitted VA to write regulations (38 C.F.R. § 3.317) narrowly interpreting section 1117 of Title 38, floor statements and hearing transcripts from the period during which PL 103–446 was crafted make clear that Congress intended for VA to compensate Gulf War veterans suffering from disabilities that were likely related to their Gulf War service, regardless of how these illnesses would be labeled by a physician. The original intent of Congress and the spirit of the law were also addressed in a June 3, 1998, letter from House Veterans' Affairs Committee Chairman Bob Stump to Department of Veterans Affairs Secretary Togo D. West. VA's response in the form of General Counsel Opinions and Congressional testimony make it quite clear that it will take legislative action to correct the deficiencies and injustice caused by the vagueness of PL 103–446.

Conditions that fall under the umbrella of Gulf War veterans' illnesses share many symptoms and can be labeled several different ways by physicians. Among the common labels are chronic fatigue syndrome (CFS) and fibromyalgia (FM). Although technically diagnosed, such conditions are not well understood by the medical community and are considered poorly defined because their exact causes remain unknown. Moreover, researchers investigating Gulf War veterans' illnesses recognize that the pattern of symptoms reported by Gulf War veterans overlap with recognized but poorly defined illnesses such as FM and CFS (this point was further discussed and supported earlier this year at a government sponsored Gulf War veterans' illness research conference held in Alexandria, Virginia). Despite this, a veteran with such a diagnosis will be denied compensation under the current undiagnosed illness law.

It must also be kept in mind that physicians undergo years of rigorous training in order to diagnose and treat illness. Yet VA compensates veterans who are examined by physicians who are unable to diagnose their illness. As a result, many disabled Gulf War veterans are left in a very precarious situation. If their examining physician labels their illness, they are ineligible for compensation. If the physician does not, the veteran becomes eligible for compensation. This scenario would be comical if it did not result in the continued suffering of ill Gulf War veterans. Additionally, there is a growing body of evidence found in the medical literature which suggests that the symptoms of CFS and FM so overlap with each other that these illnesses are sometimes indistinguishable to physicians. CFS and FM are often diagnoses that physicians arrive at after they excluded other diseases. Patients with

these illnesses do not test positive on any available medical tests. For example, one does not test positive for fatigue on a blood test. Although a physician may diagnose these illnesses after spending a great deal of time with a patient, the very nature of such conditions often results in different examining physicians of the same patient diagnosing one or the other, or even none, of these illnesses in the same patient.

As you can see Mr. Chairman, there are many uncertainties and unanswered questions that encompass the multiple unexplained physical symptoms experienced by many Gulf War veterans. To date, research into the possible causes and long-term health effects from the multitude of toxic agents and other hazards Gulf War veterans were exposed to during the war, has been mostly inconclusive. Uncertainty and confusion have also plagued effective treatment and definitive diagnosis, hindering a proper treatment regimen and also, often times, adversely impacting the veteran's undiagnosed illness claim, precluding the veteran from rightfully deserved compensation. This is why it is imperative that the law allowing compensation for such illnesses recognize the uncertainties and limitations in Gulf War research and treatment in order to establish a fair and just means of compensation for ill Gulf War veterans.

Clarifying the definition of "undiagnosed," for VA purposes under the law, to include poorly defined conditions such as CFS, FM and other such conditions is necessary in order to recognize both the original intent of Congress and the complexities involved with Gulf War-related research and treatment. Doing so would serve to correct the deficiencies in the current law and help to ensure that ill Gulf War veterans receive the compensation to which they are entitled.

Mr. Chairman, the presumptive period for undiagnosed illness claims is set to expire at the end of this year. However, Gulf War-related research to date, as highlighted by a September 2000 Institute of Medicine (IOM) report on the long-term health effects of exposures during the Gulf War, has been inconclusive. Research is ongoing and IOM is scheduled to release several additional reports on long-term health effects in the future. Therefore, due to the inconclusive nature of Gulf War research and the resulting uncertainties, it would be unconscionable to allow the presumptive period to expire at the end the year. The nature of Gulf War veterans' illnesses and limitations and problems with Gulf War research, as cited by IOM, warrant, at the very least, a ten year extension of the presumptive period.

S. 457—would establish certain presumptions, which would apply to claims for service connection by veterans suffering from hepatitis C. Under this legislation, if a veteran is diagnosed with hepatitis C and was exposed to one or more enumerated risk factors while on active duty, there will be a presumption of service connection. The presumption would apply to those veterans, who, while in service:

- Received a transfusion of blood or blood products;
- Were exposed to blood on or through the skin or mucous membrane;
- Underwent hemodialysis;
- Experienced a needle-stick accident or medical event involving a needle, not due to the veteran's willful misconduct;
- Were diagnosed with unexplained liver disease;
- Experienced an unexplained liver dysfunction or;
- Served in a health-care position or specialty under such circumstances, as the Secretary shall prescribe.

Mr. Chairman, hepatitis is not a new disease. The prevalence of the hepatitis C virus in the veterans' population and the long-term adverse health consequences are now recognized as a major public health issue. It is an easily transmitted bloodborne virus, which can result in potentially fatal health problems years or decades after being contracted. The circumstances of military training, combat and other related activities in locations around the world offer many opportunities for contact with infected blood or blood products. VA estimates that ten to twenty percent of all veterans have hepatitis C, as compared with fewer than two percent for the general population. Study data indicates that Vietnam veterans appear to be the group most affected. Many of these veterans, both men and women, unknowingly contracted the hepatitis C virus 25 or 30 years ago and may only now become symptomatic with severe liver disease and other related problems. Medical studies have established that this virus can remain dormant in a person's system for their entire lifetime or, in other individuals, it can become active at some point and attack various organs, particularly the liver. According to VA, fifty-two percent of liver transplant recipients have hepatitis C.

Mr. Chairman, there is sufficient and compelling scientific evidence of a link between certain risk factors inherent in many types of activities and duties associated with military service and the numbers of veterans with a current diagnosis of hepatitis C. In light of the available information, The American Legion wrote to former

Secretary of Veterans Affairs Togo D. West in August, 1999 urging him to promulgate regulations establishing hepatitis C as a presumptive disease for the purpose of entitlement to service connected disability compensation and VA medical care. Although proposed regulations have been developed, they have not been published in the Federal Register for public comment.

Under the current law and regulations, it is very difficult for a veteran to receive favorable action on a claim for service connection for hepatitis C or a related medical problem, because of a general inability to prove that the virus was, in fact, acquired during military service. Claims by many hepatitis C veterans who may have been treated for what was described as acute hepatitis in service are also denied by VA. Again, because they cannot prove the current condition is related to exposure to hepatitis C in service. Even though it is clear that VA intends to amend the regulations and provide certain presumptions in cases involving hepatitis C, these regulations have yet to be issued. Preliminary indications are that the number and scope of these presumptions will be limited.

Mr. Chairman, The American Legion believes the broad presumptions in S. 457 would remove an often insurmountable legal hurdle to VA compensation and medical care for veterans who are disabled from hepatitis C and related medical problems. Once service connection is established, they would become eligible for vocational rehabilitation benefits and assistance. We believe action on this legislation is essential to ensuring the welfare and wellbeing of thousands of veterans who were unknowingly exposed to the hepatitis C virus as a result of service in the armed forces.

S. 662—would amend section 2306 of title 38, United States Code, to authorize the Secretary of Veterans Affairs to furnish headstones or markers for marked graves of, or to otherwise commemorate, certain individuals.

The American Legion continues to support this measure. It is proper and correct to afford all veterans equal application of burial benefits. All too often, veterans and their families are unaware that purchasing and erecting a private grave marker voids all rights to obtaining a government headstone. This is particularly distressing in those instances when the veteran's spouse precedes him or her in death, or when the veteran purchases a gravesite in advance of their death to ease the burdens that later fall on the family. The American Legion understands the original intent of the law that placed the restriction on obtaining a government marker for the veteran's privately marked gravesite. It is time to end this unfairness.

The American Legion supports the entitlement for all honorably discharged veterans to receive an appropriate grave marker provided by the Department of Veterans Affairs, without regard to any other private marker or headstone that may be in place at the time of application.

S. 781—would amend section 3702(a)(2)(E) of title 38, United States Code, to extend until September 30, 2015, the authority for housing loans for members of the Selected Reserves who have honorably completed at least six years of such service or who were discharged or released from the Selected Reserve before completing six years because of a service-connected disability.

In the current era of military downsizing and increased operations tempo, Guard and Reserve troops are being tasked more than ever to augment the active duty force. The American Legion recognizes the sacrifices made by members of the Guard and Reserve forces and supports extending the authority for housing loans to eligible members of the Selected Reserve.

S. 912—the Veterans' Burial Benefits Improvement Act of 2001, would increase the authorized allowance for burial and funeral expenses for deceased veterans who: (1) at the time of death were in receipt of veterans' disability compensation or veterans' pension benefits; or (2) were veterans of any war or were discharged or released from active military service for a service-connected disability and for whom there is no next of kin or sufficient resources to cover funeral or burial costs. The measure also increases the burial plot allowance for veterans who, at the time of death, were receiving hospital or nursing home care in or through the Department of Veterans Affairs. The proposal authorizes the annual adjustment of such allowances based on increases in the Consumer Price Index.

The American Legion views the proposed increases in certain burial benefits as recognition that inflation has eroded the value of these important benefits. The service-connected death benefit has remained at $1,500 since the late 1970s. The American Legion recommends that the service-connected death benefit should be at the least doubled.

The American Legion supports an increase in the veterans' burial and plot allowance, and believes these benefits should apply to all eligible veterans. Prior to OBRA 1990, all honorably discharged veterans were eligible for these benefits. Since these benefits were eliminated in the spirit of deficit reduction, with significant

budgetary surpluses, Congress should finally restore these benefits. A proposed increase in the burial plot allowance will be welcomed by all states that participate in VA's State Cemetery Grants Program. However, the burial plot allowance paid to individual states should apply to all veteran burials, not just those who served during a period of war.

S. 937—Helping Our Professionals Educationally (HOPE) Act of 2001, would amend Chapter 30 of title 38, United States Code, to permit the transfer of entitlement to educational assistance under the MGIB by members of the Armed Forces.

Provisions of the HOPE Act include:

- Each military service would choose whether to participate.
- Each participating service would choose which Military Occupational Specialties (MOS) would be eligible for benefits.
- Participating service members must meet existing MGIB criterion.
- Participating service members must have completed at least six years of service and agree to serve at least four more years.
- Participating service members may transfer up to fifty percent (50%) of their total MGIB benefit entitlement.
- Spouses may use HOPE benefits after six years of service.
- Children may use HOPE benefits after ten years of service.
- Children must use HOPE benefits between the ages of 18 and 26.

At this time, The American Legion has no official position on the transferability of MGIB benefits and is currently evaluating the provisions of S. 937.

Mr. Chairman, The American Legion is pleased to provide comments on pending legislation that seeks to improve veterans' earned entitlements.

Draft legislation has been developed proposing a cost-of-living adjustment (COLA) in the monthly rates of compensation for service-disabled veterans, including the annual clothing allowance, and Dependency and Indemnity Compensation (DIC) to surviving spouses and dependent children of veterans who died of a service-connected disability. The percentage of increase in these benefits would be the same as the COLA authorized for beneficiaries under Social Security and would be effective December 1, 2001. The President's proposed budget for the Department of Veterans Affairs for FY 2002 included a cost-of-living adjustment of 2.5 percent, based on the projected increase in the consumer price index.

The American Legion supports the proposal to provide an appropriate COLA for veterans receiving disability compensation and individuals in receipt of DIC benefits. We believe it is important that this Committee take the required action to ensure the continued welfare and wellbeing of disabled veterans and their families by enacting periodic adjustments in their benefits, which reflect the increased cost-of-living. The American Legion also believes that annual congressional hearings on such legislation provide an important forum to discuss issues of concern relating to the compensation and DIC programs, which might not otherwise be available.

Mr. Chairman, The American Legion fully supports legislation to repeal the 30-year limit currently in place for respiratory cancers presumptively associated with Agent Orange exposure in Vietnam. The American Legion has long opposed this arbitrary statutory limit. Available evidence, including recent reviews of peer-reviewed literature by the Institute of Medicine (IOM), does not indicate that the potential harmful effects of herbicide exposure simply cease after 30 years. As the number of veterans reaching this scientifically unsupported limit increases with each passing day, it is imperative that legislation correcting this great injustice be enacted in order to stop the hardship this unjust limit has already caused for many ailing Vietnam veterans.

It has been more than 25 years since the cessation of hostilities in Vietnam and we still do not fully understand the ramifications of the herbicides used during that war. Even today, as highlighted by the recent IOM findings regarding Type 2 diabetes and acute myelogenous leukemia (AML), research is uncovering associations between diseases and herbicide exposure that were previously unknown. This means that although science does not support a relationship between a certain condition and exposure to herbicides today, tomorrow may be a different story.

The current system recognizes the ever-changing nature of Agent Orange research by allowing veterans diagnosed with a condition not currently recognized by VA as associated with Agent Orange exposure to obtain service connected compensation if the veteran submits medical evidence linking the claimed condition to herbicide exposure in Vietnam. Such claims are decided on a case by case basis and hinge on medical evidence, usually in the form of expert medical opinions, linking a particular condition in an individual to the exposure. Currently, the law presumes exposure to herbicides for veterans who served in Vietnam if they have been diagnosed with one of the conditions officially recognized as associated with herbicide exposure. However, precedent decisions from the appellate court system have held

that the law does not afford this presumption to veterans in cases where the claimed condition is not officially recognized, even if the veteran has submitted credible medical evidence supporting an association between the claimed condition and herbicide exposure. In cases such as this, the veteran has the added burden of proving actual exposure to herbicides, requiring additional development of the claim and often resulting in unnecessary delay and further hardship for the veteran.

Mr. Chairman, legislation amending the current law, by removing language that limits the presumption of herbicide exposure to cases in which the claimed condition is officially recognized, is warranted.

Health care professionals are only just beginning to understand the long-term health effects associated with exposure to herbicides. The reports generated by the National Academy of Sciences (NAS) have played a crucial role in both our understanding of health effects from herbicide exposure and the VA compensation process regarding these conditions. Based on where we stand today with respect to Agent Orange research and where we need to be, The American Legion fully supports legislation to extend NAS reviews and reports pertaining to herbicide exposure from 10 years to 20 years. Such legislation must also extend VA's authority to take appropriate compensation-related action based on the findings of these reports.

The American Legion is pleased to comment on the draft bill to amend title 38, United States Code, to facilitate the use of educational assistance under the MGIB for education leading to employment in the field of high technology.

Section 1 of the measure would provide accelerated payments of educational assistance under MGIB for education leading to employment in the high technology industry. The American Legion supports this provision. The American Legion policy resolution on the MGIB makes no distinctions as to what courses of study should qualify for advanced educational assistance. Instead, we support providing advanced educational assistance under MGIB, as required to all eligible veterans, with the payment provided directly to the educational institution.

Section 2 of the draft bill would amend section 3452(c) and 3501(a)(6) of title 38, United States Code, to recognize certain private technology entities in the definition of educational institutions. The American Legion recommends that any technology entity providing a course of study to veterans under MGIB be subject to the same standards and requirements as any educational institution subject to regulation by the State Approving Agencies.

Contained in Section 10 of a separate draft bill is language that would amend section 3703(a)(1) of title 38, United States Code, to raise the home loan guaranty limit from $50,750 to $63,175. The provision would increase the amount of a veteran's home loan guaranteed by the United States from $203,000 to $252,700. The American Legion supports this provision. However, there are locations where the increased home loan amount will still require qualified veterans to live significant distances from their place of employment. For instance, a guaranteed home loan amount of $252,700 may be appropriate in Birmingham, Alabama or Salt Lake City, Utah, but insufficient in Washington, D.C. or Sacramento, California. The American Legion believes that VA should study the feasibility of adjusting the amount of government-backed loans obtained through the VA home loan guaranty program for local economic housing conditions.

Mr. Chairman, that completes my testimony. Again, I thank you for allowing The American Legion to provide comments on these important issues. The American Legion looks forward to working with the members of this Committee to improve the lives of all of America's veterans.

Senator SPECTER. We turn now to Mr. Sidney Daniels, appointed Director of the VFW Action Corps and Deputy Director of the National Legislative Service in August 1997, after serving 6 years as Director of Veterans' Employment. He has a B.S. degree in political science from Florida A&M in Tallahassee. He has been with the VFW Washington Office since 1985. Welcome, Mr. Daniels, and we look forward to your testimony.

STATEMENT OF SIDNEY DANIELS, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. DANIELS. Thank you, Mr. Chairman. On behalf of the over two million members of the Veterans of Foreign Wars, I appreciate the opportunity to participate in today's hearing and to share our

views with respect to the numerous legislative bills under consideration.

