S. HRG. 108–613

HEARING ON PENDING LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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HEARING ON PENDING LEGISLATION

THURSDAY, JULY 10, 2003

UNITED STATES SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 3:17 p.m., in room SR–418, Russell Senate Office Building, Hon. Patty Murray presiding.

Present: Senators Specter, Murray, and E. Benjamin Nelson of Nebraska.

Also Present: Senator Bill Nelson of Florida.

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

Senator MURRAY. This hearing will come to order. Let me just start by thanking all of our witnesses and the numerous people in attendance today for this hearing. I apologize for all of us who are late and unable to attend. There are so many committee hearings going on right now. Appropriations is marking up two hearings. We have had votes on the floor off and on and Senators are really struggling to try and get to all of the committee hearings. It does not mean anything to any of the bills that you are all here to support or to speak about. The Senators, I know, share with me a deep concern about making sure that these issues get addressed within this Congress. So I will note the many people in attendance at this office as well as our witnesses and let the other committee members know that you are here. We hope that several more will be arriving shortly.

I am going to speak to one bill in particular. I know Senator Nelson has a comment, and we will see at that point whether we have been able to pull away any Senators from their other very serious obligations today.

I am a co-sponsor of many of the bills before the Committee today, but I wanted to highlight one of them in particular, S. 517, which is the Francis W. Agnes Prisoner of War Act of 2003. This bill will correct a glaring injustice facing some former American prisoners of war, and it will reaffirm our commitment to all those Americans who were held in captivity while fighting for our freedom.

We know that those who have been prisoners of war often suffer medical problems many years later as a result of their captivity under inhumane conditions. Unfortunately, it took a long time for many ex-POW's to get the help that they need and that they deserve. In 1981, Congress began addressing this problem. It estab-

lished certain medical conditions as presumptive for POW's, but it required a very high level of research certainty, 95 percent, before veterans could get benefits based on their medical problems. As a result, many health problems common in POW's were and still are denied coverage.

Congress has taken some steps to fix this. It changed the standard for veterans of some conflicts. For example, the Vietnam veterans who were exposed to herbicides, Gulf War veterans who were exposed to unknown factors, now get the help that they need.

Unfortunately, Congress never fixed this problem for veterans of the Korean Conflict and World War II. So today these brave former POW's are facing medical conditions because of their captivity, but they are being held to a much higher standard for care than veterans of other conflicts. It is not fair and my bill will fix that glaring injustice.

I want to say a word about the veterans who are currently punished by the status quo. Today, World War II and Korean Conflict POW's are dying at a rate of 10 veterans a day. 85,000, 70 percent have already died in the 50 years since these wars, most without receiving any disability benefits.

Now, I am certainly not the only person who is working to correct this problem. The VA POW Advisory Committee, which was created by Congress back in 1981, has stated it is blatantly wrong to hold World War II and Korean Conflict POW's to a different and more stringent standard than Vietnam and Gulf War veterans. It has recommended that all POW's be held to the same medical presumption standards.

The proposed legislation, S. 517, the Prisoner of War Benefits Act of 2003 will help correct this injustice facing our ex-POW's of World War II and the Korean Conflict. First, it would add five additional medical conditions to the presumptive list. Secondly, it would eliminate the minimum time held as a POW requirement to qualify for benefits. And finally, this legislation is complementary to legislation introduced in the House of Representatives by Congressman Michael Bilirakis, H.R. 348. Here in the Senate, our bill is endorsed by the American ex-Prisoners of War.

I also want this Committee to know that I named this bill after a great champion for veterans, and particularly for our former POW's. Fran Agnes survived as a prisoner of war for three-and-a-half years. He was a survivor of the Bataan death march and two POW camps in the Philippines. Fran Agnes lived a life of service to his family, to his fellow veterans, and to his community. In all of the time Fran and I spent together, he never asked me to do anything for himself. It was always something he wanted me to do for other veterans and their families.

He often asked me to help the widows of our veterans, he asked me to support the POWs' lawsuit against the Japanese companies that profited from slave labor during World War II, and he would ask me about helping another veteran who might be having a problem with the VA. On February 9th of this year, Fran passed away and was laid to rest in the Tahoma National Cemetery with full military honors. Passing S. 517 will be a fitting tribute to Fran Agnes and all the other thousands of veterans who endured as prisoners of war and sacrificed for our liberty and our freedom.

Again, a number of hearings are being held today and I will not be able to stay very long for this committee. I know we are waiting for other committee members to attend, but I want to register my strong support for S. 517. It really is the right thing to do for those who have sacrificed their liberty to protect our country.

With that I will recognize Senator Nelson.

Chairman SPECTER. Madam Chairman, may I interrupt for just a moment?

[Laughter.]

Senator MURRAY. I would like to introduce to you the Chairman of the Committee.

OPENING STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM PENNSYLVANIA

Chairman SPECTER. First, I would like to thank you for acting as chairwoman, and secondly to explain to everybody assembled, I think as you already know, the Judiciary Committee is in the midst of marking up the asbestos bill. We are under great pressure to try to attend that markup. They require us to attend, even beyond the so-called quorum, to be there and participate in votes on amendments. When this hearing was scheduled there was no expectation that the Judiciary Committee would be meeting this afternoon. Our customary practice is to finish up the executive session of Judiciary in the morning. But Senator Hatch has reconvened the committee and we are in session. That, and voting, has accounted for the delay.

So I want to thank you, Senator Murray, for filling in. Thank you. I am going to go back to the other hearing.

Senator MURRAY. Thank you, Mr. Chairman.

Senator Nelson.

OPENING STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator NELSON OF FLORIDA. Thank you, Madam Chairman. Madam Chairman, I have run into a very serious situation that requires a policy judgment on the part of the committee and the Senate. Let me describe it.

Under existing law, a veteran's disability benefit cannot be assigned to someone else. There is a reason for that. The disability is to help the veteran with the particular disability suffered as a result of wounds in the service to the country. Therefore, existing law says that that veteran, that disability benefit that comes to him monthly, to him or her, should not be assigned and cannot be. So that is the intent of the existing law.

But with laws, people find ways to get around them. What has happened is that by the creation of a joint banking account in the name of the veteran of which the monthly disability payment is put into the bank, and by creating a joint bank account with someone else, then they can take out that disability payment. What, in fact, is happening is that enterprises have been created by which they come to the veteran and say, "We know that you need some cash right now. If you will give us the right to your veteran's benefit over the course of the next X number of years, we will give you upfront cash."

The problem is, they do not give them an equal amount of cash, and it is not even discounted at normal interest rates. It is hugely discounted so the veteran gets a mere pittance of a percentage of the total value of that benefit over 8 or 10 years. It completely thwarts the purpose of the existing law, which is that the veteran ought to be the one benefiting from that disability payment that is being paid by the Federal Government.

So that is the scheme. Last year, you all were kind enough to—and it was specifically Senator Specter—was kind enough to make this bill a part of the package, and when it went to conference the House insisted that it come out. So I wanted to come back and we are going to try it again.

Now there is something that has happened in the meantime. The National Consumer Law Center has studied a range of financial and commercial scams directed not only at veterans, but at military and their families. They have also examined this scheme that I have just explained. They concluded that the lump sum pension schemes that are severely discounted are illegal under a variety of Federal and State truth-in-lending, usury, or consumer protection laws. But they agree that there is an ambiguity in the law that explains the absence of enforcement efforts.

So we have got a terrible contravention of the spirit, indeed, the letter of existing law. Veterans are being taken advantage of by a fast-talking person who will come at a time when they need cash, and it thwarts the purpose of the disability payment system when they do not get their payments over time, because instead, they have taken the lure of the quick cash scheme. Then, of course, the Federal Government is getting its intent completely violated by virtue of the fact that the veteran is not getting the benefit for which the veteran is entitled as a means of some compensation for their tremendous service to our country.

It can easily be fixed. Senator Specter has been very kind to indicate that he wants to do that. If you all so choose, I would hope that you would be very hard-nosed once you got into the conference committee. I have no idea where they were coming from in the House last year insisting that this provision not come out of the final bill. But the problem was that it was in the last two days of the session and there was the rush to get everything done.

So thank you, Madam Chairman, for allowing me to explain this.

Senator MURRAY. Thank you, Senator Nelson, for that excellent statement. I really appreciate your coming here today and giving that to us and wish you the best with that and look forward to working with you.

I have been joined by my colleague, the other Senator B. Nelson, today. We are delighted to have you join us. As I have explained to the audience, there are numerous committee hearings going on and a lot of activity on the floor so we have been coming and going. I have to leave now at this time as well.

I do want all the members of the audience to know that Senator Nelson will be able to stay for a short time and get some of the testimony. For any of you who are here that have testimony, we will leave the committee record open so that that testimony can be submitted. I will make sure that I let all committee members know

that that is available for them and their staffs to have access to. So it will not get lost, we assure you.

With that, it has been a deep honor to chair this committee, and not only that, but to hand it over to a Democratic colleague to chair this afternoon, Senator Nelson.

[Laughter.]

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

Senator NELSON OF NEBRASKA. Thank you very much, Madam Chairman. As Senator Murray has said, this is an unusual time. It appears that we have more markups and committee hearings than at one particular moment. I think it was Senator Dan Akaka who said that he has not yet learned how to dance at two weddings at the same time, and this is a place that would challenge you to learn how do that, I can tell you.

I want to thank the witnesses for being here and, of course, we will make your statements, to the extent that we are not able to get them in before I have to go unless somebody else arrives, part of the record, the same as with the others.

I am a co-sponsor also with the other Senator Nelson of S. 257. I certainly appreciate what he has said about that bill. I think it is something that needs to be addressed and I think we will—hopefully it will pass out of the Senate again as it did last year, but hopefully this time, unlike last time, it will survive the conference.

I would like now to speak just for a second about S. 806. At a time when we are experiencing an increased level of deployments we need to be particularly sensitive to the hardships that the service members incur as a result of being deployed more frequently and for extended periods of time. I introduced the Deployed Service Member Financial Security and Education Act to compensate both active and reserve military personnel for frequent and lengthy deployments.

As you know, because of the urgent nature of the issue, a portion of my bill was included in the defense authorization for 2004 authorizing a new special pay of $1,000 per month for active and reserve component military personnel who are deployed for 191 days or more, or active and reserve component military personnel who are deployed for 401 or more days of a rolling 730-day period; numbers that heretofore I do not think have been used in terms of deployment, and certainly not in modern times that I am aware of. And for reserve component military personnel who are mobilized for a second time within a year of being released from an earlier call up. Once again, something that I am sure has happened in the past, but perhaps not with the apparent frequency of the current time.

I appreciated the support of this provision that we received because it directly assists service members and families when dealing with the difficulties of multiple deployments. At a time when we have got service members deployed in the Sinai, in Germany, on the Korean peninsula, in Bosnia, Afghanistan, and Iraq, and Kuwait, and perhaps Liberia, we must, I think, take a strong stand in favor of the service members, as this would permit us to do.

In his written testimony, Deputy Assistant Secretary Duehring pointed out that there is a voluntary program in place to handle individual cases when student reservists have an issue with an institution of higher learning. We have found that institutions of higher learning were in some cases not giving back tuition when service members had their educational pursuits interrupted.

So I appreciate the current voluntary forum, but it addresses the issue after a problem has arrived and it may not be consistently applied and we may not find out about every one of these situations. To avoid having that happen, I think it is important to correct the problem before it becomes an educational concern and/or a fear of our deployed reservists. Voluntary forums are great, but as I think we all know, they are not absolute guarantees. It is a relatively modest proposal that will assist the service member.

I would like to end my remarks by thanking all the members of the Armed Services Committee and the families that have been supportive. We are prepared to now move forward. The members of the VA and the DoD, we are prepared to take your brief statements. We will adjourn after these statements, so have you selected—Mr. Duehring, are you the first on the line?

STATEMENT OF CRAIG W. DUEHRING, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR RESERVE AFFAIRS, DEPARTMENT OF DEFENSE

Mr. DUEHRING. Sir, I believe, Mr. Chairman, I believe I drew the short straw so I will begin. I have submitted a longer testimony for inclusion in the record, if that is permitted. What I have done is just extracted five points out of that to highlight.

The Department of Defense supports the re-enactment of the Soldiers and Sailors Civil Relief Act of 1940, which I will call the SSCRA, as the Service Members Civil Relief Act. The need to modernize the language of the Act, incorporate over 60 years of case law, and add generally accepted practices is evident. The Department believes both S. 792 and S. 1136 accomplish this goal and would like to thank the committee and its staff for their work on this important effort. The Department of Defense has only a few comments regarding specific provisions of S. 792, S. 1136, and Section 3 of S. 806.

First, the Department prefers S. 1136's requirements regarding notifying members of the benefits of the Act in Section 105 over the notification requirement in Section 105 of S. 792. We appreciate S. 1136's recognition that the Department's current approach of notifying our members to the provisions of SSCRA through recurring mobilization and deployment briefings and other command information media has been effective and that an additional requirement for written notification is unnecessary.

Second, the Department prefers Section 301 of S. 1136 over Section 301 of S. 792 because it includes an automatic inflation adjustment to the maximum monthly rental amount for leases covered by that section's eviction protections. Tying the maximum rental amount to the basic allowance for housing, BAH, will result in extending this protection to more members who are stationed in high-cost areas, because that allowance is based on rental costs in the area where he or she is stationed.

Number three, we believe that Section 305(b) of S. 1136 can be improved by amending it to allow termination of automobile leases only when the period of active duty military service exceeds a certain threshold, perhaps 180 days. As written, the section would allow least termination for short periods of active duty when the member does not lose the use of a vehicle or loses it for only a short time. Applying the termination provision only to longer periods of active duty when members are more likely to lose the use of their vehicles is more consistent with the SSCRA's historic balance between service members and those they do business with, a balance that has resulted in widespread support for SSCRA within the business community.

Fourth, the Department defers to the Department of Education on Section 207(a)(2) of S. 1136 and Section 3(a) of S. 806 which would extend the 6 percent interest rate cap to federally-insured student loans. We note that while the interest rate cap does not currently apply to such loans, the Department of Education has a policy of, during periods of mobilization, requiring complete forbearance of interest and principal repayment on federally-insured student loans for a period of active service up to one year with extensions possible. Unlike the interest rate cap, this DOE policy helps service members even when interest rates are below 6 percent.

Finally, the Department also defers to the Department of Education on Section 707 of S. 1136 which would require institutions of higher education to re-enroll students who left school to perform active duty service and to allow completion of unfinished courses at no additional cost, and on Sections 3(b) of S. 806, which addresses the same concern with a more detailed set of requirements, including leaves of absence, restoration of educational status, and refunds for uncompleted coursework.

We note though that the Department has worked closely with the educational community, State governors, and the service members opportunity colleges, SOC, a DoD-funded consortium of colleges and universities established in 1972 on a voluntary program for taking care of reserve component members who must leave school upon mobilization. We believe SOC provides us with a variety of options that have met the needs of our student population for many years.

I would again like to thank the committee and its staff for all the effort that has gone into these important bills. I will be happy to answer questions that you may have.

[The prepared statement of Mr. Duehring follows:]

THE PREPARED STATEMENT OF CRAIG W. DUEHRING, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR RESERVE AFFAIRS, DEPARTMENT OF DEFENSE

Mr. Chairman and members of the Committee, thank you for giving me the opportunity to come before you this morning to discuss S. 792 and S. 1136, two versions of the Service members Civil Relief Act, and section 3 of S. 806, the Deployed Service Members Financial Security and Education Act of 2003.

The Department of Defense supports the reenactment of the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) as the Service members Civil Relief Act. The need to modernize the language of the Act, incorporate over 60 years of case law, and add generally accepted practices is evident. The Department believes both S. 792 and S. 1136 accomplish this goal and would like to thank the Committee and its staff for their work on this important effort.

The SSCRA has been an essential ingredient in the total quality of life package for our military men and women, and their families, since its passage. In passing this Act and its Civil War and World War I era predecessors, Congress recognized that active military service may cause severe, often insurmountable, problems in handling personal affairs back home: frequent involuntary moves, extended deployments overseas, and long separations from families, sometimes with little advance notice. Congress also recognized the need to have military men and women focused on their operational mission free from worry about the welfare of their families or their personal affairs.

Congress addressed these problems adequately and equitably through the Act's skillfully crafted balance among the needs of our nation for a strong national defense, the needs of service members—and their families—for security in their personal affairs, and the needs of those who have dealt with and depend upon service members for fulfillment of their obligations.

S. 792 and S. 1136 in large part maintain this important balance while addressing three areas where our experience with the Act indicates that change is needed: clarifying and simplifying the language; incorporating generally accepted procedures; and updating the Act to reflect 60 years of change in America. With the ongoing Global War on Terrorism and reserve mobilization, now is a good time to update and clarify the Act so it can remain vital and continue to serve the needs of military members and those with whom they do business.

The questions most frequently asked by service members, their families, and those who deal with them reveal that parts of the Act are difficult to read and understand, and therefore difficult to follow. It is apparent from these questions that the entire Act needs to be rewritten in plain English and in modern legislative drafting form. S. 792 and S. 1136 redraft each section, updating the language and removing much ambiguity.

Additionally, the Act does not provide necessary procedural guidance in many areas. For example, although the Act protects service members with its stay of proceedings provision, it does not explain how to go about obtaining the needed relief. S. 792 and S. 1136 provide this missing procedural guidance.

Finally, the world of 1940 could not have foreseen all the changes in American life that more than 60 years of technological advances and business practices would bring. The extensive use of leases for automobiles and business equipment could not possibly have been imagined over 60 years ago. S. 792 and S. 1136 reflect over 60 years of progress in America.

The Department of Defense has only a few comments regarding specific provisions of S. 792, S. 1136, and section 3 of S. 806.

First, the Department prefers S. 1136's requirement regarding notifying members of the benefits of the Act in section 105 over the notification requirement in section 105 of S. 792. We appreciate S. 1136's recognition that the Department's current approach of notifying our members of the provisions of the SSCRA through recurring mobilization and deployment briefings and other command information media has been effective and that an additional requirement for written notification is unnecessary.

Second, the Department prefers section 301 of S. 1136 over section 301 of S. 792 because it includes an automatic inflation adjustment to the maximum monthly rental amount for leases covered by that section's eviction protections. Tying the maximum rental amount to the Basic Allowance for Housing will result in extending this protection to more members who are stationed in high cost areas because that allowance is based on rental costs in the area where he or she is stationed.

Third, we believe that section 305(b) of S. 1136 can be improved by amending it to allow termination of automobile leases only when the period of active duty military service exceeds a certain threshold, perhaps 180 days. As written, that section would allow lease termination for short periods of active duty when the member does not lose the use of a vehicle or loses it for only a short time. Applying the termination provision only to longer periods of active duty, when members are more likely to lose the use of their vehicles, is more consistent with the SSCRA's historical balance between service members and those they do business with, a balance that has resulted in widespread support for the SSCRA within the business community. Unlike the real property pre-service lease termination provision, for which there is not a minimum period of active duty, the automobile lease termination provision applies to movable, depreciable property, justifying a minimum period of active duty to ensure that the provision applies to those members who really need it and to reduce its cost to the lease financing community.

Fourth, the Department defers to the Department of Education on section 207(a)(2) of S. 1136 and section 3(a) of S. 806, which would extend the six percent interest rate cap to federally-insured student loans. We note that while the interest

rate cap does not currently apply to such loans, the Department of Education (DOE) has a policy of, during periods of mobilization, requiring complete forbearance of interest and principal repayment on federally-insured student loans for a period of active service, up to one year, with extensions possible. Unlike the interest rate cap, this DOE policy helps service members even when interest rates are below six percent.

Finally, the Department also defers to the Department of Education on section 707 of S. 1136, which would require institutions of higher education to reenroll students who left school to perform active duty service and to allow completion of unfinished courses at no additional cost, and on section 3(b) of S. 806, which addresses the same concern with a more detailed set of requirements, including leaves of absence, restoration of educational status, and refunds for uncompleted course work. We note, though, that the Department has worked closely with the educational community, state governors, and the Service Members Opportunity Colleges (SOC), a DoD-funded consortium of colleges and universities established in 1972, on a voluntary program for taking care of reserve component members who must leave school upon mobilization. Under this very effective program, which covers the same elements as section 707 of S. 1136 and section 3(b) of S. 806, SOC is the focal point for handling individual cases when student-reservists have a problem with an institution. Section 207 of the National Science Foundation Authorization Act of 1998 (Public Law 105–207), directed the NSF to convene a forum of government officials, representatives of the higher education community, and members of the Armed Forces reserve components to discuss and seek consensus on an appropriate resolution to problems related to the academic standing and financial obligations of reservists called to active duty. The forum concluded it was best to seek solutions through enhanced communications between DoD and the postsecondary education community and did not recommend legislation.

I would again like to thank the Committee and its staff for all of the effort that has gone into these important bills. We appreciate this opportunity to discuss them with you.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JIM BUNNING TO CRAIG W. DUERHING

Question:. G.I. Bill educational benefits are an important recruiting tool for the military. It has often been suggested that service members should be able to freely transfer their educational benefits to their spouse or children. Would the Defense Department be interested in such a benefit to recruit and retain quality service members?

Answer: The authority to transfer educational benefits to a member's spouse and children was enacted in section 654 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1153). This provision amended chapter 30 of title 38, United States Code, to give the Secretaries of the Military Departments, the Secretary of Homeland Security, the Secretary of Health and Human Services and the Secretary of Commerce concerned the discretionary authority to permit a member in a critical skill designated by the Secretary concerned and who is entitled to basic educational assistance to transfer up to eighteen months of Montgomery GI Bill eligibility to the member's spouse, children or a combination of the spouse and children.

The Air Force conducted a limited implementation of this authority to determine its effectiveness in improving recruiting and retention. During this test, the Air Force found that this new authority had limited effect on helping them achieve their personnel management objectives. Although none of the Military Departments are currently using this authority, it is a recruiting and retention tool that is available to them.

Senator NELSON OF NEBRASKA. Mr. Duehring, you were one second short of five minutes and you cannot beat that. I appreciate it very, very much.

Admiral Cooper, I believe you may be next and last; is that correct?

Mr. COOPER. I guess so, sir. He had three things to talk about. I only have 19.

[Laughter.]

STATEMENT OF DANIEL L. COOPER, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY JOHN W. NICHOLSON, UNDER SECRETARY FOR MEMORIAL AFFAIRS; JOHN H. THOMPSON, DEPUTY GENERAL COUNSEL; AND RON HENKE, DIRECTOR OF COMPENSATION

Mr. COOPER. Thank you very much for the opportunity to testify today on several bills of great interest to the veterans. I am accompanied by Mr. Jack Thompson, who is a Deputy Counsel, and General John Nicholson, the Under Secretary for Memorial Affairs, and Mr. Ron Henke, the Director of Compensation in my outfit. My written testimony goes into substantial detail on each of the 19 bills under consideration. In respect for your time here I will try not to reiterate that complete detail now. Rather, I will summarize the VA positions on the various measures so that the committee can direct questions to any areas where you might want to. I respectfully request that my written testimony be placed in the record.

Senator NELSON OF NEBRASKA. Without objection.

Mr. COOPER. I am pleased to state the VA fully supports several of the measures under consideration today. We have proposed and strongly support S. 517, improving benefits for former POW's, and S. 1133, which contains a number of VA's legislative proposals. We support S. 249, reinstating DIC benefits to remarried survivors over the age of 55; S. 1131, the annual cost of living allowance for compensation, or COLA, increases for each year; and S. 1213 which would provide compensation and burial benefits to Filipino veterans residing in the United States.

We also support portions of several other measures, specifically, the proposal in 1124 to increase the burial and funeral allowances for service-connected deaths to $3,700, the provision in S. 1188 that eliminates the two-year limitation on accrued benefits, and the provision of S. 1239 on prohibition against compensation for substance abuse disabilities.

There is merit in the intent of several of the other proposals, but we cannot support them because they are not in the President's budget and would require offsetting savings. These proposals are S. 1281, Section 2 on new presumptions for ex-prisoners of war; S. 1132 Sections 2 and 3 on monthly pay rates and entitlements for Chapter 35 dependents' education benefits; and Section 4 of 1132 on increased DIC for surviving spouses with children.

S. 1136 and S. 792 outline comprehensive revisions to the Soldiers and Sailors Relief Act, as you heard. Generally, we defer to DoD in these areas. There is one exception. VA administers the provisions of the Civil Relief Act pertaining to insurance protection. We generally support the proposed protection increase to $250,000, but we do have several concerns of a technical nature which I have stated carefully in my written report. These concerns are described in that testimony.

For reasons discussed in my written testimony, we cannot support the following measures:

S. 257 relating to veterans assignment of benefits to third parties. In fact, we do not recognize any third parties. We give the

benefits to the veteran. What they do after that, of course, we cannot control.

S. 978 establishing home loan guarantees for residential cooperatives. That is stated very carefully in my testimony. The reason is, we have nothing that they hold onto. That is, a cooperative is a group of people. Therefore, whereas in condominiums you have the property, there is no property that goes with a cooperative.

S. 1282 relating to national cemeteries in underserved areas and S. 1360 relating to the redefining of notice agreement, or NODS, in the VA appeals process.

Please excuse my brevity. I am coming in under a minute. So on these many important issues I have not only skimmed through the issues, but I have done so with respect to your time. As I previously mentioned, my written testimony is quite extensive and offers far greater detail to these various provisions.

At this point I will be glad to answer any questions you may have.

[The prepared statement of Mr. Cooper follows:]

THE PREPARED STATEMENT OF DANIEL L. COOPER, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on several bills of great interest to veterans.

S. 249

This bill would amend 38 U.S.C. § 103(d) to remove, for surviving spouses who remarry after age 55, the bar on the payment of Dependency and Indemnity Compensation (DIC) to surviving spouses who remarry. VA has no objection to this bill in principle, but because the mandatory costs are not included in the President's FY 2004 Budget, we cannot support enactment without a corresponding offset.

The DIC program provides tax-free monthly benefits to the surviving spouse of a veteran who dies in or as a result of military service. Current law denies DIC during periods of the surviving spouse's subsequent marriage or (in cases not involving remarriage) during periods when the surviving spouse lives with another person and holds himself or herself out openly to the public to be that person's spouse.

DIC was created for two purposes: to replace family income lost due to the service member's or veteran's death and to serve as reparation for the death. In 1956, the Servicemen's and Veterans' Survivor Benefits Act replaced the preexisting death-compensation program and the $10,000 Servicemen's-Indemnity-Act payment with DIC. The House Select Committee on Survivor Benefits explained, in a 1955 report, H.R. Rep. No. 84–993, that "these two separate and distinct survivor benefit programs . . . would become one. To this limited extent one of the objectives of the committee, greater simplicity, would be accomplished and the long-term interest and equity of survivors protected." In this manner, DIC was intended to meet, at least in part, the Government's obligation to those who died in the defense of our country. An expansion of DIC eligibility would well serve this purpose for the following reasons.

S. 249 would assist surviving spouses by allowing those over age 55 to maintain their standards of living, thus removing any economic disincentive to remarriage. A veteran's surviving spouse would be able to subsequently marry without fear of economic deprivation, and the elderly couple could live together in comfort and dignity—legally married.

Benefits for surviving spouses of military retirees through the Department of Defense's (DoD) Survivor Benefit Plan do not terminate if remarriage takes place at age 55 or thereafter. Social Security survivors' benefits do not terminate if remarriage takes place at age 60 or thereafter. S. 249 would thus better align DIC benefits with benefits provided to surviving spouses of military retirees under DoD's Survivor Benefit Plan and to surviving spouses under the Social Security program.

Enactment of S. 249 could result in benefit costs of as much as $23.9 million during FY 2004 and $1.1 billion during the period FY 2004 through 2013.

