S. HRG. 108–722

PROPOSALS TO LIMIT ELIGIBILITY FOR VA COMPENSATION TO VETERANS WITH DISABILITIES DIRECTLY RELATED TO THE PERFORMANCE OF DUTY

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

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SEPTEMBER 23, 2003

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WITNESSES

APPENDIX

PROPOSALS TO LIMIT ELIGIBILITY FOR VA COMPENSATION TO VETERANS WITH DISABILITIES DIRECTLY RELATED TO THE PERFORMANCE OF DUTY

TUESDAY, SEPTEMBER 23, 2003

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

The committee met, pursuant to notice, at 2:34 p.m., in room SR-418, Russell Senate Office Building, Hon. Arlen Specter, chairman of the committee, presiding.

Present: Senators Specter and Murray.

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

Chairman SPECTER. The Veterans' Affairs Committee will now proceed. We have called this hearing to examine a complex issue, which is now before the conference of the Armed Services Committee and the House counterpart, as to what should be done about the issue of concurrent receipts. The proposal has been made for an offset, which would be very problemsome for many in the military who are not retirees who have been getting compensation since 1924.

We had scheduled this hearing for last Thursday and it was scheduled on an emergency basis, scheduled last Tuesday with only two days' notice because of the importance of the subject, and the hurricane interfered and we are now going to proceed.

Our first witness is the distinguished Secretary of Veterans Affairs who is always available to this committee and we very much appreciate that. Of course, Secretary Principi, in the spirit of reciprocity, this committee is always available to you and I think it is a good team for the veterans of America.

Without further ado, let us go right to the substance of the matter and hear from our Secretary, Anthony J. Principi.

STATEMENT OF HON. ANTHONY J. PRINCIPI, SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY TIM S. MCLAIN, GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. PRINCIPI. Thank you, Mr. Chairman. I greatly appreciate the opportunity to discuss this very, very important issue with regard to concurrent receipt and consideration that has been given to whether we should change the basis for establishing service con-

nection for VA benefits. I appreciate your leadership and holding this hearing on an expedited basis so that this issue can be considered, as it certainly impacts not only in the Department of Defense, but it impacts on the Department of Veterans Affairs and the men and women we have the privilege to serve.

Let me start by saying, Mr. Chairman, that VA disability compensation is a very, very complex program and I have some of our experts here and they probably—it would take me a lifetime to learn what they have forgotten, so I am not truly an expert in every aspect of this program, but it is indeed complex, and fundamental changes to the foundation of complex programs are likely to have far-reaching and unpredictable effects.

The current standard, service connection for every disability incurred or aggravated while on active duty, as you indicated, Mr. Chairman, dates back 80 years and reflects the 24-by-7 nature of military duty. That was the way it was when I was on active duty, and it is certainly the way my two boys are bearing up under the current way we consider active duty when we call men and women into our armed forces. There is now no need to determine the cause of a disability if it occurred while you were in the military or a preexisting condition was aggravated.

We don't have the data to provide you with specific predictions of how many veterans and survivors would be affected by a redefinition of the basis for service connection, but we can predict the outcomes would be widespread and have a dramatic effect on the lives of many of the affected veterans and their survivors.

As you know, there are two separate systems of disability benefits for active duty service members and veterans, one operated by the Department of Defense and the other operated by my Department, the Department of Veterans Affairs. As I understand it, the proposal that was being looked at would leave intact the Title 10 Defense Department benefits, that is, severance pay or disability retirement even for veterans with disabilities that are determined not to be the result of performance of duty—an automobile accident, an off-duty accident. The Title 10 provisions would stay intact.

The significant difference, however, is that unlike the VA disability program, DoD benefits vary with the service member's rank and length of service and may not always provide adequate support for every affected service member. Let me show you on this chart, if I may, Mr. Chairman.

This is a comparison of Title 10 and Title 38 benefits, and for purposes of this comparison, we took an E-3, a private first class with two years of service, and an O-5, a lieutenant colonel, a commander in the Navy, with 18 years of service who were involved in an accident. For these purposes, we have an automobile accident. It could be any accident, but it's not considered to be performance of duty. And for further purposes, we considered that these service members, the private first class and the O-5, the lieutenant colonel, have a spouse and one dependent child.