Mr. Chairman, the first bill I would like to discuss is S. 1090, the Veterans' Compensation Cost-of-Living Adjustment Act of 2001. We welcome the introduction of this measure, which would increase the rate of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation paid to survivors of certain disabled veterans. We especially welcome language in the measure that provides that the rate of increase paid by the VA shall be equal to the percentage rates payable under Title II of the Social Security Act.

The VFW, therefore, strongly supports each of the provisions of this bill, with the exception of language found in Section 2, Subparagraph 3. We oppose the language that states, "Each dollar amount increased pursuant to Paragraph 2 shall, if not a whole dollar amount, be rounded down to the next lower whole dollar." It is our understanding that the practice of rounding down VA compensation to the next whole dollar was introduced following the passage of the Omnibus Budget Reconciliation Act of 1990, also known as OBRA.

While we certainly understand the importance of OBRA law in terms of assisting government mangers in working toward a balanced budget, it is the view of the VFW that our veterans have done more than their fair share to help balance the Federal budget and this need not continue in this day of budget surpluses. We, therefore, oppose the permanent extension of OBRA provisions that permit rounding down compensation payments.

Mr. Chairman, with respect to S. 1093, the Veterans' Benefits Program Modification Act of 2001, we concur with all provisions of this measure but recommend a modification to Section 3 pertaining to effective dates of awards and reductions and discontinuance of benefits. The VFW supports the repeal of the 45-day rule. Under the current law, widows and widowers are required to file a claim within 45 days of the veteran's death, while still grieving from the loss of a loved one and at the time when they are least able to conduct business. So we welcome the change in the 45-day rule.

But with this change, with the proposed repeal of the 45-day rule, another result is the effective date for payment of death pension would now become the date of claim. We recommend that Section 5110(a) be amended to allow the effective date to be the first date of the month in which the veteran dies, provided VA received a claim within 1 year of the date of death.

On a related note, Mr. Chairman, we also urge the inclusion of language in this measure that would allow the reinstatement of eligibility for death pension for remarried surviving spouses upon determination of a remarriage. Under P.L. 105–178, reinstatement of benefits for DIC compensation recipients was accomplished, but similar provisions were not provided for death pension recipients.

The VFW strongly supports the Veterans' Higher Education Opportunities Act of 2001. S. 131 is progressive legislation which, if enacted, would adequately provide for the education needs of this nation's service members and veterans. This measure is simple and straightforward. Every year, it indexes MGIB, Montgomery GI Bill, payments to the average monthly cost of tuition and expenses for

a commuter student at a 4-year public university or college. This legislation would reduce the ever-increasing gap between what the MGIB pays out and the high cost of attending college.

We believe that it will greatly assist recruiting efforts. An increased MGIB benefit would make the program competitive with the other forms of financial aid available so that military service can become a more attractive option for our nation's high school graduates. Simply put, more high school graduates will be open to military service. If this legislation is enacted, it would bring the MGIB program in line with the other great educational programs from the World War II era, Korea, and Vietnam. It will also advance the idea that a nation would pay for a service member's education as a sign of gratitude for their dedication and service to this country.

Mr. Chairman, we also support S. 937, the Helping our Professionals Education Act of 2001. S. 937 would permit the transfer of Montgomery GI Bill education entitlements by members of the armed forces to their families.

Senator SPECTER. Mr. Daniels, your red light is on, so if you could summarize, your full statement will be made a part of the record.

Mr. DANIELS. Yes, sir. I can conclude at that point, Mr. Chairman. I would be happy to take questions. Thank you.

Senator SPECTER. Thank you very much.

[The prepared statement of Mr. Daniels follows:]

PREPARED STATEMENT OF SIDNEY DANIELS, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman and members of the committee:

On behalf of the over 2 million members of the Veterans of Foreign Wars of the United States, I appreciate the opportunity to participate in today's hearing and to share our views with respect to the numerous legislative bills under consideration.

THE VETERANS COMPENSATION COST OF LIVING ADJUSTMENT ACT OF 2001

Mr. Chairman, we welcome the introduction of this legislation, which would increase the rates of compensation for veterans with service-connected disabilities, and the rates of dependency and indemnity compensation paid to the survivors of certain disabled veterans. We especially welcome language in this measure that provides that the rate of increase paid by the VA shall be equal to percentage rates payable under Title II of the Social Security Act.

The VFW, therefore, strongly supports each of the provisions of this bill with the exception of language found on page 3, lines 21 through 23. The language we object to indicates that "each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be round down to the next lower whole dollar amount".

It is our understanding that the practice of rounding down compensation to the next whole dollar was introduced following the passage of the Omnibus Budget Reconciliation Act of 1990 (OBRA). While we certainly understand the importance of the OBRA law in terms of assisting government managers work towards a balanced budget, it is the view of the VFW that our veterans have done more than their fair share to help balance the federal budget, and this need not continue in this day of budget surpluses. We, therefore, oppose the permanent extensions of the OBRA provision that permits rounding down compensation payments.

VETERANS BENEFITS PROGRAM MODIFICATION ACT OF 2001

Sec. 2. Exclusion of certain additional income from determination of annual income for pension purposes

The VFW concurs with each provision under this section.

Sec. 3. Effective dates of awards and reductions and discontinuances of benefits

The VFW supports the repeal of the 45-day rule. Under the current law, widows and widowers are required to file a claim within 45 days of the veteran's death while still grieving from the loss of a loved one and at a time when they are least able to conduct business.

On a related note, Mr. Chairman, we also urge the inclusion of language in this measure that would allow the reinstatement of eligibility for death pensions for remarried surviving spouses upon termination of a remarriage. Under PL 105–178, reinstatement of benefits for dependency and indemnity compensation was accomplished, but similar provisions were not provided to possible death pension recipients.

Sec. 9. Repeal of fiscal year limitation on number of veterans in programs of independent living services and assistance

The VFW strongly supports repeal of current language that limits the number of veterans who may participate in a program of independent living services.

Sec. 10. Increase in home loan guaranty amount for construction and purchase of homes

The VFW agrees with the language in this section to amend the current law by raising the VA home loan guaranty to $63,175, a level that is comparable to the guaranty provided by the Federal Housing Administration.

S. 131, THE VETERANS' HIGHER EDUCATION OPPORTUNITIES ACT OF 2001

The VFW strongly supports the Veterans' Higher Education Opportunities Act of 2001. S. 131 is progressive legislation which, if enacted, would adequately provide for the educational needs of this nation's servicemembers and veterans. This measure is simple and straightforward. Every year, it indexes MGIB payments to the average monthly cost of tuition and expenses for a commuter student at a 4-year public university or college. This legislation would reduce the ever-increasing gap between what the MGIB pays out and the high costs of attending college.

We believe that it will greatly assist recruiting efforts. An increased MGIB benefit will make the program competitive with the other forms of financial aid available so that military service can become a more attractive option for our nation's high school graduates. Simply put, more high school graduates will be open to military service.

If this legislation is enacted, it will bring the MGIB program in line with the other great programs from WWII, Korea, and Vietnam. And it will advance the idea that a nation will pay for a servicemember's education as a sign of gratitude for their dedication in service of this country.

S. 937, THE HELPING OUR PROFESSIONALS EDUCATIONALLY ACT OF 2001

The VFW supports S. 937. We believe passage of this measure with its authority to transfer entitlements to family members will have a major positive impact on military retention.

We strongly favor the language in section 4, which establishes that MGIB benefits may be used for training in technological occupations offered by non-traditional institutions.

A BILL TO AMEND SECTION 1116 OF TITLE 38, UNITED STATES CODE, TO MODIFY AND EXTEND AUTHORITIES ON THE PRESUMPTION OF SERVICE-CONNECTION FOR HERBICIDE-RELATED DISABILITIES OF VIETNAM ERA VETERANS, AND FOR OTHER PURPOSES.

Mr. Chairman, the VFW greatly appreciates your efforts in drafting this legislation, to repeal the 30-year limitation on the manifestation of respiratory cancers as related to herbicide exposure. The VFW supports this legislation.

There is no scientific evidence that warrants a 30-year cutoff. That number is basically arbitrary. In April, the national Institute of Medicine (IOM) released its Agent Orange Update 2000 report and found that there is a growing amount of evidence that suggests that there is an association between exposure to herbicides and cancers of the lung, bronchus, and trachea. Further, the report found that "the greatest relative risk [of developing cancer] might be in the first decade after exposure, but until further follow-up has been carried out for some of the cohorts, it is *not possible* to put an upper limit on the length of time these herbicides could exert their effect." (Emphasis Added)

Because current science cannot accurately forecast an end-point, the 30-year limit on the presumption of service connection should be unlimited, so that we can be sure that all veterans receive the compensation they are entitled to, and the treatment they deserve.

S. 409, THE PERSIAN GULF WAR ILLNESS COMPENSATION ACT OF 2001

The VFW supports this legislation to clarify the standards used for compensation of Persian Gulf Undiagnosed Illness. Under the current interpretation of PL 103–446, some veterans are being denied the compensation to which they may be entitled. For a veteran to be eligible for compensation for an undiagnosed illness, one of the criteria is that no known clinical diagnoses can exist that would explain the veteran's condition.

The problem is that Persian Gulf Illness has symptoms that frequently overlap with other illnesses, making it easy for a doctor to misdiagnose Persian Gulf Illness. As a result, one veteran may be granted compensation for undiagnosed illness for chronic fatigue while the other veteran, who has similar symptoms of fatigue, may be diagnosed with chronic fatigue and is denied compensation for Undiagnosed Illness.

This bill will ensure the proper implementation of PL 103–446 by refining the definition of undiagnosed illness that, in turn, will allow Persian Gulf veterans to receive compensation in a more efficient and convenient manner.

S. 912, THE BURIAL BENEFITS IMPROVEMENT ACT OF 2001

The VFW supports the intent of The Burial Benefits Improvement Act of 2001 that would provide increases in burial and funeral expenses of certain service connected veterans. The VFW further supports more expansive legislation that also provides assistance to the spouses of those veterans who die from non-service connected conditions. Specifically, we recommend $1,000 for veterans who die from a non-service connected condition. In addition, we recommend the burial plot allowance be increased to $1,000.

Finally, we strongly support Section 2309 of this measure, which would annually adjust the amount of burial benefits according to the Consumer Price Index.

S. 662, TO AMEND TITLE 38, UNITED STATES CODE, TO AUTHORIZE THE SECRETARY OF VETERANS AFFAIRS TO FURNISH HEADSTONES OR MARKERS FOR MARKED GRAVES OF, OR TO OTHERWISE COMMEMORATE, CERTAIN INDIVIDUALS

We support this legislation to authorize the VA Secretary to provide headstones or markers for marked graves or otherwise commemorate certain individuals.

We are concerned, however, over the language in subsection (f) that states "a headstone or marker furnished under subsection (a) shall be furnished, upon request, for the marked grave or unmarked grave of the individual or at another area appropriate for the purpose of commemorating the individual." We are concerned with the word "appropriate". However, we believe that the VA can clarify its meaning when they write the implementing regulations.

S. 781, TO AMEND SECTION 3702 OF TITLE 38, UNITED STATES CODE, TO EXTEND THE AUTHORITY FOR HOUSING LOANS FOR MEMBERS OF THE SELECTED RESERVE

We strongly favor this measure that would amend section 3702 of Title 38, United States Code, to extend the authority for housing loans for members of the Selected Reserve.

S. 457, TO AMEND TITLE 38, UNITED STATES CODE, TO ESTABLISH A PRESUMPTION OF SERVICE-CONNECTION FOR CERTAIN VETERANS WITH HEPATITIS C, AND FOR OTHER PURPOSES.

We support this measure without further comment.

S. 1063, UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS ADMINISTRATION IMPROVEMENT ACT OF 2001 AND S. 1089, A BILL TO AMEND SECTION 7253 OF TITLE 38, UNITED STATES CODE, TO EXPAND TEMPORARILY THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS IN ORDER TO FURTHER FACILITATE STAGGERED TERMS FOR JUDGES ON THAT COURT

We support both of these measures without further comment.

Mr. Chairman, this concludes our testimony. I would be happy to answer any questions that you, or the committee, may have.

Senator SPECTER. We turn now to Mr. Rick Surratt. In 1967, he was wounded by shell fragments. He was named Deputy National Legislative Director of the million-member Disabled American Veterans in 1998. He has a very distinguished record with DAV's pro-

fessional staff going back to 1976. Thank you for joining us, Mr. Surratt, and we look forward to your testimony.

STATEMENT OF RICK SURRATT, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. SURRATT. Thank you, Mr. Chairman. I am Rick Surratt with the Disabled American Veterans. In our written statement, we have commented on the provisions in each of the 14 bills before you today. I will just briefly highlight our position on the matters of primary importance to the DAV here.

We support S. 409, which would extend for an additional 10 years the presumptive period for service connection of the undiagnosed illnesses suffered by Persian Gulf war veterans.

Another bill before you, S. 1091, would replace the 30-year presumptive period for respiratory cancers due to Agent Orange exposure with an open-ended presumptive period because there is no scientific evidence to support the 30-year limitation. We support that provision in S. 1091 and its other provisions to reinstate the presumption of exposure to herbicides for all Vietnam veterans and to extend the period for adding new diseases to the presumptive list.

For the same reason that S. 1091 would remove the 30-year limitation for respiratory cancers, you should extend the presumptive period for undiagnosed illnesses. Because we still do not know the causes and exact nature of these undiagnosed illnesses, we have no way of knowing how long after service in the Persian Gulf it takes for them to appear. Your laws authorize service connection to be presumed in instances where circumstances suggest that a particular disease is due to military service, but where circumstances also make it unlikely that evidence will be available to prove it.

That is the case with hepatitis C, because the disease, which is transmitted by infected blood, such as blood transfusions for combat wounds, does not appear for many years after the infection, thus preventing veterans from proving its existence during service. Therefore, we support S. 457, which would authorize a presumption of service connection for hepatitis C.

We support. S. 662, which would allow government headstones or markers for graves, regardless of whether they were marked by other means.

We also believe increases in the burial and plot allowances are long overdue. Without any adjustment for increasing costs for several years, their value has been severely diminished. We, therefore, support S. 912.

Of course, we appreciate and support. S. 1090, which would provide an annual cost-of-living increase in disability compensation, dependency, and indemnity compensation, and the clothing allowance.

S. 1093, among other things, makes amendments to the effective date provisions of last year's Veterans' Claims Assistance Act. We are unsure of the practical effect of these amendments. However, we would rather see an amendment that would make the duty to assist provisions in that Act apply to all cases in which veterans were erroneously denied VA assistance by reason of the erroneous interpretation of law by the courts.

We also would like to see a provision added that would permit veterans to waive additional assistance under the Act. The Court of Appeals for Veterans Claims is using this new law to remand cases without a decision, even where the veteran objects to the remand, in instances where the veteran knows additional assistance from VA will not strengthen the factual support for his or her case. Thus far, the court has refused to let veterans waive their rights to additional assistance under the Act.

We support provisions in S. 1093 that would remove the limitation on participation in programs for independent living to 500 veterans annually. While this limitation may have been appropriate when this was a pilot program, it is not appropriate now.

We support the provision in S. 1093 to increase the maximum VA home loan guarantee to reflect increases in housing costs. The current VA maximum is not high enough to support a loan for the average-priced housing in some areas of the nation. The increase from the current $50,750 maximum to $63,175 will give veterans access to home ownership in these areas.

We also believe that Native American veterans living on tribal lands should have the same opportunities for home ownership as other veterans. We, therefore, support. S. 228, which would change the current program for direct housing loans to Native American veterans from a temporary pilot program to a permanent one.

There is no question that the enhancement in these bills for the Montgomery GI Bill are good and beneficial and should be reported by this committee, so we hope to see that happen, also.

Mr. Chairman, that completes my testimony and I will, as did my other colleagues, be happy to answer any questions you may have.

Senator SPECTER. Thank you very much, Mr. Surratt.

[The prepared statement of Mr. Surratt follows:]

PREPARED STATEMENT OF RICK SURRATT, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. Chairman and Members of the Committee:

I am pleased to appear before you on behalf of the more than one million members of the Disabled American Veterans (DAV) and the members of its Women's Auxiliary to provide our views on several pieces of legislation before the Committee.

These several bills cover a range of issues important to veterans and servicemembers, and their families. The DAV is an organization devoted to advancing the interests of service-connected disabled veterans, their dependents, and their survivors. Among these bills, are several provisions of importance to the DAV's membership. We fully support most of these provisions, but for the reasons we state below, we oppose or have concerns about a few.