S. 257

S. 257, the "Veterans Benefits and Pensions Protection Act of 2003," would amend VA's anti-assignment statute, 38 U.S.C. § 15301, by adding language to prohibit certain agreements, as well as collateral security arrangements, between persons receiving monetary VA benefits and third parties. Third parties use these agreements to acquire for consideration rights to receive monetary benefits paid to VA beneficiaries. Besides prohibiting these agreements and arrangements, S. 257 would subject third parties who enter into such agreements or arrangements to penalties of fine, imprisonment, or both. The bill would also require VA to "carry out a program of outreach" to inform veterans and other beneficiaries of the prohibition and would authorize $3,000,000 in appropriations for such outreach for FY 2004 through 2008.

Let me first assure the Committee that, because 38 U.S.C. § 15301 generally bars assignment of VA benefits, VA regional offices have not and do not honor such agreements. Nevertheless, once funds are paid to a beneficiary, VA lacks the ability to oversee how those funds are used, unless the beneficiary has been found mentally incompetent. While we would certainly counsel veterans, their dependents, and survivors to very carefully consider the full ramifications of assigning their benefits, we believe they should be free to decide how best to manage their own personal finances. Therefore, we do not support enactment of S. 257.

S. 517 AND S. 1281 POW'S—MINIMUM CONFINEMENT PERIODS

Section 2(a) and (b) of S. 517 would eliminate the current requirements that a former prisoner of war (POW) be detained or interned for at least thirty days in order to be eligible for a presumption of service connection for certain diseases, and at least ninety days in order to be eligible to receive VA care and treatment for a dental condition or disability.

VA supports section 2(a) and (b) of S. 517, which are virtually identical to provisions in a draft bill we recently submitted to Congress. Currently, 38 U.S.C. § 1112(b) provides a presumption of service connection for certain diseases for former POW's who were detained or interned for at least thirty days. Also, 38 U.S.C. § 1712(a)(1)(F) provides eligibility for VA outpatient dental care services and treatment, and related dental appliances for dental conditions or disabilities of former POW's who were detained or interned for at least ninety days. Recent military engagements involving the United States instruct that, because of our Nation's advanced technology and superior warfare capability, actual combat may end in a far shorter period of time than in previous wars. As a result of this phenomenon, American soldiers who are detained or interned by the enemy are likely to be held for less than 90 days, or even 30 days, as was the case with the United States soldiers held as POW's during Operation Iraqi Freedom. Recent experience has indicated, however, that, despite the shorter duration, the conditions of detention or internment may be such that these former POW's may suffer from many of the same diseases for which a presumption of service connection is available pursuant to section 1112(b) and from dental conditions or disabilities for which dental care and treatment is currently available pursuant to section 1712(a)(1)(F) for former POW's who were held for longer periods. We believe it would be equitable to eliminate the requirement of a particular duration of detention or internment so that all former POW's would be eligible for the presumption of service connection for the diseases specified in section 1112(b) and for dental care and treatment pursuant to section 1712(a)(1)(F). We estimate that enactment of section 2(a) and (b) would have mandatory costs of $3.3 million in FY 2004 and $61 million over ten years.

POW'S—DISEASES PRESUMED SERVICE CONNECTED

Section 2(c) of S. 517 would add heart disease, stroke, liver disease, diabetes (type 2), and osteoporosis to the list of diseases for which a presumption of service connection is available pursuant to 38 U.S.C. § 1112(b). Section 2 of S. 1281 would add cardiovascular disease (heart disease), cerebrovascular disease (stroke), and chronic liver disease, including cirrhosis and primary liver carcinoma, to the presumptive diseases in section 1112(b).

Section 2(c) of S. 517 would also authorize the Secretary to promulgate regulations creating a presumption of service connection for any other disease which the Secretary determines has a "positive association with the experience of being a [POW]." A "positive association" would exist "if the credible evidence for the association is equal to or outweighs the credible evidence against the association." In deciding whether to promulgate such a regulation, the Secretary would be required to consider the recommendations of the Advisory Committee on Former POW's and any other available sound medical and scientific information and analyses. VA

would have 60 days from receipt of an Advisory Committee recommendation to make a determination as to whether a presumption of service connection is warranted, and then another 60 days to publish in the *Federal Register* either proposed regulations, if VA determines that a presumption is warranted, or a notice explaining the scientific basis for a determination that a presumption is not warranted.

VA continues to investigate the long-term health consequences of the conditions of POW internment or detention, such as malnutrition, vitamin deficiency, and exposure to parasitic and infectious diseases. In severe forms, such conditions of internment or detention could likely be associated with the conditions specified in section 2 (c) of S. 517 and section 2 of S. 1281. It is also true that many POW's suffered physical and mental torture and maltreatment, which could lead to long-term stress and anxiety, which in turn have been shown to have adverse effects on the health of many individuals. VA is committed to properly compensating former POW's for the disabilities resulting from their service to our Nation. In light of the potential connection between the POW experience and the diseases listed in the subject bills, we could support enactment of section 2 (c) of S. 517 and section 2 of S. 1281 only if the Committee can identify offsetting savings, since most of these costs are not in the President's FY 2004 Budget. We estimate that enactment of all of the S. 517 provisions, i.e., elimination of the minimum confinement period and additional diseases presumed to be service connected, would result in benefit costs of $29.4 million in FY 2004 and $517.3 million over the ten-year period FY 2004 through FY 2013. If S. 517 were enacted, the most significant presumptions of S. 1281 would be addressed. If the S. 517 presumptions were not enacted, we estimate the benefit costs of S. 1281 would be $20.9 million in FY 2004 and $364.7 million over ten years.

We also note that, in its December 20, 2002 report, the Advisory Committee on Former POW's recommended to VA that cardiovascular disease be established as a presumptive condition. In response to this and previous recommendations by the Advisory Committee to add presumptive conditions, VA is establishing a Workgroup on Medical Presumptive Conditions in Former POW's to establish procedures, guidelines, and standards to determine whether a disease should be designated by VA as presumptively service connected in former POW's. We contemplate that the Workgroup will be comprised of representatives of the Under Secretaries for Benefits and Health, General Counsel, and Chairman of the Advisory Committee on Former POW's. The activities of this Workgroup will assist VA in determining whether scientific and medical evidence supports further expansion of the list of conditions presumed to be service connected in former POW's. In our view, these activities will render unnecessary the procedures for establishment of new presumptions based on consideration of recommendations from the Advisory Committee on Former POW's, as proposed in sectionE2 (c) of S. 517.

REVIEW OF DOSE RECONSTRUCTION PROGRAM OF DEPARTMENT OF DEFENSE

Section 3 of S. 1281 would require the Secretary of Defense and the Secretary of Veterans Affairs to conduct a joint review of the mission, procedures, and administration of the DoD Dose Reconstruction Program for preparing radiation dose estimates and to report to Congress on their findings within 90 days after the bill is enacted. The bill would also require the Secretaries to provide for ongoing independent review and oversight of the Dose Reconstruction Program and would require establishment of an advisory board as one method of providing such ongoing review. VA does not support this provision.

DoD has statutory responsibility for preparing radiation dose estimates. VA uses those dose estimates in adjudicating some claims for service-connected benefits filed by veterans exposed to radiation in service or their family members. A recent review by the National Research Council (NRC) of the National Academy of Sciences identified several concerns regarding certain methods and assumptions employed by DoD that may have caused underestimation of the upper-bound limits of exposure in some cases. We understand that DoD is presently in the process of revising its Dose Reconstruction Program to address the concerns identified by the NRC. Correspondingly, VA is working to identify claims previously decided based on dose reconstructions from DoD. Once we have identified those claims, we intend to seek revised dose estimates from DoD, if the claimant potentially could benefit from a revised dose estimate.

We believe the provisions of this legislation requiring VA and DoD to jointly review and report on the Dose Reconstruction Program would be superfluous in view of the comprehensive NRC report. The committee of highly qualified experts assembled by the NRC spent more than two years reviewing the Dose Reconstruction Program. The NRC report discusses in detail the specific concerns identified in the Dose

Reconstruction Program and provides a clear framework for DoD's current efforts to revise its program. We do not believe that a further review of the same matters by VA and DoD would provide any significant additional information to aid in identifying and correcting any problems in the Dose Reconstruction Program. The oversight responsibilities that would be required by this legislation would unnecessarily divert VA resources from the task of identifying and reviewing potentially affected claims.

Dose estimates prepared by DoD are often an important piece of evidence VA must consider in adjudicating claims for benefits based on radiation exposure. In view of the importance of this information and the difficult and sensitive nature of the adjudicative issues involved in such claims, we consider it important to avoid even the appearance that VA is influencing DoD's procedures and methods of preparing the dose estimates. Assigning VA an oversight role in matters affecting the creation of such evidence may result in a perception among some veterans that the estimates lack objectivity.

For these reasons, we do not support this provision. We estimate that this provision, if enacted, would result in approximately $350,000 in annual costs to VA.

DISPOSITION OF RANCH HAND STUDY

Section 4 of S. 1281 would require VA, not later than 60 days after the date of the enactment of this Act, to contract with the National Academy of Sciences (NAS), or other appropriate organization, to determine the appropriate disposition of the Air Force's well-known "Ranch Hand" epidemiologic study when it terminates in 2006. Among other things, the NAS would be required to address, and ultimately report on, the advisability of extending the study and the disposition of the specimens, medical records, and other data collected in the course of this long-term study.

VA generally supports the suggestion for independent review of the merits of the Ranch Hand study, as proposed. VA has never been involved in the funding, conduct, or direction of DoD's "Ranch Hand" study. As a result, VA cannot provide close oversight of the NAS contract, as proposed in section 4 of the bill. Were VA required to enter into the contract required by section 4, we estimate the costs associated with enactment of this provision to be $1.5 million, which would be redirected from veteran's Medical Care funds.

Section 5 of the bill would require both VA and DoD to make available to NAS in each of fiscal years 2004 through 2013, $250,000 each from their respective appropriations for the Medical Follow-Up Agency (MFUA). MFUA would use these funds for epidemiological research on members of the Armed Forces and veterans.

We support the continued funding of the MFUA whose independence and outstanding scientific reputation lend a high degree of credibility to critical studies that have a direct bearing on VA health care and compensation policies. As you know, the MFUA has been essential to VA for conducting a number of critical studies on veterans' health issues, including a study on Shipboard Hazard and Defense (SHAD) veterans, studies on actual hepatitis rates among veterans, and a congressionally mandated study on hearing loss among military personnel. In short, the MFUA is a critical asset for VA.

S. 792, S. 806 AND S. 1136

S. 792 and S. 1136 are very similar bills that recodify and revise the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), while renaming it the "Service members Civil Relief Act" (SCRA). Most of the protections provided under the SCRA would be afforded to current members of the uniformed services and to their dependents. DoD, not VA, is the Federal agency with the primary interest in these bills, and we defer to DoD on all such matters that fall within DoD's jurisdiction.

There is, however, one provision of the SSCRA, Article IV-Insurance, that VA is charged with administering. I would like to summarize for the Committee at this time our views on the insurance-protection provisions of S. 792 and S. 1136.

Under section 402(c) of the SCRA, the maximum amount of life insurance coverage protection provided would be increased from $10,000 to $250,000. The original intent of the SSCRA with regard to life insurance protection was to provide individuals summoned to active duty with a guarantee that their commercial life insurance coverage would not lapse for non-payment of premiums during service. While the provision of the current statute that provides protection for up to $10,000 of coverage under certain types of policies was of greater significance during the 1940s and 1950s, it has become less of a benefit for those serving in the Armed Forces today and has been little used by service personnel. This is probably because the amounts of insurance and types of coverage, including the availability of coverage

up to $250,000 under the Service members' Group Life Insurance program, have expanded over the years, while the protection provided by the SSCRA has not changed.

We generally support the proposed revision of the life insurance protections of the SSCRA contemplated by S. 792 and S. 1136, which would greatly enhance the insurance protection available to active duty personnel. We believe that many service members could benefit from the insurance protection provisions of the bills, particularly the proposed increase in the amount of life insurance that may be guaranteed and the expansion of the types of life insurance policies that are eligible for protection. We also applaud the effort to draft the bills in plain language. We do, however, have several concerns of a technical nature with regard to these bills.

In particular, section 401(1) of the SCRA would define "policy" as an insurance policy under which the insurer may not increase the premium if the insured is in military service. It is VA's understanding that normal term insurance premium increases based upon age are not prohibited, and the only prohibition is that of increasing premiums simply because the insured is called to military service. Some clarification concerning whether normally scheduled premium increases are acceptable under this definition may be necessary. We also note that VA regulations implementing the SSCRA currently exclude group life insurance from protection under that statute. Congress may wish to clarify whether it intends to include group insurance within the coverage of the insurance protection provisions.

Under section 402(a), the life insurance protection of the SCRA could be requested by the insured, the insured's designee, or the insured's beneficiary. Most other SCRA provisions would require the service member to personally request protection. While the SSCRA currently permits life insurance protection to be requested by the service member's designee or by the service member's beneficiary when the insured is deployed outside the continental United States, S. 792 and S. 1136 would also permit an application by a beneficiary when the insured is deployed in the United States. We question whether it is desirable to require VA to provide premium protection based on a beneficiary's request about which the service member may be unaware. The service member may become obligated to repay any money VA expends to keep the policy in place. We believe the better course is to require that the protections afforded under Title IV of the SCRA be requested by the service member or the insured's designee.

Section 407(a) (2) would require the United States, upon expiration of insurance protection under the SCRA, to reimburse the insurer for unpaid premiums in the amount of the difference between the amount of premiums due and the cash surrender value of the policy. The protections of the SCRA would be provided during a period beginning upon a service member's entry into military service and ending on the date of release from military service. As a result, VA is obligated to provide protection for the full military career of every active duty service member who is insured under a life-insurance policy that is in force for at least 180 days before entry into military service and at the time of application for SCRA protection. Given the period of protection provided by the SCRA and the increased coverage proposed in section 402(c), the Government's liability would likely increase exponentially. Congress should recognize that these provisions would result in a substantial increase in the Government's obligation to its service personnel.

Under section 409, VA's decisions regarding life insurance protection would be subject to review by the Board of Veterans' Appeals (Board) and the Court of Appeals for Veterans Claims (Veterans Court). If the contemplated review of life insurance protections is adopted, conforming changes should be made to title 38 to clarify the scope of the Board's jurisdiction. Also, the current language of section 409 does not appear to provide exclusive jurisdiction in the Board and the Veterans Court over such matters. We recommend that Congress make its intentions clear in this regard, and we would be glad to work with Committee staff to draft these clarifications.

The budgetary impact of the expansion of insurance protection contemplated by these bills will depend on the number of service members who are called to active duty in the future, the number who choose to take advantage of the insurance protection provisions, and whether the expanded protection will apply to group life insurance policies. VA estimates that the benefit cost of enactment of S. 792 or S. 1136 would be $186,000 annually for every 10,000 personnel called to active duty. VA estimates that administrative costs of the insurance protection provisions would total $67,000 in FY 2004, $359,000 over the five-year period FY 2004–2008, and $788,000 over the ten-year period FY 2004–2013.

The only other notable impact of S. 792 and S. 1136 on VA would be in VA housing loan programs. The provisions of the existing SSCRA concerning interest rates, default judgments, termination of mortgages, and similar issues have a marginal

impact on VA with respect to VA-guaranteed loan holders and loans held in our portfolio. We are not aware that any loan holders in the VA housing-loan programs have encountered significant problems as a result of these important protections granted to persons in military service. We do not anticipate that the amendments contemplated by S. 792 and S. 1136 would have any significant additional impact on the VA housing loan programs.

S. 806, the "Deployed Service Members Financial Security and Education Act of 2003," would amend title 37 of the United States Code to authorize payment of a monthly allowance to service members involved in lengthy or repeated deployments. This bill would also amend the interest-rate-relief provisions of the SSCRA to include certain student loans and would preserve educational status and protect tuition payments of deployed service members. As S. 806 pertains to allowances and protections for active members of the Armed Forces, we defer to DoD as to its merits.

S. 938

S. 938 would amend 38 U.S.C. § 1318(b)(3) to eliminate the September 30, 1999, date limitation on benefit eligibility for surviving spouses and children of former POW's who died of non-service-connected causes and were totally disabled for a continuous period of one year prior to death. Under current law, VA pays DIC benefits under chapter 13 of title 38, United States Code, to the surviving spouse, dependent children, and dependent parents of service members who died during active duty or who died after service as a result of a service-connected condition. In addition, VA provides benefits in the same manner to the surviving spouse and children of veterans who died after service from a non-service-connected cause if the veteran was totally disabled due to a service-connected cause: (1) for a continuous period of ten or more years immediately preceding death; (2) for a continuous period of at least five years after the veteran's release from service; or (3) in the case of a former POW who died after September 30, 1999, for a continuous period of at least one year immediately preceding death. The amendment to section 1318(b)(3) would eliminate the date limitation governing benefit eligibility for POWs' survivors, thereby authorizing such payments regardless of the date of the veteran's death.

We estimate that enactment of the proposed amendment to 38 U.S.C. § 1318(b)(3) would result in additional mandatory benefit costs of $7.5 million in FY 2004 and $208.7 million for the 10-year period FY 2004 through FY 2013. Additional discretionary costs would total $187,000 for five years. This proposal was not in the President's Budget for FY 2004, so we cannot support it without an offset.

S. 978

S. 978 would authorize VA to guarantee loans to veterans to purchase stock or membership in a cooperative housing project.

Under current law, veterans may purchase conventional homes, condominium units, or manufactured homes and manufactured home lots with VA guaranteed loans. In all cases except manufactured homes, the veteran is purchasing real property. Although a manufactured home is normally considered personal property, veterans nevertheless obtain title to the actual homes they will be occupying. In contrast, the buyers of co-ops do not acquire an interest in real estate or obtain title to their dwelling unit. Instead, the purchasers acquire a share of the cooperative's stock, coupled with the right to occupy a particular apartment in the building. Unlike other VA loans, there would be no lien on real property or tangible personal property.

Predominately, cooperative housing projects are subject to blanket mortgages. This poses a significant risk to the buyer, the loan holder, and VA. The co-op owners are responsible for the monthly payment on their share loans as well as the assessments levied by the co-op project. The survival of the project may depend upon virtually all members of the co-op meeting their assessment obligations. Failure of a few members to do so could lead to foreclosure of the blanket mortgage on the entire building. Such foreclosure would totally wipe out the interests of all co-op owners, even those owners who made timely payments. It would also leave the holder of the VA guaranteed share loans without any security. This sets co-ops apart from condominiums.

The governing documents of most co-ops contain a right of first refusal, a right by the co-op board to approve or reject a prospective buyer, or other restrictions on the resale of units. These rights of first refusal or most other sales restrictions are not permitted by VA regulations and could adversely affect the marketability of a unit. If veteran-borrowers are experiencing financial difficulties and cannot freely dispose of their units at an advantageous price, foreclosure is more likely. These re-

sale restrictions could also hamper VA's efforts to resell properties following loan termination, thus increasing VA's loss. Since most co-op projects have such resale restrictions, few projects are likely to meet the requirements VA would set for the acceptability of cooperative projects. Accordingly, VA opposes enactment of S. 978.

VA estimates that enactment of S. 978 would result in approximately 30 additional guaranteed loans a year, with a first-year cost of $70,000 and a 10-year cost of approximately $847,000.

S. 1124

S. 1124, the "Veterans Burial Benefits Improvement Act of 2003," would increase the amount of several burial benefits for veterans. Section 2(a) of the bill would amend 38 U.S.C. §§ 2302(a) and 2303(a)(1)(A) to increase the burial and funeral allowance for non-service-connected deaths from $300 to $1,135, and amend 38 U.S.C. § 2307 to increase the burial and funeral allowance for service-connected deaths from $2,000 to $3,712. Section 2(b) would amend 38 U.S.C. § 2303(b) to increase the plot allowance for veterans who are buried in State or private cemeteries from $300 to $670. Section 2 (c) would add to title 38 a new section 2309, which would require future annual increases in these benefits based on the percentage increases of the Consumer Price Index. The initial increases in the various benefits would apply to deaths occurring on or after the date of enactment of this legislation.

We estimate that the bill could increase spending by $116 million during FY 2004 and $1.4 billion during the ten-year period FY 2004 through FY 2013.

The proposed new rates are apparently derived from a December 19, 2000 Pricewaterhouse-Coopers study, "An Assessment of Burial Benefits Administered by the Department of Veterans Affairs." Since that report, President Bush approved legislation increasing two of the three benefits listed in S. 1124. On December 27, 2001, President Bush signed Public Law 107–103, thus increasing burial and funeral allowances for service-connected deaths by one third and doubling the plot allowance. Furthermore, the adequacy of the current burial and plot allowances must be considered in the context of the overall 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. Given the expanding availability of burial options within both national and state veterans' cemeteries, and the competing demands for scarce VA resources, at this time we cannot support S. 1124.

S. 1131

S. 1131, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2003," would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for veterans with service-connected disabilities and of DIC for the survivors of veterans whose deaths are service related, effective December 1, 2003. As provided in the President's FY 2004 budget request, the rate of increase would be the same as the cost-of-living adjustment (COLA) that will be provided under current law to Social Security recipients, which is currently estimated to be 2.0 percent. We believe this proposed COLA is necessary to protect the benefits of affected veterans and their survivors from the eroding effects of inflation.

We estimate that enactment of this COLA bill would cost $355 million during FY 2004 and $4.3 billion over the period FY 2004 through FY 2013. However, this cost is already assumed in the Budget baseline and, therefore, would not have any effect on direct spending.

S. 1132

Mr. Chairman, S. 1132, the "Veterans' Survivors Benefits Enhancements Act of 2003," contains several provisions that would improve benefits for survivors and certain dependents of veterans under the Department's various programs.

Specifically, section 2 of this bill would increase educational assistance benefits under the chapter 35 VA's Survivors' and Dependents' Educational Assistance program by 44.8 percent, from $680 to $985 per month for full-time course pursuit, from $511 to $740 for three-quarter time pursuit, and from $340 to $492 per month for half-time pursuit, effective for months of course pursuit on or after October 1, 2003. It would also raise the basic monthly rate payable for Special Restorative Training (SRT) to $985. Similarly, the optional supplement to the SRT basic rate would be increased to pay the amount of tuition and fee charges that, on a monthly basis, would exceed $307 for FY 2004.

Given this benefits increase, the measure would suspend the statutory annual Consumer Price Index-based adjustment in chapter 35 educational assistance rates for FY 2004.

Chapter 35 benefit rates earlier equaled rates payable under the Vietnam Era GI Bill to a veteran with no dependents and, for a time, exceeded chapter 30 Montgomery GI Bill (MGIB) rates. In more recent years, however, chapter 35 benefits have lost ground. The current $680 chapter 35 monthly rate is significantly below the MGIB rate payable to eligible veterans with 3 years or more of service, which will be $985 per month in FY 2004 under legislation already enacted. Section 2 of S. 1132 would remedy this, ensuring that chapter 35 spouses, surviving spouses, and children would receive educational assistance equal to that of veterans receiving such educational assistance under the MGIB.

Mr. Chairman, although we appreciate your efforts to restore this balance, the President's FY 2004 Budget does not include this proposal.

VA estimates the effect of the rate increase in section 2 of this measure could raise obligations by approximately $1.4 billion over the 10-year period FY 2004 through FY 2013.

Section 3 of S. 1132 would decrease the entitlement available to new chapter 35 recipients from the current 45 months to 36 months. This would apply in the case of those who first file an educational assistance claim under chapter 35 after the date of enactment.

Approximately 23 percent of dependents use more than 36 months of benefits. Nevertheless, we believe the 44-percent increase in the monthly rate would compensate for the loss of 9 months of entitlement. VA further believes this reduction in entitlement would be necessary to partially offset the cost of increases in the rates of assistance allowance provided by section 2 of this bill.

VA estimates the cost savings for section 3 of S. 1132 would be approximately $126.9 million over the ten-year period FY 2004 through FY 2013. The estimated ten-year net cumulative cost for sections 2 and 3 of S. 1132 is $1.3 billion. VA supports the provision in principle, but because it was not in the President's Budget for FY 2004, we cannot support it without a corresponding offset.

Section 4 of S. 1132 would amend 38 U.S.C. § 1311 to provide an additional $250 in DIC for a surviving spouse with one or more children under the age of 18. The increase would apply only for the 5-year period after the veteran's death and would cease when all children attain age 18.

By boosting the DIC rate payable to a surviving spouse with children during the 5 years following a veteran's death, this provision would provide dependents additional monetary support at an appropriate time. VA has no objection to the provision in principle, but because it was not in the President's Budget for FY 2004, we cannot support it without a corresponding offset.

Section 5 would amend 38 U.S.C. § 2402(5) to make a veteran's surviving spouse who marries a non-veteran after the veteran's death eligible for burial in a VA national cemetery based on his or her marriage to the veteran. This provision is similar to a VA proposal sent to Congress on April 25, 2003. Our full rationale and justification for this proposal, as well as our cost estimates, are contained in Secretary Principi's April 25, 2003 letter to the President of the Senate.

Unlike VA's proposal, section 5 of S. 1132 would make the burial eligibility of remarried surviving spouses of veterans retroactive to deaths occurring on or after January 1, 2000. We estimate that the additional costs associated with this retroactivity would be negligible. Although it is difficult to determine how many families of already deceased, and presumably interred, remarried surviving spouses of veterans would want to disinter their loved ones and then re-inter them with their veteran spouses in a national cemetery, we believe the number of such families would not be significant.

Section 6 would amend chapter 18 of title 38, United States Code, to authorize VA to provide a monetary allowance and other benefits to a person suffering from spina-bifida who is natural child, regardless of age or marital status, of a veteran who served in the active military, naval, or air service in or near the Korean demilitarized zone (DMZ) between January 1, 1967, and December 31, 1969, if the person was conceived after such service began and if the veteran is determined by VA, in consultation with the DoD, to have been exposed to a herbicide agent during such service. The term "herbicide agent" would be defined as a chemical in a herbicide used in support of United States and allied military operations in or near the Korean DMZ, as determined by VA in consultation with DoD during the specified period.

VA is still formulating its views and cost estimates on this provision. As soon as those views and estimates are cleared for transmittal, we will provide them to the Committee.

S. 1133

Mr. Chairman, we very much appreciate your courtesy in introducing S. 1133 at the Department's request. Our full rationale and justification for these proposals, as well as our cost estimates, are contained in Secretary Principi's April 25, 2003 letter to the President of the Senate and will not be repeated here. Several of this bill's provisions are also covered in other bills that are on the agenda for today's hearing.

All of the provisions in VA's proposal are significant to the programs administered by VA and the veterans served by those programs. Among the important proposals in S. 1133 that have not been otherwise introduced in the Senate are:

Sections 3 and 4, which would repeal the 45-day rule for effective dates of death pension awards and exclude lump-sum life insurance proceeds from determinations of annual income for pension purposes. These changes are necessary to eliminate unequal treatment of death pension applicants and to uphold one of the fundamental principles of the pension program—insuring that those with the greatest need receive the greatest benefit.

Section 6, which would authorize VA to pay unclaimed National Service Life Insurance and United States Government Life Insurance proceeds to an alternative beneficiary. This proposal would allow VA to ensure that the proceeds of insurance policies are paid to an appropriate beneficiary and to avoid adding to the approximately 4,000 existing policies in which payment has not been made due to the fact that we cannot locate the primary beneficiary, despite extensive efforts.

Section 7, which would clarify VA's authority both to declare a claim abandoned where it is not completed within one year of VA's notice of what is required to complete it, and to decide claims before the end of the one year the claimant has to provide the evidence to substantiate the claim. Such early adjudications are subject to revision based on evidence submitted within the year, and the effective date of any decision so revised will be the earlier date on which the claim was made.