As you can see, these are the various benefits that are afforded either through Title 10 for DoD or Title 10XXVIII, VA—monthly compensation, vocational rehabilitation, priority health care, all the

way down to an annual clothing allowance if you're disabled and need to have certain types of clothing.

You can see under—for purposes of this example, we have a 60 percent rating. The service member lost one leg above the knee in this accident. Under Title 10, the O-5, the officer with 18 years of service, will be eligible for a monthly compensation of $3,657 a month. The E-3 under the Department of Defense program will be eligible for $865 a month. And the VA, in these individuals chosen, the VA program, the benefit would be tax-free $1,011 a month. So you can see here that the O-5 does better, so to speak, than the E-3.

But if the VA was changed that this would not be considered performance of duty and no benefits would accrue, there would be no monthly compensation. So that would dramatically impact on the lower-ranking enlisted member.

In addition, and very importantly, you can see that if the VA definition is changed so that this would not be compensable, but this is an off-duty automobile accident, the service member, both O-5 and E-3, would not be eligible for vocational rehabilitation, the opportunity to go to school, learn a new trade, a new vocation, get subsistence while they're trying to go to school. They would be eligible for priority health care under both DoD and VA. Of course, Tri-Care is available for the Defense member and their dependents. We do not have a Tri-Care program. We do not treat dependents.

Survivor benefits, dependency and indemnity compensation, are available to dependents of the veteran. They would lose all of these benefits, of course, if there was a definition change, and veterans would lose such other benefits as the automobile allowance, civil service preference, on and on.

Now, if you look at a more serious disability that would be rated at 100 percent, using both an O-5 again and an E-3, with a spouse and one child, you could see that under the DoD system, the O-5 would receive a monthly retirement benefit of $4,600 a month. The E-3, $1,082 a month. And if they chose to receive the VA benefits, it would be $2,943 a month tax-free.

So if the VA system was changed and this automobile accident was not considered service connected, the O-5 would still certainly be ahead because the retirement for the O-5 with 18 years of service is $4,621 a month. You can see what happens to the E-3. It would be very, very difficult to support a spouse and a child on basically $12,000 a year under the DoD program. It would be about a third of what they would get under the VA.

So I think this clearly shows the difficulty of making changes and how it might impact, especially on the lower-rated enlisted people and, to a degree, the officers, as well. So I am concerned that DoD benefits might be reasonable for higher-ranking individuals, but would provide a poor foundation for building a civilian life for the lower-ranking service members who comprise the bulk of the veteran population.

A reform of this importance and this scope, I believe, is poorly suited to enactment without rigorous and comprehensive examination of policy alternatives, resolution of implementation issues, and careful consideration of the effects of drafting decisions on both the veterans and their survivors, spouses and children, and on the abil-

ity of VA and other agencies like the Office of Personnel Management for veterans' preference, the Department of Labor for employment benefits, and other State and local governments to administer the legislation fairly and effectively.

At the same time, I do understand concerns that have been raised that current law compensates illnesses or injuries with no relationship to a veteran's military service. I recognize that the nature and origin of disabilities for which compensation is paid raises public policy issues.

If the Congress desires to address these issues, including the integration of the VA and the DoD disability programs and the rationale for the two systems, I suggest that these questions be studied thoughtfully and deliberately, alternative answers identified, and consequences of those answers evaluated. I believe then that we would all, the VA and the Department of Defense and the Congress, both the Armed Services Committee and the Veterans' Affairs Committee, would have the data necessary to make considered public policy decisions with a reasonable assurance that it understands and accepts the consequence of those decisions.

I also believe that the Congress was on the right path last year when it enacted the Combat-Related Special Compensation program, called CRSC. CRSC provides for additional benefits to disabled retirees awarded a Purple Heart or whose disability is the result of military operations—a training accident, instrumentality of war, aboard ship, or something along those lines. It ensures that they receive both their military retirement pay and their disability, tax-free disability compensation from the VA. Even though their disability did not disrupt their military careers and they were able to serve for 20 years or more, it certainly focuses on the people who were in combat and whose injuries and disabilities were related to, whether it be combat operations or training accidents, friendly fire or whatever it might be.