S. 1093—VETERANS' BENEFITS PROGRAMS MODIFICATION ACT OF 2001

Section 2 of this bill would exclude from annual income for nonservice-connected pension entitlement life insurance proceeds and non-recurring income. Nonservice-connected pension is a needs-based benefit. Entitlement and the amount of the benefit are therefore governed by annual income and the beneficiary's net worth. While the DAV has no mandate from its membership on this issue, stability of pension rates and other equitable and practical considerations make this a meritorious change. We believe, however, that the proceeds of these types of income should also be exempted from net worth calculations under section 1522 of title 38, United States Code, and sections 3.274 and 3.275 of title 38, Code of Federal Regulations. Otherwise, the beneficial purposes of this legislation may be defeated.

Section 3(a) of the bill would repeal the requirement that death pension claims be filed within 45 days of the veteran's death to be eligible for an award of death pension effective the first day of the month in which the death occurred. Because

the entire text of section 5110(d)(2) of title 38, United States Code, would be stricken, this appears to leave no rule in place by which the effective date of the award would be the first day of the month of death. Before the 45-day rule was enacted, awards of death pension were effective the first day of the month of death if the application was filed within 1 year from the date of death. While we, again, have no mandate from our membership on this issue, we suggest that what is now section 5110(d)(1), to become 5110(d) under this bill, be amended to again apply to death pension as it did before the 45-day rule was enacted and codified at section 5110(d)(2).

Section 3(b) would replace the "end-of-the-month" rule for reductions and discontinuances in pension awards based on increases in income with an end-of-the-year rule. Under this amendment, any change in entitlement to or the rate of pension consequent to an increase in income would be the end of the calendar year in which the income increased rather than the end of the month in which the income increased. We have no mandate from our membership on this issue, but this amendment appears beneficial for pension recipients and practical for the Department of Veterans Affairs (VA).

Section 4 of this bill amends section 5102 of title 38, United States Code, to impose a 1-year time limit upon a claimant's submission of information necessary to complete an application for benefits, other than Government life insurance benefits. We have no objection to this amendment. It also amends section 5103 of title 38, United States Code, by removing the 1-year time limitation for the submission of information or evidence necessary to perfect a claim for benefits. This amendment appears to remove the 1-year time limit for the submission of evidence necessary to perfect a claim. If the Committee were to deem the retention of such or some other requirement advisable, we suggest that the time limit include a "good cause" exception. Such exception is now included in VA's regulation, section 3.109(b), title 38, Code of Federal Regulations. Section 3.109(a)(2) specifies the types of claims to which the time limit applies and makes an exception for evidence that a claimant might submit to support the credibility of a witness or to authenticate documentary evidence timely filed. When a disposition has become final under section 3.158 or sections 3.160(d), 20.1103, 20.1104 of title 38, Code of Federal Regulations, "evidence to enlarge the proofs and evidence originally submitted" are not admissible in that claim. Section 3.109 implemented the provisions of section 5103 in effect before the amendments made by the Veterans Claims Assistance Act of 2000, Pub. L. No. 106–475 (VCAA). VCAA made only minor, nonsubstantive changes in the language of the 1-year time limit.

In addition, any time limitation on the submission of evidence should expressly indicate it is subject to other provisions that suspend the finality of VA decisions. For example, under section 7105(c) of title 38, United States Code, an appeal initiated with a notice of disagreement suspends the finality of a VA decision. Thus, under VA regulations, evidence submitted before a decision becomes final by expiration of the 1-year appeal period or submitted during the pendency of an appeal has the same effect as if it were submitted with the application for benefits. See 38 C.F.R. §§ 3.156(b), 3.400(q)(i), 20.1304(b) (2000). Thus, the 1-year rule does not operate when finality is suspended and a claim continues to be open and pending.

The section heading indicates that section 5 of the bill clarifies the date the VCAA modifications in the duty to assist become effective. In amending section 7(a)(2) of VCAA, section 5(a)(1)(B) of the bill appears to narrow the category of claims to which the VCAA applies under section 7(a)(2). Section 7(a)(2) now applies to claims "filed before the date of the enactment of this Act and not final as of that date." Section 5(a)(1)(B) of this bill strikes "and not final as of that date" and inserts in its place, "in which a decision had not been issued by the Secretary of Veterans Affairs before that date." Because decisions are not final when issued, this gives the appearance of excluding from VCAA's provisions claims which were decided but not final before enactment of VCAA. However, section 5(a)(2) of this bill appears to include these claims under section 7(b) of VCAA. Section 7(b)(2)(A) of VCAA makes it applicable to claims in which the denial or dismissal "became final during the period beginning on July 14, 1999, and ending on the date of the enactment of this Act. . . ." These claims were finally denied between July 14, 1999, and the enactment date of VCAA specifically on the basis that they were not "well grounded." This bill retains this language, merges old subparagraph (B) into (A) and adds a new subparagraph (B), which seems to make VCAA applicable to all claims not finally denied before enactment of VCAA.

The DAV believes that any claimant who received a denial of benefits by reason of the erroneous interpretation of the well-grounded claim requirement should be entitled to a new adjudication under the clarification of the law by VCAA. The time in which the claim was denied itself has no bearing on the merits of the claim or

the corresponding degree of injustice consequent to misapplication of the law, and the time of denial should not be the basis of an arbitrary rule which denies or affords justice for similarly situated aggrieved claimants. For that reason, the DAV proposes language that would make VCAA more equitably cover all claims denied because of this erroneous interpretation of law. The first precedent decision of the Court of Veterans Appeals, now the Court of Appeals for Veterans Claims, that misconstrued the law as requiring claimants to prove their claims were well grounded as precondition for VA assistance was issued on October 12, 1990. *Gilbert* v. *Derwinski,* 1 Vet. App. 49 (1990). In our proposed language we include a provision to permit claimants to waive the duty to assist provisions of VCAA as a way of avoiding unnecessary prolongation of the proceedings:

Applicability and waiver:

(a) This Act shall apply to

(1) any claim denied by the Department of Veterans Affairs, the Court of Appeals for Veterans Claims, or Court of Appeals for the Federal Circuit on or after October 12, 1990, on the ground that such claim was not well grounded if the claimant requests that the Secretary readjudicate such claim within two years from the date of enactment of this act or review is initiated on the Secretary's own motion within such period; and

(2) any claim pending on, or filed on or after the date of enactment of this act.

(b) The enhanced duty to assist and notice provisions of this Act shall not apply in any case where the claimant waives those provisions of the Act.

New subsection (b) is required to prevent the Court of Appeals for Veterans Claims ("Court") from remanding essentially all appeals, even over the objections of appellants. Appellants often make specific assignments of legal error, or clearly erroneous fact finding, in their appeals to the Court. The Court has adopted the position that it generally need not either consider or decide any such assignments of error in cases where the Veterans Claims Assistance Act of 2000 ("VCAA") applies or is potentially applicable. Rather, the Court follows a practice of piecemeal litigation, and this practice severely harms appellants.

The Court has concluded that where a Board decision must be remanded because of the Board's failure to consider or apply the VCAA the appeal is at an end. E.g., *Mahl* v. *Principi,* No. 99–1678 (U.S. Vet. App. June 7, 2001). For example, an appellant raises alleged legal errors committed by the Board in an appeal to the Court. The Court, either on its own motion or at the urging of the Secretary, concludes that a remand is required for further proceedings before the VA pursuant to the VCAA. The Court will decline to consider the assignments of alleged legal error advanced by the only party entitled to invoke the Court's jurisdiction, the claimant. *Mahl* v. *Principi.* Rather than resolve the legal dispute that caused the appeal to be brought to the Court, the Court remands the case to the Board with the disputed issue(s) of law entirely unsettled. When the Board then discharges any additional duty it may owe to the claimant under the VCAA, the Board has no reason to revise its treatment of the case with respect to the claimant's alleged errors. The Court has not overturned the Board's prior decision. The claimant has no recourse other than to appeal a second time, thereby having lost a significant amount of time and potentially legal fees associated with the original appeal, the remand to the Board, and the second appeal to the Court.

The VCAA grants additional rights to those claiming benefits from the VA. To many, however, the benefit of VCAA is only theoretical because VA assistance or more thorough notices will not materially affect the outcome of their claims. Such claimants should be permitted to waive their rights when they determine such a waiver is in their overall interest. The Court should not be permitted to use VCAA as a pretense to summarily remand cases to the Board. In short, VCAA should not become a tool to delay justice. The Court has strongly indicated that it will not permit such a waiver and has to date not allowed a waiver even though a number of appellants have attempted to waive their rights under the VCAA. The VCAA has become a heavy burden rather than a benefit to some claimants at the hands of the Court. Congress should act now to relieve that unnecessary burden.

Section 6 of the bill would prohibit the payment or provision of specified veterans' benefits in the case of a veteran who is a fugitive felon. We infer that the public policy reasons for this section would be that felons, assuming they could somehow receive and expend their veterans' benefits while fugitives, should not be given government assistance while they are fleeing the justice system of that government and should not have VA benefits to aid in their evasion of the authorities. It is doubtful, we believe, that a fugitive would be able to receive and use most of these benefits, for example, a home loan. We particularly object to the denial of these benefits to

dependents. Under current law, the compensation of an imprisoned veteran can be apportioned to dependents. The loss of earnings consequent to disability adversely effects dependents, and compensation is intended to make up for the loss of earnings. Dependents of veterans, especially children, are in no less need of the compensation they rely on for the necessities of life when a veteran is imprisoned. If compensation were discontinued upon the veteran's incarceration, innocent dependents would be twice harmed by the actions of the veteran. The same is true with respect to depriving dependents of compensation when the veteran is fleeing justice and unavailable to support them. If this provision is enacted, it should be applicable only to the fugitive veteran.

Section 7 of the bill extends to veterans incarcerated for felonies committed before October 7, 1980, the same limitation on payment of VA benefits applicable to veterans incarcerated for felonies committed after that date. The DAV has no position on this provision of the bill except to note that it would appear to give retroactive effect to a measure that could be viewed as punitive.

Section 8 of the bill would override a judicial interpretation of section 3512(b) of title 38, United States Code. Under section 3501(a) of title 38, United States Code, a spouse becomes eligible for educational benefits when the veteran's service-connected disability is rated permanent and total, the veteran dies while so rated, or the veteran dies of a service-connected disability. The Court of Appeals for Veterans Claims held that the plain language of section 3512(b) provides that the 10-year delimiting period for a spouse's use of educational benefits ends 10 years after the latest of any of those three events. Under existing law, the spouse of a veteran who died while rated permanent and total would have already become eligible when the permanent and total rating was assigned, but the death while so rated begins a new 10-year delimiting period. While the effect of this bill is somewhat unclear to us, it appears to make the law more restrictive. It appears to provide that the 10-year period will end 10 years from the first event by which the spouse became eligible, unless the spouse elects an alternative later date as specified in the bill. It has always been congressional intent that laws governing veterans' benefits be liberally applied in favor of beneficiaries. In this instance, the Court followed the plain language of the law to give it an effect favorable to veterans' spouses. Under existing law, an eligible spouse would always automatically be entitled to the latest possible delimiting date, as it should be. Based on our understanding of the bill before us, we prefer existing law and therefore oppose this part of the bill.

Section 9 of the bill would remove the limitation on the number of veterans who, during a fiscal year, may participate in programs of independent living. For service-connected disabled veterans who are incapable of rehabilitation to achieve a vocational goal, VA may provide a program of independent living services and assistance to enable the veteran to achieve maximum independence in daily living. This program began as pilot, and, as such, was limited to 500 participants each fiscal year. When the program was made permanent, this limitation was retained in section 3120 of title 38, United States Code, with priority given to veterans whose inability to achieve a vocational goal was solely attributable to the effects of the service-connected disability. The change in this bill would replace the numerical limitation and priority with the priority only.

We understand that this program—beyond the independence and incidental benefits afforded some of our most seriously disabled veterans—also results in cost savings for the Government. It saves the Government the high costs of nursing home care for those veterans who, but for this program, would enter nursing home care and those veterans, who by reason of this program, are able to leave nursing home care to live independently in their communities. The DAV fully supports section 9 of this bill.

Section 10 of the bill would increase the maximum amount of the VA home loan guaranty to $63,175. To make home ownership easier for eligible veterans and other persons, the VA home loan guaranty program creates conditions in which lenders extend credit under terms more favorable than they do to the general population. VA's guaranty of repayment allows lenders to make loans without borrower down payments and other safeguards that would generally be necessary under conventional lending practices. Under mortgage industry standards, at least 25% of the total mortgage loan must be covered by the guaranty to adequately protect the lender against borrower default. With the current $50,750 maximum for a VA home loan guaranty, this effectively limits veterans to homes costing a maximum of $203,000, unless they can make up the difference with a down payment. A recent survey by the Federal Housing Finance Board showed average home prices higher than $203,000 in several areas of the Nation. Several years have passed without any adjustment in the maximum home loan guaranty, and the erosion of the benefit in the face of increasing housing costs has put housing beyond the reach of veterans living

in these several areas of the Nation. To make VA loan amounts match maximum loan amounts proposed for the Federal Housing Administration (FHA), the maximum VA guaranty must be increased to $63,175, which would allow VA loans up $252,000. As one of the four organizations who make this recommendation in the Independent Budget, the DAV fully supports this section of the bill.

S. 1091—BILL TO AMEND PROVISIONS FOR SERVICE CONNECTION OF DISABILITIES RELATED TO HERBICIDE EXPOSURE

Section 1(a) of this bill would repeal the requirement that respiratory cancers must manifest to the required degree within 30-years after the veteran's service, and section 1(b) provides for a beginning date of compensation in an amount that would have been paid had this requirement not been in effect. Inasmuch as this limitation apparently has no scientific basis, the DAV supports repeal of the 30-year limitation with retroactive effect.

Section 1(c) would reinstate the presumption of exposure to herbicides for Vietnam veterans. From 1980 to 1999, VA presumed exposure to herbicides in the case of any Vietnam veteran who claimed exposure, in recognition that circumstances make it near impossible to prove or rule out exposure in individual cases and in observance of the benefit-of-the-doubt rule. Following a court decision in which the court had no cognizance of the presumption and did not recognize it, VA conveniently abandoned the presumption, although the circumstances responsible for this policy and its legal premises had not changed. Now, the only veterans entitled to the presumption of exposure to herbicides are those who claim compensation for disabilities subject to the statutory presumption of service connection. Others are left with the often impossible burden of proving exposure even though existing records are insufficient to document individual exposure in most instances. The DAV strongly supports section 1(c) of this bill.

Section 1(d) extends the process and sunset period from 10 to 20 years for adding additional diseases to the list of those to be presumed service connected due to herbicide exposure. Because scientific knowledge remains incomplete regarding the effects of herbicide exposure, we believe this extension is fully justified. The DAV therefore supports this section of the bill.

S. 1090—VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2001

This bill would increase the rates of disability compensation, dependency and indemnity compensation, and the clothing allowance by the percentage of annual increase in the cost of living, with rounding down of the adjusted rates to the next lower whole-dollar amount. These increases would be effective December 1, 2001.

Congress must adjust these benefit rates regularly to avoid the decrease in their value that would otherwise occur by reason of rising costs of goods and services. The DAV supports this bill. However, we continue to oppose rounding down of compensation increases, and we urge this Committee to reject recommendations to permanently extend rounding down provisions.

S. 1089—BILL TO AUTHORIZE ADDITIONAL JUDGES AND REPEAL JURISDICTIONAL NOTICE OF DISAGREEMENT REQUIREMENTS FOR COURT OF APPEALS FOR VETERANS CLAIMS

Section 1 of this bill would temporarily authorize two additional judges for the Court of Appeals for Veterans Claims. These additional judges would be appointed to the Court and will have gained experience in veterans' law before several of the Court's current judges retire near the same time. The DAV supports the goals of section 1 of this bill. Section 2 of the bill repeals the requirement for a written notice by a judge regarding acceptance of reappointment as a condition for retirement. The DAV has no objection to this provision.

Section 3 of the bill repeals sections 402 and 403 of the Veterans' Judicial Review Act, Public Law 100–687. To limit the workload of the newly created court, Congress restricted the Court's jurisdiction to cases in which the administrative appeal was initiated by a notice of disagreement on or after the date of enactment of the judicial review bill, November 18, 1988. With judicial review legislation, Congress relaxed some of the attorney fee restrictions, but limited authority for attorney fees to cases in which the notice of disagreement was filed on or after the date of enactment of Public Law 100–687. The jurisdictional and attorney fee restrictions no longer serve any beneficial purpose, but can complicate appeals or present additional issues that the Court must resolve. The DAV supports this section of the bill.