Section 11, which would make permanent the State Cemetery Grants Program, an important supplement to the National Cemetery system. This program authorizes VA to make grants to states to assist them in establishing, expanding, or improving state veterans' cemeteries.

Section 15, which would extend the date on which eligibility for education benefits ends for individuals ordered to full-time National Guard service under title 32 of the United States Code in the same manner the delimiting date is now extended for those who are activated under title 10.

All of the proposals in S. 1133 would improve veterans programs and their administration, and we commend them to the Committee's careful consideration.

S. 1188

S. 1188, the "Veterans' Survivor Benefits Act of 2003," would, in section 2, eliminate a discrepancy regarding the limitation on the period for which retroactive benefits due and unpaid a claimant may be paid to others after the claimant's death. In the interest of fairness, we support enactment of this provision.

Under 38 U.S.C. §5121, periodic monetary benefits to which an individual was entitled at death under existing ratings or decisions or based on evidence on file with VA at the date of death are paid upon the individual's death to specified classes of survivors according to a prescribed order of preference. Before a recent court decision, VA had construed section 5121 to limit the payment of any benefits under that section to the retroactive period specified in the statute, regardless of whether the payment was based on an existing rating or decision or on evidence on file at the date of death. The retroactive payment period, originally one year, was extended to two years by Public Law 104–275, the "Veterans' Benefits Improvements Act of 1996."

On December 10, 2002, the United States Veterans Court issued its decision in *Bonny* v. *Principi*, 16 Vet. App. 504 (2002). The court held that 38 U.S.C. §5121(a) specifies two kinds of benefits: benefits that have been awarded to an individual in existing ratings or decisions but not paid before the individual's death, and benefits that could have been awarded based on evidence in the file at the date of death. The court held that, in the case of the first type of benefits, the statute requires that an eligible survivor is to receive the entire amount of the award; only the latter type of "accrued" benefits is subject to section 5121(a)'s two-year limitation. The court based its interpretation of the statute primarily on section 5121(a)'s punctuation.

The Veterans Court's *Bonny* decision has resulted in differing entitlements under section 5121 based on the status of the deceased's claim at the date of his or her death. S. 1188 would eliminate this discrepancy by eliminating the two-year limita-

tion on payment of retroactive benefits for all classes of beneficiaries under that statute.

The distinction the *Bonny* decision draws between the two categories of claimants—those whose claims had been approved and those whose entitlement had yet to be recognized when they died—is really one without a difference. In either case, a claimant's estate is deprived of the value of benefits to which the claimant was, in life, entitled. Section 2 of S. 1188 would remove this inequitable distinction, and we support its enactment.

We note that section 2 of S. 1188 would also add a new class of claimants eligible for accrued benefits. Chapter 18 of title 38, United States Code, authorizes monetary benefits for Vietnam veterans' children with birth defects. This provision would ensure that, upon the death of a child entitled to benefits under chapter 18, the child's surviving parents would be eligible for accrued benefits.

In addition, we note one technical change needed in section 2 of S. 1188 should it be enacted. The comma in current section 5121(a) following "existing ratings or decisions" should be deleted to clarify, for purposes of 38 U.S.C. §§5121(b) and (c) and 5122, that the term "accrued benefits" includes both benefits that have been awarded to an individual in existing ratings or decisions but not paid before the individual's death, as well as benefits that could be awarded based on evidence in the file at the date of death.

Sections 3 and 4 of S. 1188 would add new sections 5127 and 7270 to title 38, United States Code. These sections would provide that, if a claimant for monetary veterans' benefits dies on or after the date of enactment of this legislation and before a decision on the claim becomes final, an "eligible person" may submit an application to VA or a motion to a court to be substituted as the claimant. They would require VA or the court to grant such an application or motion if timely filed.

S. 1188 would not limit its application to claims for benefits in which benefits are due and unpaid under existing ratings or decisions or in which evidence sufficient to decide the claim has already been developed. Under section 5121, the findings necessary to support an award of accrued benefits must be made on the factual record established during the deceased claimant's lifetime. In contrast, section 5127(f) contemplates that a substitute claimant may submit evidence to substantiate the deceased's claim. Section 5127(d) would require VA to assist the substitute claimant in developing the claim pursuant to the Veterans Claims Assistance Act of 2000 (VCAA) in essentially the same manner as if the claimant had survived.

VA opposes this legislation primarily because it would impose significant additional burdens by requiring evidentiary development after the veteran's death, when the veteran cannot provide critical information necessary to properly develop and adjudicate the claim. Inasmuch as VA would be unable to rely upon the veteran to provide information about events in service, treatment during and after service, and the nature and extent of his or her condition, as the VCAA contemplates, it would be unusually difficult and burdensome for VA to develop those claims to the extent required by the VCAA. Indeed, in many cases, it simply may be impossible for VA to obtain sufficient information to resolve the claim. Claims for disability compensation often cannot be resolved without examining the veteran to discern the nature and extent of the claimed disability and determine whether the disability may be related to events or injuries in service. In requiring VA to conduct medical examinations when necessary to a decision, the VCAA recognizes that, absent a medical examination of the veteran, the evidence will often be insufficient for VA to make a reasoned decision on the claim. Even if the issue of service connection can be resolved, there may be no basis on which to establish a degree of disability. Accordingly, VA's inability to contact or examine a deceased veteran may be an insurmountable obstacle to the proper development and adjudication of a claim for benefits or to an accurate rating of a disability.

Moreover, the notification requirements in section 3 of S. 1188 would impose an additional burden on VA's already overtaxed adjudication system. Under section 5127(c), VA would be required to notify "the eligible person" that the claim will be dismissed unless an application for substitution is received within one year of the claimant's death, within 6 months of the date of the Secretary's notification, or within 3 months of notification of an adverse decision under section 5121, whichever is latest. It appears that this provision would require VA to send multiple notices because there is no way of knowing which of several of potentially eligible persons is actually eligible until they submit an application for substitution. Not only would this provision require multiple notices, it would require a burdensome search of the deceased's complete file to see if it contained addresses of any individuals in the listed classes. In addition, other VA records, such as hospital records, would apparently have to be searched. Further, if VA records were found to contain addresses of potentially "eligible persons," VA would have to send notices to all such persons, even

if the information identifying them was many years old and VA had no way of knowing whether they were surviving.

Sections 3 and 4 of S. 1188 would not afford VA or a court sufficient discretion in carrying out their provisions. Sections 5127(a) and 7270(b) would require VA or a court to approve "any" timely application for substitution submitted by an eligible person.

The substitution-of-parties portion of S. 1188 may be intended to provide veterans' families with benefits in the same manner as is currently done for survivors of Social Security claimants. The Social Security Act provides for adjustment of underpayments of Supplemental Security Income by payment to the underpaid individual's surviving spouse or, if the underpaid individual was a disabled or blind child, by payment to the child's surviving parents if the deceased individual had lived with such spouse or parents within the 6 months preceding death. 42 U.S.C. § 1383(b)(1)(A). That Act also provides for adjustment of underpayments of Old-Age and Survivors Benefits by payment to survivors of the underpaid individual. 42 U.S.C. § 404(d). Thus, the current differences between treatment of Social Security benefits and veterans benefits upon the death of an unpaid individual are the two-year limitation on certain retroactive payments under 38 U.S.C. § 5121 and the parties to whom the unpaid benefits can be paid. We believe that such differences can best be addressed by eliminating the two-year-limitation, which is addressed by section 2 of S. 1188, and by expanding that provision to authorize payment to adult children.

VA estimates that enactment of these provisions of S. 1188 could result in benefit costs of $16.1 million for FY 2004 and $62.5 million for the period FY 2004 through FY 2013 and administrative costs of $661,000 in FY 2004 and $2.6 million for the period FY 2004 through FY 2013.

S. 1199

S. 1199, the "Veterans Outreach Improvement Act of 2003" would define the term "outreach" for title 38 purposes and would establish a new subchapter IV under Chapter 5 of title 38, entitled "OUTREACH," covering outreach funding and activities by the Department.

"Outreach" would be defined as meaning the act or process of reaching out in a systematic manner to proactively provide information, services, and benefits counseling to potentially eligible beneficiaries to ensure they are fully informed about and receive assistance in applying for benefits.

The new subchapter would require that the Secretary establish a separate "outreach account," with sub-accounts for funding outreach activities for each of VA's Administrations, i.e., Health (VHA), Benefits (VBA), and National Cemetery (NCA), and require separate budgeting for each sub-account. Subchapter IV, further, would require VA to establish procedures for effectively coordinating outreach activities between and among the Administrations, the Office of Public Affairs, and the Office of the Secretary, with periodic review and modification of such procedures to better achieve outreach requirements. Finally, this new subchapter would require VA to assist states in providing outreach and assistance in locations proximate to eligible veteran populations and enter into cooperative agreements and arrangements with veterans' agencies of the various States to implement, coordinate, and improve such outreach. In this regard, VA would be authorized to award grants to State veterans agencies to achieve outreach purposes, including enhancing assistance in development and submission of claims for veterans' and veterans'-related benefits. The State agencies, in turn, could award these grants to local governments or other entities in the State for such purposes.

Mr. Chairman, we certainly appreciate this interest in outreach activities for veterans and their dependents. However, we already provide extensive and effective outreach information and assistance, and are implementing and planning new initiatives. Consequently, we believe this measure is unnecessary.

S. 1199 would require a new infrastructure within the Department to coordinate all Department outreach activities and to oversee the proposed new outreach award grants. However, each VA Administration currently has Outreach Coordinators/Offices assigned to develop, implement, and oversee outreach activities. VA's Office of Public Affairs has the responsibility to coordinate the outreach activities of these three Administrations, in conjunction with the Secretary's wishes. A strategic work group has been formed by the Deputy Assistant Secretary for Public Affairs, which includes key executives and public affairs representatives from all three Administrations. This existing structure already affords the necessary internal and external coordination to achieve VA's outreach objectives.

Recently such coordination has resulted in sharing of resources and staffing at the Public Service Recognition Week activities at the National Mall and for the upcoming AARP Conference in September 2003. Further, NCA is teaming up with VHA and VBA to extend its message to groups that more routinely come into contact with those entities. In this regard, a comprehensive plan is being implemented to improve awareness of NCA's benefits among VHA and VBA counselors and social workers who, because of their direct contact with the hospice industry and with families at the time of imminent loss, can be instrumental in having burial benefit information distributed to those families. All VA Administrations will be participating in a scheduled meeting to discuss and coordinate the Department's FY 2004 outreach activities.

VA's field offices also engage in and are encouraged to sponsor joint outreach events. This is currently being done in "Stand-downs" where the Homeless Outreach Coordinators from the regional offices and medical centers work hand-in-hand in gaining sponsorship and staffing of these worthwhile events.

Mr. Chairman, we view outreach as an extremely important part of our mission to assure that no veteran or eligible dependent is left behind in being made aware of the benefits VA provides and their ability to apply for and receive all of those benefits to which they may be entitled. We take this mission seriously in our efforts, for example, to meet the existing title 38 requirements for outreach to veterans and dependents, including specially targeted groups: recently separated veterans, active duty personnel (to include Reserves/Guard), elderly, homeless, women, Gulf War, those exposed to Agent Orange in Vietnam, minority, Native American, Former Prisoners of War, service-disabled, Asian and Pacific Islanders, eligible dependents, and first time applicants for VA benefits and services. VHA has an aggressive outreach program directed at veterans living on the streets and in shelters who otherwise would not seek assistance, and at those veterans suffering post-traumatic stress syndrome.

Although not covered by this bill, our outreach programs are not limited to veterans and dependents, but include active duty and reserve service members; partner organizations such as Veterans Service Organizations, State approving agencies, military education counselors and recruiters; as well as community service providers, lenders, the funeral industry, and other non-veteran groups.

We certainly welcome and encourage the interest in and participation of veterans' agencies and other agencies of the states in outreach to veterans and their dependents. We will continue to cooperate and coordinate with those agencies. However, we believe VA's current outreach program meets the statutory requirements and provides both the quality and uniformity of benefit information and assistance necessary to be effective.

S. 1213

S. 1213 would amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and their survivors, who lawfully reside in the United States, by expanding their eligibility for VA health care, compensation, DIC, and burial benefits. S. 1213 would also extend VA's authority to maintain a regional office in the Philippines through 2008. This bill reflects proposed legislation submitted by the Secretary of Veterans Affairs to the President of the Senate by letter dated May 12, 2003, and we greatly appreciate the Chairman's courtesy in introducing S. 1213. The full rationale and justification for this proposed legislation, as well as our cost estimates, are contained in the Secretary's May 12th letter. For the reasons stated in that letter, VA strongly supports this legislation and recommends that Congress approve S. 1213 as introduced.

S. 1239—SPECIAL COMPENSATION FOR FORMER PRISONERS OF WAR

Section 2 of S. 1239, the "Former Prisoners of War Compensation Act of 2003," would add a new subchapter at the end of chapter 11 of title 38, United States Code, to authorize special compensation for former POW's. This special compensation would be in addition to any service-connected disability compensation or pension to which a former POW may be entitled and would be exempt from attachment, execution, or levy in the same manner as special pension paid to Medal of Honor recipients is exempt pursuant to 38 U.S.C. § 1562. The bill would authorize the Secretary of Veterans Affairs to pay monthly to each former POW, including active duty personnel, special compensation at a rate of payment determined by the cumulative length of confinement as a POW. Thirty days would be the minimum period of confinement for which a former POW would be eligible to receive special compensation. The bill would establish three rates of special compensation based on the length of the period of the former POW's confinement, as follows:

Length of Former POW's Confinement	Special Compensation Monthly Rate
30–120 days	$150.00
121–540 days	$300.00
541 days or more	$450.00

We estimate that benefit-costs for the POW portion of the bill would be $134.4 million for FY 2004 and $839.5 million for FY 2004 through FY 2013. We estimate administrative costs to be an additional one-time cost of $654,000 in the first year. These amounts are not included in the President's FY 2004 budget request, so the Department cannot support this provision's enactment. However, we are sensitive to the contributions and needs of former POW's and will consider additional benefits for them in formulating future budget requests. I would add that we have recently submitted legislation to remove the minimum internment periods for purposes of POW's dental care and presumptions of service connection, and to exempt them from the co-payments for VA medications.

PROHIBITION AGAINST COMPENSATION FOR SUBSTANCE-ABUSE DISABILITIES

Section 3(a) of S. 1239 would amend 38 U.S.C. §§ 1110 and 1131 to clarify that the prohibition on payment of compensation for a disability that is a result of the veteran's own abuse of alcohol or drugs applies even if the abuse is secondary to a service-connected disability. Section 3(b) would make that amendment applicable to claims filed on or after the date of enactment and to claims filed prior to, but not finally decided as of that date. We strongly support this provision, which is also proposed in the President's budget.

Sections 1110 and 1131 of title 38, United States Code, authorize the payment of compensation for disability resulting from injury or disease incurred or aggravated in line of duty in active service, during a period of war or during other than a period of war, respectively. Sections 1110 and 1131 also currently provide, "but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs." Before their amendment in 1990, the provisions currently codified in sections 1110 and 1131 prohibited compensation "if the disability is the result of the veteran's own willful misconduct." In 1990, they were amended to also prohibit compensation if the disability is a result of the veteran's own alcohol or drug abuse.

VA had long interpreted those provisions to authorize compensation not only for disability immediately resulting from injury or disease incurred or aggravated in service, but also for disability more remotely resulting from such injury or disease. That interpretation is embodied in 38 C.F.R. § 3.310(a), which provides that, generally, disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. Thus, VA does pay, in specific cases, compensation for primary service-connected disability and for secondary service-connected disability. However, consistent with the plain meaning of sections 1110 and 1131, if a disability, whether primary or secondary, is a result of the veteran's own alcohol or drug abuse, VA did not pay compensation.

This has changed. On February 2, 2001, a three-judge panel of the United States Court of Appeals for the Federal Circuit interpreted section 1110 as allowing compensation for an alcohol or drug-abuse-related disability arising secondarily from a service-connected disability. *Allen* v. *Principi*, 237 F.3d 1368, 1370 (Fed. Cir. 2001). More specifically, the panel held that section 1110 "does not preclude compensation for an alcohol or drug abuse disability secondary to a service-connected disability or use of an alcohol or drug abuse disability as evidence of the increased severity of a service-connected disability." *Id. at 1381.* The Government filed a petition for rehearing and rehearing en banc, which the panel and full court denied on October 16, 2001. *Allen* v. *Principi*, 268 F.3d 1340, 1341 (Fed. Cir. 2001). However, five of the eleven judges who considered the petition for rehearing en banc dissented from the order denying rehearing, opining that the court's interpretation is wrong. 268 F.3d at 1341–42.

We are concerned that payment of additional compensation based on the abuse of alcohol or drugs is contrary to congressional intent and is not in veterans' best interests because it provides an incentive to engage in debilitating and self-destructive behavior by providing additional compensation for the disability caused by such behavior.

The Federal Circuit's interpretation in *Allen* could also greatly increase the amount of compensation VA pays for service-connected disabilities. Under the

court's interpretation, any veteran with a service-connected disability who abuses alcohol or drugs is potentially eligible for an increased amount of compensation if he or she can offer evidence that the substance abuse is a result of a service-connected disability, i.e., that the substance abuse is a way of coping with the pain or loss the disability causes. Under this interpretation, alcohol or drug abuse disabilities that are secondary to either physical or mental disorders are compensable.

The potential for increased costs is illustrated by mental disorders, which are frequently associated with alcohol and drug abuse. Almost 421,000 veterans are currently receiving compensation for a service-connected mental disability. About 324,000 of those disabilities are currently rated less than 100 percent and could potentially be rated totally disabling on the basis of secondary alcohol or drug abuse. Even if the service connection of disability from alcohol or drug abuse does not result in an increased schedular evaluation, temporary total evaluations could be assigned whenever a veteran is hospitalized for more than twenty-one days for treatment or observation related to the abuse. Even the 97,000 cases of a service-connected mental disability evaluated at 100 percent disabling have potential for increased compensation for secondary alcohol or drug abuse if the statutory criteria for special monthly compensation are met.

The potential increase in compensation does not end there. Under the Federal Circuit's interpretation, VA is required to pay compensation for the secondary effects of the abuse of alcohol or drugs. Once alcohol or drug abuse is service connected as being secondary to another service-connected disability, then service connection can be established for any disability that is a result of the service-connected abuse of alcohol or drugs. If alcohol or drug abuse results in a disease, such as cirrhosis of the liver, then that disease would also be service connected and provide a basis for compensation under the court's interpretation.

Of course, an increase in the amount of compensation VA pays for service-connected disabilities will increase the benefit cost of the compensation program. Section 3 of S. 1239 would avoid those increased costs. Our estimate of savings that would result from enactment of this provision is based on the payment of only basic compensation for alcohol or drug abuse disabilities secondary to service-connected disabilities. We estimate that this provision would result in benefit savings of $127 million and administrative savings of $44 million in FY 2004 and benefit savings of $4.6 billion and administrative savings of $97 million for the ten-year period FY 2004 through FY 2013. This amount does not include the savings that would be associated with payment of compensation for temporary total evaluations, special monthly compensation, or compensation for the secondary effects of alcohol or drug abuse.

DENTAL CARE FOR FORMER PRISONERS OF WAR

Section 4 of S. 1239 would require VA to provide outpatient dental services and treatment, and related dental appliances, for any non-service-connected dental condition or disability from which a veteran who is a former POW is suffering. Currently, a veteran who is a former POW may receive dental benefits for non-service-connected dental conditions or disabilities only if the veteran was incarcerated for 90 days or more. By eliminating the 90-day requirement, section 4 would authorize VA to treat all former POW's the same, regardless of their length of captivity, with respect to dental care for a non-service-connected condition or disability. It would also make the eligibility rules for dental benefits for former POW's the same as for other health-care services for former POW's.

This provision is identical to VA's recent proposal, and we strongly support its enactment.

Costs resulting from enactment of this provision would be insignificant.

S. 1282

S. 1282 would direct the Secretary of Veterans Affairs to establish national cemeteries for geographically underserved populations of veterans. It would direct the Secretary to identify the ten burial service areas in the United States, as determined by the Secretary, most in need of a new national cemetery to ensure that 90 percent of the veterans who reside in each service area live within 75 miles of a national cemetery. The bill would define "burial service area" as having a radius of approximately 75 miles, containing a minimum population of approximately 170,000 veterans, and not being served by a national or state veterans' cemetery. In addition, the bill would direct the Secretary to submit to Congress a report setting forth each burial service area identified by the Secretary as needing a cemetery and a schedule and cost estimate for the establishment of each new national ceme-

tery. The first report would be due within 120 days after the date of enactment, and annual status reports would be required until the ten cemeteries were completed.

Not all of America's veterans and their families have easy and convenient access to a national cemetery. In the Veterans Millennium Health Care and Benefits Act, Pub. L. No. 106–117 (1999), Congress directed VA to identify areas of the country with the greatest concentrations of veterans who do not have reasonable access to a burial option in a national or state veterans' cemetery. Substantial documentation demonstrates that 80 percent of burials in national cemeteries involve individuals who resided within 75 miles of the cemetery. VA has determined that a veteran population threshold of 170,000 within a 75-mile service radius is an appropriate threshold for the establishment of a new national cemetery.

In response to the Veterans Millennium Health Care and Benefits Act, on May 15, 2002, VA transmitted to Congress a report entitled, *Study on Improvements to Veterans Cemeteries—Volume 1: Future Burial Needs.* An independent contractor, Logistics Management Institute (LMI), prepared the report. It assesses the number of additional cemeteries needed to ensure that 90 percent of veterans live within 75 miles of a national or state veterans' cemetery between 2005 and 2020. The report identified 31 locations recommended by LMI as areas of greatest need. Six sites had over 170,000 veterans who currently were not being served by a burial option by a state or national cemetery within 75 miles of their residences. On June 4, 2003, VA transmitted revised veteran population estimates, based on 2000 United States Census data. From the two listings, eleven locations were identified as meeting VA's population threshold. VA plans to meet the identified unmet burial needs in each location by either establishing a new national cemetery or expanding an existing national cemetery.

Several steps are involved in establishing a new national cemetery. Depending on the size of the project, the cost of these steps can range from $100,000 to $250,000 for environmental compliance requirements; $3 million to $6 million for land acquisition, if required; $1 million to $2 million for master planning and design; and $15 million to $25 million for construction. Even with an aggressive schedule, it generally takes 4½ to 5 years to open a cemetery to initial burials. A new national cemetery's average annual operating costs range between $1 million and $2 million, without consideration of headstones and grave liners, which are purchased through mandatory funds.

Because the Future Burial Needs report released last year and the updated demographic data transmitted to Congress earlier this year satisfy the intent behind S. 1282, enactment of this bill is unnecessary. However, VA is committed to begin addressing those identified locations with unmet burial needs within the annual budgetary process.

S. 1360

Section 1(a) of S. 1360 would amend 38 U.S.C. § 7105(b) to provide, in effect, that a writing filed by a claimant, a claimant's legal guardian, an accredited representative, attorney, or authorized agent, or a legal guardian expressing disagreement with a decision of an agency of original jurisdiction shall be recognized as a notice of disagreement (NOD). The amendment made by section 1(a) would apply to any document filed on or after the date of enactment of S. 1360 and any document filed prior to the date of enactment that was not rejected as an NOD by VA as of that date. Section 1(b) of S. 1360 would provide that, if a document filed as an NOD between March 15, 2002, and the date of enactment of S. 1360 meets the requirements of section 1(a) for an NOD, but VA determined that it did not constitute an NOD pursuant to 38 C.F.R. § 20.201, VA would have to treat the document as an NOD if the claimant makes a request, or VA makes a motion, within one year after the date of enactment, to treat it as a NOD.

S. 1360 would overturn the decision of the United States Court of Appeals for the Federal Circuit in *Gallegos* v. *Principi*, in which that court held that 38 C.F.R. § 20.201, defining an NOD as a writing expressing a desire for appellate review, is a reasonable and permissible construction of 38 U.S.C. § 7105, which sets forth the necessary steps for appellate review by the Board. Defining a writing as an NOD irrespective of whether it expresses a desire for appellate review would represent a major change in the statutory scheme of 38 U.S.C. § 7105, which refers to an NOD only in the context of initiating an appeal to the Board.

It does not serve veterans to initiate appeals of their claims against their wishes. However, requiring VA to treat any document disagreeing with an initial VA determination or decision on a claim as an NOD, without regard to whether it expresses a desire for appellate review, would impose a substantial burden on the VA claims adjudication system and hinder us in achieving our objective of improving the effi-

ciency of claim adjudications and reducing the time necessary to resolve claims. VA is inundated on a daily basis by myriad correspondence from claimants and their representatives. Under the proposed amendment, in any case in which such correspondence could be construed as expressing disagreement with an initial claim decision, VA would be required to initiate a time-consuming, multi-step process under which it is obligated to reexamine the claim and determine if additional review or development is warranted and, ultimately, prepare a statement of the case summarizing the evidence, citing applicable laws and explaining their affect, and providing the reasons for making the determination in question. This process would apparently be required even in cases where, although a claimant has expressed disagreement with a VA decision, it is quite plain from the claimant's submission that the claimant has no desire for appellate review of the decision.

VA opposes S. 1360 and believes that the goal of the bill can better be achieved by amending VA's procedures to assure that VA ascertains the intent of a claimant who expresses disagreement with an initial VA claim decision.

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

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JIM BUNNING TO DANIEL COOPER

Question: VA supports legislation restoring the traditional prohibition on disability compensation for drug and alcohol related disabilities. But even if we prohibit those benefits, drug and alcohol abusing veterans will still receive compensation for other disabilities that can be used to feed their habit. Would the VA support prohibiting all payments to abusing veterans until they successfully complete substance abuse treatment?

Answer: VA's justification for opposing compensation for disabilities resulting from substance abuse was primarily that compensating for such disabilities can provide an incentive for engaging in disability-producing behaviors. Compensating for other disabilities not related to substance-abuse does not provide an incentive for drinking excessively or using drugs illegally (although it may provide the means for obtaining them). Furthermore, it would be counterproductive to deny such veterans the assistance in supporting themselves and their families such compensation is meant to provide.

Senator NELSON OF NEBRASKA. I understand there may be 46 pages to your written testimony.

Mr. COOPER. Yes, sir.

Senator NELSON OF NEBRASKA. It is admitted to the record and it will be reviewed. We appreciate it very much, Admiral. Were there any other comments from anybody else here with you?

Mr. COOPER. No, sir, I believe no.

Senator NELSON OF NEBRASKA. We do not have the time for extended questions for the witnesses or to hear oral statements of the veterans service organizations. I am sorry. I assume the witnesses, your written statements are going to be in and the committee members will have an opportunity to question the witnesses in writing, which we traditionally do and will be glad to do.

[Statements of various veterans service organizations follow:]

PREPARED STATEMENT OF PHILLIP R. WILKERSON, DEPUTY MANAGER OF OPERATIONS AND TRAINING, VETERANS AFFAIRS AND REHABILITATION, THE AMERICAN LEGION

Mr. Chairman and members of the Subcommittee: Thank you for this opportunity to present The American Legion's views on these important issues. We commend the Subcommittee for holding this hearing.

S. 257—THE VETERANS BENEFITS AND PENSION PROTECTION ACT OF 2003

This legislation amends 38 U.S.C. § 5301, and prohibits any type of agreement assigning the payment of a veteran's compensation, pension, or survivor's DIC benefits to another person to include penalties against persons entering into such agreements with a veteran or other beneficiary.