Could refinements to the CRSC program be made? I think the Congress could look at refinements. We are asking our Reserve and Guard to play a much more meaningful role in combat operations today and perhaps the CRSC program could be expanded to embrace more of the Reservists and Guardsmen. There is a 60 percent rating threshold for non-combat injuries or illnesses. That could be addressed perhaps, to ensure that serious disabilities are being looked at and compensated fairly for those who are disabled retirees.

So I do think there are things that perhaps can be explored by the Congress, but I do believe you were on the right path last year because you focused on the people whose injuries or illnesses were related to their combat or their training accidents.

With that, Mr. Chairman and members of the committee, I thank you for the opportunity to testify today and I look forward to answering your questions.

Chairman SPECTER. Mr. Secretary, working through just the very basics here, when you talk about concurrent receipts, you are talking about getting both retirement pay and disability for those who have served 20 years or more, are entitled to retirement, and they have some disability.

Mr. PRINCIPI. That is correct.

Chairman SPECTER. And at the present time, there is an offset unless the retiree has the disability for injury sustained in the line of duty. Is that all line of duty or only combat?

Mr. PRINCIPI. No, it is—well, certainly there are two components to the CRSC program. The first component is anyone who has a Purple Heart is fully covered. Whether it is a ten percent disability or a 100 percent disability, they get both full military retirement pay and full VA disability compensation tax-free.

The second component of this CRSC is what they call the "plus" part. If you have a military-related disability rated 60 percent or greater that was incurred in the performance of duty, and their criteria are spelled out, as a direct result of armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war, which would be training, or through an instrumentality of war, aboard a ship, aboard a tank, then you would be covered, as well. So it is not just combat. It is performance of duty, as well. That is my understanding of how the law is being interpreted by the Defense Department.

Chairman SPECTER. And on the proposed offset, there would be a change in the law which has been in existence since 1924 so that a non-retiree would not be entitled to any disability unless it was in performance of duty.

Mr. PRINCIPI. Yes. I think there was a consideration being given to it. I really don't know whether that is in the conference report. I don't believe it is. They were looking at how to offset the cost of full concurrent receipt and they proposed changing the definition of service connection just along the lines you said, that if you——

Chairman SPECTER. We are talking about a non-retiree now and the non-retiree would continue to get disability if it was in the performance of duty.

Mr. PRINCIPI. Everyone would—any active duty service member who is injured, whether it is in the performance of duty or not, would be eligible for benefits under Title 10, the Department of Defense disability program.

Chairman SPECTER. Take the hypothetical of somebody in the military is in an automobile accident on the way to the base.

Mr. PRINCIPI. Like I showed you here.

Chairman SPECTER. All right. It is your hypothetical. Is that injury entitling him to a disability under the proposed offset?

Mr. PRINCIPI. Only under the DoD system, not the VA. They would be eligible for disability payments from the Department of Defense, but not from the VA. But as you saw in the charts, if you are a lower-rated enlisted person, you don't fare as well under the DoD system as you would under the VA system. If you are a higher-ranked officer, you fare better under the DoD system than the VA system because the DoD system is based upon your grade times your length of service. The VA is equitable. We treat everybody the same.

Chairman SPECTER. My time has almost expired, so let me turn to Senator Murray.

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

Senator MURRAY. Mr. Chairman, thank you for having this hearing today. I really appreciate it, and Secretary Principi for coming and joining us, and, of course, the VSO's, who are great voices for many people in this country. They have served us all well. I appreciate your all being here.

I have been a strong supporter of concurrent receipt. I think it is the right thing to do and I am trying to understand this compromise proposal, as well. It is my understanding the VA has done some kind of quick assessment of the percentage of retirees that are currently receiving VA disability compensation that would be denied under the proposed definition for disability, and I think I heard that as many as 64 percent of the claims would have to be changed, is that correct?

Mr. PRINCIPI. I will have Mr. Epley answer the question.

Mr. EPLEY. My name is Bob Epley. We did a review of cases that were on hand in our central office, Compensation and Pension Service, and very quickly tried to make an assessment based on our review of the proposed legislation, and we did find that as many as 64 percent might not be eligible under——

Senator MURRAY. Might not be eligible. Can you give me a rough idea of exactly how many veterans we are talking about, numbers?