While we are pleased to see the Committee undertaking ways to improve judicial review of veterans' claims, we are disappointed that none of these bills incorporate Independent Budget recommendations for improving the judicial appeal process. The Independent Budget recommends legislation to change the standard for judicial

review of questions of fact in a way that will have the courts enforce the benefit-of-the-doubt rule. It also recommends limited judicial review of changes to VA's Schedule for Rating Disabilities and expanded jurisdiction of the Court of Appeals for the Federal Circuit to authorize that court to review questions of law.

S. 1063—UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS ADMINISTRATION IMPROVEMENT ACT OF 2001

This bill, introduced by request, would authorize the Court to charge participants attending the Court's judicial conferences a registration fee and would authorize the Court to expend the funds collected to defray the expenses of judicial conferences and other activities and programs that are designed to foster bench and bar communication and relationships or the study, understanding, public commemoration, or improvement of veterans law or of the work of the Court. The DAV supports the goals of this bill.

S. 1088—AMENDMENTS TO MONTGOMERY GI BILL TO AUTHORIZE ACCELERATED PAYMENTS FOR EDUCATION IN HIGH TECHNOLOGY AND FOR OTHER PURPOSES

This bill makes the Montgomery GI Bill more flexible to accommodate the non-traditional educational programs now offered for employment in the high technology industry. These programs compress training into short-term courses but cost as much or more than the more lengthy courses offered over a full college term. This bill will allow veterans attending such courses to elect to receive their educational allowances in accelerated payments. Although the DAV has no mandate from its membership on this issue, we believe this bill has beneficial purposes and should be reported by the Committee.

S. 131—VETERANS' HIGHER EDUCATION OPPORTUNITIES ACT OF 2001

S. 131 would increase the Montgomery GI Bill allowance to reflect the average cost of tuition. The current GI Bill allowance is substantially less than the average costs of college. Although the DAV has no mandate on this issue from its membership, this bill is beneficial to veterans and should be reported by the Committee.

S. 228—BILL TO MAKE THE NATIVE AMERICAN HOME LOAN PROGRAM PERMANENT

The program under which VA provides direct housing loans to Native American veterans living on trust lands began as a 5-year pilot in 1993. It has been extended but is due to expire in 2002. S. 228 would make it a permanent program. We believe Native American veterans should have the same opportunities for home ownership that other veterans enjoy. The Committee should favorably consider this bill.

S. 409—PERSIAN GULF WAR ILLNESS COMPENSATION ACT OF 2001

This bill specially extends the presumptive period for undiagnosed illnesses of Persian Gulf War veterans to December 31, 2011, a period of 10 additional years from the expiration date set by the Secretary of Veterans Affairs in accordance with specific rulemaking authority delegated to him in section 1117 to title 38, United States Code. This bill also includes in the meaning of "undiagnosed illnesses" poorly defined illnesses that have been given diagnostic labels and prescribes signs and symptoms that will be considered a manifestation of an undiagnosed illness.

Because the causes and underlying disease mechanisms responsible for undiagnosed illnesses are still unknown, the appropriate presumptive period is still unknown. Extension of the presumptive period is therefore warranted. We also believe that clarification of the meaning of undiagnosed illnesses to include poorly defined illnesses will prevent inappropriate disallowance of these claims by VA. The DAV fully supports extension of the presumptive period and the other clarifying provisions of this bill.

S. 457—PRESUMPTION OF SERVICE CONNECTION FOR HEPATITIS C

For veterans suffering from hepatitis C who, during military service before December 31, 1992, were exposed to specified known risks of hepatitis C infection, this bill would authorize a presumption of service connection. The DAV submits that service connection for hepatitis C is fully justified when a veteran has a history of exposure during service that could have transmitted the infection. Although we would prefer to see this issue resolved by regulations issued by the Secretary of Veterans Affairs, we support the goals of this bill.

S. 662—HEADSTONES OR MARKERS FOR MARKED GRAVES OR TO COMMEMORATE CERTAIN INDIVIDUALS

This bill would remove the restriction that authorizes government headstones or markers for unmarked graves only. The DAV believes that any eligible person should be entitled to receive a headstone or marker, regardless of whether the grave or place of commemoration has been marked in some other manner. The DAV supports S. 662.

S. 781—EXTENSION OF AUTHORITY FOR HOUSING LOANS TO MEMBERS OF THE SELECTED RESERVE

The authority for housing loans to members of the Selected Reserve is set to expire on September 30, 2007. S. 781 would extend the expiration date to September 30, 2015. The DAV has no mandate on this issue, but we have no objection to its passage.

S. 912—BILL TO INCREASE BURIAL AND PLOT ALLOWANCES

This bill would increase the burial allowance for veterans who die of service-connected disabilities from $1,500 to $3,713 and would increase the burial allowance for other eligible veterans from $300 to $1,135. It would increase the plot or interment allowance from $150 to $670.

Our Government provides burial allowances as a final measure of appreciation for service rendered on behalf of the Nation and to help ensure that our Nation's military veterans will be buried with the dignity they deserve. However, over the several years these allowances have not been adjusted, the value of the benefit has eroded to the point they no longer provide a substantial contribution to the costs of burial. The DAV supports S. 912.

S. 937—HELPING OUR PROFESSIONALS EDUCATIONALLY (HOPE) ACT OF 2001

This bill would permit servicemembers to elect to transfer their entitlement to educational assistance under the Montgomery GI Bill to dependents, allows for election of an accelerated payment of the educational allowance, makes GI Bill benefits available for training provided by other than colleges and traditional educational institutions, and extends the time in which members of the Selected Reserve may use their educational benefits. The DAV has no mandate on these issues, but we do not oppose its enactment.

CLOSING

The DAV sincerely appreciates the introduction of these bills and the Committee's interest in improving benefits and services for veterans, and we appreciate the opportunity to appear before the Committee to testify on these important measures.

Senator SPECTER. We now turn to David Tucker, Associate Legislative Director of Paralyzed Veterans of America. He has been at the organization since 1993. He has a Bachelor's in history from the University of Utah and a Doctor of Jurisprudence from William and Mary. Thank you for joining us, Mr. Tucker, and we look forward to your testimony.

STATEMENT OF DAVID M. TUCKER, SENIOR ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. TUCKER. Thank you, Senator Specter, Senator Akaka. For the sake of brevity, I would also be willing to forego my oral statement with the assumption that my written statement is made part of the record and just go straight to questions.

Senator SPECTER. Without objection, it will be made part of the record.

[The prepared statement of Mr. Tucker follows:]

PREPARED STATEMENT OF DAVID M. TUCKER, SENIOR ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Chairman Rockefeller, Ranking Member Specter, members of the Committee, on behalf of the Paralyzed Veterans of America (PVA) I am pleased to present our views on benefits-related legislation pending before the Committee.

The "foundation document" of veterans' benefits was an act of the English Parliament in its 1592–1593 session. Parliament passed "An Acte for the Reliefe of Souldiours" to provide for the soldiers and sailors who had served since the defeat of the Spanish Armada in 1588. As the Act states, in pertinent part and with modern spelling:

> For as much as it is agreeable with Christian Charity, Policy, and the Honor of our Nation that such as have, since the 24th day of March, 1588, adventured their lives, and lost their limbs, or disabled their bodies—or shall hereafter adventure their lives, lose their limbs, or disable their bodies in defense and service of Her Majesty and the State—they should, at their return, be relieved and rewarded to the end that they may reap the fruit of their good deservings and *that others may be encouraged to perform the like endeavors;* be it enacted[.] (Emphasis added). From House Committee Print 4, 90th Congress, 1967.

Indeed, veterans' benefits must be looked at as a means for a nation to recognize and reward the service of its veterans as well as to encourage future generations to serve with the promise that these benefits will be there for them. PVA's expertise is in health care and specialized services, and we note that the provision of adequate budgets for the Department of Veterans Affairs (VA) health care system sends an important signal regarding how we treat our veterans. Likewise, the benefits measures we will address today send a message, a message meant to assure the men and women who serve in our Armed Forces that we shall not forget their sacrifices, or their service.

With an all-volunteer service, it is essential that we make military service attractive and that we encourage all segments of society to serve our Nation. Military service should be a top option, not an option of last resort. This is especially critical in periods of economic expansion and low unemployment. The way we treat veterans today will either encourage or discourage the men and women currently contemplating service. This is why it is so important that benefits promised be delivered, and that these benefits maintain their original goals, and their original intentions.

The benefits measures we are addressing today may be viewed as covering the gamut of benefits, from recruitment and retention, to achieving earned benefits after discharge, to providing fitting memorials to deceased veterans.

PVA believes that the over-arching goal of Montgomery GI Bill (MGIB) legislation should be first, the improvement of benefits; second, the provision of flexible alternatives to a traditional university education to meet the needs of a new century while staying true to the intent underlying the MGIB; and third, the provision of transferability as a tool to retaining the men and women who possess the critical skills and specialties demanded by our evolving Armed Services.

PVA supports S. 131, the "Veterans' Higher Education Opportunities Act of 2001." PVA has long supported increases in the MGIB. Recently, the House of Representatives passed H.R. 1291, the "21st Century Montgomery GI Bill Enhancement Act," which increased the basic monthly benefit. We believe that this is a step forward, but as we testified before the Benefits Subcommittee, we also believe that the MGIB benefit should be "tied to the average cost of tuition at public colleges or universities." S. 131 accomplishes this goal.

When the GI Bill was first enacted in 1944, it covered the costs of tuition and fees at any college or university to which the veteran gained admittance and provided a monthly amount equivalent to $500 for single veterans and $750 for married veterans in 2001 dollars. Currently, the MGIB provides only $650 per month. If the MGIB is to be used as a meaningful tool for recruitment purposes, a veteran who has served the requisite amount of time should be assured of a benefit that will essentially meet the tuition costs of a college education. S. 131 also guards against the deleterious effects of inflation by updating annually the amount provided based upon a benchmark set by the College Board. If S. 131 were in place today, the monthly stipend for this academic year would be $1025.

S. 131 meets the intent underlying the original GI Bill, and if we are to promote education in the 21st century, as well as work to ensure that military service always attracts large segments of our population, then S. 131 should be passed by this Committee and this Congress.

PVA also supports S. 1088, a bill to facilitate the use of educational assistance under the MGIB for education leading to employment in high technology industry.

This measure would allow veterans to use their MGIB benefits in courses leading to certification in technical fields. If the MGIB is to be used not only for recruitment purposes, but also as a means of enabling a veteran to make a smooth transition back to civilian life, then S. 1088 is a vital means to accomplish these goals.

Finally, we support S. 937, the "Helping Our Professionals Educationally (HOPE) Act of 2001." S. 937, by providing limited transferability to family members of MGIB benefits, would be a powerful incentive to active duty personnel to remain in military service. In addition, as our military forces continue to evolve to meet the challenges of a new century, S. 937 would provide the means to enable the Armed Services to target and retain individuals with critical skills and specialties.

PVA believes that all three measures relating to the MGIB should be passed. All three measures would provide a powerful benefit that would promote education for our Nation, promote recruitment in our Armed Services, and be a potent tool to retain military personnel with critical skills and specialties.

PVA believes that statutes and regulations governing the provision of benefits for veterans and their dependents should be construed liberally. For this reason we take no position regarding section 8 of S. 1093. It is not clear to PVA whether this proposed amendment would narrow the options currently enjoyed by spouses and dependents.

PVA supports S. 228, a bill to make permanent the Native American Veteran Housing Loan Program. Since the inception of this pilot program in 1992, and its extension from 1997 to December 31, 2001, 233 Native American veterans, residing on trust lands, have been able to achieve the dream of home ownership. We support making this successful pilot program permanent.

PVA is not opposed to S. 781, a bill to extend the authority for housing loans for members of the Selected Reserve. PVA supports extending the authority of the VA Home Loan Program through September 30, 2015. This is an important benefit to members of the National Guard and Reserve who serve the requisite six years, and by extending this program for an additional eight years will ensure that this benefit may indeed be used as a recruiting incentive until 2009.

In addition, PVA supports section 10 of S. 1093. PVA notes that the intent underlying this section is to ameliorate the effect of inflation upon the home loan guaranty amount and to enable this program to keep pace with the guaranty amounts provided by Federal Housing Authority. This amount was last increased in 1994, and PVA supports the increase contained in this section from $50,750 to $63,175.

PVA supports S. 1091, a bill to modify and extend authorities on the presumption of service-connection for herbicide-related disabilities of Vietnam veterans. Because of the impossible task of determining who in fact might have been exposed to Agent Orange, Congress, a decade ago, provided a presumption that all veterans who had served in Vietnam had been exposed to this herbicide. The Court of Appeals for Veterans Claims (CAVC), in *McCartt* v. *West,* 12 Vet.App. 164 (1999) limited this presumption to veterans experiencing one or more of the diseases listed by the VA, rather than any disease claimed by the veteran. Currently, veterans who suffer diseases not listed must first prove exposure to Agent Orange and then prove that the exposure led to the disease. S. 1091 would restore the benefit of the doubt to all who served in Vietnam.

S. 1091 also provides for the review of all claims filed for respiratory cancers and denied as a result of the 30-year manifestation limit. Further, S. 1091 eliminates this 30 year limitation, relying on a National Academy of Science report that has found no scientific basis for this specific time-frame. Finally, S. 1091 provides for five more biennial reports from the National Academy of Science, reports slated to end without congressional action.

PVA is not opposed to S. 409, the "Persian Gulf War Illness Compensation Act of 2001." This measure extends the presumptive period from the end of this year to the end of 2011 and expands the definition of "undiagnosed illnesses."

PVA is also not opposed to S. 457, a bill to establish a presumption of service-connection for certain veterans with Hepatitis C. Researchers believe that the Hepatitis C virus was widespread in Southeast Asia during the Vietnam War. A test for the virus was not available until 1990, and the virus has few symptoms. The VA has found that approximately 20 percent of its inpatient population is infected with the virus, and other studies have shown that possibly 10 percent of Vietnam veterans are Hepatitis C positive. This legislation will provide the service-connection nexus necessary for these veterans to seek VA treatment.

PVA does not take a position on S. 1063, the "United States Court of Appeals for Veterans Claims Administrative Improvement Act of 2001." PVA believes that the CAVC should be provided the same level of administrative control over its funds that other similarly-situated Article I courts enjoy. We also believe that all courts must, above all else and at all times, be removed from any appearance of impro-

priety. PVA simply does not know if other similar Article I courts enjoy the administrative control over practice fees that the Court is seeking in S. 1063, and we ask that this Committee look to the practices of these other courts when contemplating passage of this measure.

PVA supports S. 1089, a bill to expand temporarily the United States Court of Appeals for Veterans Claims in order to further facilitate staggered terms for judges on that court. Providing for a temporary expansion to facilitate staggered terms will ensure that there are judges on the CAVC to hear the cases of veterans, and will provide ample time for the nomination and confirmation process. PVA also strongly supports the removal of the Notice of Disagreement (NOD) as a jurisdictional requirement.

Regarding sections 4 and 5 of S. 1093 relating to amendments to the "Veterans Claims Assistance Act of 2000": We are amenable to changes that clarify congressional intent, but we are concerned lest any change may be utilized by the VA or the Court of Appeals for Veterans Claims to put us back on the path of the well-grounded claim procedural roadblock, or to dispense with providing assistance in the guise of efficiency. We have no objection to providing for a one-year time limitation in which to complete an application, as long as the VA, or the Court, does not begin to construe a completed application as a proven claim.

PVA does oppose the removal of the one-year time limitation contained in 38 U.S.C. §5103(b) if it is the VA's intention to utilize this removal to deny benefits before the one-year period has elapsed. Doing so would be a substantial departure from the congressional intent underlying the "Veterans Claims Assistance Act of 2000." PVA believes that the VA, under that statute, may indeed award benefits prior to the end of this limitation. We are cognizant of the concern of the VA regarding its backlog of claims, for it is a concern that we share and that we have expressed for many, many years. For the VA to deny a claim before the time has elapsed to retrieve the information necessary to process that claim, which is the manner in which we are interpreting this proposed amendment to §5103, would fly in the face of the liberalizing statute enacted last November.

We are willing to work with this Committee and the VA to attack the backlog problem and to better identify, statistically, the extent and scope of the problem, but we are not willing to entertain any steps that may be construed by the VA or by the CAVC as nullifying or limiting the VA's statutory duty to assist claimants in obtaining evidence necessary to substantiate their claims for benefits. We have fought for too long to reinstate this basic concept.

PVA does not oppose section 5 of S. 1093, but only if the VA does not use this technical change to violate the spirit of section 7 of the "Veterans Claims Assistance Act of 2000." Finally, PVA wishes to note our concern that the VA is already seeking statutory changes to the duty to assist legislation enacted at the end of last Congress, before regulations have become final and before the many fears of the VA are shown to be actual, or chimerical.