The American Legion is concerned by reports of various loan scams used by unscrupulous companies and individuals to take advantage of unsuspecting, sick and disabled veterans and their families. These entities offer instant lump-sum cash payment in exchange for the individual's VA benefits. However, the actual payment is steeply discounted by 60–70 percent or higher, according to a VA investigation. The companies go to great lengths to avoid calling these arrangements loans, which could violate State and Federal laws against loan sharking and truth-in-lending requirements. Veterans should be free to do what they want with their benefits; however, there is a loophole in the current law that should be closed to prevent veterans from being victimized by such predatory practices.

This legislation also authorizes the appropriation of $3 million to be used over the next four years by VA for the purpose of outreach and education concerning the prohibition to assignment of their veterans' benefits and financial risks of entering into any such an arrangement. The American Legion believes this proposal will help protect veterans and other beneficiaries and provide substantial penalties for violators of the law.

S. 517—THE FRANCIS W. AGNES PRISONER OF WAR BENEFITS ACT OF 2003

This legislation eliminates the current requirement in 38 U.S.C. § 1112(b), that an individual had to have been detained or interned for a period of not less than 30 days in order to be entitled to presumptive service connection. This bill also eliminates the requirement that an individual be detained or interned for a period of no less that 90 days in order to be eligible for VA outpatient dental treatment.

The American Legion has long supported the elimination of these requirements. Studies have shown that there can be long lasting adverse health effects resulting from even a relatively short period of confinement as a prisoner of war. Access to medical and dental care is important factors in helping maintain these particular veterans' overall good health and strongly support the change in law.

The bill also expands the list of presumptive prisoner-of-war diseases in 38 U.S.C. § 1112, to include heart disease, stroke, liver disease, diabetes mellitus, and osteoporosis. It specifically authorizes the Secretary of Veterans Affairs to create regulations adding or deleting diseases enumerated in § 1112(b), on the basis of sound medical and scientific evidence, to include recommendations from the VA's Advisory Committee on Former Prisoners of War.

This legislation represents a solid step toward ensuring former POW's receive the compensation and medical care they are clearly entitled to. In addition to those diseases that would be presumed to be service connected, The American Legion recommends that the list also include the organic residuals of hypothermia, e.g. trench foot, immersion foot or hand, or Raynaud's Disease; arthritis, including osteoporosis; and chronic pulmonary disease where there is a history of forced labor in mines during captivity.

S. 1131—THE VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2003

This legislation increases the rates of compensation and dependency and indemnity compensation (DIC), effective December 1, 2003. This adjustment is the same percentage as that authorized for Social Security recipients. The American Legion believes that annual cost-of-living adjustments (COLAs) are necessary to ensure that the benefits provided service disabled veterans and their survivors keep pace with inflation.

S. 1133—THE VETERAN'S BENEFITS IMPROVEMENT ACT OF 2003

Section 2, increases the rates of compensation and DIC, effective December 1, 2003. This adjustment would be at the same percentage as that authorized for Social Security recipients. The American Legion believes that annual COLAs are necessary to ensure that the benefits provided service disabled veterans and their survivors keep pace with inflation.

Section 3, repeals the 45-day effective date rule for the award of death pension. In many instances, the surviving spouse is unable to meet this restrictive and arbitrary filing deadline and, as a result, benefits for this period to which they would otherwise be entitled are lost.

Section 4, amends title 38, U.S.C., § 1503 to exclude lump-sum proceeds of any life insurance policy on a veteran for the purposes of determining entitlement to death pension. This includes both government as well as commercial life insurance policies. Under the current rule, the effective date of award that applies in death pension cases is the first day of the month in which the veteran's death occurred, only if the application was received within 45 days of the date of death. Otherwise, it will be based on the date the claim is received.

If a surviving spouse receives the veteran's life insurance proceeds within 45 days of the veteran's death, but does not file a claim for death pension until some time after, the insurance proceeds are not considered as countable income for VA death pension purposes. If the proceeds are received and a claim for death pension are filed within 45 days of the veteran's death, the proceeds are then considered countable income, which may disqualify the surviving spouse for pension benefits for the entire year. The American Legion does not believe these surviving spouses should be put in this position.

The American Legion also supports an increase in the surviving spouse's pension rate to 90 percent of that for a veteran without dependents as well an exclusion of the proceeds from Government life insurance policies from countable income.

Section 5, prohibit the payment of compensation for a drug or alcohol disability, even if the abuse were secondary to a service-connected disability.

The American Legion is concerned with this provision. It proposes the amendment of title 38, U.S.C., § 1110 and 1131, to specifically provide that disability compensation shall not be paid to any veteran, which would include a former prisoner of war, who is suffering from an alcohol or substance abuse disability even when such disability is determined to be secondary to a service connected disability. The American Legion has always held the position that veterans who succumb to alcohol or drug-abuse that is caused by their service-connected disability are entitled to a level of compensation that reflects all aspects of their disability. These disabled veterans are in a very different class from those individuals who become alcoholics or drug abusers because they have engaged in conscious, willful wrongdoing or prohibited behavior. The American Legion is opposed to any attempt to legislate away the rights of veterans who are suffering from disabilities resulting from their military service. At the April 2003 hearing before the House of Representatives Subcommittee on Benefits, The American Legion testified similarly on H.R. 850, which contains the same bar to benefits.

Clearly, the intent of this proposal is to overturn the 2001 decision of the United States Court of Appeals for the Federal Circuit (the Federal Circuit or the Court) in *Allen* v. *Principi,* 237 F.3d 1368 (Fed. Cir., 2001). The Court held that Congress, in enacting P.L. 96–466, the "Omnibus Budget Reconciliation Act of 1990" (OBRA 90), did not intend to preclude compensation for an alcohol or drug-related disability resulting from or secondary to a non-willful misconduct service-connected disability. Prior to OBRA 90, VA considered alcoholism and drug abuse disabilities unrelated to a service connected psychiatric disorder as willful misconduct. The term "willful misconduct" was defined in VA regulations as a deliberate and intentional act involving conscious wrongdoing or known prohibited action, with knowledge of or wanton and reckless disregard of the probable consequences. However, the definition noted that the mere technical violation of police regulations and ordinances would not, per se, constitute willful misconduct unless it is the proximate cause of injury, disease, or death. VA's policy was that the misconduct bar to benefits did not apply to those veterans whose alcohol or drug addiction was secondary to a service connection mental or physical disability. OBRA 90 specifically provided in 38 U.S.C. §§ 1110 and 1131, that an injury or disease resulting from the abuse of alcohol or drugs is not considered to have been incurred in the line of duty and VA may not pay compensation for disabilities that are the result of "the veteran's own willful misconduct or alcohol or drug abuse." Under OBRA 90, VA as a matter of policy and practice, would not grant secondary service connection for substance abuse, but would, where appropriate, incorporate the symptoms of alcohol and drug abuse into the overall evaluation of the primary service connected disability. As an example, a veteran may have been rated for "PTSD with alcoholism." In 1998, the United States Court of Appeals for Veterans Claims (CVAC), in *Barela* v. *West* (11 Vet. App. 280) (1998), held that, while OBRA 90 provided for service connection of alcohol and drug-related disabilities as being secondary to a service connected disability, VA could not pay compensation for such disabilities.

As a result of the Federal Circuit's interpretation of 38 U.S.C. §§ 1110 and 1131, in the *Allen* decision, there are now three possible categories of disabilities involving alcohol and drug abuse. There is the category where an alcohol or drug abuse disability, developing during service, which results from the voluntary and willful abuse of alcohol or drugs and OBRA 90 still bars service connection for primary alcoholism or drug addiction and any associated disability. Then, there is the category where an alcohol or drug abuse disability is recognized as secondary to a service connected condition. And the category where there are disabilities that result from or are aggravated by an alcohol or substance abuse disability for which secondary service connection has been established

Scientific studies over the years have highlighted the fact that there is a higher incidence of substance abuse problems among veterans who suffer from severe phys-

ical or psychiatric disabilities. A recent article by Dr. Andrew Meisler, entitled "Trauma, PTSD, and Substance Abuse", from the PTSD Research Quarterly notes, "Studies of individuals seeking treatment for PTSD have a high prevalence of drug and/or alcohol abuse." Research has suggested "that 60–80 percent of treatment seeking Vietnam combat veterans with PTSD also met the criteria for current alcohol and/or drug abuse." Also cited was a study of Persian Gulf War veterans that found a PTSD diagnosis was strongly linked to problems with depression and substance abuse which supports earlier research on co-morbidity. If enacted, this provision would severely penalize veterans whose service connected condition has caused them to develop an alcohol or drug-abuse disability.

The American Legion believes Congress should not be seeking ways to deprive these veterans of their right to compensation benefits earned by virtue of their service to this nation. It is recommended that Section 5 of this bill be stricken, so that the merits of the other benefit provisions of S. 1131 can be clearly considered.

Section 6, provides several enhancements to the VA insurance program and The American Legion is supportive of their enactment.

Regarding life insurance settlements to alternate beneficiaries, when principal beneficiaries cannot be located, VA has some 4,000 outstanding cases. These represent approximately $23 million in insurance with some 200 new cases added each year, in which life insurance proceeds cannot be paid under the existing rules. This creates a situation where the original intent of the life insurance contracts is negated by current law, and settlement to a contingent or other equitably entitled person(s) cannot be made. Further, the VA advises the number of such cases where a principal beneficiary does finally come forward at some later date to make a claim for proceeds is approximately one or two per year.

The American Legion believes this proposed change would better serve the affected veteran's population in general, and provide a more fair and reasonable solution in ensuring the fulfillment of the intent of these insurance contracts than does existing law.

The American Legion recommends VA consider the feasibility of additionally permitting a face value payment in those cases where a principal beneficiary does come forward, even though full payment of proceeds has already been rendered. This is a reasonable provision from the standpoint of equity and good conscience and because of the extreme rarity of such occurrences.

Section 7, amends 38 U.S.C. § 5102 to provide that if information a claimant or the claimant's representative has been notified of that is necessary to complete an application is not received by VA within one year of such notification, no benefit may be paid or furnished by reason of the claimant's application.

This amendment addresses several problems with existing provisions of the law relating to the absence of any time limitation on the receipt of information needed to complete a claimant's application. Prior to the enactment of the VCAA, § 5103 requires VA to notify the claimant of evidence or information needed to complete the application and give the claimant one year within which to respond, otherwise the claim will be considered abandoned. Now, in the absence of a specific time limit in § 5102, the application technically remains pending indefinitely and could be the basis for a claim for retroactive benefits. The American Legion believes this was an oversight in the VCAA and supports this clarification.

Section 8, amends 38 U.S.C. §§ 2303 and 2307 to authorize the payment of the current $300 plot allowance to a state when an eligible veteran is interred in a state veterans' cemetery. The American Legion continues to support the State Cemetery Grants Program as an important adjunct and complement to the National Cemetery System in helping meet veterans' burial needs. The American Legion supports additional financial support for the operation of state veterans' cemeteries.

Section 9, extends entitlement to a government headstone or grave marker regardless of whether the veteran's grave already had a non-government marker back to November 1, 1990. P.L. 107–103, as amended, authorized the furnishing of a government headstone or grave marker where a veteran's grave was already marked by a private headstone for those veterans who died after September 11, 2001. The proposed change is consistent with this effort to assist those families who wish to have the veteran's service recognized and honored by having a government headstone or marker placed on the veterans' grave.

Section 10, authorizes the burial of a remarried surviving spouse in a national cemetery. The American Legion has no formal position on this proposal.

Section 11, amends 38 U.S.C. § 2408, to permanently authorize VA to make grants to states for the establishment, expansion, and improvements to state veterans' cemeteries. The American Legion continues to support efforts to improve the State Cemetery Grants Program and believe the enactment of this provision will enhance VA's long-term planning ability for this program.

Section 12, amends 38 U.S.C. §6105 by adding conviction for offenses involving biological and chemical weapons, nuclear material, genocide, and weapons of mass destruction to those offenses currently enumerated in §6105. The American Legion's historic position is that an individual who acts against the national interests of the United States and its citizens forfeits the right to any benefits based on prior military service in the United States Armed Forces.

Section 13, extends the life of the Veterans' Advisory Committee on Education. The committee provides valuable assistance to the Department in developing and carrying out the various program of educational assistance to veterans and other eligible beneficiaries. The American Legion continues to support the work of the Advisory Committee and fully supports extending it through December 31, 2009.

Section 14, terminates VA's authority to provide loans under 38 U.S.C., Subchapter III of Chapter 36, and the repeal of the Educational Loan Program under this subchapter. The American Legion has no formal position on this proposal.

Section 15, authorizes the extension of the delimiting period for Chapter 35 educational assistance benefits to an eligible individual who is a member of the National Guard and who is involuntarily called to full-time National Guard duty.

Current law allows for an extension of the Chapter 35 delimiting period, if the individual serves on active duty. In view of the expanded duties and responsibilities of the National Guard in supporting and augmenting the active duty armed forces, The American Legion strongly believes it is both fair and timely to recognize their valuable role in the overall defense of the nation. This change to the Chapter 35 program ensures that entitlement to these educational assistance benefits is preserved during their period of active service in the National Guard. The American Legion fully supports this proposal.

Section 16, provides for the expansion of benefits under the Montgomery GI Bill for certain self-employment training. It allows qualified veterans to utilize their GI Bill entitlement for training in state accredited courses that provide the knowledge and skills needed for successful self-employment.

The American Legion recognizes that there are non-traditional employment opportunities available in today's economy and veterans should be allowed to utilize their earned educational benefits to pursue self-employment options. The Montgomery GI Bill is an important tool in assisting veteran's transitioning from the military to civilian life and the program must continue to evolve in response to veterans' changing educational needs.

S. 1188

This legislation repeals the two-year limitation on the payment of accrued benefits to which a claimant would have otherwise been entitled to at the time of their death, as currently set forth in 38 U.S.C. §5121. It authorizes the continuation of a claim that was pending at the time of the claimant's death by the substitution of another eligible person. It similarly authorizes the substitution of a claimant in a pending appeal before a court.

VA currently has over 279,000 pending claims and another 102,000 cases requiring some type of action. While considerable progress has been made over the past year in reducing the overall backlog with particular attention to the older pending claims, a substantial number of these cases have essentially been "in process" for years. Conversely, as pending claims have been reduced pending appeals have increased; currently 105,000 appeals await adjudication by VA.

The veterans filing claims and appeals are very ill and, because of the long processing times, may, unfortunately, die before a final decision is ever made on their claim. The delays they and their families experience can result in adverse health effects and financial hardship. Upon the veteran's death, the pending claim or appeal also dies, unless a claim for accrued benefits is filed within one year of the veteran's death. Regardless of how long the veteran's case had been pending, whether at the regional office level or the Board of Veterans Appeals or court, an eligible survivor can only receive a maximum of two years retroactive benefits, rather than the full amount the veteran would have been entitled to had he or she lived.

The American Legion's longstanding position has been that any limitation on the payment of accrued benefits is unfair. The enactment of P.L. 104–275 in 1996, which extended entitlement to accrued benefits from one year to two years, was a step in the right direction. However, it fell short of providing appropriate compensation to the veteran's family in a claim that had been pending for more than two years prior to the veteran's death. Under this legislation, the full amount of accrued benefits could also be paid where there was an appeal pending before a court at the time of the claimant's death.

S. 1213

This legislation improves benefits to qualified Filipino veterans legally residing in the United States, including medical care, compensation and DIC, and burial. It also authorizes VA to furnish hospital, nursing home care, and other medical services to former members of the Philippine Commonwealth Army and New Philippine Scouts residing in the United States as a U.S. citizen or as a permanent resident alien.

In addition, extends VA's authority to maintain a regional office in the Philippines through December 31, 2005. The American Legion has long supported the continued presence of a VA Regional Office in the Philippines to help assist these veterans and their families. The American Legion continues to advocate for the earned veterans benefits of those Filipino Commonwealth soldiers who served and were recognized as members of the U.S. Armed Forces during World War II, and fully supports this legislation.

S. 1239

This legislation establishes a special compensation program for former prisoners of war based on the length of their confinement. It authorizes payment of $150 monthly for those held up to 120 days; $300 monthly, if held more than 120 days but less than 540 days; and $450 monthly, if held more than 540 days. This benefit would not be affected by any other benefits to which the veteran may be entitled and is not considered income or resources for purposes of determining eligibility for any Federal or federally-assisted program.

The American Legion takes no formal position on this proposal.

Mr. Chairman, Section 3 of 1239 is the same as Section 5 of S. 1133. The American Legion has the same concerns. The American Legion reiterates its position that Congress should not seek ways to deprive former American prisoners of war their right to compensation benefits earned by virtue of their service to this nation.

S. 1281—THE VETERANS INFORMATION AND BENEFITS ENHANCEMENT ACT OF 2003

This legislation expands presumption of service connection for additional diseases of former prisoners of war for compensation purposes and enhances the Dose Reconstruction Program of the Department of Defense (DoD), and other epidemiological studies.

Section 3, mandates VA and the DoD to jointly conduct a review of the Defense Threat Reduction Agency's (DTRA) Dose Reconstruction Program and to determine whether any additional action is required to ensure the quality control and assurance mechanisms of the program are adequate. In addition, VA would determine whether any actions are required to ensure the communication and interaction with veterans were adequate, including mechanisms to permit veterans to review the assumptions utilized in their dose reconstructions. It also establishes a VA/DoD advisory board to provide review and oversight of the Dose Reconstruction Program.

Since the 1980s, claims by "atomic veterans" exposed to ionizing radiation for a radiogenic disease, which is not among those listed in 38 U.S.C. § 1112(c)(2), have required an assessment to be made by DTRA as to nature and amount of the veteran's radiation dose(s), in accordance with 38 C.F.R. § 3.311. Under this guideline, "When dose estimates provided pursuant to paragraph (a)(2) of this section are reported as a range of doses to which a veteran may have been exposed, exposure at the highest level of the dose range will be presumed." From a practical standpoint, VA routinely denied the claims by many atomic veterans on the basis of dose estimates indicating minimal or very low-level radiation exposure.

As a result of the case of *National Association of Radiation Survivors (NARS)* v. *VA*, and studies by GAO and others of the U.S.'s nuclear weapons test program, the accuracy and reliability of the assumptions underlying DTRA's dose estimate procedures came under public scrutiny. It has been shown that very often many of the records from nuclear weapons tests including individual film badges had been lost or are incomplete. Also noted, not all participants were issued dosimeter badges or had been worn at all times. Information about an individual's activities during these tests has often been sketchy or completely lacking, which raises further uncertainties about the method by which DTRA developed the reported dose estimates.

On May 8, 2003, the National Research Council's Committee to Review the DTRA Dose Reconstruction Program released its report. It confirmed the often-unheeded complaints of thousands of atomic veterans that, historically, DTRA's dose estimates have often been based on arbitrary assumptions resulting in underestimating the amount of actual radiation exposure. Based on a sampling of past DTRA cases, it was found that existing documentation of the individual's dose reconstruction, in a

large number of cases was unsatisfactory and evidence of any quality control was absent.

The committee concluded their report with a number of recommendations that would, in their opinion, improve the dose reconstruction process of DTRA and VA's adjudication of claims by atomic veterans. These recommendations included: the establishment of an independent advisory board to provide ongoing external review and oversight of DTRA's dose reconstruction and VA claims adjudication process; re-evaluate the method of dose reconstruction to establish more credible upper-bound estimates; a comprehensive manual for standard operating procedures for dose reconstruction; a state-of-the-art quality assurance and quality control; the principle of the benefit of the doubt be consistently applied in all dose reconstructions; interaction and communication with atomic veterans be improved. It further recommended to include allowing individual atomic veterans to review the scenario assumptions used in their dose reconstruction before this information is furnished to VA; and create more effective methods to communicate the meaning of the radiation risk information; and that information should be disseminated to the community of atomic veterans advising them and their survivors of changes in the method of dose reconstruction and the possibility of have prior assessments updated and a reopening of their prior VA claim.

The American Legion was encouraged by the mandate for a study of the dose reconstruction program. While pleased that S. 1281 is responsive to the committee's recommendation, nonetheless, The American Legion is concerned that the dose reconstruction program may still not be able to provide the type of information that is needed for atomic veterans to receive fair and proper decisions from VA. Congress should not ignore the fact that, according to the National Research Council's report and other reports, the dose estimates furnished VA by DTRA over the past fifty years have been flawed and have seriously prejudiced the adjudication of the claims of tens of thousands of atomic veterans. It remains practically impossible for an atomic veteran or their survivor to effectively challenge a DTRA dose estimate.

The American Legion believes that before the proposed advisory committee begins to consider possible changes in dose reconstruction procedures, they should address the fundamental question of whether the dose reconstruction program, as it relates to the requirements of 38 C.F.R. § 3.309, should continue. The American Legion believes this provision should be eliminated in the claim of a veteran with a recognized radiogenic disease who was exposed to ionizing radiation during military service.

The American Legion supports the portion of S. 1281 pertaining to the Report on the Disposition of USAF "Ranch Hand" study. Although The American Legion has objected to the way the Ranch Hand study has been conducted, we realize that vast quantities of data have been accumulated during the last 20 years. Since such data could be potentially valuable for future research, a thorough study regarding the disposition of Ranch Hand study, and associated data, upon the conclusion of the study is warranted.

S. 249

This legislation amends 38 U.S.C. § 103(d), to establish the remarriage of a surviving spouse of a veteran in receipt of dependency and indemnity compensation (DIC) after the age of fifty-five would not result in the termination of DIC benefits.

Currently, the law bars the payment of benefits upon the remarriage of the veteran's surviving spouse at any age, unless that remarriage is subsequently terminated by divorce, annulment, or the death of the second spouse. It eliminates the disparity that exists between the DIC surviving spouses who lose their VA benefits if they remarry and other Federal annuitant who continue to receive their survivor benefits if they remarry after the age of 55. The American Legion is not opposed to this change in the DIC program.

S. 938

Amends 38 U.S.C. § 1313(b)(3) deleting the effective date of September 30, 1999 for entitlement to dependency and indemnity compensation (DIC) to those survivors of former prisoners-of-war who were rated totally disabled for one year immediately preceding death.

The American Legion supported the enactment of P.L. 106–419, the "Veterans' Millennium Benefits Act." which included a provision expanding entitlement to DIC to former prisoner-of-war rated totally disabled for a period of not less than one year immediately preceding death. However, it only applied in those cases where the veteran's death occurred after September 30, 1999. This legislation was felt to be a step in the right direction in recognizing the long-term adverse health effects of the pris-

oner-of-war experience. The American Legion has continued to advocate the removal of this arbitrary date of death restriction on the payment of this benefit and are pleased to support S. 938.

S. 1132—THE VETERANS SURVIVORS BENEFITS ENHANCEMENT ACT

This legislation increases the monthly educational assistance rates for veterans' survivors and dependents. Title 38 U.S.C. § 3532(a), rates will change from $670 for full-time to $985, from $503 for three-quarter time to $740, and from $335 for half time to $492.

Section 3, reduces the length of Chapter 35 educational assistance from 45 to 36 months for individuals who first files a claim under this chapter after the date of the enactment of this provision. The American Legion has no formal position on this proposal.

Section 4, increases the rate of DIC by $250 for a surviving spouse with one or more children. This would be in addition to the DIC dependency allowance payable. The increased rate would continue for the five-year period following the veteran's death. The American Legion is supportive of the proposed increases in educational assistance and DIC benefits.

Section 5, authorizes the burial of a remarried surviving spouse in a national cemetery. The American Legion has no formal position on this proposal.

Section 6, authorizes spina-bifida benefits for those disabled children of veterans who are presumed to have been exposed to Agent Orange while serving in Korea. This provision extends the same benefits and services as those disabled children of veterans who served in the Republic of Vietnam. DoD recently released information identifying units that were assigned to areas during the 1967–68 time frame that may have been exposed to Agent Orange. It essentially updates current statutes to reflect new information concerning the use of Agent Orange in areas of the world outside of the Republic of Vietnam and The American Legion believes this change is both appropriate and timely.

S. 792 AND S. 1136—SERVICE MEMBERS CIVIL RELIEF ACT

This legislation amends the Soldiers' and Sailors' Civil Relief Act of 1940 to rename the Act the Service members' Civil Relief Act and revises provisions with respect to certain civil protections and rights afforded to service members while on active duty assignment. Additionally, it provides certain protections of service members against default judgments, including a minimum 90-day stay of proceedings, with respect to the payment of any tax, fine, penalty, insurance premium, or other civil obligation or liability.

While The American Legion does not have an official position on this particular bill, The American Legion has long supported fair and equitable provisions for Guard and Reserve service members as provided in the Soldiers' and Sailors' Civil Relief Act.

S. 806—THE DEPLOYED SERVICE MEMBERS FINANCIAL SECURITY AND EDUCATION ACT OF 2003

This legislation improves the benefits and protections provided for regular and Reserve members of the Armed Forces deployed or mobilized in the interests of the national security of the United States.

While The American Legion does not have an official position on this particular bill, The American Legion has long supported fair and equitable provisions for Guard and Reserve service members as provided in the Soldiers' and Sailors' Civil Relief Act.

S. 978—THE VETERANS HOUSING FAIRNESS ACT OF 2003

This legislation authorizes the use of veterans' housing loan benefits for the purchase of residential cooperative apartment units. Expanding veterans housing benefits to include cooperative dwellings allows veterans who may otherwise be restricted from obtaining conventional hosing to realize the benefits of home ownership. The American Legion fully supports this legislation.

S. 1124—THE VETERANS BURIAL BENEFITS IMPROVEMENTS ACT OF 2003

This legislation increases the Burial and Funeral Allowance for a veteran eligible under 38 U.S.C. §§ 2302(a) and 2303(a)(1)(A) from $300 to $1135. Also under this section, the burial allowance for veterans who die as result of a service-connected condition increases $2000 to $3712. This legislation increases the burial plot allowance for veterans eligible as described above from $300 to $600. The bill also ties

these allowances to the Consumer Price Index, requiring the VA to adjust the allowance for inflation annually and eliminating the need for legislative action to bring the allowances in line with the original intent of Congress to pay 22 percent of the burial expenses of a veteran.

Considering the average funeral service with casket now costs over $5000, exclusive of grave marking and burial plot, these increases are desperately needed by families of deceased veterans. The American Legion finds these proposals reasonable and supports them fully.

S. 1199—THE VETERANS OUTREACH IMPROVEMENTS ACT

This legislation would provide specific authority and requirements for VA's outreach activities to coordinate between its various divisions of benefits and compensation, education and health care. In addition, mandates the VA to identify within its discretionary budget line amounts for such activities. This legislation also authorizes VA to enter in cooperative agreements and arrangements in order to carry out, coordinate, improve, or otherwise enhance both VA's and the States outreach programs. Under such cooperative agreements, VA would be authorized to make grants to State veteran agencies for the purpose of outreach and providing direct assistance in claims for veterans' and veterans-related benefits.

The American Legion is supportive of efforts to expand and improve VA's outreach to veterans and other eligible beneficiaries. The contracting out provision of this bill however, has the potential to fundamentally change the nature of the relationship between the VA and the State's veteran's agencies. The American Legion does not have a formal position on authorizing the VA to contract with the States to expand direct service and assistance.

S. 1282

The American Legion notes that the National Cemetery Administration (NCA) was required by the Veterans Millennium Health Care Act of 1999 (Pub. L. 106–117) to review the burial needs of the veteran population, in five year increments, through the year 2020 beginning in 2005. The report of a study commissioned by VA in 2001, concluded that an additional 31 national cemeteries will be required to meet the 2020 objective of serving 90 percent of veterans within a 75 mile radius of any area in the country with a population density of approximately 10 veterans per square mile, or roughly 170,000 veterans within the burial serve area.