Mr. EPLEY. I think the sample was about 200 cases.

Senator MURRAY. About 200 cases? Mr. Secretary, arthritis is one of the common diseases in non-veterans, and I have heard things like it could come from the trauma of jumping out of planes, for example. So if a paratrooper veteran with arthritis in his knees is unable to point to a specific injury from a specific jump, could this new proposal deny him benefits for which he is currently eligible?

Mr. PRINCIPI. Yes, I believe it would under the VA system, but it would be eligible for the DoD retirement disability system, so——

Senator MURRAY. He would be eligible for the DoD——

Mr. PRINCIPI. But he would—under a redefinition; it is possible that that would be the case. I think, clearly, if you have arthritis and are a finance officer, it would probably be more difficult to demonstrate connection. If you were a paratrooper or Marine who slept on the cold ground in Korea, then I think a strong case could be made that that was performance of duty. But that is the complexity. That is what happens when you change this definition. It becomes very difficult to adjudicate what is service connected and what is not.

Senator MURRAY. How could this proposal that is limiting the concurrent receipt to injuries directly, can you give us kind of an example of how that would affect our current veterans coming home from Iraq and Afghanistan? Do you have any idea?

Mr. PRINCIPI. They are all coming home from a combat theater of operations. I would hope that anyone who is disabled, whether it is an injury or an illness, from a combat theater of operations would be service connected, would be considered to be in the performance of duty.

Senator MURRAY. Even if it was their half-a-day off and they were not directly in combat?

Mr. PRINCIPI. That could be very problematic, and under a redefinition, they could be excluded. They would have to rely upon the DoD system for their benefits.

Senator MURRAY. I think that is a real concern. And the other concern I had was about surviving spouses. Wouldn't it be much more difficult under a performance of duty standard for a surviving spouse?

Mr. PRINCIPI. Surviving spouses would be impacted the same as the service member, the veteran, is. Again, the Department of Defense has survivor benefit plans, but under DoD, under VA, if the veteran is deemed—his injury is deemed not to be in the performance of duty, then the spouse would be adversely impacted, as well.

Senator MURRAY. I guess what concerns me is I feel like we are potentially creating a dual system where current claimants operate under a different standard for disability for future claimants, as well. I am concerned that administering two different systems here is going to become complex. We are going to have to create two different systems to handle this. How do you see that?

Mr. PRINCIPI. I think it would be very—I think it would be problematic. I think those are some of the issues, if changes are appropriate, the implications of those changes and how those—this new program would be administered should be studied very carefully before we proceed.

Again, I understand that it may be appropriate to look at some types of reforms, and I believe that the best approach to do that would be for us to collectively study it and to make recommendations on change.

Senator MURRAY. I have a number of questions on this that I would like to submit. I know I only have a few seconds left. I did want to ask you while you were before this committee, as well, Secretary, as you know, we discussed the CARES process and I am deeply concerned about some of the time lines on that. I know you are supposed to make a decision by the end of this year. I know that cost savings is supposed to be part of that. I want to know from you, if those cost savings don't materialize, how we are going to deal with some of the outcomes of this and whether you think the administration will have enough funding or has requested enough funding to cover the costs of expanding the coverage and enhancing care.

Mr. PRINCIPI. Senator, you raise important issues. I only have one goal, and that is to move the VA health care system forward in this century, recognizing the enormous changes that are taking place in American medicine and the demographics of the veteran population. So it is more about transformation. I am not looking to save money per se just for the sake of saving money, but to use that money in a way that expands the reach of health care.

I have to be convinced in my own mind after the commission submits its report to me that this is, in fact, the right plan for the VA in the 21st century or I will not approve it. So I am going to take—I am going to be very deliberate in my review of it. If I have questions with what they have proposed, I am going to ask them to go back out and consider it. I would like to see if we can get this done by the end of the year, but what is more important to me is that we do it right, because we don't have many opportunities.

GAO has said we are wasting $400 million a year, or close to $400 million a year. That is an awful lot of money for doctors and nurses and drugs that are being denied veterans, so I appreciate your concern.