PVA supports S. 1090, a bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for certain disabled veterans. PVA does oppose again this year, as we have in the past, the provision rounding down to the nearest whole dollar compensation increases.

PVA has no objection to sections 2 and 3 of the S. 1093. These sections would exclude life insurance proceeds and other non-recurring income from determinations of annual income for pension purposes, as well as change the reporting requirement for changes in recurring income from the end of the month to the end of the calendar year. These changes will better reflect the amount of recurring income and eliminate the anomaly faced by some pension recipients. PVA also understands that section 3 of the Committee Print will remove the 45 day application requirement for the receipt of death pensions.

Although PVA does not oppose sections 6 and 7 of S. 1093, we do feel we lack the special expertise to fully consider any possible due process considerations that these provisions may encompass. We trust that this Committee will fully consider these as it moves forward to insure that the targets of these provisions are the only ones that are affected by these provisions.

PVA supports section 9 of S. 1093. This section would remove the current cap on the number of veteran participants in programs of independent living services. Although this program initially was a pilot program, it is now an important program that assists veterans who are too disabled to retrain for employment to achieve and maintain a stated independent living outcome. All who qualify should be able to take advantage of this program.

PVA, in testimony before the House Subcommittee on Benefits, stated that the increases for burial allowances contained in H.R. 801 were "a very good starting

point" but that we desired to see the increases reflect the "tremendous rise in burial expenses since the last adjustment." In a letter to Senator Barbara Mikulski who, along with Senator Kay Bailey Hutchison, introduced S. 912, the Veterans Burial Improvement Act of 2001, PVA, along with the other co-authors of the Independent Budget, stated that "this proposed legislation would help ensure that our Nations' military veterans will be buried with the dignity they deserve."

PVA notes that the allowance for service-connected deaths was last adjusted in 1988 and the allowance for other deaths was last adjusted in 1978. This legislation would return burial benefits to the same percentage level as was intended by the original legislation enacted in 1973, and would ensure that the gap between actual costs, and actual benefits would remain the same in the future by adjusting these benefits annually to cover the increased costs due to inflation. This increase is long overdue, and PVA supports S. 912.

PVA would also like to note, in passing, two provisions of importance to PVA contained within the House-passed version of H.R. 801. These provisions would increase the amount of assistance provided to disabled veterans for automotive and adaptive equipment and the Specially Adapted Housing Grant. We ask that this Committee move forward as soon as possible with these provisions.

In addition, we support the measure introduced by Senator Dodd and currently co-sponsored by 17 Senators, S. 662. This measure would authorize the VA to reimburse the costs of providing headstones or markers where a family has already done so privately. S. 662 would repeal a measure enacted in 1990 that eliminated this reimbursement provision. We agree with Senator Dodd that we must "make sure that all our veterans receive the recognition they have earned," and we agree that the current law, which prohibits the VA from providing as many as 20,000 headstones or markers to the families of veterans must be amended.

In closing, passage of many of these proposals will indeed enable veterans to, in the words of Parliament stated over five centuries ago, "reap the fruit of their good deservings" and encourage others to "perform the like endeavors." These measures send a clear message concerning the importance of military service to this Nation, to those who are veterans and to those who will be veterans in the future.

This concludes PVA's testimony concerning benefits-related legislation before this Committee. I will be happy to respond to any questions.

Senator SPECTER. In my round of questioning, I would like to explore with you gentlemen what additional legislation you think might be appropriate, looking beyond these bills. We appreciate your generalized endorsements, and Mr. Surratt, we note the suggestions you made, which we shall take under consideration.

With respect to the presumptions which have been discussed, are there any other ailments or maladies or conditions which any of you think ought to be included within the statutory presumptions we might enact?

Mr. SURRATT. I can't think of any that we have presented in the budget, can you, Mr. Tucker, that we have some suggestion or scientific suggestion on so far. Certainly, the VA has taken care of the diabetes, supposedly, due to Agent Orange, and the hepatitis C is one that we need to act on, that you have in a bill already.

Quite frankly, the Secretary could act on that, we think, more efficiently than you could in the legislation if they would move that forward and include all the proper criteria. That way, we would avoid any pay-go implications, and quite frankly, if you have circumstantial evidence that a certain category of diseases is related to service, that provides a basis for direct service connection, as we do for post-traumatic stress disorder and things based on radiation.

Senator SPECTER. Have you had a chance, Mr. Surratt, or others, to examine the statistical standard which is used to establish presumptions without direct proof? Do you think that standard is adequate?

Mr. SURRATT. Well, the fundamental standard is at least as likely as not, and that relates back to the benefit of the doubt rule and

the statistical standard was limited suggestive evidence. I suppose—I haven't examined that in detail, but I suppose that roughly equates to the benefit of the doubt rule.

Senator SPECTER. Let me acknowledge the presence today here of Mr. Curtis Jackson, President of the American Federation of Employees in Pittsburgh. Would you stand, Mr. Jackson. Thank you for joining us. We appreciate your being here.

Is there any other suggestion that any of you panelists might have for any further legislation at the present time?

Mr. DANIELS. Mr. Chairman, we would like to submit as a followup to this question information on ALS. We believe that there is a compelling argument that can be made that ALS should also be considered for presumptive. But again, I am not the expert. The expert on this issue is not with us today, but we can get you some information before the close of business today.

[The information referred to follows:]

A recent study of veterans' health records showed a higher-than-normal incidence of ALS among Persian Gulf War veterans. Researchers do not yet know why.

Isolating definite cause-and-effect relationships between environmental factors of military service and higher-than-usual prevalence of certain diseases among veterans has often proven problematic. Congress has historically solved such problems equitably by authorizing presumptions of service connection in circumstances where a statistical association is shown and it is at least as likely as not that the disease is due to military service. Such a provision for disposition of claims for service connection is consistent with the "benefit of the doubt" rule. This rule is based on the fundamental principle of VA law that a veteran should always be given the benefit of the doubt or that reasonable doubt should be resolved in the veteran's favor when conflicting evidence or confounding factors cause a matter to be neither proved nor disproved.

As long as the question os a causal connection between service in the Persian Gulf and ALS goes unresolved, the circumstances of a higher-than-usual incidence of ALS in Persian Gulf War veterans warrant a presumption of service connection.

Senator SPECTER. I appreciate that suggestion, Mr. Daniels. While I know you don't have any statistical backup, let us get a little fuller picture of your sense as to why you think ALS might be included. ALS, of course, is commonly known as Lou Gehrig's disease, amyotrophic lateral sclerosis.

Mr. DANIELS. If I may, may I refer to a statement from the independent budget. The independent budget, as most of you know, is prepared by the group of organizations, PVA, DVA, Veterans of Foreign Wars.

ALS, more commonly known as Lou Gehrig's disease, is a fatal neurological condition. ALS is an acquired disease in all but about 5 percent of cases. There is an autoimmune dominant trait for the acquired form of the disease. Several causes or precipitative factors are known. Acquired ALS rarely affects people younger than 50.

I have not read this in advance, and I cannot go to the pertinent parts, but I would much rather submit a statement at a later date, if I could.

Senator SPECTER. Mr. Daniels, would you suggest that for Vietnam veterans, Gulf War veterans?

Mr. DANIELS. Gulf War veterans.

Senator SPECTER. Just Gulf War veterans?

Mr. DANIELS. Yes, sir.

[The information referred to follows:]

RESOLUTION NO. 647.—AMYOTROPHIC LATERAL SCLEROSIS (LOU GEHRIG'S DISEASE) HIGH AMONG GULF WAR VETERANS

[Adopted by the 102nd National Convention of the Veterans of Foreign Wars of the United States held in Milwaukee, Wisconsin, August 18–24, 2001]

WHEREAS, Amyotrophic Lateral Sclerosis (ALS), commonly known as "Lou Gehrig's Disease," is a fatal neurological condition that destroys motor neurons, the specialized brain and spinal cord nerve cells that control muscles; and

WHEREAS, while progression of the disease may vary, approximately 50 percent of people with the disease die within three years of the first symptoms; and

WHEREAS, an estimated 30,000 Americans (less than one percent of the population) suffer from this disease which typically appears in people between the ages of 50 and 70; and

WHEREAS, the average age of a Persian Gulf War veteran is 32 years; and

WHEREAS, estimates suggest that normal incidence risk is less than one in one million per year for a person in their 30s to contract ALS; and

WHEREAS, a recent study of veterans' health records showed a higher than normal incidence of ALS among Persian Gulf War veterans, with no present research as to why; and

WHEREAS, that "normal incidence" is estimated at 27 veterans in one million but there are approximately 80 veterans with ALS symptoms enrolled in the VA's "Epidemiological Investigation into the Occurrence of Amyotrophic Lateral Sclerosis Among Gulf War Veterans" currently being conducted at the Durham VA Medical Center; and

WHEREAS, Congress has historically solved such uncertainty by authorizing a presumption of service connection in circumstances where a statistical association indicates it is at least as likely as not that the disease is due to military service; and

WHEREAS, as long as a question of a casual connection between service in the Persia Gulf and ALS goes unresolved, the circumstances of a higher than usual incidence of ALS in Persian Gulf War veterans warrant a presumption of service connection; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we call for intensified medical and scientific research to determine the cause of Amyotrophic Lateral Sclerosis among Gulf War veterans and, in the interim, we urge Congress to grant a temporary presumption of service connection for Amyotrophic Lateral Sclerosis for Persian Gulf War veterans until such time as the research is complete.

Senator SPECTER. How about more presumptive diseases for atomic veterans? Does anybody have a comment about that?

Mr. SURRATT. Yes. All the diseases for atomic veterans that are on the VA regulation for direct service connection should be made presumptive. Again, Senator, we have covered this in the independent budget, and you will have to excuse me for not mentioning that when you gave me ample opportunity to. But we have recommended in the independent budget this year that those diseases on VA's list of radiogenic diseases be also included as presumptive diseases.

Senator SPECTER. Does anybody else have anything they would like to add? My red light is on now.

Mr. SURRATT. Yes. Certainly, we would like to see you seriously consider the recommendations we made in the independent budget for changing judicial review. One issue in particular, if I may elaborate on that, under the court's standard for reviewing questions of fact, they defer to the BVA if there is a plausible basis for the factual finding. However, the law mandates that the VA go in favor of the veteran if there is the benefit of the doubt.

So if it only takes that much to uphold a factual finding when they are supposed to rule in favor of the veteran unless a preponderance of the evidence is against the veteran, then that makes

that standard unenforceable and, thus, in some instances, meaningless.

Senator SPECTER. We will take a look at that. We also have some questions in writing and we would ask that you be available for any questions which may be submitted by any other committee member.

Thank you all very much for coming. That concludes our hearing.

[Whereupon, at 11:48 a.m., the committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. JOSEPH R. BIDEN, JR., U.S. SENATOR FROM DELAWARE

Mr. Chairman, I commend you for moving forward with consideration of the Veterans' Higher Education Opportunities Act of 2001 (S. 131), of which I am a cosponsor, and I want to take just a few moments to explain why I feel this legislation is so important.

No one from either side of the aisle questions the importance of education as the steppingstone to success in the 21st century. We all know that the economy of the future is going to require people with specialized training and skills, while the unskilled labor that typified the 18th and 19th centuries is becoming less and less prevalent. In this regard, it is hardly surprising that Congress is flooded with proposals to enhance access to high-quality elementary education, secondary education, and higher education. I myself have championed initiatives relating to expansion of Pell Grants, broadening of student loans, and tax incentives to help families pay for a college education. The recent passage of a comprehensive education bill is a key milestone toward the goal of enhancing educational opportunity for all.

As we rightly promote the importance of government help for education, both for elementary and secondary schooling as well as higher education, it might be useful to recall that one of the first, and most successful, of the higher education initiatives was the GI bill that was enacted back in 1944. Following World War II, millions of veterans were able to obtain college educations through the GI bill, with the result that many were able to attain a standard of living they could not have imagined. Furthermore, all this college-trained talent contributed to the burst of economic advances that improved life for all of us over the ensuing decades.

Fast forward 57 years. We still have a GI bill, and in our highly successful all-volunteer military, it turns out that the single most important factor that attracts many young people to join the military is the availability of educational benefits after discharge. Yet the current GI bill suffers from one big flaw: the educational stipend is no longer sufficient to pay for the cost of a college education.

The current monthly payment in the GI bill has not come close to matching the rate of inflation in educational costs over the past 50 years. Just consider these statistics. At present, the standard GI bill benefit is $650 per month for 36 months. That's it. Moreover, we now ask servicemembers who want educational benefits after discharge to contribute $1200 while they are in the military. By contrast, when it began in 1944, the GI bill benefit included full tuition and fees at any educational institution to which the veteran could gain admittance, PLUS a monthly stipend equivalent to $500 in 2001 dollars ($750 for married veterans).

We thus find ourselves in an anomalous situation: at the same time that the government is ramping up its support and subsidy for non-veterans seeking college educations, the program that started this whole thing, and which provides key benefits for those who put their lives at risk for the country, is lagging way behind.

The Veterans' Higher Education Opportunities Act of 2001 goes a long way toward redressing this situation. The key provision of this bill is quite simple: the total VA educational stipend under the Montgomery GI Bill will be increased to a level equal to the average cost of tuition at 4-year public colleges. In other words, the standard 36 months of GI bill benefits will be sufficient to allow a veteran to attend college and complete a degree.

The 21st Century Montgomery GI Bill Enhancement Act (H.R. 1291), which has been recently passed by the House of Representatives, is an important step in the right direction. However, I believe that the Senate bill (S. 131) you are considering is an improvement over the House bill. The Senate bill makes the enhanced educational benefits for veterans available right away, rather than being phased in over several years, and indexes these benefits for inflation. I hope that you and the Com-

mittee will see fit to endorse the provisions in S. 131 and move this bill to the Senate floor.

Mr. Chairman, the Veterans Higher Education Opportunities Act of 2001 provides the minimal benefit that we should be offering to those who are willing to make the ultimate sacrifice to keep our country free and prosperous, and I look forward to working with you to ensure enactment of this important legislation.

PREPARED STATEMENT OF HON. ELTON GALLEGLY, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I introduced the House companion bill to S. 409, the Persian Gulf War Illness Compensation Act of 2001, with my colleagues Congressmen Don Manzullo (R-IL) and Ronnie Shows (D-MS). This bill would make it easier for veterans who suffer from Gulf War-related illnesses to receive compensation. This bipartisan measure has the support of a majority of the House of Representatives and a number of major veterans organizations.

As one of the original cosponsors of the 1991 resolution to authorize then-President Bush to use force in the Persian Gulf, I believe it is important to take care of the men and women who went to war against Iraqi dictator Saddam Hussein and are now suffering from unexplained and devastating ailments. Many of those suffering from Gulf War Illness were Reservists and National Guardsmen uprooted from their families and jobs. They answered the call, and we have a duty to help them.

According to the California Veterans Administration, more than 54,000 men and women from my district served in the Persian Gulf War. Many of these veterans came home and developed symptoms for which they still are being denied compensation.

It is clear that Americans who fought in the Persian Gulf War have been exposed to chemical weapons or other harmful chemical or biological agents. The Department of Veteran Affairs, which has the option to compensate and treat veterans for undiagnosed illnesses, has denied 78.5 percent of Gulf War Illness claims presented to it. This is unacceptable.

The VA has too narrowly implemented legislation we passed in the 103rd Congress (Public Law 103–446) to grant sick Gulf War Veterans relief by limiting compensation to only those veterans whose "illness . . . [which] by history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis." So if any of the symptoms of your illness are diagnosable, or if you are misdiagnosed with having another recognizable illness, you do not get compensation. S. 409 will close this loophole that has denied these veterans their just compensation.

Under Persian Gulf War Illness Compensation Act of 2001, the Department must recognize that veterans are suffering from the illness if they meet certain criteria. To qualify for benefits, a veteran must have served in the Gulf conflict between Aug. 2, 1990, and Dec. 31, 1991. In addition, the veteran must have suffered from one or more chronic conditions, including fatigue, unexplained rashes, severe headaches, joint pain, muscle pain, sleep disturbances and circulatory disorder. The symptoms must manifest themselves by Dec. 31, 2011.

With the recent passing of the tenth anniversary of the Gulf War, it is time to finally take care of these brave men and women who served their country honorably. I urge you to favorably report S. 409 and bring it to the Senate floor.

PREPARED STATEMENT OF HON. DONALD MANZULLO, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ten years ago, a patriot from Freeport, Illinois, named Dan Steele went off to war in Iraq to fight for the American people and protect the freedoms this country has known for more than 200 years. During the buildup in the Gulf, Dan's leg was fractured by an Iraqi soldier's apparent suicide attack. Over the next eight years, Dan suffered from various conditions shared by many other soldiers who fought in the Gulf War.