This legislation authorizing the establishment of ten new national cemeteries, together with the six new cemeteries already either approved or under construction will go a long way toward fulfilling this need. NCA has already determined, under the above criteria that the ten current most underserved areas are in Sarasota, FL; Salem, OR; Birmingham, AL; St. Louis, MO; San Antonio, TX; Chesapeake, VA; Sumter, FL; Jacksonville, FL; Bakersfield CA; and Philadelphia, PA. New Cemeteries are currently authorized or are under construction in Atlanta, GA; Detroit, MI; Miami, FL; Sacramento, CA; Pittsburgh, PA; and, Oklahoma City, OK. Fort Sill National Cemetery near Oklahoma City opened on November 2, 2001. Some of these projects have commenced under NCA's "Fast Track" cemetery construction program, in which within a very short time after the beginning of the project, interments are accepted by setting up minimum facilities while the major construction goes forward. The interment of veterans in national cemeteries has increased from 36,400 in 1973 to 84,800 in 2001. This rate is expected to continue to rise to 115,000 in 2010. The average time to complete construction of a national cemetery is seven years.

This legislation will allow NCA to keep pace with demand for burial space if enacted and fully funded this year. The American Legion asserts that Congress must provide sufficient major construction appropriations to permit NCA to accomplish its mandate of ensuring that burial in a national cemetery is a realistic option for 90 percent of the nation's veterans. Construction funding must be continually adjusted to reflect the true requirements of the NCA, as must appropriations for operation, maintenance and renovation of existing national cemeteries.

The American Legion fully supports this legislation requiring the establishment of additional national and state veterans' cemeteries wherever a need for them is apparent and petition Congress to provide the required operations and construction funding to meet NCA's goals.

S. 1360

Currently, if a claimant is dissatisfied with a decision on their VA claim, the appellate process is initiated by the filing of a Notice of Disagreement (NOD). 38 U.S.C. § 7105(b)(1) states, in part, that "Such notice, and appeals, must be in writ-

ing and filed with the activity (agency of original jurisdiction) which entered the determination with which disagreement is expressed." P.L. 87–666 added this provision in 1962. The regulation implementing this provision of the law, 38 CFR 19.118, defined the term notice of disagreement as "written communication expressing dissatisfaction or disagreement with an adjudicative determination in terms that can be reasonably construed as evidencing a desire for a review of that determination." There was no additional or special wording required or specified.

However, in 1992, this regulation was revised and redesignated as § 20.201. It now required that, in order for a NOD to be valid, it must not only be in writing, but it must also express a desire for appellate review of the determination in question. However, despite the restrictive language of the regulation, VA maintained its previous liberal interpretation of what constituted a valid NOD. Few, if any NOD's, were rejected as invalid due to a claimant's failure to include a specific request for appellate review. The fact that a claimant filed a NOD was generally taken at its face value as an expression of a desire to appeal a particular determination.

In 2000, the United States Court of Appeals for Veterans Claims (CAVC), in *Gallegos* v. *Gober*, 14 Vet. App. 50, 57–58 (2000) invalidated 38 C.F.R. § 20.201. It held that the 1992 change added a "technical, formal requirement for a NOD beyond the requirements set by the statute." In 2001, VA appealed the CAVC's decision to the United States Court of Appeals for the Federal Circuit (the Federal Circuit). The Federal Circuit overturned the CVAC decision and held that it was "reasonable and permissible for VA to require that, in order for a NOD to be valid, it must express a desire for appellate review."

In the opinion of The American Legion, the Federal Circuit's interpretation of 38 U.S.C. § 7105(b)(1) imposes an unnecessary legal burden on veterans and other claimants who are trying to exercise their appellate rights. This decision has the effect of making the VA claims adjudication process increasingly formal, legalistic, and adversarial, which is contrary to the informal, ex parte system that Congress always intended something that The American Legion is strongly opposed to. The draft bill proposes to nullify the Federal Circuit's decision in *Gallegos* by amending 38 U.S.C. § 7105(b)(1), to specifically provide that "for the purpose of an appeal to the Board of Veterans Appeals," a valid notice of disagreement need only express in writing the claimant's disagreement with the adjudicative determination of the agency of original jurisdiction.

Mr. Chairman, The American Legion, once again thanks you for the opportunity to presents its views on these various pieces of legislation to enhance and improve the benefits of our nation's veterans. The American Legion again reasserts its position that while the legislation we have discussed today tries to fix the many challenges facing the Veterans Administration and its mission to provide compensation and benefits, they do not fix the overall problem with VA.

Until adequate funding is provided to implement the various programs affected by the proposed legislation, VA will continue to struggle to provide benefits in a fair and timely manner. The Congress must do all it can to ensure that proper financial support is available for the VA to institute the many long awaited and needed changes being discussed today.

I thank you again for your commitment to veterans and look forward to working with you and the Committee on these important issues that concludes our testimony.

THE PREPARED STATEMENT OF RICHARD JONES, NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Chairman Specter, Ranking Member Graham, and members of the Committee: On behalf of National Commander W.G. "Bill" Kilgore and the nationwide membership of AMVETS, thank you for the opportunity to present testimony to the Veterans' Affairs Committee on pending legislation regarding VA-provided benefits programs.

Mr. Chairman, AMVETS has been a leader since 1944 in helping to preserve the freedoms secured by America's Armed Forces. Today, our organization continues its proud tradition, providing not only support for veterans and the active military in procuring their earned entitlements but also an array of community services that enhance the quality of life for this nation's citizens.

S. 257—THE VETERANS BENEFITS AND PENSIONS PROTECTIONS ACT OF 2003

Senator Nelson's legislation, S. 257, would expand the definition of assignments of benefits. The aim of this bill is to end the practice of some companies paying lump-sum cash payments in exchange for collection of a veteran's future pension or disability benefits. The VA Inspector General has termed these types of contracts

a "financial scam." We believe these practices take unfair advantage of vulnerable veterans receiving VA benefits. In one case, the Inspector General reports that a veteran received a lump sum total of $73,000 in return for his monthly benefit checks of $2,700 over 10 years, an annual interest rate of 28.5 percent. AMVETS fully supports this bill to close the loophole in law that prohibits the assignment of benefits.

S. 517—THE "FRANCIS W. AGNES PRISONER OF WAR BENEFITS ACT OF 2003"

S. 517, introduced by Senator Murray, would amend current statute that requires a 30-day minimum period of capture prior to the designation of service connection for the purpose of payment of veterans' disability compensation and healthcare treatment for certain illnesses. It would also add to the list of diseases that are termed presumptive for association to the experience of being a prisoner of war. The list includes: heart disease, stroke, liver disease, diabetes (type 2), and osteoporosis. In addition, it would grant to the Secretary authority for making the determination of presumption for a non-listed disease.

AMVETS supports this legislation for the following three reasons:

First, the swiftness of war and communications today makes the need to eliminate the 30-days period to qualify for POW benefits appropriate. The traumatic experience of meeting an enemy face-to-face, not knowing what is going to happen next is sufficient stress even though a long period of incarceration does not follow.

Second, research over time and in-depth study by the National Academy of Science and others has established the need for the addition of the five designated presumptives to cover these medical problems resulting from the POW experience.

Third, granting authority to the Secretary regarding future determinations is the same standard used for delivering presumptives for Vietnam veterans. It is also the standard recommended by the VA POW Advisory Committee. If the evidence for the association is equal to or outweighs the evidence against the association between the occurrence of a disease and the POW experience should be considered positive.

S. 1133—"VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2003"

S. 1133, introduced by Chairman Specter, would provide a cost-of-living adjustment for veterans' benefits programs and help protect the veterans' benefit against the erosion effects of inflation. The principle programs affected by the adjustment would be compensation paid to disabled veterans, dependency and indemnity compensation payments made to surviving spouses, minor children and to other dependents of service members who died in service or who died as a result of service-connected injuries or disabilities. AMVETS supports the adjustment and would encourage Congress to take one more step making the payment adjustment to totally disabled veterans more generous than the consumer-price-index as measured by the Department of Labor. It is time we recognize that the compensation to totally disabled is too low and there are a number of ways to make the adjustment within the current budget.

S. 1133—THE "VETERANS PROGRAMS IMPROVEMENT ACT OF 2003"

S. 1133, introduced by Chairman Specter (by request), would address several benefit programs relating to compensation, DIC, education and memorial benefits. First, the bill would allow the cost-of-living increase in the rates of disability compensation benefits to be determined administratively. AMVETS appreciates the concern about protecting the affected benefits, however we remain confident in the current method of COLA adjustment accomplished by Congress in annual statute. Second, the bill would eliminate the 45-day rule regarding the filing of a death pension claim. Currently, claimants who receive insurance proceeds within 45-days of death and file for pension claims within 45-days of death can have their insurance proceeds counted as income for pension purposes. However, those who wait 45 days or longer to file pension claims do not. AMVETS supports this change. Surviving spouses who deserve help from VA should not have life insurance proceeds counted against them as income for purposes of being barred from the pension program. Third, the bill would prohibit payment of compensation for alcohol or drug-related disability. AMVETS agrees with this section of the bill. We do not support payment of compensation for a disability that is a result of the veteran's own alcohol or drug abuse.

AMVETS supports provisions in this bill affecting burial benefits. We support the expansion of the burial plot allowance to allow payment of a plot allowance to States for each veteran interred in a State veterans' cemetery. Current law disallows such payment to the State, if the family seeks reimbursement of expenses for a veteran entitled to related service-connected burial benefits. We also support provision in

this bill to allow VA to provide a marker for the private-cemetery grave of a veteran who died between November 1, 1990, and September 11, 2001. This provision closes a gap in VA benefits by extending the honor of this authority to the burial site of all veterans. In addition, we support expansion of burial eligibility for remarried spouses, as it reflects the importance of the first marriage to the veteran's family. Also, we support making permanent the authority of VA to make grants to States to assist them in establishing, expanding, or improving State veterans' cemeteries. The VA State Cemetery Grants Program has proven itself as an important complement to the national cemetery program and making it permanent would assist planning in this benefit program.

AMVETS also supports provisions in this bill that enhance and expand veterans' education programs. In particular we cite our support for legislation to extend educational benefits for individuals who have been called to full-time National Guard duty. The provision in this bill would extend the amount of time equal to that period of full-time duty plus 4 months to allow those who are qualified for chapter 35 benefits time to reestablish their curriculum.

S. 1188—THE "VETERANS' SURVIVOR BENEFITS ACT OF 2003"

S. 1188, introduced by Senator Murray, would repeal the two-year limitation on the payment of accrued benefits that are due to an unresolved benefits claim at the time of a veteran's death. AMVETS and the members of The Independent Budget have recommended such a change for a number of years. With the time period for processing claims and appeals often being a matter of years, the two-year limitation is inequitable. Long delays should not be a factor in our nation's compensation paid to the surviving spouse or child of a disabled veteran.

S. 1213—THE "FILIPINO VETERANS' BENEFITS ACT OF 2003"

Mr. Chairman, AMVETS is certainly mindful of the brave and historic contributions made by Filipino nationals during World War II. Their actions as part of the allied effort are legendary. Measured in these terms, we believe Filipino veterans of World War II certainly deserve our grateful appreciation for their heroic contributions they made during the war effort, regardless of where they may reside. And, in a fiscally unconstrained environment, AMVETS would most assuredly support allowing these individuals access to appropriate veterans benefits.

However, despite the efforts of the chairman and this committee, VA funding has been chronically deficient for far too long. With this in mind, AMVETS must offer its opposition to S. 1213, the Filipino Veterans' Benefits Act of 2003, introduced by the chairman at the request of Secretary Principi. By the secretary's own figures, this bill would cost VA an additional $16.2 million for fiscal year 2004 and total in excess of $130 million over the next decade. These are expenditures VA can little afford to make.

AMVETS certainly values the contributions and sacrifices made by our Filipino comrades in arms during World War II, yet we believe the interests of American veterans must continue to come first. We would certainly prefer a fiscal climate where both the interests of similarly situated Filipino beneficiaries and American veterans could be satisfactorily accommodated. However, it is difficult to see a positive effect on our veterans by extending benefits to Filipino veterans, at this time.

S. 1239—THE "FORMER PRISONER OF WAR SPECIAL COMPENSATION ACT OF 2003"

S. 1239, introduced by Senator Craig, would create a new compensation system establishing a three-tiered special monthly pension for former prisoners of war. POW's detained 30 to 120 days would receive $150 a month, those detained 121 to 540 days would receive $300 a month, and those detained form 541 or more days would receive $450 a month. Payment would be made without regard to any other compensation under federal law. Current law requires a period of internment of not less than 90 days to qualify. AMVETS supports this bill.

S. 1281—THE "VETERANS INFORMATION AND BENEFITS ENHANCEMENT ACT OF 2003"

S. 1281, introduced by Ranking Member Graham, would augment research in specific exposures to radiation and toxins such as Agent Orange and the risk of later disease. AMVETS supports the provisions contained in this legislation as a means to continue efforts to find remedies and better understand the agents used on the battlefield.

S. 249—A BILL TO PROVIDE THAT REMARRIAGE OF THE SURVIVING SPOUSE OF A DECEASED VETERAN AFTER AGE 55 SHALL NOT RESULT IN TERMINATION OF DEPENDENCY AND INDEMNITY COMPENSATION

S. 249, introduced by Senator Clinton, would allow the spouse of veterans who remarry after the age of 55 to continue to receive DIC payments. The current program that disqualifies spouses who remarry is the only federal annuity program that does not permit a recipient of dependency compensation to continue benefits after age 55. AMVETS supports this bill to retain benefits eligibility.

S. 938—A BILL TO PROVIDE FOR THE PAYMENT OF DIC TO THE SURVIVORS OF FORMER PRISONERS OF WAR WHO DIED ON OR BEFORE SEPTEMBER 30, 1999

S. 938, introduced by Senator Murray, is similar to H.R. 886, introduced in the House by Pennsylvanian Representative Tim Holden. It would update and correct inequities in disability and indemnity compensation (DIC) for all survivors of Prisoners of War (POW's) rated totally disabled at time of death.

Current law provides DIC benefits only to surviving spouses of eligible POW's who died after September 30, 1999. Before 1999, surviving spouses of POW's were eligible for DIC benefits providing the POW was rated 100 percent disabled for a minimum of 10 years prior to the POW's passing. Due to unresolved eligibility issues, many POW's passed away prior to being considered 100 percent disabled for ten years. This problem was addressed by enactment of the Veteran's Millennium Healthcare Act of 1999, which allowed surviving spouses to qualify for DIC benefits if their POW spouse was rated 100 percent disabled for at least one year and died after September 30, 1999.

However, establishment of this date left many widows with unresolved cases penalized due to this cutoff. This legislation would treat all surviving spouses of POW's equally and grant them DIC benefits regardless of when their POW spouse passed away. We believe these changes honor all those who have been held captive in service to our nation. AMVETS also wishes to recognize the support of AMVETS Department of Pennsylvania for this legislation.

S. 1132—THE "VETERANS SURVIVORS BENEFITS ENHANCEMENTS ACT OF 2003"

S. 1132, introduced by Chairman Specter, would enhance several benefits programs for spouses and children of those killed or injured in military service to our nation. First, it would increase the Survivors' and Dependents Education Assistance benefit available to eligible spouses and children to equal the benefit provided veterans. Second, the bill would increase the DIC benefit over a five-year period. It recognizes that the DIC basic rate of $948 monthly for a total of 36 months does not adequately meet the needs of surviving spouses with dependent children. Third, the bill extends VA authority to allow remarried spouses the right to burial with their previous spouse, already buried in a national cemetery. Fourth, the bill would provide benefits to spina-bifida children of veterans who served in or near the Korean DMZ between 1967 and 1969. This provision is crafted under the same rational as the benefit extended to children of Vietnam veterans. AMVETS supports the compassionate provision of benefits contained in this legislation.

S. 792—THE "SERVICE MEMBERS CIVIL RELIEF ACT"

S. 792, introduced by Senator Miller, would amend and update the Soldiers' and Sailors' Civil Relief Act of 1940. The bill is similar to HR 100, legislation approved on May 7 in the House of Representatives, and S. 1136, legislation introduced in the Senate by Chairman Specter. The bill would clarify and strengthen the rights and protections provided to persons in military service. Under current statute coverage includes service members' financial obligations and liabilities, such as rent, mortgages, installment contracts and leases; civil (but not criminal) legal proceedings; life insurance; taxes; and rights in public lands.

Congress enacted the Soldiers' and Sailors' Civil Relief Act in 1940 to protect individuals called to active duty. It is intended in large part to promote the national defense by suspending enforcement of civil liabilities of service members to enable them to devote their entire energies to freedom's defense. For example, the act provides for forbearance and reduced interest on certain obligations incurred prior to service and restricts default judgments against service members and rental evictions of service members and their dependents.

Mr. Chairman, as the scope and role of our National Guard personnel has changed, so must the laws that govern their service. AMVETS supports these changes. They are needed as recognition of the changing responsibilities of the modern world.

S. 806—THE "DEPLOYED SERVICE MEMBERS FINANCIAL SECURITY AND EDUCATION ACT OF 2003"

S. 806, introduced by Ben Nelson, would provide financial assistance to reserve and active troops deployed for prolonged tours of duty. Since the end of the Cold War, and especially since the terrorist attacks of September 11, National Guardsmen and Reserves have seen an upward spiral in the rate of deployment and mobilizations. Often these deployments last for long periods keeping these military personnel away from their jobs and their normal lives sometimes up to 2-years.

This bill would lessen the financial burdens potentially carried by those called from their employment to active duty. It would amend the Soldiers' and Sailors' Civil Relief Act to protect the educational status and tuition payments and limit the interest rate on student loans of service for our citizen soldiers. It would allow members of reserve components to withdraw from new 401(k) accounts to supplement military income when mobilized or completing a military career. In whole, this bill helps recognize the stress on our brave volunteers and see that help is available as they fulfill their national defense and homeland security mission.

S. 1136—THE "SERVICE MEMBERS' CIVIL RELIEF ACT"

S. 1136, introduced by Chairman Specter, would update and upgrade the Soldiers' and Sailors' Civil Relief Act of 1940. The bill is similar to legislation approved on May 7 in the House of Representatives and S. 792, companion legislation introduced in the Senate in April by Senator Zell Miller.

S. 1136 retains the core protections in place for over 6 decades such as providing a stay in civil proceedings, capping interest rates on individual debts at 6 percent, and protecting from evictions in rental agreements and residential leases. However, it takes an additional step to upgrade the rent ceiling on evictions from the current level of $1,200 per month to $1,950 per month or the amount of a service member's basic allowance for houses whichever is higher. Since the basic allowance is annually adjusted, this change would avoid erosion of the benefit over time. The legislation also would include leased automobiles in the relief protections. It would allow service members to terminate automobile leases just they can for real property leases. Moreover, the bill would provide protections for small business owners during military service. Reservists and guardsmen deserve protection that postpones or suspends certain civil obligations with which military service could interfere. AMVETS gives its full support for swift consideration and passage of this measure.

S. 1124—THE "VETERANS BURIAL BENEFITS IMPROVEMENT ACT OF 2003"

S. 1124, introduced by Senator Mikulski, would amend the burial benefits provided families of our brave and dedicated veterans. It is important to note that Congress, with minor, yet significant exception, has not increased veterans' burial benefits for several decades. A PricewaterhouseCoopers study, submitted to VA in December 2000, indicates serious erosion in the value of burial allowance benefits. While these benefits were never intended to cover the full costs of burial, they now pay for only a fraction of what they covered in 1973, when the Federal Government first started paying burial benefits for our veterans.

While some adjustments were made in the 107th Congress to adjust the plot allowance from $150 to $300 and the service-connected benefit from $1,500 to $2,000, it's important to note that these increases remain significantly lower, as a percentage of original expense, than originally provided. For instance, in 1973 the plot allowance benefit covered approximately 13 percent of a veterans' funeral. Today it covers only 6 percent. Increasing the plot allowance from $300 to $670 would restore the benefit to an amount proportionally equal to the benefit paid in 1973. Similarly the bill would raise the service-connected benefit and the non-service-connected benefit to percentage levels appropriate to a more meaningful contribution to the costs of burial for our veterans. Finally this bill would adjust burial benefits for inflation annually to avoid the erosion of this important benefit to the families of veterans.

S. 1199—THE "VETERANS OUTREACH IMPROVEMENT ACT OF 2003"

S. 1199, introduced by Senator Feingold, would establish a new grant program to fund State-run outreach programs conducted by State Departments of Veterans Affairs. AMVETS firmly believes that outreach programs provide important information to veterans about their earned benefits. Moreover the current program funded in the State of Wisconsin is well operated. However, we do not believe a separate funding line should be created. It is already well known that overall funding is inadequate: Over 167,000 veterans are currently denied enrollment in the VA health care system due to shortfalls in funding and more than 136,000 waiting six months

or more for their first appointment to see a VA doctor; VA benefits are running delays measured in months and in too many cases years; Burial benefits are under funded with maintenance of national cemeteries reported to be nearly $920 million in arrears. Though AMVETS is committed to improving the lives of our Nation's veterans, we do not believe the time is ripe for establishment of an outreach program that is more the responsibility of VA than the State Departments.

S. 1282—A BILL TO REQUIRE THE SECRETARY OF VA TO ESTABLISH NATIONAL CEMETERIES FOR GEOGRAPHICALLY-UNDERSERVED POPULATIONS OF VETERANS

S. 1282, introduced by Ranking Member Bob Graham, would direct the VA secretary to ensure burial access to veterans located within a reasonable distance of their homes. It would authorize the construction of ten new cemeteries in the ten top areas of veterans population identified to be in greatest need. These sites would include: Sarasota, Fla.; Salem, Ore.; Birmingham, Ala; St. Louis, Mo.; San Antonio, Tex.; Chesapeake, Va.; Sumter, Fla.; Bakersfield, Cal.; Jacksonville, Fla.; and Philadelphia, Penn. AMVETS supports the construction of new cemeteries to ensure that burial needs of veterans and their family members will be met in the future.

S. 1360—A BILL TO AMEND SECTION 7105 OF TITLE 38, UNITED STATES CODE, TO CLARIFY THE REQUIREMENTS FOR NOTICES OF DISAGREEMENT FOR APPELLATE REVIEW OF DEPARTMENT OF VETERANS AFFAIRS ACTIVITIES

S. 1360, introduced by Ranking Member Bob Graham, would clarify the level of formality necessary for a veteran to file notice of disagreement regarding a VA denial of claim for benefits. The bill specifies that a claimant's filing is appropriate as long as it complies with section 7105 of title 38, which simply requires that a notice of disagreement must be filed in writing within 1-year from the initial denial with the regional office that issued the decision in disagreement. Regulations issued by VA require, extra statutorily, that the notice also state in writing "a desire for appellate review." VA regulations were upheld in the United States Court of Appeals for the Federal Circuit on appeal in *Gallegos* v. *Gober* (later *Principi*). AMVETS supports this legislation. Filing of a notice of disagreement should be no more convoluted than prescribed by law. Moreover, NOD's previously set aside by use of VA's expanded regulation should be restored.

This concludes our testimony. Again, thank you for the opportunity to testify on this important legislation, and thank you, as well, for your continued support of America's veterans.

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

Mr. Chairman and Members of the Committee: The agenda today includes a number of bills of importance to the more than 1,252,000 members of the Disabled American Veterans (DAV). As always, we appreciate this Committee's efforts to improve benefits and services for disabled veterans, and we are grateful for the opportunity to provide our views on legislation affecting our members. With a few exceptions, the provisions of these bills are beneficial and justified.

BILLS RELATING TO VETERANS' DISABILITY COMPENSATION BENEFITS—S. 257

The Veterans' Benefits and Pensions Protection Act of 2003, S. 257, would clarify that the prohibition on assignment of veterans' benefits includes any agreement between a beneficiary and a third party under which the third party acquires for consideration the right to receive any compensation, pension, or dependency and indemnity compensation (DIC) of the beneficiary. The bill provides criminal penalties for violations, and directs the Secretary of Veterans Affairs to conduct an outreach program to inform veterans and other potential recipients of compensation, pension, or DIC of the prohibition against the assignment of those benefits, including information on various schemes to evade the prohibition and means of avoiding such schemes.

After its May 2, 2002, hearing on several bills that included last year's version of S. 257, that is, S. 2003, this Committee merged S. 2003 into S. 2237 and favorably reported it for a vote by the Senate. The Senate passed S. 2237 with these provisions included as section 105. Unfortunately, section 105 was removed in conference, and the provisions were thus not included in the bill enacted as Public Law 107–330.

The DAV testified in support of S. 2003 last year, and the DAV fully supports S. 257. The disability benefits Congress provides to veterans and their dependents

are intended to relieve the effects of impairments and other economic disadvantages. To safeguard these benefits against loss and to ensure they are not diverted to or siphoned off by third parties, Congress enacted legislation making veterans' benefits non-assignable. Certain commercial companies nonetheless entice veterans to assign their future compensation payments to the companies in exchange for smaller amounts advanced as lump sums. This practice defeats the public policy principles underlying the non-assignability provisions of section 5301 of title 38, United States Code, because a portion of government payments become profits benefiting commercial concerns.

Under some of these "factoring" arrangements, the lump sum paid to the veteran is only a fraction of the total amount that must be repaid over the term for repayment and far exceeds the amount of total payments of principal and reasonable interest that would be due in a legitimate loan. Such factoring agreements may in effect violate usury laws.

The Department of Veterans Affairs (VA) Inspector General made an inquiry into this practice in 2001. He observed that these "schemes seem to target the most financially desperate veterans who are the most vulnerable." He noted, "for many unsuspecting veterans, these benefit buyouts could be financially devastating." Surprisingly, VA cavalierly testified against this legislation in last year's hearing, stating a belief that veterans should be free to dispose of their benefits as they wish. Such a position by VA is irresponsible and should be disregarded by this Committee, as it was last year. The DAV urges the Committee to favorably report S. 257.

S. 517

The Francis W. Agnes Prisoner of War Benefits Act of 2003 would amend certain statutory requirements for presuming service connection of disabilities in the case of former prisoners of war (POW's) and for providing VA dental care to former POW's. It would repeal the current 30-day minimum period of internment that is a prerequisite for the presumption of service connection for recognized POW-related diseases. It would repeal the current 90-day minimum period of internment that is a prerequisite for eligibility for VA dental care. It would add to the list of diseases subject to the statutory presumption of service connection heart disease, stroke, liver disease, type 2 diabetes, and osteoporosis and would provide for the presumption of service connection of other diseases through administrative rules promulgated by the Secretary of Veterans Affairs when the Secretary determines there is a positive association between the experience of being a prisoner of war and such diseases. The short title of this bill honors a well-known former POW and a survivor of the Bataan Death March.

This bill is consistent with DAV's resolution calling for expansion of the list of disabilities subject to presumptive service connection for former POW's. The DAV supports S. 517.

S. 1131

The Veterans Compensation Cost-of-Living Adjustment Act of 2003, S. 1131, provides for adjustment of disability compensation, DIC, and clothing allowance rates for the annual increase in the cost of living as will be determined by the Consumer Price Index. To avoid a decrease in purchasing power, these benefits for service-connected disabled veterans and their survivors must be adjusted annually, commensurate with increases in the cost of living. The DAV supports S. 1131.

S. 1133

In addition to a cost-of-living adjustment for compensation, DIC, and the clothing allowance, this bill, which was introduced by request, includes a variety of other provisions, apparently sought by VA. Although its short title is the "Veterans Programs Improvement Act of 2003," some of the bill's provisions do not improve veterans' programs. Other provisions are beneficial.

Section 3 of S. 1133 would repeal the rule that requires an application for death pension to be received by VA within 45 days of a veteran's death for the effective date for an award of death pension to be retroactive to the first day of month of the veteran's death. This change would restore the prior rule under which the effective date would be the first day of the month of the veteran's death provided the application was received within 1 year from the date of death. The DAV has no mandate from its membership on this provision, but we note it would have a beneficial effect for claimants and would be more practical for VA to administer as well.