Senator MURRAY. I don't want to see money wasted. I am very concerned—I know you are closing or looking at closing about 6,000 beds and counting on beds to be available in the private sector. Part of the CARES process was not to look at what beds were available. You said you are going to take your time and do it right. I would really urge you to make sure that you can assure veterans that we are not just going to close hospitals and hope those beds are open, but part of your study will be whether or not those beds are available in some of these communities, and I am deeply concerned about that.

Mr. PRINCIPI. I agree with you, Senator, and I commit to you, that will be the case. From my perspective, as long as I am there, I will certainly ensure that that is done.

Senator MURRAY. Thank you very much, Mr. Secretary. Thank you, Mr. Chairman.

Chairman SPECTER. We are going to turn now to our second panel, Cynthia Bascetta and Dr. Dennis Snook. We are going to be holding to time lines very tightly here, if you would move up. Three minutes for each witness. We have another very lengthy panel and I expect to be voting soon so that we are going to have to adhere to these time lines.

Our first witness is the Associate Director of Health, Education, and Human Services, General Accounting Office, Ms. Cynthia Bascetta. Ms. Bascetta, thank you for joining us and we look forward to your testimony.

STATEMENT OF CYNTHIA A. BASCETTA, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GENERAL ACCOUNTING OFFICE

Ms. BASCETTA. Thank you, Mr. Chairman. Thank you for inviting me to testify today.

It goes without saying, with continued deployment of our military forces that we owe a profound debt to our veterans. As you know, current law allows veterans to receive disability compensation for diseases and injuries that are coincident with their military service. No causal link is required for eligibility.

We reported on this issue in 1989 and suggested that the Congress may wish to consider whether diseases neither caused nor aggravated by military service should be compensated as service-connected disabilities. At your request, I will focus today on the findings of that report issued to the Congress nearly 15 years ago. To provide context for my perspective, I will also highlight our recent work on the high-risk nature of Federal disability programs for veterans and other Americans.

Mr. Chairman, the complex design of VA's disability programs, including eligibility, has developed over many years. Our 1989 analysis used 1986 data to provide a profile of beneficiaries receiving disability compensation, with an emphasis on determining the origin of their disabilities. Our methodology involved extensive review by physicians of 400 randomly selected case files.

We found that 51 percent of veterans in our review were disabled due to injury, and more than one-third of them sustained their injuries in combat or performing a military task. The remaining 49 percent were disabled due to disease and the physicians concluded that 17 percent of their diseases were probably caused or aggravated by military service. But 19 percent were probably not related to military service, and 13 percent were indeterminate.

The physicians concluded that there was generally no relationship between military service and several common diseases, including arteriosclerotic heart disease and chronic obstructive pulmonary disease. Notably at the time, they included diabetes, which recent scientific evidence indicates is linked to diabetes in veterans exposed to Agent Orange.

CBO has used our analysis to estimate the savings associated with discontinuing eligibility for seven diseases we identified as probably not caused by service. Using VA data, CBO estimated budget savings of $449 million over the next five years.

While this illustrates the potential cost savings of changes in eligibility, it is neither a comprehensive estimate nor does it necessarily reflect changes in medicine and scientific knowledge that could be used to update our understanding of the causal links between military service and disabilities. In fact, VA's outmoded disability criteria, whether the statutory definition of service connection remains the same or not, was one reason we designated it as high risk this year.

Beyond eligibility, outmoded criteria have implications for the distribution of benefits, including whether those who are more severely disabled are compensated fairly relative to those with severe disabilities. For example, narrowing eligibility could free up resources to provide more compensation to the most severely disabled veterans.

Chairman SPECTER. Ms. Bascetta, you are in overtime. Your full statement will be made a part of the record. Would you sum up, please?

Ms. BASCETTA. Yes, I will. Narrowing eligibility has significant implications, obviously, for stakeholders, veterans, and the design of VA's disability programs.

This March, we testified that deliberations on concurrent receipt of disability compensation and retirement pay would benefit from the pursuit of more fundamental reform of all Federal disability programs, and we think that the proposal under discussion today certainly deserves the same amount of scrutiny.

Chairman SPECTER. Thank you very much.