In May 1999, Dan succumbed to his illnesses and passed away. The county coroner listed "Gulf War Syndrome"; as a secondary cause of death on his death certificate. Shortly after Dan's funeral, I contacted his widow, Donna. She vowed to Dan that she would do whatever she could so that this would not happen to other veterans. Her story moved me to introduce legislation in 1999 to compensate our suffering Gulf War veterans.

Since the Gulf War ended ten years ago, the federal government has conducted hundreds of studies on Gulf War Illness. Despite this research, the VA continues to deny 75% of veterans' claims for compensation for undiagnosed illness. Enough is enough!

This year, I joined forces with Senators Hutchison and Durbin and Representatives Gallegly and Shows to reintroduce legislation that better defines Gulf War Illness and requires the VA to compensate our ailing veterans accordingly (H.R. 612/ S. 409).

Momentum is building behind this legislation. It has the support of all the major veterans organizations and over 220 bipartisan cosponsors. Because identical bills have been introduced in both the House and Senate, this legislation should more quickly reach the desk of President Bush. And once it gets there, I have a very good feeling that he will sign it based on his past vows to take better care of our sick soldiers.

Two years ago, I met Dan Steele's son, D.J., shortly after his dad passed away. I promised myself that I would not stop fighting for this cause until I present this bright twelve-year-old with a copy of the signed bill that was inspired by his brave father.

PREPARED STATEMENT OF RICHARD J. GRIFFIN, INSPECTOR GENERAL, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and members of the Committee, I welcome the opportunity to submit testimony on two issues presented in Bill S. 1093 to limit provision for benefits for fugitives and incarcerated veterans. These two legislative initiatives were proposed by my office to significantly strengthen the integrity of the programs and systems administered by the Department of Veterans Affairs (VA) and enhance the American public's trust and confidence in our government.

PROHIBITION ON PROVIDING CERTAIN BENEFITS WITH RESPECT TO VETERANS WHO ARE FUGITIVE FELONS

The first initiative relates to the suspension of Veteran's benefits to fugitive felons. Denying government benefits to fugitive felons is not a new idea. In fact, as a result of Public Law 104–193 (Personal Responsibility and Work Opportunity Reconciliation Act) enacted by Congress in 1996, fugitive felons are currently barred from receiving Supplemental Security Insurance (SSI) payments from the Social Security Administration (SSA) and food stamps from the Department of Agriculture (DOA). Continuing Congressional and media interest in this issue was highlighted again on April 25 of this year when the Senate Committee on Finance conducted a hearing to identify the difficulties associated with improper payments made by Federal agencies, including those made to fugitive felons, and to seek possible solutions to curb what appears to be a slow and fragmented government approach to the problem. Our Office of Inspector General (OIG) proposal includes statutory language similar to the 1996 law and will prohibit fugitives, and parole and probation violators from receiving benefits from VA. The law will also authorize VA to share investigative information with law enforcement authorities concerning veterans who are fugitives.

There are a number of persuasive arguments for seeking statutory changes to Title 38, directing VA to deny benefits to fugitive felons. First, being a fugitive from justice is itself a violation of Federal law as codified in Title 18 USC 1073 (Flight to avoid prosecution). Providing financial or other benefits to fugitives may actually be facilitating (aiding and abetting) their continuing criminal activity, which could lead to the erosion of the public's trust and confidence in the integrity of programs and systems administered by VA.

The second reason for denying benefits to fugitives relates to the mandate of the Inspector General Act of 1978. The Act requires each Inspector General to continuously review existing and proposed legislation relating to programs and operations and to make recommendations concerning the impact on the economy and efficiency of the programs and the systems that deliver the services. Under current law, fugitives from justice are eligible to receive a variety of veterans benefits, representing a significant financial outlay for the government. Simultaneously, the government is expending considerable financial, technical, and human resources to locate, arrest, and bring to justice the very same fugitives. The result of this conflict is a duplication and waste of government resources. This proposed legislative initiative resolves the conflict by terminating the imprudent duplication of expenditures, thereby enhancing the Department's image with the veterans community and the American taxpayer.

Third, many fugitives are violent offenders or have a propensity for violence. Allowing these individuals to visit medical and other facilities to receive VA benefits represents a significant safety risk to American citizens, particularly veterans and Department employees. This is a major concern for VA administrators, particularly hospital directors, who spend significant resources to promote a safe and secure work environment, free from rampant drug distribution and other criminal activity. Excluding fugitives from participating in VA programs would assist in maintaining an environment that will better promote the mission and strategic goals of VA.

Finally, significant cost savings to the government could be realized as a result of this initiative. The welfare reform legislation enacted in 1996 has led to the implementation of a highly successful SSA OIG Fugitive Felon Project. According to the SSA Inspector General's latest Semiannual Report to Congress, since the program's inception, 29,863 fugitives receiving SSI payments have been identified; 3,540 fugitives have been arrested; $53,591,239 in overpayments have been identified; and $91,476,159 in government savings are estimated. Similarly successful is DOA's Operation Talon. This is a joint venture with other Federal, state, and local law enforcement agencies, which, according to DOA OIG's most recent Semiannual Report to Congress, has apprehended nearly 7,400 fugitives since initiation, including many violent offenders.

To determine the extent to which VA is making payments to veterans who are wanted by law enforcement authorities for committing felony criminal offenses, VA OIG has recently undertaken a pilot statistical research project that matches VA systems of records with fugitive files received from law enforcement authorities. To date, we have received files from the U.S. Marshals Service and the States of California and Tennessee. While the project is still ongoing, preliminary results indicate that VA is paying a considerable amount of money to fugitive felons that could be redirected into veterans programs. For example, matching records based on either social security number alone or full name and date of birth, a total of 1800 statistical "hits," or possible fugitive felons, were identified, representing $14,859,975 in VA compensation/pension benefits paid in Year 2000. Additionally, 3,821 "hits" were identified in the medical and educational programs. While the value of VA medical benefits paid has not yet been determined, disbursement of educational benefits totaled $517,878 in the same year. A particularly disturbing discovery is that 52 "hits" were identified in the fiduciary file, meaning that it is possible that 52 fugitive felons are acting as fiduciaries for 83 veterans unable to care for themselves, with a total payout of $933,287 in Year 2000. Our research also found that 1,015 fugitive felons may have active home loans guaranteed by VA. The value of the loans has not yet been determined.

The statistical results to date represent unconfirmed "hits," or potential fugitive felons identified with each VA file reviewed. Additional data analysis with the current files, along with those we hope to receive from other states that initially indicated an interest in participating in our pilot study, will confirm the actual number of individual matches. Nevertheless, at the present time, the pilot study has identified a total of 6,688 matches and $16,311,140 in payments for all benefit files. These matches represent approximately 2 percent of all felony warrants reviewed in the study. In comparison, SSA OIG's fugitive program has identified exact matches (name, date of birth, social security number, and gender) in approximately 1.7 percent of all felony warrant files reviewed. Our research findings are significant, particularly in view of the limited data included in the pilot study. The files received from the U.S. Marshals Service and the States of California and Tennessee, which were matched with VA records, contained approximately 281,008 felony warrants. Based on our discussions with officials from the National Crime Information Center (NCIC) and the SSA OIG, we estimate there could be as many as 1.9 million outstanding felony warrants existing in the United States. Moreover, every year law enforcement authorities in this country issue over 1 million new felony warrants.

In anticipation of receiving Congressional authorization to bar VA benefits to fugitive felons and to assist other law enforcement agencies in locating and apprehending these fugitives, VA OIG has developed close liaison with other federal and state agencies. For instance, we have had preliminary discussions with officials from the FBI's Information Technology Center (ITC), which has the infrastructure to provide individual law enforcement agencies with investigative information when a fugitive felon is identified through an automated matching program. Further, our meetings with SSA OIG have assisted us immensely in identifying some of the major considerations in the design, development, and operation of a successful fugitive felon initiative, including the importance of securing appropriate additional fulltime resources dedicated to ensure reliability of the matching and validation process and the professional administration of the program. As a result, VA OIG projects that an additional 25 investigative, technical, and support personnel and

additional computer resources would be required to initiate and manage a successful fugitive felon program nationwide.

With the proper resources, VA OIG looks forward to the day its staff can join with SSA OIG and DOA OIG in not only effectuating savings for the U.S. government, but also to "treat felons as felons," regardless of the types of VA benefits they are using to finance their flight from justice, and to better assist law enforcement agencies in making this country a safer place to live.

LIMITATION ON PAYMENT OF COMPENSATION FOR VETERANS REMAINING INCARCERATED FOR FELONIES COMMITTED BEFORE OCTOBER 7, 1980

The second legislative initiative we have proposed relates to the reduction of service-connected disability compensation for all veterans confined in a Federal, State, or local penal institutions as a result of a veteran's conviction of a felony. VA OIG has become aware of approximately 230 veterans who were incarcerated prior to the enactment of Public Law 96–385, effective October 7, 1980, and are currently drawing about $2.5 million per year in compensation benefits. These 230 veterans do not have an apportionment for support of their dependents. Congress decided to reduce the service connected disability benefits paid to veterans who are incarcerated for a felony. The benefits paid to these veterans, who were incarcerated prior to enactment of the law, represent an unjust enrichment and defeats the purpose for which service connected disability benefits are awarded: since these veterans are not capable of gainful employment by reason of their incarceration, and there is no apportionment made for the support of dependents. We support the position that it is not the intent of the proposed change in law to retroactively terminate the benefits of those persons incarcerated prior to the enactment of the original law (pre-1980), but rather to terminate their benefits as of the date last paid. This change would permit the Department to quickly achieve the projected cost savings without creating any undue hardship on the incarcerated veteran. We estimate that an annual cost avoidance of $2.2 million would be achieved by enactment of this legislative initiative. An estimated $42 million in compensation payments would be avoided for the projected lifetime of these incarcerated persons. We calculated our estimate of lifetime benefits that would be avoided based on the number of years until the incarcerated persons reach age 70. This estimate is based on Year 2000 dollars.

In July 1986, VA OIG reported that veterans who were imprisoned in State and Federal penitentiaries were improperly receiving disability compensation benefits or needs based pension. This occurred because controls were not adequate to ensure benefits were terminated or reduced upon incarceration, as required by Public Law 96–385. Department managers agreed to implement certain measures to identify incarcerated veterans and reduce or terminate benefits as appropriate.

In Fiscal Year 1999, we conducted a follow-up evaluation to determine if disability benefit payments to incarcerated veterans were appropriately adjusted, and other procedures agreed to in 1986 had been taken. We found that Department officials did not implement the agreed to control procedures and improper payments to prisoners continued. We reviewed a sample of files of veterans incarcerated in state and Federal prisons and found that 72 percent of the cases were not adjusted as required. We estimate that nationwide, about 13,700 incarcerated veterans have been, or will be overpaid by about $100 million. Additionally, overpayments to newly incarcerated veterans totaling about $70 million will occur over the next 4 years, if the Department does not establish appropriate controls.

In conclusion, the two legislative initiatives we have proposed, Prohibition on Providing Certain Benefits With Respect to Veterans Who Are Fugitive Felons and the Limitation on Payment of Compensation for Veterans Remaining Incarcerated for Felonies Committed Before October 7, 1980, are ways the law must be changed to make our government more efficient, to provide all citizens a safer environment in which to live, and to gain the respect and confidence of the American public.

PREPARED STATEMENT OF E. KEITH JOHNSON, LEGISLATIVE LIAISON, TENNESSEE EDUCATIONAL ASSOCIATION OF VETERANS PROGRAMS ADMINISTRATORS

Mr. Chairman and Distinguished Members of the Senate Committee on Veterans' Affairs: Thank you for the invitation and opportunity to provide written testimony on veterans' education benefits as they relate to several bills before your committee today. While I would welcome sharing my testimony with you in person, I do understand the time constraints and urgency of acting upon all veterans' benefit legislation before your committee today.

My name is E. Keith Johnson and I am representing the Tennessee Educational Association of Veterans Programs Administrators (TEAVPA). TEAVPA was formed

about 25 years ago and is the state professional association of veterans' education benefit program administrators serving at approximately 200 U. S. Department of Veterans Affairs approved higher education institutions across Tennessee. I am employed as the full-time Veterans Affairs Coordinator at East Tennessee State University in Johnson City so I work with student veterans one-on-one daily.

I also represent Tennessee on the Southern Region Education Committee for Veterans (SRECV) an advisory committee to the Atlanta (Southern) Regional Processing Office (RPO) that administers veterans' education benefit programs in the southeastern part of the country. Moreover, I am honored to be one of three higher education representatives/members of the Veterans' Advisory Committee on Education (VACOE), which is congressionally charged with providing advice and consultation to the Secretary of Veterans Affairs on matters regarding the administration of veterans' education programs. [Title 38, United States Code § 3692] I also serve on the Board of Directors of the National Association of Veteran Program (education benefits) Administrators (NAVPA). Finally, I am a veteran who utilized the GI Bill to acquire my higher education.

Last week, the U. S. House of Representatives passed the "21st Century Montgomery GI Bill Enhancement Act" (House Resolution 1291). Earlier in this session of Congress, several related bills were introduced in the Senate. The "Veterans' Higher Education Opportunities Act of 2001" (Senate 131 originally sponsored by Senator Tim Johnson) and "Helping Our Professionals Educationally (HOPE) Act of 2001" (Senate 937 initially introduced by Senator Max Cleland). The Senate Veterans' Affairs Committee Chairman recently introduced Senate 1088 that is cosponsored by the ranking member on the committee. All of the bills before the committee proposing to enhance the Montgomery GI Bill are long overdue however, I am concerned that efforts to do too many things at one time will draw attention and support away from taking immediate action to restore the basic "buying power" to the GI Bill. At the very least I urge the committee to support, in a bipartisan manner, the pending House legislation before the Senate and not risk realistic remedies to the present GI Bill with other proposed enhancements.

I would like to take this opportunity to share with how the GI Bill can impact a state's student veteran population and highlight some recently established programs in Tennessee to supplement the education benefits of veterans and certain veterans' dependents. Tennessee has demonstrated it can finding creative ways to support our veterans and certain veterans' dependents pursuing a higher education by providing complementary non-financial state benefits. Finally, I want to briefly share with you my views on the adequacy and administration of veterans' education benefit programs.

The Tennessee General Assembly enacted legislation that required the development of a Statewide Master Plan for Higher Education 2000–2005 (SMPHE) that will serve as a future development guide for higher education in the state. A few areas of the state plan are relevant to matters before the committee today. The master plan envisions that "higher education will be seen as a valued opportunity to prepare students for professions, careers, and lifelong learning in order to meet the challenges of living in a rapidly changing world and to develop thinking, principled citizens." (SMPHE, p. 4) The mission of the plan, in part, is and I quote, "Tennessee higher education will prepare its citizens for productive and responsible social and economic roles in the 21st century by providing appropriate educational opportunities."

Of the nine specific goals in the plan, I want to present two. Simply put, the first goal is to "elevate the educational attainment levels of Tennesseans." Tennessee is below the national average in students pursuing postsecondary education. Research indicates that 17% of Tennesseans have a baccalaureate degree or higher, compared to the national average of 24%. The number of individuals in the state with associate degrees is 4.2%, which is two percent below the national average of 6.2%. (SMPHE, p. 4) Over the last 20 years, the gap in undergraduate enrollments in the state, compared to other southern states, has increased from one to three percentage points. Tennessee has the poorest per student state funding during the period 1995–2000 among 16 southern states according to figures of the Southern Regional Education Board (SREB). The increasing costs of a higher education ultimately are being passed on to students and student veterans are not exempt from those increased costs and their veterans' education benefits already trail certain average higher education costs. We simply have to reverse the trend in Tennessee.

The low educational attainment level of the state's citizenry poses a threat to the state's economy. We are experiencing economic growths in Tennessee, but employers are beginning to notice a shortage of educated and skilled employees. In the future, companies will be reluctant to locate to Tennessee if we cannot meet their needs for an educated and trained workforce. The Governor's Council on Excellence in

Higher Education recently commented in a report, "for too long, Tennessee has relied only on the state's natural resources, the richness of its soil, the state's geographic location, the beauty of its land, the creativity of its leaders, and the predisposition of its people to work hard. Tennesseans need to sustain the best from the past, but must do more. Tennessee must begin to educate its people more fully. Human capital is the new resource. . . ." (SMPHE, p. 4)

The relationship between educational attainment and economic growth is clear. Effective competition in an increasingly global market requires a highly skilled and productive workforce, for both the professional and the highly trained technical personnel. In light of the importance we are placing on higher education in Tennessee, it is only appropriate that another goal of the master plan be for public higher education to play a major role in the economic development of Tennessee.