Section 4 adds lump-sum life insurance proceeds to the list of items that are excluded from income calculations for purposes of entitlement to death pension. Again,

the DAV has no resolution on this specific issue, but we note this provision would be beneficial for veterans' survivors who have very limited incomes.

Consistent with a legislative proposal in the fiscal year (FY) 2004 budget for VA, section 5 of the bill would amend the law to prohibit compensation for disability from alcohol or drug abuse that was caused by a service-connected disability. For the reasons stated below in our discussion of the same provision in S. 1239, the DAV strongly opposes this provision.

Section 6 would authorize the payment of the proceeds of a National Service Life Insurance (NSLI) or United States Government Life Insurance (USGLI) policy to a contingent beneficiary when the primary beneficiary does not claim the proceeds within 2 years of the insured's death. After the passage of the 2-year period, the primary beneficiary would be treated as if he or she had predeceased the insured.

Further, if within four years after the death of the insured, no claim has been filed by a designated beneficiary, payment of the insurance proceeds may be made to such person as may, in the judgment of the Secretary, be equitably entitled to such proceeds.

Annually, VA sends statements to policyholders regarding the status of their policies. Recently, VA requested that policyholders resubmit beneficiary designations to enable VA to electronically file the designations in its new imaging system. These forms also requested beneficiaries' social security numbers. As part of VA's annual mailing to policyholders, it should continue to request updated beneficiary information to ensure its records are current and allow it to carry out veterans' wishes as to recipients of life insurance policy proceeds.

It is unclear what action VA currently takes to ensure a deceased veteran's beneficiary is located and receives notice that life insurance proceeds are available. Further, a 2-year window of opportunity for a primary beneficiary to file a claim appears to be a very short period of time, especially in light of the fact that after that 2-year period, the primary beneficiary is treated as if he or she had predeceased the insured and, therefore, is precluded from receiving the life insurance proceeds. Likewise, a secondary beneficiary would have only 2 years in which to file a claim after the primary beneficiary's 2-year period has elapsed.

We are unaware of any private insurance company that has similar restrictions. Accordingly, the DAV is opposed to the provisions contained in Section 6 of this bill.

Section 7 of the bill would amend 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 would also amend 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. We do not understand why VA would want to remove this time limit unless it desires, by the absence of any statutory time limit, the discretion to impose its own requirement of less than 1 year. We believe existing section 5103(b) should be retained, and 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, non-substantive 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 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)(i) (2002). Thus, the 1-year rule does not operate when finality is suspended and a claim continues to be open and pending.

Section 8 would expand eligibility for the burial plot allowance to make it consistent with eligibility for burial in a national cemetery and provide for a plot allowance to a state for burial in a state cemetery when a service-connected burial allowance is paid to a veteran's survivor. The change in eligibility for the plot allowance is a recommendation of The Independent Budget, of which DAV is one of the co-

authors in the partnership of four veterans' organizations. The DAV supports section 8 of this bill.

Section 9 would establish an earlier effective date for provisions authorizing government-furnished markers for privately marked veterans' graves. The DAV has no mandate from its membership on this issue, but the legislation is liberalizing, and we have no opposition.

Section 10 would expand eligibility for interment in national cemeteries to veterans' spouses who survived the veteran and who were remarried at the time of their death. The DAV has no position on this section.

Section 11 would remove the FY 2004 sunset from the state cemetery grant program. The DAV has no mandate from its membership on this issue, but the state cemetery grant program should continue as long as there is a need for state veterans' cemeteries to augment the limited availability of burial space in national veterans' cemeteries.

Section 12 would add more offenses to the list of subversive activities that will result in forfeiture of entitlement to veterans' benefits. Added to the list would be (1) crimes involving development, possession, use, etc., of biological weapons, chemical weapons, or nuclear materials; (2) genocide; (3) use of weapons of mass destruction; and (4) terrorist acts. The DAV opposes the addition of crimes involving biological, chemical, or nuclear materials, without qualification beyond their respective broad statutory definitions, in sections 175, 229, and 831 of title 18, United States Code. These statutes include use of the prohibited materials in crimes against individuals—for example, poisoning or attempted poisoning of a person—which are not necessarily within the class of subversive activities, and are thus not of a magnitude to warrant forfeiture of all veterans' entitlements. Currently, the commission of a capital crime disqualifies a veteran for certain burial benefits but does not cause forfeiture of other entitlements. According to Black's Law Dictionary, 7th edition, a "subversive activity" is one in which there is a "pattern of acts designed to overthrow a government by force or other illegal means." Therefore, section 6105 of title 38, United States Code, in incorporating a list of offenses that will result in forfeiture, should only do so with language that limits the applicability of these crimes to circumstances in which they were committed for subversive ends. Under other circumstances of crimes against the person, the veteran should not suffer a forfeiture of veterans' rights because that would constitute a dual penalty for a crime: the government would impose the first penalty for commission of the crime and the second penalty because the perpetrator was incidentally a veteran.

Section 13 of S. 1133 would amend requirements for appointments to the Veterans' Advisory Committee on Education. Current provisions require the VA Secretary to appoint veterans "representative of World War II, the Korean conflict era, the post-Korean conflict era, the Vietnam era, the post-Vietnam era, and the Persian Gulf War." Section 13 would require such appointments to the extent practicable and would make a technical amendment to a cross-reference in section 3692 of title 38, United States Code. The DAV has no position on this section 13.

Section 14 would repeal the education loan program. The DAV has no position on this issue.

Section 15 would amend provisions for extension of the period for using educational benefits under chapter 35 of title 38, United States Code. Under current law, the period of eligibility, the "delimiting period," may be extended for the length of time an eligible person serves on active duty during their delimiting period. Section 15 would add compulsory full-time National Guard duty to types of military service that will warrant an extension. The DAV has no specific mandate from its membership on this issue, but this would be a beneficial change for persons eligible for educational assistance under chapter 35, and we therefore support it.

Section 16 would authorize payment of education benefits under the Montgomery GI Bill for veterans pursuing self-employment training as specified by the section. The DAV has no position on this issue.

S. 1188

The Veterans' Survivors Benefits Act of 2003, S. 1188, would repeal provisions that impose a 2-year limitation on retroactive benefits payable to an eligible survivor by reason of death of the entitled beneficiary before adjudication can be finalized or payment can be disbursed. Section 5121 of title 38, United States Code, authorizes VA to pay to immediate surviving family members the benefits due a veteran or due an eligible dependent at the time of death, but the statute restricts payment to those benefits "due and unpaid for a period not to exceed two years."

Other than an arbitrary limitation, there is no rational basis to pay benefits for a fixed period that is less than the period for which benefits are actually and right-

fully due. No circumstances or factors inherent in the merits of the matter warrant nullification of all a veteran's entitlement to benefits except for the 2 years immediately preceding death simply because, by the chance of time and perhaps administrative variations, a veteran's death occurs before VA can issue payment of all benefits owed.

Workload variations and differentials in efficiency between VA field offices can result in different outcomes and unequal treatment of identically situated survivors. The widow of one veteran might get the benefit of a full retroactive award because the VA regional office decided the veteran's claim and made full payment of all amounts due to the veteran just a day or so before the veteran's demise, while the unfortunate widow of another veteran may get the benefit of only a 2-year retroactive award because her regional office took enough extra days to dispose of the claim that the veteran's death occurred before VA could pay him the benefits he was due. Although the same as the first widow in all respects, the second widow's accrued benefits would be subject to the 2-year limitation solely because of administrative variations.

With the persistence of high error rates in VA's adjudication of claims, correct decisions only follow from appeals that take years, in many instances. With an aging veteran population and protracted claims and appeals processing times, seriously ill and aged veterans may die before VA can properly finalize their claims. Because effective dates for beginning benefit entitlement are tied to the dates veterans file their claims, retroactive awards spanning more than 2 years almost always occur because of some administrative error or delay beyond the veteran's control.

Compensation and other benefits provide economic assistance for loss of earning power or other reasons. To the extent the veteran was deprived of the income from benefits due, his or her immediate family members are also deprived of the value of that income. A surviving spouse or child, who shared and suffered the effects of economic deprivation for an extended period while the claim was pending, should not be barred from receipt of a substantial portion of the relief the veteran would have received but for his or her death merely because the veteran did not live long enough to see his or her claim properly resolved by VA.

To remedy this injustice, section 2 of S. 1188 strikes from section 5121 the limiting phrase "for a period not to exceed two years," thereby authorizing payment of all accrued benefits to eligible family members. This legislation addresses DAV Resolution No. 22 that calls for repeal of the limitation on payment of accrued benefits and a recommendation by The Independent Budget that Congress remove this unfair restriction.

To remedy the lack of any survivor designated to receive a deceased child's benefits accrued under chapter 18 of title 38, United States Code, section 2 of the bill designates the child's surviving parents as eligible recipients.

For cases in which benefits are not payable based on existing ratings or decisions, or not payable based on the evidence on file at the date of death, sections 3 and 4 of S. 1188 would authorize those survivors who would have been eligible to receive accrued benefits, had accrued benefits been payable, to continue to prosecute claims and appeals for the purpose of establishing, after the claimant's death, entitlement to the benefits sought by the deceased claimant. However, these substituted parties, may only prosecute claims or appeals for compensation, DIC, or pension, and therefore could not prosecute claims or appeals for the broader range of periodic monetary benefits subject to the accrued benefits provisions of section 5121.

The purpose of this section is for practicality and administrative economy, and to remove inequities in current law. For example, if a veteran died while his case was before the Board of Veterans' Appeals or the United States Court of Appeals for Veterans' Claims, a substituted party could continue to prosecute the pending appeal without the necessity of beginning an entirely new claim as a claimant for accrued benefits with the knowledge that VA is unlikely to award the survivor accrued benefits based on the same evidence on which it denied the veteran's claim and with the expectation that another appeal from the denial of accrued benefits would inevitably be required. It also removes the inequity that results from circumstances in which one survivor would receive accrued benefits because the veteran had been able to submit sufficient evidence to prove his entitlement before death and a similarly situated and equally entitled survivor would be denied benefits because the veteran had been unable to submit full proof of entitlement before his or her death occurred. Current law does not permit a survivor to submit evidence necessary to prove a claimant's entitlement after the claimant's death. Under the provisions of this bill, survivors, as substituted parties, would in effect have all the rights the claimant had while living to submit evidence or appeal in an effort to establish entitlement.

The provisions of S. 1188 address one of the DAV's legislative priorities and remedy serious inequities in current law. We urge the Committee to make this bill one of its legislative priorities this year.

S. 1213

Section 3 of S. 1213, the Filipino Veterans' Benefits Act of 2003, would authorize payment of the full-dollar rate of compensation for service-connected disability suffered by a person who served in the Philippine Scouts under authority of section 14 of Public Law 79–190 (known as "new" Philippine Scouts) who resides in the United States as an American citizen or permanent resident and would pay the full-dollar amount of DIC to an eligible survivor of a Commonwealth Army veteran or new Philippine Scout if the survivor resides in the United States as an American Citizen or permanent resident. Section 5 would extend full-dollar burial benefit entitlement and national cemetery eligibility to a new Philippine Scout residing in the United States as an American citizen or permanent resident. Section 4 would extend VA's authority to operate a regional office in the Philippines to 2008. The DAV recognizes the contributions of these Filipino veterans during World War II, and we support S. 1213.

S. 1239

As the short title of S. 1239 indicates, the Former Prisoners of War Special Compensation Act of 2003 would establish a special compensation benefit for former POW's. For service members and veterans who were held as prisoners of war for at least 30 days, monthly benefits would be paid at three different rates, based upon the length of time an individual was in POW status. Those held 30 to 120 days would receive $150 monthly; those held 121 to 540 days would receive $300; and those held more than 540 days would receive $450. This special compensation would not be considered income or resources for purposes of determining eligibility to any other Federal or federally funded program and would not be subject to attachment, execution, levy, tax lien, or detention under any process whatever.

In addition to special compensation for POW's, the bill would remove the requirement that a POW must have been a prisoner of war for not less than 90-days to be eligible for VA dental care. This provision addresses a legislative proposal in the VA budget for FY 2004.

Also in response to a legislative proposal in the VA budget, the bill would amend the law to prohibit compensation for disability from alcohol or drug abuse that was caused by a service-connected disability. Currently, the law bars compensation for disability that is the result of abuse of alcohol or drugs, except when alcohol or drug abuse is secondary to a service-connected disability. Unlike the other provisions of the bill, which are beneficial to POW's, this provision in H.R. 850 is not specifically related to POW benefits, although it will adversely affect some disabled POW's, as it does other disabled veterans.

Veterans in no other group as a whole have borne a greater burden on behalf of our Nation and deserve more in return than our former POW's. Many suffered unimaginable horrors from torture, humiliation, other physical and psychological trauma and abuse, deprivation, isolation, and malnutrition. In addition to the effects of physical and mental trauma, many suffered from diseases caused by unsanitary conditions and inadequate diets. Many, perhaps, never fully recover from a life experience that is far more traumatic than most in society ever have to endure. The families of POW's also suffer, especially families of those confined for long periods of time under uncertain circumstances, families of those who never recover after they return to civilian lives, and the families of those who never return at all. To the extent we can provide former POW's benefits that address their special needs or afford some general recompense in proportion to their suffering and sacrifices, we should never hesitate to do so, but the special benefits we provide should have some equitable correlation to their degree of sacrifice.

Although the DAV fully supports, in principle, special compensation for former POW's, we have some doubts about the appropriateness of the formula in S. 1239 under which special compensation would be provided. The three tiers of monthly benefit rates appear to be designed to provide higher monetary amounts for longer periods of confinement, i.e., $150 for 30–120 days, $300 for 121–540 days, and a maximum of $450 for any number of days in excess of 540. A former POW imprisoned for 30 days would receive the same monthly rate as a POW imprisoned 120 days, or four times as long. A former POW imprisoned for 120 days would receive $150 monthly while a former POW imprisoned 1 day longer would receive $300, or twice as much. A former POW, who was confined 121 days, or roughly 4 months, would receive $300, while a former POW imprisoned 540 days, or 18 months, would

also only receive $300. A former POW who was detained or interned for 121 days would receive $300 while a former POW imprisoned for any period more than 540 days would receive $450, only $150 more per month.

At a monthly rate of $150, the former POW held for 30 days would receive $5 monthly for each day of confinement. A former POW held for 120 days would receive $1.25 for each day of confinement, while a former POW held for 121 days would receive $2.47 for each day of confinement. A former POW held for 540 days, or 18 times as long as a 30-day POW, would receive only $0.55 for each day of confinement, as compared with $5 per day for the 30-day POW. A POW held for 541 days would receive $0.83 for each day of confinement, with that rate per day of confinement dropping with each additional day after 541 days.

According to VA statistics, there were 42,781 living former POW's as of January 1, 2002. Data from the VA in a report entitled "Study of Former Prisoners of War" from the Studies and Analysis Service of the Office of Planning and Program Evaluation, shows the estimated average length of internment of World War II POW's in Europe as 347 days or .95 years; World War II POW's in the Pacific, 1,148 days or 3.15 years; and the Korean Conflict, 737 days or 2.02 years. This report notes that the 82 crew members of the naval intelligence ship *U.S.S. Pueblo* were interned by North Korea for 11 months. Although the report does not provide average internment times for Vietnam veterans, it acknowledges that they were held "longer than any other POW group—up to seven years." However, Navy pilot, Everett Alverez, was imprisoned by North Vietnam for more than eight-and-a-half-years. Under the formula in H.R. 850, he would receive a few pennies a month for each day of his captivity. Moreover, this formula provides no special benefit for the families of the hundreds of heroic POW's who died in captivity, and thus made the ultimate sacrifice.

Any special benefit for former POW's that differentiates between groups and provides different benefit rates according to the time they were held as POW's should have a more meaningful correlation to their degree of sacrifice and suffering and be money well-spent by grateful American taxpayers. The three classifications and benefit rates for POW's in S. 1239 do not equitably compensate POW's proportionate to their varying lengths of detainment or internment.

The removal of the 90-day internment or detainment eligibility threshold for dental care is straightforward, however, and makes requirements for dental care consistent with requirements for other medical services provided to POW's.

Generosity to POW's commensurate with their service to the Nation is commendable, but the provisions to bar compensation for the effects of secondary service-connected disabilities from alcohol abuse blemish this otherwise benevolent and well-intentioned bill for POW's. In seeking this change, VA ignores the distinction between alcohol abuse arising from the use of alcohol to enjoy its intoxicating effects and alcohol abuse that results from a service-connected disability. A review of the pertinent statutory and regulatory provisions is helpful to understanding this issue.

Under general provisions of law, a disability incurred during active military, naval, or air service is deemed to have been incurred in the line of duty unless the disability was the result of the affected person's own willful misconduct. Under section 3.310(a) of title 38, Code of Federal Regulations, "disability which is proximately due to or the result of a service-connected disease or injury shall be service connected," and when "service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition."

In section 8052 of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, Congress amended section 105 of title 38, United States Code, regarding line of duty and misconduct, and sections 1110 and 1131 of that title, that govern payment of wartime and peacetime disability compensation, to provide that, in addition to disabilities resulting from willful misconduct, disabilities from abuse of alcohol and drugs are not in the line of duty and that compensation shall not be paid for disability that is a result of the veteran's abuse of alcohol or drugs.

To implement these statutory changes, VA published its proposed rule in the Federal Register on March 1, 1994. In response, the DAV reminded VA, as already provided in its own instructions in a circular and its adjudication manual, that the changes in law did not apply to alcohol-related disabilities where the alcohol abuse is a manifestation of a service-connected disability, such as posttraumatic stress disorder (PTSD), or where drug abuse arises out of therapy for a service-connected disability. We recommended that these circular and manual instructions be included in the new regulations. With the publication of its final rule in the Federal Register on May 24, 1995, VA addressed our comment in the preamble:

The same commenter noted that the Veterans Benefits Administration Manual M21–1 and VBA Circular 21–90–12 provide that alcohol- or drug-related disabilities will be considered service-connected if alcohol abuse is a manifestation of a service-

connected disability such as post traumatic stress disorder, or if drug abuse arose out of therapy for a service-connected disability.

He stated that these are substantive rules that should be included in the amendment to § 3.301.

The manual and circular provisions which the commenter cited are examples of the application of 38 CFR 3.310(a), which provides that disability that is proximately due to or the result of a service-connected disease or injury shall be service-connected and that when service connection is thus established for a secondary condition the secondary condition shall be considered a part of the original condition. In circumstances such as those raised by the commenter, VA is required by § 3.310(a) to consider conditions that it has determined are secondary to a service-connected condition to be part of that service-connected condition rather than a result of the abuse of alcohol or drugs. Since that requirement is established elsewhere in VA's regulations, it is unnecessary to incorporate those provisions into § 3.301.

VA therefore declined to incorporate its circular and manual provisions in the rule because section 3.310(a) already addressed this matter adequately, according to VA. VA's circular and manual provisions initially implementing Public Law 101–508, as reinforced by its comments in conjunction with its final rule, indicated that it interpreted the changes in Public Law 101–508 as inapplicable to alcohol abuse secondary to a service-connected disability. In the final rule, VA's definition of drug abuse, codified at 38 C.F.R. § 3.301(d), explicitly excluded addiction or the effects of drug use arising out of treatment of a service-connected disability but did not expressly exclude alcohol-related disability secondary to a service-connected disability. As noted, VA argued that section 3.310(a) adequately addressed this. The definition provided:

For the purpose of this paragraph, alcohol abuse means the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

Without addressing or explaining why it believed its original interpretation was wrong, VA later took the position that Public Law 101–508 prohibits compensation for alcohol abuse even when due to a service-connected disability. In an April 7, 1997, letter to the VA General Counsel, Congressman Lane Evans of the House Veterans' Affairs Committee advised VA that it was not the intent of Congress in Public Law 101–508 to bar compensation for alcohol-related disabilities when such disabilities are secondary to another service-connected disability. Congressman Evans said: "Where the addiction results from the medical condition incurred or aggravated during military service, Public Law 101–508 was not intended to preclude payment of benefits."

In *Allen* v. *Principi*, 237 F.3d 1368 (Fed. Cir. 2001), the court agreed with DAV's argument that the law does not bar compensation for disability from alcohol abuse when caused by a service-connected disability, and an expanded panel of judges, finding VA's argument unpersuasive, rejected VA's request that the court rehear the case. Having had its erroneous interpretation against veterans set aside by the Court and having apparently determined it unlikely that further appeal would be successful, VA now looks to Congress to reinstate its incorrect view of the law. Congress should reject VA's recommendation.

Although VA's Veterans Health Administration (VHA) is a recognized leading authority in research on and treatment of PTSD, and thus possesses extensive information and insight into the relationship between PTSD and alcohol abuse, VA's leadership and its Veterans Benefits Administration (VBA) apparently understand little about the subject, despite much puffing about the "One-VA" concept. Even before the American Psychiatric Association recognized PTSD as a distinct psychiatric disorder in 1980, those counseling Vietnam veterans suffering from its symptoms recognized alcohol abuse as a frequent component. Studies from the 1970s and later revealed that Vietnam combat veterans exhibited substantially higher levels of alcohol consumption than other veterans and non-veterans and that many combat veterans appeared to use alcohol as an anti-anxiety agent to induce a form of "psychic numbing." It was observed that many combat veterans appeared to be "self-medicating" with alcohol to suppress PTSD symptoms.

Numerous studies about the relationship between psychiatric disorders, particularly PTSD, and alcohol abuse have been conducted, and VA's own National Center for PTSD recognizes the relationship. From the Center's Internet website at *www.ncptsd.org*, a number of fact sheets, articles, and clinical newsletters about PTSD and alcohol may be accessed. One entitled "Effects of Traumatic Experiences:

A National Center for PTSD Fact Sheet," explains under the heading "How Do Traumatic Experiences Affect People?" that trauma survivors "may turn to drugs or alcohol to make them feel better." Under the heading "What are the Common Basic Effects of Trauma?" and subheading, "All of these problems can be secondary or associated trauma symptoms," the fact sheet states:

Alcohol and/or drug abuse: can happen when a person wants to avoid bad feelings that come with PTSD symptoms, or when things that happened at the time of the trauma lead a person to take drugs. This is a common way to cope with upsetting trauma symptoms, but it actually leads to more problems.

Another fact sheet entitled "PTSD and Problems with Alcohol Use" observes:

Sixty to eighty percent of Vietnam veterans seeking PTSD treatment have alcohol use disorders. Veterans over the age of 65 with PTSD are at increased risk for attempted suicide if they also experience problematic alcohol use or depression. War veterans diagnosed with PTSD and alcohol use tend to be binge drinkers. Binges may be in reaction to memories or reminders of trauma.

Other articles by various authors on the subject accessible from the Center website include the following:

- PTSD and Substance Abuse: Clinical Assessment Considerations
- Dual Diagnosis: PTSD and Alcohol Abuse
- Chronic PTSD in Vietnam Combat Veterans: Course of Illness and Substance Abuse
- Substance abuse and post-traumatic stress disorder co-morbidity
- Post-Traumatic Stress Disorder and Comorbidity: Psychological Approaches to Differential Diagnosis

Under an article titled "Identifying the PTSD paradox," in a recent issue (Vol. 24, No. 1) of the *Vet Center Voice*, published by VA's Readjustment Counseling Service, the author presents "models" related to PTSD and its treatment. "Model A" lists "Self-medicate" as the first feature of avoidance devices and symptoms. The author, a PTSD treatment team leader at a VA Vet Center, explains in the introduction how the veteran may be unable to escape the trauma of the past and become entrapped by PTSD symptoms and consequent alcohol abuse:

Other veterans, however, continue to experience distress as they go through life, as if they must continue to live today under the rules and regulations that were imposed upon them in the past, during moments of trauma. Not only do some veterans continue to live in the past, but new learning in the present seems to have come to a standstill: today is just like yesterday which is just like 30 years ago; there are no differences—"I am my trauma; I am my PTSD." The self becomes enmeshed with the past, exposure to traumatic events, and PTSD symptoms in the presence of such distortions. The self is surrounded by a layer of trauma, followed by a layer of PTSD symptoms, followed in some cases by a layer of substance abuse. Reins of control are in the hands of PTSD. Under these conditions, a relationship in the present with others and life and living is difficult and distressing. Indeed, a relationship with the past, trauma, and PTSD is maintained to the exclusion of one's relationship with life today and living in the present.

Under his discussion of "Model B," the author explains: "Hyperarousal also contributes to cognitive distortions, heightened emotionality and maladaptive behaviors such as aggression, isolation, sleep disturbance, lack of concentration and self-medication." Under another model, the "Negative SORC" (Situation, Organism, Reaction, Consequences), the author shows how an individual with PTSD might react to a negative event with emotional symptoms, and negative reactions, such as to "Start drinking."

The VA's 1985 edition of the *Physician's Guide for Disability Evaluation Examinations* stated that substance abuse "may be either primary, or secondary to posttraumatic stress disorder." The Clinicians' Guide that replaced it states that substance abuse "may occur as a result of PTSD" and "when a veteran's alcohol or drug abuse is secondary to or is caused or aggravated by a primary service-connected disorder, the veteran may be entitled to compensation." Among other things, the Clinicians' Guide instructs examiners to explain why "substance abuse had onset after PTSD and clearly is a means of coping with PTSD symptoms."

Many former POW's suffer from PTSD and other psychiatric disorders. These conditions are so common in POW's that anxiety, depressive, and psychotic disorders affecting former POW's are presumed service connected under section 1112 of title 38, United States Code. This provision in S. 1239 will prohibit them from being compensated for the effects of alcohol-related disabilities caused by PTSD.

The fact sheet quoted above, "PTSD and Problems with Alcohol Use," states: "Women exposed to trauma show an increased risk for an alcohol use disorder even if they are not experiencing PTSD. Women with problematic alcohol use are more likely than other women to have been sexually abused at some point in their lives."

With women in the Armed Forces being captured and held as POW's, and with the possibility that female POW's could be brutalized and sexually abused by undisciplined, unprincipled enemy forces, the possibility exists that female POW's might begin to abuse alcohol as a means to escape the unforgettable horrors of their experiences. Will they then become victims of the insensitivity of our own government?

Obviously, this provision to prohibit compensation for alcohol abuse, included in S. 1239 at the urging of VA, does not have recognized medical principles and fair and equitable treatment of veterans as its bases. Regrettably, this recommendation reflects very negatively upon the agency that is charged with understanding and having insight into the effects of trauma and severe disabilities upon veterans. It evidences a narrow-minded insensitivity to the real nature of the effects of severe trauma and severe disability upon young men and women who bear these extraordinary burdens and suffer these extremely traumatic experiences. We oppose such an unwarranted, inequitable change in the strongest possible terms, and we urge that this Committee not report S. 1239 with this objectionable provision included.

S. 1281

Section 2 of S. 1281, the Veterans Information and Benefits Enhancement Act of 2003, would add to the list of diseases subject to the statutory presumption of service connection based on internment or detainment as a POW cardiovascular disease, cerebrovascular disease, and chronic liver disease, including cirrhosis and primary liver carcinoma. Section 3 would require the Secretaries of VA and the Department of Defense to jointly conduct a review of the radiation Dose Reconstruction Program of the Department of Defense (DoD) to determine how well that program is working and report to Congress the findings of the review. In addition, section 3 would establish oversight requirements for the Secretaries and an advisory board to conduct periodic audits of dose reconstructions and perform other functions to ensure the integrity of the program. Section 4 would require the Secretary of Veterans Affairs to determine the appropriate disposition of the Air Force Health Study of personnel who were involved in aerial spraying of herbicides during the Vietnam Era. Section 5 would require the VA and DoD Secretaries to make funds available to the National Academy of Sciences for epidemiological research on members of the Armed Forces and veterans.

It is self-evident that the provisions in each of these sections would serve to improve veterans' programs and the scientific data upon which entitlement decisions are made. Certainly, the accuracy of the Government's radiation dose reconstruction program has been doubted and questioned for a long time, and recent information indicates that those doubts were justified. Similarly, the Government's actions with regard to herbicide exposure and its consequences have not engendered public confidence. The DAV supports S. 1281. We also suggest that the better solution to radiation dose estimates is to remove the uncertainties related to dose quantification and the supposed corresponding risk of harmful effects from the consideration altogether, as has already been done for determinations of service connection under presumptive provisions.

BILLS RELATING TO VETERANS' SURVIVOR BENEFITS—S. 249

This bill would amend the law to provide continued eligibility for DIC when the surviving spouse remarries after age 55. Under current law, DIC eligibility terminates upon remarriage of the surviving spouse. Section 103(d)(2)(B) of title 38, United States Code, exempts medical care for certain veterans' spouses from the general rule that a surviving spouse's eligibility for veterans' benefits terminates upon his or her remarriage. This bill would amend (d)(2)(B) of section 103 to include DIC in the exemption by adding a cross-reference to section 1311 of title 38, United States Code.

Veterans' benefits are provided to family members because they are, or were during the disabled veteran's lifetime, dependent upon the veteran for support. Entitlement to those benefits ends when the dependence ends by reason of age, marriage, or remarriage. Under section 1310 of title 38, United States Code, DIC may be paid to surviving spouses, children, and dependent parents of veterans. Section 1318 of title 38, United States Code, authorizes DIC for surviving spouses and children of veterans whose deaths were preceded by total service-connected disabilities for specified periods. Under section 101(14) of title 38, United States Code, DIC is a benefit paid to a "surviving spouse, child, or parent." Under section 101(3), "surviving spouse" is defined as, among other things, a spouse who "has not remarried," and section 101(4) conditions status as a "child" upon the child being "unmarried." Thus, by definition, DIC, as it pertains to a surviving spouse or child, is a benefit for a survivor who is unmarried. Under section 103(d) of title 38, United States Code, en-

titlement to DIC revives upon the termination of a disqualifying marriage of a surviving spouse.

The DAV has no mandate from its membership on this issue, but the purpose of this bill is one beneficial to surviving spouses of disabled veterans, and we therefore have no objection to its favorable consideration. However, because section 1311 is not the authority for DIC but rather sets the payment rates and because this amendment would make the existing definition of DIC under section 101 incongruent with the nature of the benefit insofar as it would be paid to remarried spouses, we question whether S. 249 would accomplish the change in the most appropriate manner under principles of good statutory drafting.

S. 938

Under section 1318(b)(3) of title 38, United States Code, DIC is authorized for certain surviving spouses and children of former POW's whose deaths were preceded by total service-connected disabilities. Before enactment of Public Law 106–117, eligibility criteria for DIC under section 1318 required that veterans must have been totally disabled by a service-connected condition for a period of 10 years or more immediately preceding death. Public Law 106–117 eliminated the 10-year time requirement for survivors of POW's. Congress recognized that knowledge of the cause-and-effect relationships between the harsh conditions of confinement as a POW and many diseases had only recently come to light, and provisions for presumptive service connection had therefore not been in effect sufficiently long for POW's to have established service connection and a total rating for the requisite 10-year period although many had in fact suffered total disability from these conditions for 10 or more years. However, Congress did not make these liberalizing provisions applicable retroactively. The change applied only to claims based on deaths after September 30, 1999, the effective date of Public Law 106–117.

This bill would make the 1-year total disability requirement applicable to any DIC claim based on total service-connected disability of a former POW. The DAV supports S. 938.

S. 1132

This bill, the Veterans' Survivors Benefits Enhancements Act of 2003, would make several changes in the benefits provided to veterans' survivors, dependents, and disabled children. Section 2 would increase the monthly allowances provided under the survivors' and dependents' educational assistance program. Section 3 would reduce the duration of assistance under the survivors' and dependents' educational assistance program from 45 to 36 months. Section 4 would add $250 monthly to the DIC payment for a surviving spouse with one or more children below age 18, with such additional payment to continue until every child has attained age 18 or until the end of the 5-year period beginning on the date of the veteran's death, whichever is earlier. As with section 10 of S. 1133, section 5 of this bill would allow spouses who survived the veteran and who were remarried at the time of their death to be buried in national cemeteries. Section 6 would extend benefits for spina-bifida now available to children of herbicide-exposed Vietnam veterans to children of veterans who were exposed to herbicide agents in Korea during the period beginning on January 1, 1967 and ending December 31, 1969, with a prohibition against duplication of benefits based on exposure in both locations.

The DAV supports section 2, which would provide greater assistance to dependents and survivors pursuing a course of education. However, the DAV does not support section 3, which would reduce the duration of that program from the current 45 months to 36 months. While 36 months may be adequate to obtain a 4-year degree in most circumstances, we question whether the availability of more time for special circumstances would have any significant budgetary impact. The DAV supports section 4 which would provide higher rates of DIC for surviving spouses who have a greater financial burden during the period in which there are minor children in the home. The DAV has no position on section 5, which would authorize burial of a remarried spouse in a national cemetery. The DAV does not have a mandate from its membership on section 6; however, we note, as a matter of fundamental fairness, benefits provided on account of exposure to herbicides should not be granted to one group and denied another solely because the veteran parents in the first group were exposed in Vietnam and the veteran parents in the second group were exposed in Korea.

PROPOSED SOLDIERS AND SAILORS CIVIL RELIEF ACT AMENDMENTS
S. 1136, S. 792, AND S. 806

These three bills address current circumstances in which a need exists to afford certain relief and assistance to service members who have been called away from jobs and families for extended periods to serve on active duty. Although meritorious, the purposes of these bills are beyond the scope of the DAV's legislative mission, i.e., issues pertaining to rights and benefits for service-connected disabled veterans and their dependents and survivors. We have no position on S. 1136, S. 792, and S. 806.

BILLS RELATING TO OTHER MATTERS—S. 978

The Veterans Housing Fairness Act of 2003 would make VA housing loans available for purchase of residential cooperative housing units. This expands authority for VA home loans to add this option for home ownership in the changing marketplace. The DAV has no mandate from its membership on this issue, but finds the legislation to be beneficial.

S. 1124

The Veterans Burial Benefits Improvement Act of 2003 would increase the base burial and funeral allowance from $300 to $1,135, the burial allowance for service-connected deaths from $2,000 to $3,712, and the burial plot allowance from $300 to $670. In addition, S. 1124 would provide for automatic future annual adjustments indexed to increases in the cost of living.

Like disability compensation, DIC, and the clothing allowance, burial and plot allowances should be adjusted annually. For every year in which these allowances remain the same despite an increase in the cost of living, their value erodes. Because Congress has not regularly enacted legislation to adjust these benefits, their value has seriously eroded.

These increases are consistent with recommendations of The Independent Budget for FY 2004, which states:

Congress has not substantially increased veterans burial benefits for the families of our wounded and disabled veterans for over a decade. A PricewaterhouseCoopers study, submitted to VA in December 2000, indicates serious erosion in the value of burial allowance benefits. While these benefits were never intended to cover the full costs of burial, they now pay for only a fraction of what they covered in 1973.

In the 107th Congress, the plot allowance . . . was increased for the first time in over 28 years to $300 from $150 . . . The IBVSO's recommend increasing the plot allowance from $300 to $670, an amount proportionately equal to the benefit paid in 1973.

Also in the last Congress, the allowance for service-connected deaths was increased from $500 to $2,000. Prior to this adjustment, the allowance had been untouched since 1988. Clearly, it is time this allowance was raised to make a more meaningful contribution to the costs of burial for our veterans. The IBVSO's recommend increasing the service-connected benefit from $2,000 to $3,700, bringing it back up to its original proportionate level of burial costs.

The non-service-connected benefit was last adjusted in 1978, and today it covers just 6 percent of funeral costs. We recommend increasing the non-service-connected benefit from $300 to $1,135.

Finally, the IBVSO's recognize the need to adjust burial benefits for inflation annually to maintain the value of these important benefits.

For these reasons, the DAV's membership has adopted a resolution for the DAV to support legislation increasing burial benefits and providing for automatic annual adjustments based on the Consumer Price Index. We therefore urge favorable action by the Committee on S. 1124.

S. 1199

To improve the dissemination of information on programs for veterans, the Veterans Outreach Improvement Act of 2003 would first define outreach according to its methods and goals to guide VA actions. It would establish by law separate funding line items for outreach activities within the budgets of VA and its three administrations, VHA, VBA, and the National Cemetery Administration (NCA). Separate funding would serve to assure that the resources provided by Congress are used to meet the goals of this legislation. The bill would require the VA Secretary to establish and maintain procedures to coordinate outreach activities between the Office of the Secretary, the Office of Public Affairs, VBA, VHA, and NCA to gain economies of scale and avoid duplication and inconsistency. It would authorize VA collabora-

tion with state governments to take advantage of and supplement their resources with grants for the purpose of providing outreach. The DAV supports S. 1199.

S. 1282

This bill would require the VA Secretary to determine from current population data the 10 areas in the United States where the need for new national cemeteries is most urgent, toward the goal of ensuring that 90 percent of the veterans within a 75-mile radius of a population center have access to a national cemetery. The Secretary would be required to carry out advanced planning for the establishment of cemeteries in these 10 "burial service areas," report to Congress his findings, and establish a national cemetery in each such area.

The provisions of this bill are consistent with the DAV's resolution calling for an adequate number of national cemeteries and recommendations by The Independent Budget. The DAV supports S. 1282.

S. 1360

By reference to existing statutory provisions regarding the form of a "notice of disagreement," this bill would provide that a document conforming to the existing requirements will be accepted by VA as a notice of disagreement. Under section 7105 of title 38, United States Code, a veteran may initiate an appeal by notifying VA in writing of his or her disagreement with a VA decision. The statute requires nothing more to trigger the appellate process within VA. This bill would override a decision by the United States Court of Appeals for the Federal Circuit that upheld VA's regulation, which has requirements beyond those set forth in section 7105. The change would apply to any notice of disagreement filed on or after the date of enactment of S. 1360 and any existing notice of disagreement that had not been rejected by VA at the time of enactment. For any document rejected as a notice of disagreement by VA as not conforming to its regulatory requirements, the bill provides that VA must accept the document as a notice of disagreement if affirmatively requested to do so by the veteran or other claimant within the time prescribed for such request. Also, the Secretary may, on his own motion, accept the previously rejected document as notice of disagreement.

The process Congress established for veterans' claims and appeals is designed to be simple, informal, and pro-veteran. Because the process is non-adversarial and because VA has the obligation of assisting the veteran in prosecuting claims and appeals, adverse actions based purely on formalities are inappropriate. In the case leading to the decision by the Federal Circuit, the veteran had notified VA of his disagreement in accordance with the requirements of the statute but had not expressly stated that he desired appellate review, as required by VA's regulation. This seems somewhat absurd inasmuch as the purpose of a notice of disagreement is to formally lodge an appeal. It inherently communicates a desire for appellate review. To require the veteran to also expressly state he or she desires appellate review is a redundant and unnecessary formality. Regrettably, this represents the mindset of today's VA in which VA will resort to an extremely strict literal reading of somewhat imprecise regulatory text to justify a result against a veteran. The pertinent general words on which VA relied to reject the veteran's notice of disagreement in the case decided by the Federal Circuit were: "the Notice of Disagreement must be in terms which can reasonably be construed as disagreement with [the] determination and a desire for appellate review."

It is regrettable that it becomes necessary for Congress to intervene to prevent such behavior by VA, but it has nonetheless become necessary in this instance. We urge the Committee to act favorably and promptly to restore reason to VA's appellate process.

These many beneficial provisions included in these several bills demonstrate the sincere efforts of members and staff of this Committee, as well as other Senators who introduced and co-sponsored some of these bills, to improve veterans' programs. We appreciate this strong support for our Nation's disabled veterans.

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

Chairman Specter, Ranking Member Graham, Members of the Committee, PVA would like to thank you for the opportunity to testify today concerning the proposed veterans benefits legislation. PVA is pleased to present our views on the important issues that you have addressed with these measures.

S. 257—THE "VETERANS BENEFITS AND PENSIONS PROTECTION ACT OF 2003"

PVA supports S. 257, the "Veterans Benefits and Pensions Protection Act of 2003." This measure would provide protection to some of our most vulnerable veterans. S. 257 would close a current loophole by prohibiting assignment contracts transferring certain veterans' benefits for cash "buy-outs" to non-veteran entities for specified periods. The Department of Veterans Affairs (VA) Inspector General has stated in previous testimony that "these schemes seem to target the most financially desperate veterans who are most vulnerable. For many unsuspecting veterans these benefit buyouts could be financially devastating."

S. 517—THE "FRANCIS W. AGNES PRISONER OF WAR BENEFITS ACT OF 2003"

S. 517 would repeal the current requirement that a former prisoner of war be interned for at least 30 days in order for the VA to recognize a presumption of service-connection for certain listed diseases directly associated with that internment, for purposes of the payment of veterans' disability compensation. It would also repeal the 90-day minimum period of internment in order for the veteran to be eligible for dental care furnished by the VA. The proposed legislation adds heart disease, stroke, liver disease, Type 2 Diabetes, and osteoporosis to the list of diseases presumed to be service-connected for former prisoners of war. PVA recognizes that prisoners of war have suffered extreme hardships in defense of this country. We also recognize that veterans who were held as prisoners of war for less than 30 or 90 days did not necessarily suffer any less than those veterans who were held longer. PVA supports this legislation.

S. 1131—THE "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2003"

PVA supports S. 1131, 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. We oppose again this year, as we have in the past, the provision rounding down to the nearest whole dollar compensation increases.

S. 1133—THE "VETERANS PROGRAMS IMPROVEMENT ACT OF 2003"

As stated previously, PVA supports Section 2 of S. 1133 which would increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation. However, we oppose the provision requiring the rounding down to the nearest whole dollar amount compensation increases.

Section 3 of the proposed legislation would repeal the 45-day rule for the effective date of award of death pension. The award of death pension would be placed in the same section as death compensation and DIC. This means that death pension benefits can be paid as long as an application for these benefits is made within one year, not 45 days. The elimination of the 45-day rule is yet another issue of fairness for claimants who are coping with the losses of loved ones. PVA supports this section. Likewise, PVA supports Section 4 which would exclude the proceeds of life insurance from consideration as income for purposes of determining veterans' pension benefits.

PVA is deeply troubled by, and sees no need for, Section 5 of this legislation as written. The narrowness of the Federal Circuit Court of Appeals' holding in *Allen* v. *Principi*, 237 F.3d 1368 (U.S.C.A. Fed. Cir. 2001), a narrowness repeatedly referenced by the Court, would enable compensation only when there is "clear medical evidence establishing that the alcohol or drug-abuse disability is indeed caused by a veteran's primary service-connected disability, and where the alcohol or drug-abuse disability is not due to willful wrongdoing." We are also concerned that this section would erase the important distinction between willful and involuntary acts, a concern also expressed by the Court.

Section 6 of the S. 1133 would ensure that insurance payments are made to a primary beneficiary or a designated alternate beneficiary. National Service Life Insurance (NSLI) and United States Government Life Insurance (USGLI) are important benefits available to veterans and their families. It is essential that these benefits be paid to the proper beneficiary in the event that a veteran dies. Likewise, it is important that an alternate beneficiary be designated by the veteran who carries USGLI or NSLI so that an insurance payment may be made to an appropriate beneficiary. The VA must play an active part in ensuring that benefits intended for a veteran's surviving spouse or alternate beneficiary are paid in full. PVA does have concerns about allowing the Secretary of Veterans Affairs to determine who will receive the benefits in the event that no claim has been filed within four years. We

do not understand how the Secretary has the knowledge and authority to make such a decision.

Section 7 of the legislation allows the VA to not pay benefits to a claimant if the claimant does not provide information requested by the VA within one year of that request. PVA opposes this section. Veterans should not be subject to a time limitation for anything related to the completion of a claim for disability. The VA has a responsibility to ensure that a veteran is given the benefit of the doubt when filing his or her claim. That veteran should not be under pressure to meet a time deadline because the VA does not want to take more time to ensure a veteran is properly taken care of.

PVA supports the provisions of Section 8 of S. 1133. This provision would allow the VA to pay states a plot allowance for burying veterans in state cemeteries. Currently, states do not receive this allowance if a veteran's surviving spouse files for reimbursement of funeral expenses. Our position is consistent with the recommendations of The Independent Budget. PVA also supports Section 9 of the bill. This provision would allow the VA to furnish a government marker to the family of veteran whose grave already has a private marker. Currently, this is allowed for veterans who died after September 11, 2001. This provision would extend that time period to include veterans that died after November 1, 1990.

PVA has no position on Section 10 of this legislation. This section would permit the surviving spouse of a veteran who remarries to be eligible for burial in a national cemetery. Current eligibility allows for a surviving spouse who is remarried to a non-veteran to be buried in a national cemetery. The spouse is eligible if the remarriage is terminated by divorce or the non-veteran spouse dies. The proposal seems to be consistent with current law. PVA understands this proposal, as it is written, allows a remarried spouse to be buried together with the deceased veteran whether or not he or she is divorced from the new spouse or the new spouse is deceased. PVA is concerned that this section may be unnecessary.

Section 11 of S. 1133 would remove the end date for providing state cemetery grants and make the program permanent. This program is currently scheduled to end at the end of FY 2004. PVA has no objection to this provision. Section 12 of the legislation adds to the list of offenses that a veteran could be convicted of that would result in a forfeiture of "gratuitous" VA benefits. Section 6105 provides that an individual convicted after September 1, 1959, of any of several specified offenses involving subversive activities shall have no right to gratuitous benefits, including national cemetery burial, under laws administered by the Secretary of Veterans Affairs and that no other person shall be entitled to such benefits on account of such individual. Congress' primary concern in enacting this provision was to prevent VA benefits from being provided based on military service of persons found guilty of offenses involving national security.

This section adds six classes of "subversive" activities. The following offenses from title 18, United States Code, would be added: sections 175 (Prohibitions with respect to biological weapons); 229 (Prohibited activities with respect to chemical weapons); 831 (Prohibited transactions involving nuclear materials); 1091 (Genocide); 2332a (Use of certain weapons of mass destruction); and 2332b (Acts of terrorism transcending national boundaries). These activities are recognized as threats to national security. PVA has no position on this section.

PVA has no objection to the provisions of Section 13 or 14. PVA supports Section 15 which provides for an extension in the period of eligibility for survivors' and dependents' education benefits for members of the National Guard who are involuntarily ordered to active duty. The legislation would extend the delimiting date for use of Chapter 35 education benefits. The amount of time available for this benefit would be extended the length of the active duty service time plus four additional months.

PVA fully supports the provisions of Section 16 of S. 1133. This section would allow for a veteran who is eligible for Montgomery GI Bill benefits to use those benefits to pay for self-employment training. This provision would meet the intent of P.L. 106–50, which PVA worked to get enacted, which fosters veteran-owned small business entrepreneurship. A veteran would not be able to use these benefits unless the program or entity providing the self-employment or on-the-job training was certified by a state approving agency.

S. 1188

Under current law, if a veteran dies while a claim is being processed by the Department of Veterans Affairs (VA), but before his or her claim becomes final, the surviving spouse is entitled to no more than two years of accrued benefits when the claim is decided in the veteran's favor. S. 1188 repeals this two-year limitation al-

lowing the veteran's surviving spouse to receive the full amount of the award and not be penalized by VA's failure to resolve a claim in a timely manner. The Independent Budget clearly states that "with the time period for processing claims and appeals often being a matter of years, this limitation is inequitable." A veteran's surviving spouse should not be forced to suffer the consequences of the VA's inefficiency. PVA fully supports Section 2 of S. 1188.

We do, however, have concerns regarding provisions of S. 1188 that allow for substitutions before the Court of Appeals for Veterans Claims. As the Court noted in *Vda de Landicho* v. *Brown*, "the issues involved in the Board's [of Veterans Appeals'] adjudication of the deceased veterans' underlying claims are not identical to those needing resolution in an accrued-benefits claim." 7 Vet. App. 42, 48 (1994).

In addition, these provisions conceivably could change the nature of the Court, as well as implicate the "case or controversy" requirement. The Court is not generally considered to be an initial trier of facts. As the Court stated in *de Landicho*, if it "were to permit a putative accrued-benefits claimant to continue the appeal, there would be no guarantee that that individual would be entitled to accrued benefits [.] Further, there is no innate guarantee, in the case of the death of any veteran, that any accrued-benefits claimant exists; a veteran may die without leaving a qualified spouse, child, parent, or final-sickness-caregiver. Absent a BVA decision that a survivor is qualified under section 5121, any decision the Court would render on the deceased veterans' service-connection or increased-rating claims could well be purely hypothetical." *de Landicho* at 49 [emphasis in original].

S. 1213—THE "FILIPINO VETERANS' BENEFITS ACT OF 2003"

PVA strongly supports S. 1213, the "Filipino Veterans' Benefits Act of 2003." This legislation would extend health care benefits to certain Filipino veterans residing legally in the United States. It would also eliminate statutory payment rates that allow Filipino veterans and their survivors who live in the United States to be paid less than other veterans and their survivors who live in the United States. PVA supports the provision of health care and nursing home care outlined in Section 2 of this bill.

Section 3 of the draft bill addresses a basic issue of fairness and equality for payments of compensation and dependency and indemnity compensation (DIC). Currently, Filipino veterans receive compensation payments at the rate of $0.50 for every dollar that other veterans receive. PVA supports Section 3. PVA also supports the extension of the operation of a regional office in the Philippines provided for in Section 4 and the offering of national cemetery burial to New Philippine Scouts provided for in Section 5.

S. 1239—THE "FORMER PRISONERS OF WAR SPECIAL COMPENSATION ACT OF 2003"

S. 1239 would allow the VA to pay a monthly special compensation to veterans who were prisoners of war. The amount of this compensation would be based on the length of time that the veteran was actually held as a prisoner. The bill would also allow the VA to provide dental care to all former prisoners of war, not just those who were held captive for more than 90 days. PVA supports the provisions of Section 2 and 4 of the proposed legislation; however, we have concerns about whether or not the formula used to determine the amount of compensation is fair and equitable. We would urge the Committee to consider other alternatives for the payment of compensation.

As we stated in our testimony regarding S. 1133: PVA is troubled by Section 3 and sees no need for this legislation as written. The narrowness of the Federal Circuit Court of Appeals' holding in *Allen* v. *Principi* 237 F.3d 1368 (U.S.C.A. Fed. Cir. 2001), a narrowness repeatedly referenced by the Court, would enable compensation only when there is "clear medical evidence establishing that the alcohol or drug-abuse disability is indeed caused by a veteran's primary service-connected disability, and where the alcohol or drug-abuse disability is not due to willful wrongdoing." We are also concerned that this section would erase the important distinction between willful and involuntary acts, a concern also expressed by the Court.

S. 1281—THE "VETERANS INFORMATION AND BENEFITS ENHANCEMENT ACT OF 2003"

PVA supports Section 2 of S. 1281 which would add three diseases to the list of conditions presumed to be service-connected for former prisoners of war. These diseases include cardiovascular disease, cerebrovascular disease, and chronic liver disease. PVA also supports the intentions of the provisions of Section 3 and Section 4 which would require the Secretary to conduct a review of the Department of Defense Dose Reconstruction Program and the Air Force Health Study. Finally, PVA supports the Section 5 which would require both the VA and DoD to provide funding

for the Medical Follow-up Agency, a scientific body charged with tracking the health of veterans and military service members. This provision is consistent with the original law, P.L. 102–585, which required the two agencies to fund this program.

S. 249

The proposed bill, S. 249, allows for the surviving spouse of a deceased veteran to continue to receive Dependency and Indemnity Compensation (DIC) if he or she remarries after the age of 55. This bill would prevent the VA from stopping payment of these benefits to the surviving spouse. PVA does not have a resolution addressing this issue. This is an issue that staff members in our Veterans Benefits department continue to monitor and evaluate. At this time, PVA does not oppose this proposed legislation.

S. 938

S. 938 provides for the payment of DIC to survivors of veterans who were former prisoners of war who died on or before September 30, 1999. Under this proposed legislation, the same eligibility conditions that apply to payment of DIC to the survivors of former prisoners of war who die after that date will apply to this new group of survivors. It is important that the surviving spouses and dependents of veterans who were held as prisoners of war receive just compensation. This is an issue of fairness and equity for all surviving spouses of former prisoners of war. PVA fully supports S. 938.

S. 1132—THE "VETERANS' SURVIVORS BENEFITS ENHANCEMENTS ACT OF 2003"

PVA supports Section 2 of the "Veterans' Survivors Benefits Enhancement Act." This section would increase the monthly Survivors' and Dependents' Education Assistance, DEA, benefits from $680 to $985. The surviving spouse or dependent child of a veteran who is killed while in the service or fatally injured is entitled to these education benefits. However, the small amount is not enough to provide for the costs of tuition, fees, and room and board. PVA recognizes this as a basic issue of fairness. Surviving spouses and dependent children are still left with a heavy burden when paying for an expanded education. This increased benefit would provide the resources they need to pay for the costs of tuition, as well as other fees and room and board. However, PVA has concerns with Section 3 of the proposed legislation. As we understand it, this legislation would reduce the time frame for use of the benefits from 45 to 36 months for any surviving spouse who claims the benefits after the enactment of this bill. PVA opposes any reduction in the amount of time that the veteran's family has to use these benefits.

Section 4 of the bill would increase the rate of DIC by $250 per month, from the current rate of $948, from the month immediately following the death of a veteran. This increased rate would be in effect for five years after the veteran's death and effect surviving spouses who have dependent children. This rate will cease the first month after all dependent children reach the age of 18. PVA supports this section. This provision would reinforce the commitment of the VA to both a veteran and his or her family.

PVA also supports Section 6 which would expand benefits available to dependent children of veterans who suffer from spina-bifida. The veteran whose children are eligible must have served in or near the Korean demilitarized zone between January 1, 1967 and December 31, 1969 during which time the defoliant Agent Orange was utilized.

S. 792 AND S. 1136—THE "SERVICE MEMBERS CIVIL RELIEF ACT"

We welcome both S. 792 and S. 1136 and thank Senators Nelson and Specter for introducing them. Times are very different from when the Soldiers and Sailors Civil Relief Act was introduced in 1940. In many ways, the Act has not kept up with the times.

Though these bills are similar and we support both bills, we would prefer to see the more beneficial provisions of S. 1136. These include the higher monthly rent provision of Sec. 301, the inclusion of motor vehicle leases in Sec. 305 and the provisions of Sec. 706 providing protections of business obligations and 707 providing the opportunity to return to educational classes with no extra costs.

Service members often live in high rent areas and implementing the $1,950 rent level specified in Sec. 301 will benefit a large number of service members. The addition of a provision using the monthly basic allowance for housing as a guide will also protect the service member against the wide disparities in lease costs that can occur nationwide.

Sec. 305 adds motor vehicles to the provisions that cover real property leases. It makes no sense to permit a service member to terminate a lease for housing while requiring them to maintain a lease on a vehicle they have no opportunity to use. This is clearly different from payments on a motor vehicle that is owned. A lease is payment for the use of the vehicle. The inability of the service member to use the vehicle should preclude their requirement to pay for it.

PVA applauds the inclusion of Sec. 706. Many service members are engaged in small businesses or have professional obligations. This is particularly true for Reservists and National Guardsman. The provisions to protect the personal assets of a service member that are not part of the business are needed to insure service to this nation does not destroy the life, livelihood or family of the service member. We also feel that Sec. 706(b) provides sufficient safeguards to obligators in allowing for the courts to modify the relief.