About 200,000 students enroll in post-secondary educational institutions in Tennessee annually. During the federal fiscal year 2000, there were just over 5,000 student veterans pursuing a higher education and utilizing the Montgomery GI Bill—Active Duty ("MGIB–AD"; Chapter 30, Title 38, United States Code). The economic value of veterans' education benefit payments to Tennesseans for the last full fiscal year was almost 19 million dollars. [Exhibit A] In the last five years, the benefit value totals approximately 92 million dollars from MGIB–AD benefits alone. When considering all of the veterans' and certain veterans' dependents' education benefit program payments to students in Tennessee for the last five years, the figure doubles reaching approximately 175 million dollars. [For further information refer to Exhibit A] The amount of benefits paid to Tennesseans has remained consistent over the last five years although the slight decline in the number of trainees is probably offset by recent increases in benefit payments. Tennessee has a slightly higher average of students in four-year institutions than what is reported nationally. [Exhibit C] Since two percent of total benefit payments and trainees are in Tennessee, the state is fairly representative of a typical state. [For further information refer to Exhibits A & C]

Enhancing veterans' education benefit program(s) will ultimately aid Tennessee to achieve its higher education and economic goals. A 1986 Congressional Research Service study indicated that the country recouped between $5.00 and $12.50 for every dollar invested in the original GI Bill enacted after World War II. The economic return results from increased taxes paid by veterans who achieved higher incomes made possible by a college education. (As cited in reference following for USCNS, p.108) The state would likewise share in the economic return from the investment of enhancing the GI Bill. Therefore, educated veterans can potentially play an important role in achieving the state's economic goals.

GOVERNMENTAL VETERANS' EDUCATION BENEFIT ENHANCEMENT RECOMMENDATIONS

Several federal government reports have recently highlighted the need to enhance veterans' education benefits. In the "Phase III Report" by the United States Commission on National Security/21st Century (USCNS) dated February 15, 2001 and entitled, "Road Map for National Security: Imperative for Change," more commonly known as the "Hart-Rudman Commission," the Commission enumerated their recommendations as to "how government should work." (Preface, v) Specifically, "Recommendation 44" of the report states, "Congress should significantly enhance the Montgomery GI Bill, as well as strengthen recently passed and pending legislation supporting benefits . . . for qualified veterans." (p. 105) The Hart-Rudman Commission further stated that "GI Bill entitlements should equal, at the very least, the median education costs of four-year U. S. colleges, and should be indexed to keep pace with increases in those costs." (p. 106)

In perhaps the most significant study ever conducted, the Report of the Congressional Commission on Servicemembers and Veterans Transition Assistance (CSVTA) dated January 14, 1999 issued some strong recommendations on veterans' education benefits. The report has and will certainly continue to receive considerable attention, especially with respect to the recommendations on education benefits for veterans. The report, authored by the current Secretary of Veterans, Affairs Anthony J. Principi, "recommends that Congress enhance the MGIB by . . . paying qualifying veterans the full costs of tuition, fees, books, and supplies, as well as a subsistence allowance . . . indexed for inflation. Benefits also would be payable for non-institutional training. . . ." (CSVTA, pp. 27–28)

I concur with the general findings in these reports. Enhancements to the GI Bill are uniquely beneficial to veterans and the country.

STATE VETERANS' EDUCATION PROGRAM ORGANIZATION SUPPORT

The Tennessee Educational Association of Veteran Programs Administrators (TEAVPA) adopted a resolution at their last year's annual conference that is relevant to the subject being discussed today. The TEAVPA resolution called for the state association to join the "Partnership for Veterans' Education: Fulfilling America's Promise." This unprecedented coalition is composed of over 50 major veterans and/or educational organizations supporting an enhanced GI Bill that will meet the costs of a typical higher education. The agreed upon standard among coalition members is the cost to attend an average public, four-year commuter educational institutional as reported annually by The College Board in Trends in College Pricing.

CONCLUSION & RECOMMENDATION

The proposed increases in monthly benefit payments over the next three years will make significant and important progress toward restoring the GI Bill to fulfill the promise of an education to eligible Tennessee veterans. However, Congress must ensure that the GI Bill continues to keep pace with the costs of higher education so that repeated efforts to restore the benefits to adequate levels are not necessary. If at the end of the third year the GI Bill is indexed to certain annual reported college costs, the GI Bill well into the future will be a viable means for veterans acquiring a higher education and realizing the fulfillment of the promise made by this country.

States and the federal government should work in concert with each other toward goals of providing for the higher education of veterans and certain veterans' dependents. Presently only about half of the states offer some form of state-based education benefit specifically for veterans and their dependents. Tennessee has demonstrated there are veterans education benefits that states can provide that supplement federal government benefit programs.

"Veterans' Dependents' Post-Secondary Education Assistance Act of 2000"

Tennessee Public Chapter 767 enacted last year provides certain supplementary education benefits for veterans and certain veterans' dependents. Essentially the new law provides for an education through a baccalaureate degree for the dependents of veterans who make the ultimate sacrifice. The major provision of the Act established the "Certain Veterans' Dependents Education Benefit Program." Under this program, every dependent child in the state under the age of twenty-one (21) years, whose parent (father or mother) was killed, died as a direct result of injuries received, or has been officially reported as being a prisoner of war or missing in action while serving honorably as a member of the United States armed forces during a qualifying period of military conflict, or the spouse of such veteran, is entitled to a waiver of tuition, and or maintenance fees, and shall be admitted without cost to any of the institutions of higher education owned, operated and maintained by the state. [Section 2(a), Public Chapter 767] Legislation has passed the current session of the General Assembly and signed into law that extends eligibility to the dependents of former prisoners of war. [Public Chapter 293] Eligible veterans' dependents would likely receive benefits under the Survivors' & Dependents' Educational Assistance Program (Chapter 35, Title 38, United States Code).

The second provision of the Act established the "Student Veterans' & Dependents' Tuition & Fee Payment Deferment Program." Any student with eligibility to any of the education benefit programs of the United States Department of Veterans Affairs (USDVA) and other certain military related education benefits, may be granted a deferment of the payment of their tuition and fees at public educational institutions until the end of the term. Under certain circumstances the law permits deferments into the next term. All too frequently months pass before students receive their benefit payments from the USDVA. This relatively simple state law has put many students at ease with paying their tuition and fees with their benefit payments.

"Tennessee National Guard Tuition Assistance Act"

I indicated earlier that I wanted to highlight some veterans' education program administration concerns affecting Tennesseans. The lack of timely processing of education claims in regional processing offices is unacceptable. Seemingly the delays only get worse with time when, through the use of information technology, administration of the processes should improve. For example, the Regional Processing Offices currently have more claims currently waiting to be process than last year's pending claims load for the same period. Moreover, the Atlanta RPO has 30,000 education issues pending. The education claim delays extend to the processing of applications for benefits, enrollment certifications, and to appeals to decisions. I urge the committee to explore remedies to ensure acceptable and timelier service to our

student veterans. Students need to receive benefit payments with some greater sense of regularity and consistency.

In recent years much attention has been focused on enhancing the active-duty GI Bill. However, eventually attention will need to turn to improving Montgomery GI Bill—Selected Reserve ("MGIB-SR"; Chapter 1606, Title 10, United States Code). The overall objective of providing adequate veterans' education benefit programs will not be complete until due consideration is given to the MGIB-SR program. This program is of great interest to states and its benefit value impacts the recruiting and retention efforts in the states' National Guard. Moreover, it was noted in one of the government reports that the GI Bill "should carry a sliding scale providing automatic full benefits for Reserve and National Guard personnel who are called to active duty for overseas contingency operations. (USCNS, p. 106) I support this specific recommendation since there has been a tremendous increase in members and units of the Tennessee National Guard fulfilling worldwide military missions.

Student veterans have expressed their frustration with another problem related to the treatment of veterans' education benefits by other federal agencies. GI Bill benefit payments should be excluded as a financial resource for all federal student financial aid programs and purposes to prevent what is given in one benefit from being diminished by the other.

Aside from not keeping pace with the escalating costs of a higher education, the GI Bill has seemingly not evolved with the times. Enhancements to the veterans' education benefit programs will not be modernized until the GI Bill benefit payments are permitted for emerging professional technical training leading to certification and lucrative employment especially in emerging fields like information technology. Under outdated assumptions of the old GI Bill is a bias that education can only occur through attending traditional education institutions and earning certificates or degrees. Professional certification and licensure are relatively new areas to consider expanding eligibility. Moreover, the Hart-Rudman Commission endorsed technical training alternatives. (USCNS, p. 106)

Finally, the GI Bill should eventually be updated to allow for payment of benefits for lifelong learning initiatives. Currently the MGIB-AD expires ten years from the veteran's discharge from active military service. Members of the National Guard and Reserve must remain in an active participation status with the Selected Reserves to utilize their "earned" education benefits and that must be done within ten years from the initial eligibility date. Increasingly higher education is taking place throughout an adult's lifespan. Many veterans need to later update their knowledge or skills or retrain into a new job altogether. The expiration date of veterans' education benefit programs needs to be reconsidered. The "Hart-Rudman Commission" agrees. The USCNS report recommended "the Bill [GI Bill] should . . . extend eligibility from ten to twenty years. . . .] (p. 106)

As is clearly set forth in the Principi Commission report, we need to restore veterans to the ranks of public and private sector leadership. With ever decreasing numbers of veterans in the population, we need to give veterans the incentive to rise and fill those important leadership ranks in our country, and that is achieved through adequately providing for veterans' higher education. Many of my previous recommendations have these additional and important social benefits.

I want to share with you a relevant quote related to the subject of testimony before this committee today. "Upon the subject of education . . . I can only say that I view it as the most important subject which we as a people can be engaged in." This same individual called upon Congress to "care for him who shall have borne the battle and for his widow, and his orphan." Abraham Lincoln made those statements, the first in an 1832 letter, and the latter at his second inaugural address in 1865. I believe it is clear what President Lincoln would urge this committee to do today with respect to the legislation before this body. Those remarks are just as true today as they were over 150 years ago.

I fully support immediate and basic enhancements to the Montgomery GI Bill and urge the committee to not lose sight that more work is essential to restore veterans' education benefit programs to their former value.

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS,
WASHINGTON, DC,
July 3, 2001.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Veterans' Affairs,
U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for inviting the Court to provide written comments on two pending bills, S. 1063 and S. 1089, that you recently introduced. We very much appreciate your support for improving the operation of the Court.

S. 1063

Regarding S. 1063, the Court is most appreciative of your having introduced, at the Court's request, the legislation, submitted as a draft bill by the Court on May 24, 2001. For the reasons set forth in our transmittal letter, the Court supports the enactment of that legislation. However, based on a request from Committee staff of both parties on the House Committee on Veterans' Affairs, we have reassessed the additional sentence that section 2(a) of the bill would add to 38 U.S.C. § 7285(a), regarding other registration fees, in order to recast that authority in more generic terms and thereby possibly foreclose the need for future legislation on this subject. As a result, we have proposed that section 2(a) of the bill be revised to read as follows:

SEC. 2. REGISTRATION FEES.

(a) Section 7285(a) of title 38, United States Code, is amended by adding the following sentence at the end: "The Court may also impose registration fees on persons participating at judicial conferences convened pursuant to section 7286 of this title and in other Court-sponsored activities.".

We hope that you will be able to incorporate this proposed revision.

S. 1089

Regarding S. 1089, the Court is again most appreciative of your interest and support. As to section 1, proposing a temporary expansion from seven to nine judges for a transition period from the present to August 2005, the Court notes that this provision, according to your introductory statement, is intended to solve the problem of simultaneous vacancies in the 2004–05 period "by allowing two additional judges to be appointed to full terms, in order to bridge the retirement of the original judges." Cong. Rec. S6667–68 (daily ed. June 22, 2001). This problem was called to the attention of the Congress by the Court in 1997, and the Congress responded, as you have noted, with the enactment of the Court of Appeals for Veterans Claims Amendments of 1999, Pub. L. No. 106–117, title X, 113 Stat. 1587, 1590 (found at 38 U.S.C. § 7296 note). That law offered a period, which has now expired, during which two judges of the Court could retire early under special terms and conditions. As you also have noted, no judge opted for early retirement under those special terms and conditions.

The Court continues to believe that the simultaneous vacancies that will be occasioned by the terms of four active judges ending within an eleven month period from September 14, 2004, to August 6, 2005, will under present law present very serious problems for the effective functioning of the Court. Section 1 of S. 1089 proposes another method of ameliorating that simultaneous-vacancy problem and would also increase the staggering of the terms of future judges appointed to the Court. Assuming that nominations and confirmations occur in a relatively timely fashion, the Court believes that the approach in section 1 offers a constructive way of dealing with both problems. Although the need for staffing of two additional chambers (and concomitant space and equipment requirements) would make this alternative considerably more costly than an early-retirement approach that offered terms and conditions of retirement sufficiently attractive to induce two early retirements, the Court supports enactment of section 1 if enactment of an enhanced early-retirement option is not considered viable at this time. Moreover, the Court is especially appreciative of the effort that has been expended to create this approach to dealing with a very real and substantial looming problem for the Court and its ability to handle its caseload effectively.

We do have two suggestions for modification of the language of section 1. In paragraph (2)(C) (page 3, line 21, to page 4, line 1), in the subsection (h) that would be added to section 7253, we believe that the following revised text would be technically preferable to carry out what we understand the intent to be:

"(C) If no judge is appointed as described in clause (A), or if no judge is appointed as described in clause (B), or if no judge is appointed as described in either of those clauses, the number of judges that is authorized by this subsection to be appointed but is not appointed as described in those clauses may be appointed pursuant to a nomination or nominations made during the period beginning on January 1, 2004, and ending on September 30, 2004."

We also suggest, as a technical matter, that "only" be substituted for "not more than" in clauses (A) and (B) (page 3, on lines 15 and 18), respectively.

Second, in section 1(a)(2), we suggest that, in lieu of lines 20–23 on page 3, insert "judges in excess of seven (other than judges serving in recall status under section 7257 of title 38, United States Code) who were appointed or reappointed after January 1, 1997.". We believe that this would carry out the intent to count as part of the seven none of the Court's original judges (five are still serving) unless reappointed under new subsection (h)(4)—that is, to count only Judge Greene and any replacement or new-position appointees.

As to section 2 of S. 1089, relating to 38 U.S.C. § 7296(b)(2), which provides for one of the three options for retirement from the Court—completion of the term to which appointed (the other two retirement alternatives are retirement based on the Rule of 80 under section 7296(b)(1) and disability retirement under section 7296(b)(3))—the Court believes that the proposed repeal of the written-notice requirement is appropriate in light of the provision included in the new subsection (h)(4) that would be added to 38 U.S.C. § 7253 by section 1(a)(1) of the bill, under which a judge appointed before 1991 (there are five such sitting judges) would be eligible to accept one of the two new appointments authorized by the bill even though this would mean that he would not complete the term of his initial appointment and commission.

As to section 3 of S. 1089, proposing to repeal the notice of disagreement (NOD) requirements added in sections 402 and 403 of the Veterans' Judicial Review Act, Pub. L. No. 100–687, 102 Stat. 4105, 4122 (1988) (found at 38 U.S.C. §§ 7251 note and 5904 note, respectively), the Court offers no comment on the policy implications of such repeal. That is a matter for the Congress and the President. We note, however, that the Court does not anticipate that the repeal of these added NOD requirements would substantially affect the Court's caseload.

* * * * *

Again, we appreciate the opportunity to comment on S. 1063 and S. 1089 and your interest in introducing them. The Court stands ready to offer any appropriate assistance in connection with the pending measures and to answer any questions regarding this letter.

Sincerely,

KENNETH B. KRAMER,
Chief Judge.

PREPARED STATEMENT OF THE NATIONAL FUNERAL DIRECTORS ASSOCIATION

The National Funeral Director's Association (NFDA) wants to thank the Committee for the opportunity to submit testimony for the record on these very important issues.

NFDA is an individual membership professional association that represents more than 13 thousand licensed funeral directors throughout the United States. A large majority of our members are small-business men and women who own and operate funeral homes in communities all across America.

Most of our members live in cities of less than 50,000 population, with the average NFDA member funeral home serving about 180 families a year and employing four people.

NFDA has long been a supporter of veterans benefits issues, ranging from the use of a military honor guard at veterans' funerals to the active support of the World War II Memorial to be constructed on the national Mall. Honoring those who have served in the armed services is a very important issue to our members, especially since many of them are veterans themselves, or have had loved ones lost in service to this country.

The National Funeral Directors Association would like to express its strong support for the death, burial and memorial benefits legislation currently pending before this Committee. Veterans are one of this country's most cherished assets. Their brave and selfless actions defending this country are ones that should be honored in death, as well as in life, and never forgotten.