Sec. 707 simply makes good sense. Our service members should not be punished with extra costs or lost educational benefits because of their military service.

S. 806—THE "DEPLOYED SERVICE MEMBERS FINANCIAL SECURITY AND EDUCATION ACT OF 2003"

We thank Senator Nelson for his introduction of S. 806, the Deployed Service Members Financial Security and Education Act of 2003. Today's service members face significant challenges with longer and more frequent deployments. The impact on family members is significant, especially on children. Another impact is the financial effect of deployment. The added costs of phone calls, shipping costs for packages and additional comfort items provided to their deployed family members can be significant. In addition, soldiers often maintain part-time jobs to supplement their lower pay. The $1,000 allowance would help defer many of these extra expenses. PVA also supports the educational provisions of the bill. As many service members try to continue their educations while a member of the military, they should not be penalized when called to defend the nation.

S. 978—THE "VETERANS HOUSING FAIRNESS ACT OF 2003"

PVA supports the provisions of S. 978. This legislation would authorize a veteran to use veterans' housing loan benefits to purchase stock or membership in a development, project, or structure of a cooperative housing corporation. In order to do so, the structure that the veteran purchases must be in compliance with criteria set forth by the Secretary of Veterans Affairs, and it must be a single-family residential unit.

S. 1124—THE "VETERANS BURIAL BENEFITS IMPROVEMENT ACT OF 2003"

PVA fully supports this proposed legislation. The provisions are consistent with the recommendations of The Independent Budget with regards to burial benefits. The Independent Budget states:

Congress has not substantially increased veterans burial benefits for the families of our wounded and disabled veterans in over a decade[.] While these benefits were never intended to cover the full costs of burial, they now pay for only a fraction of what they covered in 1973, when the federal government first started paying burial benefits for our veterans.

S. 1124 would increase the plot allowance from $300 to $670. It would also increase the service-connected benefit from $2,000 to $3,712 and the non-service-connected benefit from $300 to $1,135. PVA also appreciates the provision allowing for an annual inflation adjustment in the burial benefits.

S. 1199—THE "VETERANS OUTREACH IMPROVEMENT ACT OF 2003"

The "Veterans Outreach Improvement Act" is intended to improve outreach activities performed by the VA. It does so by creating a new budget line item for funding the outreach activities of the Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA). This money is currently drawn from the budget line item for general operating expenses.

The bill also would create a structure within the VA to require the Office of the Secretary, the Office of Public Affairs, the VBA, the VHA, and the NCA to coordinate outreach activities. Coordinated activities could improve the efficiency of each office and make them more effective at providing for the needs of current veterans and new veterans who will be returning home from new conflicts. The legislation would also allow the VA to enter into cooperative agreements with State Departments of Veterans Affairs regarding outreach activities and would give the VA the

authority to provide grants to these state departments. PVA supports the provisions of S. 1199.

S. 1282

PVA fully supports the provisions of S. 1282. This bill would require the VA to establish new national cemeteries in the 10 most underserved geographic areas in the country. These areas are defined as having 170,000 or more veterans living in the area who are more than 75 miles away from the nearest national cemetery. With the rate that veterans are dying today, particularly World War II veterans, it is imperative that the VA be able to provide a suitable burial location for these men and women. It is also important that the families of these deceased veterans have relatively easy access to these locations. PVA cannot stress enough the need for adequate funding for the construction of these new cemeteries as well.

S. 1360

S. 1360, is a measure that would amend 38 U.S.C. §7105, to clarify the requirements for notices of disagreement for appellate review of VA activities. This measure is in response to a U.S. Court of Appeals for the Federal Circuit's ruling that upheld the VA's regulation that is beyond the scope of statutory requirements. PVA strongly supports S. 1360.

PVA appreciates the opportunity to testify before the Committee today on this important legislation. As new veterans return from the front lines of combat in Iraq, we must continue to work to expand the benefits available. We look forward to working with this Committee in the future to continue to provide for our nation's veterans.

PREPARED STATEMENT OF DENNIS M. CULLINAN, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. Chairman and Members of the Committee: On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I would like to thank you for the opportunity to offer our views on the following legislation under discussion.

The VFW supports S. 257, the Veterans Benefits and Pensions Protection Act of 2003, introduced by Senator Nelson. This bill will prohibit unscrupulous companies from taking advantage of veterans by cheating them out of their compensation, pension, or dependency and indemnity compensation in return for services, securities, or other agreements. Currently, veterans may not directly assign their benefits to a third party. These companies, however, have found a loophole that they unjustly use to defraud unsuspecting veterans wherein they offer a large lump sum payment in return for the veteran's benefits for a period of time. Unfortunately for the veteran, they receive pennies on the dollar for their benefits and compensation. This legislation would close the loophole and prevent these companies from taking advantage of our nation's veterans.

We also applaud the bill's outreach provisions. Informing veterans and their families of the deceitful practices these companies and individuals use can only lessen the chances that these companies will continue to take advantage of our veterans.

The VFW lends its support to S. 517, the Francis W. Agnes Prisoner of War Benefits Act of 2003, introduced by Senator Murray.

We especially applaud Section 2(a), which would repeal of the 30-day minimum period of internment prior to presumption of service connection for certain listed diseases for purposes of payment of veterans' disability compensation, Section 2(b) repeal of requirement for minimum period of internment for presumption of service connection for dental care and Section 2 (c) which adds additional diseases presumed to be service connected to Sec.1112 of title 38, United States Code.

The VFW is pleased to offer our support for S. 1131, introduced by Chairman Specter, legislation that would provide an annual cost-of-living adjustment to compensation, clothing allowance, and dependency and indemnity compensation (DIC) rates for veterans and their families. It greatly benefits those who are least able to adjust their incomes to keep pace with inflation and is vital to many of our veterans and retirees, many of whom have limited or fixed incomes. VFW Resolution 621 urges the Congress to approve an annual cost-of-living adjustment.

The VFW supports all sections of S. 1133, introduced by Chairman Specter, the Veterans Programs Improvement Act of 2003 with the exception of Section 5, which would amend the clarification of payment of compensation for alcohol or drug, related disability to preclude service connection on a secondary basis. Physicians often

consider alcohol and drug related disabilities to be secondary conditions of Post Traumatic Stress Disorder resulting from such situations as internment as a POW or from severe combat war wounds such as an amputation.

This, coupled with their primary condition, impairs their ability to manage day-to-day activities, like holding a job. Accordingly, their earning potential is limited. Disability compensation was intended to compensate the veteran for that limited earning potential due to injuries suffered while defending this nation. Further, restricting veterans from receiving these benefits, which were granted in relation to a primary service connected condition, directly opposes the principles behind service connected disability compensation.

We strongly support S. 1188, introduced by Senator Murray, and would like to thank the members of the committee for addressing this legislation that would repeal the inequitable two-year limitation on accrued benefits.

Last summer, the voting delegates to the VFW National Convention in Nashville, Tennessee, approved Resolution 628, which calls for the removal of the limitation on payment of accrued benefits. Under current law, if a veteran dies while a claim for VA benefits is being processed, the surviving spouse is entitled to no more than two years of accrued benefits. With the time period for processing claims and appeals often taking over two years, this law unjustly penalizes the survivor. The surviving spouse or children should not be made to suffer economically if a veteran dies while a claim for VA benefits is being processed.

S. 1188 would ensure that the veterans' survivor would receive the full amount of accrued benefits. Further we support the section that would allow an eligible person to take up the veteran's claim if the original beneficiary dies while the claim is still pending.

The VFW has long supported legislation that seeks to restore benefits to certain military forces of the Philippine Commonwealth Army and the Philippine Scouts and is pleased to support S. 1213, introduced by Chairman Specter by request. This legislation will provide a number of benefits that our Filipino veterans have earned through their service fighting side by side with American soldiers in WWII.

It is our belief that since such forces were in active service of the U.S. Armed Forces they should be entitled to equal benefits under the programs administered by The Department of Veterans' Affairs. As many Filipino veterans of WWII are departing life every day, now is the right time to fulfill our obligation as a grateful nation and restore their full-earned benefits.

Next, the VFW will discuss S. 1239, the Former Prisoners of War Special Compensation Act of 2003, introduced by Senator Craig. We support Section 2, which would establish a three-tiered special monthly compensation to former Prisoners of War to be based upon length of captivity as follows:

- Those detained 30–120 days would receive $150 per month
- Those detained 121–540 days would receive $300 per month
- Those detained 540 or more days would receive $450 per month

We believe, however, that all POW's should be included in this special monthly compensation. Furthermore, we acknowledge Senator Murray's legislation mentioned earlier which would repeal the 30-day minimum period of internment prior to presumption of service connection for certain listed diseases for purposes of payment of veterans' disability compensation. By eliminating the 30-day starting period in the first tier, so that eligibility starts from the moment of capture those POW's who have been held for shorter intervals but have certainly suffered most of the same physical and psychological trauma as other POW's will be included.

The VFW objects to Section 3, which would amend the clarification of payment of compensation for alcohol- or drug-related disability to preclude service connection on a secondary basis. We stand by our statement in S. 1133 which contains the same language in Section 5.

The VFW is pleased to support Section 4 which would extend outpatient dental care to all former POW's regardless of their length of captivity.

The VFW is supportive of S. 1281, introduced by Ranking Member Graham. This legislation would amend Title 38, United States Code, to presume additional diseases of former prisoners of war to be service-connected for compensation purposes, to enhance the Dose Reconstruction Program of the Department of Defense, and to enhance and fund certain epidemiological studies. The VFW believes that Section 3, Dose Reconstruction Program of Department of Defense may be premature at this time. Recently the Government Accounting Office published a study on the Defense Departments' Reconstruction Program. We believe that the Department of Veterans' Affairs should be given the opportunity to review and respond to the findings in that report.

The VFW supports S. 249 legislation introduced by Senator Clinton, which would amend Title 38, United States Code to provide that remarriage of the surviving spouse of a deceased veteran after age 55 shall not result in termination of DIC.

No other federally-funded survivorship program including Civil Service, Social Security and Congress's own program makes a distinction between unmarried and remarried surviving spouses. DIC was created to replace family income loss due to the service member or veteran's death and to serve as reparation for his death. Our nation has made a promise to our veterans that their families will be taken care of should they die for our country. It is our duty to ensure that that promise is kept and S. 249 is a good step towards that goal.

The VFW also supports S. 938, introduced by Senator Murray, legislation to provide for the payment of DIC to the survivors of former prisoners of war who died on or before September 30, 1999, under the same eligibility conditions as apply to payment of DIC to the survivors of former prisoners of war who die after that date.

The VFW will next address S. 1132, legislation introduced by Chairman Specter by request. We will comment on each section in order:

SECTION 2. INCREASE IN RATES OF SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

The VFW supports this section, as it would make the monthly benefit amount under the Dependents' Educational Assistance Program (DEA) equal to what veterans receive under the Montgomery GI Bill (MGIB).

SECTION 3. MODIFICATION OF DURATION OF EDUCATIONAL ASSISTANCE

VFW has no objection to this section that would allow eligible dependents 36 months of educational benefit upon enactment of the Veterans' Survivors Benefits Enhancements Act.

SECTION 4. ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION

The VFW supports this section, which would provide the surviving spouse with dependent children under the age of eighteen additional DIC compensation.

SECTION 5. ELIGIBILITY OF SURVIVING SPOUSES WHO REMARRY FOR BURIAL IN NATIONAL CEMETERIES

The VFW supports this section that would permit remarried surviving spouses of veterans to be eligible for burial in a national cemetery. Current law does not allow the surviving spouse to be buried in a national cemetery if the surviving spouse's remarriage remained in effect at the time of death.

In 1994, Public Law 103–446 revised the eligibility criteria by allowing a surviving spouse of an eligible veteran, whose subsequent marriage to a non-veteran had been terminated by death or divorce, to be buried in a national cemetery. This legislation would be consistent with that amendment and further acknowledges the importance of the veteran's first marriage.

SECTION 6. BENEFIT FOR CHILDREN WITH SPINA-BIFIDA OF VETERANS OF CERTAIN SERVICE IN KOREA

The VFW supports this section that would now equitably include the eligible child of any veteran, as stipulated in Chapter 18 of Title 38, United States Code (U.S.C.), who was exposed to herbicides used in certain other locations during the veteran's active military service on the same basis as veterans who are eligible under Chapter 11 of Title 38, U.S.C. That authority, however, does not extend to those claimants under Chapter 18, Title 38, U.S.C., because their entitlement was not established until after P.L. 102–4 was enacted. It is our understanding that VA is in the process of issuing regulations under the authority of the Agent Orange Act of 1991 (P.L. 102–4) that would extend a presumption of exposure to veterans who served in other locations where herbicides, primarily Agent Orange, were used. Such locations included Panama, Johnson Island and the Demilitarized Zone between North and South Korea. These regulations have not been issued at this time.

The VFW strongly supports both S. 1136, introduced by Chairman Specter and S. 792, introduced by Senator Miller. The Service members Civil Relief Act as titled both provide much needed enhancements to the original Soldiers' and Sailors' Civil Relief Act of 1940. We applaud those sections that will modernize, reinforce, and expand judicial and administrative protection for our service members. Both also offer increased protection for future financial transactions, legal representation, protection against default judgments, professional liability, and health and life insurance protections and guarantee residency for military members. Equally important

is that it will shield professionals and small business owners called to active duty by protecting their assets from personal trade and business debts.

The VFW supports S. 806, the Deployed Service Members Financial Security & Education Act of 2003, introduced by Senator Nelson. This legislation much like the Service members Civil Relief Act would improve the benefits and protections provided for regular and reserve members of the Armed Forces deployed or mobilized in the interests of the national security of the United States.

We would like to specifically comment on Section 3 which would provide our military personnel a leave of absence from educational commitments and financial relief on student loans, tuition and fees paid for the period covering their active duty. Since September 11, many of our nations Air Force, Army, Coast Guard, Marine Corps, Navy and Reserve Components have put their postsecondary education on hold in order to serve their nation without hesitation. The VFW believes that offering them this waiver gives those called and their families' peace of mind and is the right thing to do.

The VFW supports S. 978, introduced by Senator Schumer, which would amend Title 38, United States Code, to provide housing loan benefits for the purchase of residential cooperative apartment units. We believe that this legislation would offer those veterans living in large urban areas a more affordable option for using their VA housing loan.

The VFW strongly supports S. 1124, introduced by Senator Mikulski, the Veterans Burial Benefits Improvement Act of 2003. This legislation provides a long overdue increase in veterans' burial benefits. When first enacted in 1973, the amount of the benefit for a service-connected veteran covered 72 percent of the average burial expense, today, the current benefit of $2,000 covers just 39 percent of those costs. The non-service-connected veteran received 22 percent or $300, which is 6 percent of today's funeral expenses. This bill will provide service connected veterans an increase to $3,713 and non-service-connected veterans an increase to $1,135, which returns the cost of burial benefits back to the same percentages offered in 1973 when the program was initiated.

It will also allow for annual adjustment to cover inflation which we believe will help continue to address the burial needs of those who have and continue to make the ultimate sacrifice.

The VFW supports S. 1199, introduced by Senator Feingold. This bill would improve the outreach activities of the Department of Veterans Affairs. We especially applaud Sec. 563, which would offer grants to States to help them in their efforts to improve, carry out, and coordinate outreach and assist veterans when applying for any veterans-related health or benefit programs.

The VFW strongly supports S. 1282, introduced by Ranking Member Graham, legislation to require the Secretary of Veterans Affairs to establish national cemeteries for geographically underserved populations of veterans.

The mortality rate of our World War II and Korean veterans is increasing rapidly. VA estimates that approximately 665,000 veterans will die during this fiscal year—that is more than 1,800 per day and a figure much higher than previously projected.

This legislation is a step in the right direction. It identifies areas that are currently underserved while mandating NCA to construct and open these cemeteries in a reasonable time frame. We would also encourage Congress to meet the present and future requirements of the National Cemetery Administration by providing adequate funding to ensure that existing cemeteries are properly maintained and new cemeteries are constructed to provide access to burial options for veterans and their eligible family members.

The VFW is also pleased to support S. 1360, introduced by Ranking Member Graham, legislation that would amend section 7105 of Title 38, United States Code, to clarify the requirements for notices of disagreement for appellate review of the Department of Veterans Affairs. We believe this legislation strengthens Congress' original intent as to what constitutes a notice of disagreement.

Mr. Chairman and Members of the Committee, this concludes the VFW's testimony. We again thank you for including us in today's most important discussion and I will be happy to answer any questions you may have. Thank you.

Senator NELSON OF NEBRASKA. If there is no objection, and since I am the only one here and I am not going to the object——

[Laughter.]

Senator NELSON OF NEBRASKA. ——then it will be the order of the chair that the business, having been accomplished, I order this hearing adjourned. Thank you very much.

[Whereupon, at 3:46 p.m., the hearing was adjourned.]

A P P E N D I X

THE PREPARED STATEMENT OF HON. DANIEL K. INOUYE,
U.S. SENATOR FROM HAWAII

Mr. Chairman and Members of the Committee: At the outset, I wish to commend you for holding this hearing on veterans' benefits measures that are pending before the Committee. I appreciate the opportunity to comment on S. 1213, the Filipino Veterans' Benefits Act of 2003, which would provide both health care and certain compensation benefits to Filipino veterans residing legally in the United States.

Many of you are aware of my continued support and advocacy on behalf of the Filipino World War II veterans, and the importance of addressing their plight. As an American, I believe the treatment of Filipino World War II veterans is bleak and shameful. Throughout the years, I have sponsored several measures to rectify the wrong committed against these World War II veterans. I am grateful to the Committee for the assistance and considerations given to my past initiatives involving the Filipino veterans. While some strides have been made, I believe more needs to be done to assist these veterans who are in their twilight years. Of the 120,000 that served in the Commonwealth Army during World War II, there are approximately 59,899 Filipino veterans currently residing in the United States and the Philippines. According to the Department of Veterans Affairs, the Filipino veteran population is expected to decrease to approximately 20,000, or roughly one third of the current population, by 2010.

I support the intent of S. 1213, to provide health, disability compensation, and burial benefits to Filipino veterans legally residing in the United States. However, I remain concerned that the benefits in S. 1213 are restricted to only those veterans residing in the United States. In my view, a distinction should not be made between those veterans residing in the United States and those residing in the Philippines.

As a result of a citizenship statute enacted by the Congress in 1990, some Filipino veterans who were able to travel came to the United States to become United States citizens. At the same time, many other Filipino World War II veterans were unable to travel to the United States and take advantage of the naturalization benefit because of their advanced age. The law was subsequently amended under the Fiscal Year 1993 Departments of State, Justice, Commerce and the Judiciary Appropriations Act (Public Law 102–395), to allow the naturalization process for these veterans to occur in the Philippines. Since then, a distinction has been made to provide benefits to only those Filipino veterans residing in the United States. I believe it is unfair to make a distinction between those residing in the United States versus those residing in the Philippines. The Commonwealth Army of the Philippines was called to serve with the United States Armed Forces in the Far East during World War II under President Roosevelt's July 26, 1941, military order. Together, these gallant men and women stood in harm's way with our American soldiers to fight our common enemies during World War II.

Because all Filipino veterans stood in equal jeopardy during World War II, I do not believe we should draw a distinction based on their current residency in the U.S. or in the Philippines. All of them were at equal risk, and so all should receive equal benefits. Accordingly, I introduced S. 68, the Filipino Veterans' Benefits Improvements Act of 2003, which has health and disability compensation benefits similar to those provided in S. 1213, but without limitations based on the residency of the veterans. S. 68 includes an outpatient health care component at the Manila Veterans Affairs Outpatient Clinic for veterans residing in the Philippines. I strongly urge the Committee to incorporate provisions of S. 68 into S. 1213, and not make a distinction between those veterans residing in the United States and those veterans residing in the Philippines.

Heroes should never be forgotten or ignored, so let us not turn our backs on those who sacrificed so much. Many of the Filipinos who fought so hard for our nation have been honored with American citizenship, but let us now work to repay all of

these brave men and women for their sacrifices by providing them the veterans' benefits they deserve.

THE PREPARED STATEMENT OF HON. JIM BUNNING,
U.S. SENATOR FROM KENTUCKY

Thank you, Mr. Chairman. I am glad to be here today to begin the legislative process on improving benefits for our veterans. We have many good ideas on the agenda today, but unfortunately we don't have much money to spend under this year's Budget Resolution.

First and foremost, we need to make sure our veterans receive a cost-of-living increase in the benefits they rely on. The Budget Resolution provides us with funding to ensure our veterans' benefits are increased by the same amount as Social Security benefits, and we have a bill on today's agenda to do just that. I am a co-sponsor of the Chairman's bill, S. 1131, which will ensure our veterans' benefits maintain their value and buying power. I fully support that bill, and hope that we can quickly hold a markup and get it to the Senate floor.

Another important bill before us today is S. 1132, the Veterans' Survivors Benefits Enhancements Act. I am also a co-sponsor of this bill, which increases educational benefits for widows and children of our service members killed in action. Spouses and children of deceased service members would be eligible for the same level of educational benefits as the service member, and a new payment would be made for spouses with a minor child. Finally, remarried widows would be allowed to be buried in VA cemeteries with their first spouse. I realize this bill needs PAYGO offsets, and I hope we can find some so we can have this bill signed into law.

Finally, I want to mention my support for S. 1136, another bill introduced by the Chairman that I am a co-sponsor of. That bill makes many important changes to the current Soldiers' and Sailors' Civil Relief Act of 1940, which protects our military men and women when we send them away from their homes. We have not updated this law substantially since the first Gulf War, and we need to modernize it to ensure our men and women who are increasingly deployed to fight terrorism around the globe can be sure they have legal protections in the courts and against creditors while they are fighting to protect our country.

Again, thank you Mr. Chairman. I look forward to hearing from the witnesses.

THE PREPARED STATEMENT OF HON. HILLARY RODHAM CLINTON,
U.S. SENATOR FROM NEW YORK

Let me begin by thanking the chairman of this committee, Senator Specter, and the Ranking Member, Senator Graham, for allowing me the opportunity to submit this statement for the record in support of S. 249. I would also like to acknowledge my partner in this effort, Senator Kay Bailey Hutchison. She is an original co-sponsor of this legislation and has been its steadfast advocate. I also want to thank The Gold Star Wives of America, who brought this issue to the attention of Senator Hutchison and myself. They have worked tirelessly for its passage.

Mr. Chairman, at this time when our nation's armed forces are once again in harm's way defending the fundamental values of our nation, it is a fitting moment to remedy a long-standing penalty in the benefit system for the widows and widowers of United States veterans who served their country and paid the ultimate price.

As you know, Dependency and Indemnity Compensation (DIC) is the benefit provided to surviving dependents of members of the Armed Forces who died in active duty or of a service-connected cause. However, it is the only federal annuity program that does not allow a surviving spouse who receives compensation to remarry after the age of 55 and retain these benefits. Social Security and the Railroad Retirement allow remarriage after 60 without the loss of benefits, while Civil Service Survivor Benefits and the Federal Employees Compensation Act allow remarriage after 55. This inherently unfair policy essentially demands that the surviving spouses of these heroes who find a mate later in life make an extraordinarily difficult and unjust choice.

I firmly believe these courageous men and women should not have to choose between the person they love and financial security. By eliminating this marriage penalty, S. 249 will enable these widows and widowers, who have limited earning power, to continue to receive the assistance they need to make ends meet. Additionally, it will provide a small measure of comfort to those individuals who have been forced to make profound sacrifices in the name of their country.

I urge my colleagues on the committee to join us in supporting this important and meaningful legislation. It is time for these inequities to be corrected. Thank you.

THE PREPARED STATEMENT OF HON. BOB FILNER,
U.S. CONGRESSMAN FROM CALIFORNIA

I would like to thank Chairman Specter and Ranking Member Graham for the opportunity to speak about providing Filipino World War II veterans, widows and dependent children living in the United States with increased benefits, including VA health care for Filipino veterans in the same manner as other U.S. veterans. I would also like to thank Chairman Specter for holding this hearing on this important issue.

As many of you know, I have been working to restore these benefits for many years. By passing legislation for Filipino World War II veterans, we are providing a giant step forward in our quest to restore the benefits for Filipino soldiers that were rescinded by the 1946 Congress, shortly after World War II ended.

You also may know that over 50 years ago, Filipino soldiers were drafted into service by President Franklin D. Roosevelt. They fought side-by-side with soldiers from the United States mainland, exhibiting great courage at the epic battles of Bataan and Corrigidor. Their participation was critical to the successful outcome of the war in the Far East. It was quite a shock when Congress deprived many of these veterans of the benefits that they were expecting.

Because these veterans are in their 70s and 80s, their most urgent need is for health care. So I sincerely appreciate the actions of the Chairman and of VA Secretary Anthony Principi to restore health care benefits to them.

Regarding the increase in compensation in S. 1213 and in my own bill in the House of Representatives, H.R. 664, quoting Secretary Principi: "Filipino beneficiaries residing in the United States face living expenses comparable to United States veterans and limiting the payment of these subsistence benefits to these individuals based on policy considerations applicable to Philippine residents is not only inequitable, but may result in undue hardships." Our actions today will benefit in a substantial way a number of these brave veterans and their survivors.

But, at a deeper level, these bills are also about restoring dignity and honor to these proud veterans. Over fifty years of injustice burns in the hearts of the Filipino World War II veterans and in the hearts of their sons and daughters. This bill says that we will remedy this historical injustice. We will make good on the promise of America.

Recently, the House of Representatives Veterans' Affairs Committee passed the provisions of my bill, H.R. 664 and they now move for action on the Floor of the House. I commend the Chair and the Ranking Member on their fine work in bringing S. 1213 to the Senate Veterans' Affairs Committee for consideration.

PREPARED STATEMENT OF ROBERT D. EVANS, DIRECTOR OF GOVERMENTAL AFFAIRS,
AMERICAN BAR ASSOCIATION

Dear Mr. Chairman: I am writing you in connection with the hearings your committee held July 10, 2003, on S. 792 and S. 1136, legislation to restate, clarify and revise the Soldiers and Sailors Civil Relief Act of 1940 (SSCRA). We ask that the ABA voice be heard and this letter be made a part of the record of the hearings. The ABA strongly supports enactment of this important legislation to modernize the SSCRA, which has had only a few changes since it was passed in 1940.

We strongly recommend that the escalator provisions based on the Basic Allowance for Housing (BAH) found in Section 301 of S. 1136 be included in the final version of the legislation reported from Committee. We believe the BAH escalator is a much more realistic escalator than other escalators since it reflects rental costs where service members are assigned rather than escalators based on a national average like the CPI. Due to rising and widely varying housing costs, a realistic escalator provision or index is vitally needed.

We also support the provisions in S. 1136 and in Section 3 of S. 806, the "Deployed Service Members Financial Security and Education Act of 2003," that would extend the six percent interest cap to federally insured student loans held by deployed service members. Coverage of these loans is now prohibited by the Higher Education Act of 1965.

Following the terrorist attacks of September 11th, our nation has increased its focus on enhancing homeland security. Since the military action against Iraq was initiated, the number of service members and reservists on active duty has increased. Because our homeland security is at stake, it is imperative that these brave

men and women devote their full and undivided attention to their military duties. As a result, we must provide security at home for those who risk their lives everyday, in order to protect our nation. S. 792 and S. 1136 take several important steps toward that end.

Congress has an important opportunity to modernize and clarify the SSCRA, which has become outdated as a result of the passage of 63 years and advancements in case law. The revision of the SSCRA is an urgent issue that should be addressed as soon as possible. Legislative action will show our service members that we value their sacrifices and that we fully support them and their families.

Thank you for considering the views of the ABA on this important legislation.