On behalf of the funeral directors around the country and the veterans and their families and communities they serve, I want to express our strong support for S. 912, "The Burial Benefits Improvement Act of 2001," and S. 662, To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to furnish headstones or markers for marked graves of, or to otherwise commemorate, certain individuals.

NFDA strongly supports S. 912, "The Burial Benefits Improvement Act of 2001," a bill to increase the funeral and burial expenses as well as plot allowances for veterans. At a time of unimaginable grief, funeral directors deal with the families of service members who must plan for the funeral of their loved one. This process is never easy, but is made more difficult when a family must plan a funeral in accordance with current VA mandated funeral and burial expense levels.

NFDA endorses any legislation that recognizes the reality of the cost of a funeral and burial in 2001 and seeks to help the families of veterans manage that expense.

NFDA fully supports S. 662, a bill to allow deserving veterans the ability to have their grave marked with an official Veterans Administration headstone or marker, even if they already have a private one. This legislation corrects a longstanding problem that continues to place an undue hardship on the families of veterans.

The current law, which prohibits a veteran from receiving an official headstone or marker if his/her grave was previously marked with a private marker, works an extreme hardship on many families of veterans who are unaware this restriction exists when they purchase a private headstone, many times years in advance of their passing. This prohibition is unfair because many families want to honor their loved ones by attaching an official VA marker directly on the grave or to a privately purchased headstone.

The National Funeral Directors Association supports the entitlement for all honorably discharged veterans to receive an appropriate grave marker provided by the Department of Veterans Affairs, without regard to any other private marker or headstone that may be in place at the time of application. We agree with Senator Dodd that we must "make sure that all our veterans receive the recognition they have earned," and we agree that the current law, which prohibits the VA from providing as many as 20,000 headstones or markers to the families of veterans, must be amended.

These bills are a modest first step on the path to correcting a long-standing inequity where veteran's funeral, burial and memorial benefits are concerned. Individuals who have served their country in times of war have earned these benefits.

NFDA supports Senators Mikulski (D-MD), Hutchison (R-TX) and Dodd (D-CT) efforts to help our nation's veterans. All veterans should benefit from the funeral, burial and memorial benefits put forth in S. 912 and S. 662. NFDA offers to work with the members of this committee to help pass theses measures as well as to develop additional legislation that will further reconcile these benefits with today's costs.

Thank you for the opportunity to submit testimony. If the Committee or any of its members have any questions or need any further information, please contact Allison Salyer in the NFDA Washington, DC office.

NATIONAL VETERANS LEGAL SERVICES PROGRAM,
2001 S STREET, NW, SUITE 610,
Washington, DC, July 23, 2001.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Veterans' Affairs,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN ROCKEFELLER: Thank you for inviting the National Veterans Legal Services Program (NVLSP) to submit written testimony regarding several VA benefits-related bills pending before the Committee on Veterans' Affairs—S. 1063, S. 1089, S. 1091, and S. 1093. We separately set forth our views on each bill below.

S. 1063

NVLSP supports this bill without reservation.

S. 1089

NVLSP supports the intent of this bill without reservation. We especially applaud section 3 of the bill, which repeals ("terminates") the notice of disagreement (NOD) provisions in the Veterans' Judicial Review Act of 1988. These provisions have engendered an inordinate amount of litigation, and the underlying need for the provisions lost its vitality long ago.

We do, however, advocate two changes in subsection 3(d), regarding the applicability of the terminations. The first change involves the applicability of subsection 3(b). This subsection repeals the NOD provision as it affects the operation of 38 U.S.C. § 5904(c), which allows agents and attorneys to charge fees for services rendered in representing a VA claimant after the Board of Veterans' Appeals (BVA) renders a first final decision in a case. The services for which 38 U.S.C. § 5904(c) authorizes agents and attorneys to charge a fee include representation on (1) a reopened claim filed with a VA regional office; (2) a motion for reconsideration filed with the BVA; and (3) a claim filed with the BVA for revision of a final BVA decision based on clear and unmistakable error.

The subsection 3(d) provisions governing the applicability of subsection 3(b) are triggered by what has occurred or may occur in the future in the U.S. Court of Appeals for Veterans Claims (CAVC). When an agent or attorney charges a fee for representation before the VA in these three types of administrative proceedings, there is no need to file an appeal with the CAVC. Thus, as written, subsection 3(b) will not have much impact because its repeal will only become applicable when an event occurs in a forum to which the claimant will often not be using. For subsection 3(b) to have its intended impact, subsection 3(d) needs to be changed so that it is triggered by an event that takes place at the VA.

We suggest bifurcating the applicability provisions in subsection 3(d) so that one set of rules applies to subsection 3(a) and another set of rules applies to subsection 3(b). We suggest that subsection 3(b) should apply to any case in which the BVA renders a first final decision on or after the date of enactment of this Act.

The second suggested change involves the applicability provisions in subsection 3(d) as they relate to subsection 3(a). Since the repeal to the NOD requirement is long overdue, NVLSP believes that the repeal should also be applicable to any appeal filed with or pending before the U.S. Court of Appeals for the Federal Circuit or the U.S. Supreme Court on or after the date of the enactment of the Act.

S. 1091

NVLSP supports the intent of this bill without reservation. By way of background, the attorneys at National Veterans Legal Services Program (NVLSP) have been involved in the Agent Orange issue for over 20 years. We have served as counsel to the plaintiff class counsel in the ongoing case *Nehmer* v. *U.S. Veterans Administration,* Civ. No. C 86–6160 (TEH) (N.D. Cal.) ever since that lawsuit was filed in 1986. See, e.g., *Nehmer,* 712 F.Supp. 1404 (N.D. Cal. 1989); 32 F. Supp. 2d 1175 (N.D. Cal. 1999).

During the course of the discovery process as a result of the 1999 decision of the *Nehmer* District Court, NVLSP attorneys have reviewed over 12,000 VA claims files and identified over 1,400 Vietnam veterans and survivors of deceased Vietnam veterans who have been granted disability or death benefits due to herbicides containing dioxin, but as to whom the VA has refused to pay the amount of retroactive compensation required by the 1991 consent decree in Nehmer. In addition, for the past four and one-half years, NVLSP has been in contact with approximately 14,000 additional Nehmer class members to inform them about their rights to VA benefits due to Agent Orange exposure. To this end, NVLSP has mailed these individuals a copy of its Self-Help Guide on Agent Orange. Thus, NVLSP's staff has had extensive contact with thousands of Agent Orange claimants and is intimately familiar with the VA's processing of Agent Orange claims.

Our comments on this bill are as follows:

NVLSP strongly support the bill's removal of the 30-year limitation on the manifestation of respiratory cancers. The first reason we support this change is scientific. The chair of the Institute of Medicine (IOM) panel reporting the most recent findings of the IOM stated at the public presentation of the IOM's findings that there was no scientific basis for the current 30-year limit and that the limit was "completely arbitrary."

The second reason for our support is a practical one. We have seen many claims (especially claims for DIC filed by widows) that have been rejected by the VA because the cancer was not diagnosed until more than thirty years after the veteran left Vietnam. In the large majority of these cases, the cancer was in stage four when it was diagnosed and therefore the cancer was probably in existence within the thirty-year period. Many of the claimants in these cases could have prevailed even under the 30-year manifestation rule if they had obtained a medical opinion addressing when the cancer first manifested itself. But, unfortunately, many of these claimants were of limited means and/or did not understand how to pursue the denial of their claims. Many came from rural areas where sophisticated health care

is limited and there is little help available to deal with the subtle adjudication issue at hand.

NVLSP also strongly supports the provisions in S. 1091 that would eliminate any need for a Vietnam veteran or survivor to prove exposure to herbicide agents in claims for service connection or DIC. Finally, NVLSP strongly endorses the extension of the 10-year mandate in 38 U.S.C. § 1116(e) to 20 years. The recent reports from the IOM have provided significant insight into diseases related to herbicides in Vietnam. The IOM reports clearly indicate that more information on the health effects of dioxin exposure should become available in the next decade. Gaining additional knowledge is also important because the VA has begun to recognize that exposure to herbicides occurred in places outside of Vietnam and that certain presumptions are appropriate in those cases. See 66 Fed. Reg. 23 (May 8, 2001).

While NVLSP strongly endorses S. 1091, we strongly recommend two amendments to the bill.

1. DIC CLAIMANTS. S. 1091 does not explicitly state that its provisions apply to claims of survivors of deceased Vietnam veterans for dependency and indemnity compensation (DIC). Indeed, by referring to "each claim for disability compensation" in section 1(b)(1) and to "establishing service connection for a disability resulting from exposure to a herbicide agent" in section 1(c)(1)(B)(i), the bill could wrongly be read so that DIC claims are excluded. There is no reason to exclude survivors from the bill's provisions, and we urge the Committee to amend the bill to clarify the intent to make its provisions equally applicable to both disability and DIC claims.

2. THE EFFECTIVE DATE FOR AWARDS. Section 1(b)(2)(A) of S. 1091 states that "the effective date of the award shall be the date on which the claim would otherwise have been granted . . ." The date a claim is granted or should have been granted is not generally a factor in the assignment of an effective date for an award of benefits according to the provisions in the statute governing effective dates of awards—38 U.S.C. § 5110. In almost all cases, the effective date that 38 U.S.C. § 5110 would require is before the date a claim is granted. Thus, NVLSP strongly urges that this subsection be amended to provide that "the effective date of the award shall be the date that would have been assigned pursuant to section 5110 of title 38, United States Code, or other existing legal requirements if the claim had been granted on the date that it was denied as referred to in paragraph (1)."

S. 1093

NVLSP's only comments on S. 1093 are as follows. We do not know the extent to which the VA has, since November 9, 2000, notified claimants pursuant to the VCAA of the need to submit additional information in order to complete an application, but to the extent that it has, the retroactive effective date of the change in Section 4 could create serious due process problems. If a claimant were not informed in the past of a deadline for submission of information to complete an application, a retroactive effective date would be unduly harsh. We believe that amending the effective date to the date of enactment will eliminate any such due process problems.

Respectfully submitted,

BARTON F. STICHMAN,
DAVID F. ADDLESTONE,
Joint Executive Directors.

PREPARED STATEMENT OF DENISE NICHOLS, VICE CHAIRMAN, NATIONAL VIETNAM AND GULF WAR VETERANS COALITION

The National Vietnam and Gulf War Veterans Coalition, a coalition of 106 member groups including such groups as Viet Now, Rolling Thunder, Vietnam Veterans of the War, Inc, and Gulf War Veterans Groups nationally and internationally, have endorsed S409/HR612 The Gulf War Veterans Compensation Act of 2001.

In the 105th Congress, there were many hearings on the Gulf War Illnesses to include House efforts (Congressman Shay's Government Reform Committee Investigation) and multiple Senate Veterans Affairs Committee Hearings. In the hearings on the senate side at that time there was mention of a need for a blanket disability for the Gulf War Veterans. At the end of the session, legislative action and law was passed to send the Gulf War Veterans to the Institute for Medicine to review the Health consequences of over 20 known exposures. The Institute of Medicine completed their first study in November of last year on the Sarin, Depleted Uranium, PB tablets, and vaccines. Unfortunately, when the Veterans Affairs Administration awarded the contract to the IOM they limited them to the use of only peer reviewed

journal articles. This was probably related to national security concerns but it prevented the IOM from requesting and reviewing DOD unpublished research and reports on these exposures, which definitely hurt the gulf war veterans obtain service connection to diseases, known and unknown, related to these exposures. There were similarities seen with the Sarin Gas Victims of the Japan Subway incident.

Anthrax reactions are still being examined by the IOM after the House of Representative (Rep Shays subcommittee on Government Reform and the Full Government Reform Committee) and the door must be kept open for the Gulf War Veterans and for those that have had health consequences from the Anthrax Vaccine. Research is on going on the interactions of PB tablets and nerve agents and other exposures. Many Federally Funded Research projects are still not reported as completed and published.

We are still receiving inquiries weekly, if not more frequently from Gulf War Veterans both deployed and nondeployed and those that have received Anthrax vaccines who are just now realizing their symptoms and who have not yet reported into the VA or the DOD medical facilities for assistance. The veterans have as normal people, with chronic type disease processes, normal coping going on where if they can they keep continuing to try to do their normal activities and deny their symptoms as long as they can before their bodies can not continue.

The research and review ongoing at the IOM has not even gotten to the stage of considering the synergistic effects of multiple exposures.

It is imperative that we continue the present coverage for the veterans and extend the time presumption period of time another ten years until 2011. We need to also remember to extend the Priority Care to these veterans as is currently in place.

The symptoms list and the time period of the symptoms to be considered chronic will not be changed in this legislation, the bill simply seeks to codify two separate sections of The 38 CFR USC code (sections 117 and 118) for clarity to the VA adjudicators, in order that the importance of proper review of claims is fully implemented. Too many claims have been denied and the veterans are the ones that suffer unnecessarily. Since 1993, the Sense of the Congress has been to care for the Gulf War Veterans and to enact the benefit of the Doubt to the Veterans! It is to this government's advantage to rectify the errors of the past and to seek adequate and effective compensation for the Gulf War Veterans. The president in his campaign even stated that he did not want the Gulf War Veterans standing in line with hat in hand.

If we do not take these positive steps, the trust and faith in our government by both the active duty and the veterans will suffer. We have seen effects on recruitment and retention due to the fact that our veterans are not as well care for as they should be when they have put their life in harms way and have been damaged. This situation creates a vicious cycle where then the government has to then funnel more money into ads, educational benefits, and other recruitment and retention efforts in order to overcome a negative effect from failure to fully compensate and care for the veterans of a war/conflict.

The other portion of the bill is the effort to direct that every benefit of the doubt goes to the veteran. The symptoms are a constellation of symptoms and normally do not consist of just one or two symptoms, the majority of the veterans have had all of the symptoms listed and the epidemiological surveys have clearly shown that problem.

The last item of the bill 1-b- highlights the overlapping of the symptoms the gulf war veterans have with some of the diagnosed illnesses re Chronic Fatigue, Multiple Chemical Sensitivities, and other autoimmunological diseases. The Art and Science of Medicine does not guarantee 100 percent accurate or correct diagnosing and therefore if the symptoms are common and overlapping the veterans claims should not be thrown out for Undiagnosed Illnesses if they have received a diagnosis for a known illness that may or may not be an accurate diagnosis. Again, this seeks to give clear legal guidance to the VA adjudicators to give the benefit of the doubt to the veteran.

The Gulf War Veterans are ill and it is real. We should not have the veterans who are ill and need assistance fight their own government for the earned benefit that they EARNED by putting their bodies and life on the line for the United States Government (and its citizens), its national policies and security. We Recommend that this bill be Fast Tracked and passed into law now.

We must get passed the issue of compensation and into the other needs of the Gulf War Veterans such as complete and accurate diagnostic testing and medical treatment options. We have attached a list of these Identified needs and hope that other Senators and Representatives will take proactive action in these issues.

We would like to recommend that legislative steps be taken for the troops and veterans that did not serve in theater and who are ill, whether it is from anthrax

vaccine, other vaccines, pb tablets, or NBC exposures from secondary routes. These veterans have also been waiting for assistance and enacting a registry, priority care, and compensation is the next step. These steps may also help us further the research into undiagnosed illness and find the factor that may have caused the most damage or the key component to their illnesses. WE need to do this for National Security and for the future soldiers of this country and for the Citizens as well.

Thank you for your time and interest at today's hearings. We stand ready to testify in person at the next Senate or House Hearing on the Issue of Gulf War Veterans Compensation/Health and Investigations relating to it.

PREPARED STATEMENT OF DONALD SWEENEY, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES

Thank you Mr. Chairman and members of the Committee for the opportunity to comment on the provisions of Senate Bill 1088. The Association is grateful for the leadership that the Chairman and Ranking Member have provided on the topic addressed by the bill. Allowing accelerated payments is an excellent step in the right direction to resolving one of the major problems confronting the use of the Montgomery GI Bill.

Today's society demands that our Nation's veterans be competitive in the market place, especially in the high technology industry. To be so, they must initially acquire and, subsequently, periodically upgrade appropriate knowledge and skills. Many educational institutions and training establishments have addressed the demands of the high technology industry by developing concentrated, short-term entry level as well as advanced instruction. The costs that accompany such instruction are usually much greater on a monthly basis than those affiliated with a two or four year degree program. One way to offset the escalation in these costs is to provide the veteran an opportunity to utilize his or her VA educational benefits at an accelerated rate, which is the focus of S. 1088.

We strongly believed that the rules governing the administration of the GI Bill need to be flexible in providing our Nation's veterans as many choices as possible to reach their educational and career goals. We are pleased to provide our support for the provisions of S. 1088 and will work for the enactment of the bill.

Thank you again, Mr. Chairman, for the opportunity to comment.