[The prepared statement of Ms. Bascetta follows:]

THE PREPARED STATEMENT OF CYNTHIA A. BASCETTA, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Committee:

I am pleased to be here to discuss our past reviews of the Department of Veterans Affairs (VA) disability programs as you consider the fundamental issue of eligibility for benefits and the related issue of concurrent receipt of VA disability compensation and Department of Defense (DoD) retirement pay. Our work has addressed these issues in addition to identifying significant program design and management challenges hindering VA's ability to provide meaningful and timely support to disabled veterans and their families. It is especially fitting, with the continuing deployment of our military forces to armed conflict, that we reaffirm our commitment to those

who serve our nation in its times of need. Therefore, effective and efficient management of VA's disability programs is of paramount importance.

As you know, in January 2003, we designated VA's disability compensation programs, as well as other federal disability programs including Social Security Disability Insurance and Supplemental Security Income, as high risk areas. We did this to draw attention to the need for broad-based transformation of these programs, which is critical to improving the government's performance and ensuring accountability within expected resource limits. In March 2003, we cautioned that the proposed modification of concurrent receipt provisions in the military retirement system would not only have significant implications for DoD's retirement costs, but could also increase the demands placed on the VA claims processing system. This would come at a time when the system is still struggling to correct problems with quality assurance and timeliness. Moreover, we testified that it would be appropriate to consider the pursuit of more fundamental reform of the disability programs as the Congress and other policymakers consider concurrent receipt.

Today, as you requested, I would like to highlight the findings of our related past work on VA's disability programs, including our 1989 report on veterans receiving compensation for disabilities unrelated to military service. My comments are based on numerous reports and testimonies prepared over the last 15 years as well as our broader work on other federal disability programs.

In summary, VA needs to modernize its disability programs. In particular, VA relies on outmoded medical and economic disability criteria in adjudicating claims for disability compensation. In addition, VA has longstanding problems providing veterans with accurate, consistent, and timely benefit decisions, although recent efforts have made important improvements in timeliness. However, complex program design features, including eligibility, have developed over many years, and solutions to the current problems will require thoughtful analysis to ensure that efficient, effective, and equitable solutions are crafted. Moreover, these solutions might need to take into account a broader perspective from other disability programs to ensure sound federal disability policies across government programs and to reduce the risks associated with the current programs.

BACKGROUND

VA provides disability compensation to veterans with service-connected conditions, and also provides compensation to survivors of service members who died while on active duty. Disabled veterans are entitled to cash benefits whether or not employed and regardless of the amount of income earned. The cash benefit level is based on the percentage evaluation, commonly called the "disability rating," that represents the average loss in earning capacity associated with the severity of physical and mental conditions. VA uses its Schedule for Rating Disabilities to determine, based on an evaluation of medical and other evidence, which disability rating to assign to a veteran's particular condition. VA's ratings are in 10 percent increments, from 0 to 100 percent.

Although VA generally does not pay disability compensation for disabilities rated at 0 percent, such a rating would make veterans eligible for other benefits, including health care. About 65 percent of veterans receiving disability compensation have disabilities rated at 30 percent or lower, and about 8 percent are 100 percent disabled. Basic monthly payments range from $104 for a 10 percent disability to $2,193 for a 100 percent disability.

VA'S DISABILITY CRITERIA ARE OUTMODED

In assessing veterans' disabilities, VA remains mired in concepts from the past. VA's disability programs base eligibility assessments on the presence of medically determinable physical and mental impairments. However, these assessments do not always reflect recent medical and technological advances, and their impact on medical conditions that affect potential earnings. VA's disability programs remain grounded in an approach that equates certain medical impairments with the incapacity to work.

Moreover, advances in medicine and technology have reduced the severity of some medical conditions and allowed individuals to live with greater independence and function more effectively in work settings. Also, VA's rating schedule updates have not incorporated advances in assistive technologies—such as advanced wheelchair design, a new generation of prosthetic devices, and voice recognition systems—that afford some disabled veterans greater capabilities to work.

In addition, VA's disability criteria have not kept pace with changes in the labor market. The nature of work has changed in recent decades as the national economy has moved away from manufacturing-based jobs to service- and knowledge-based

employment. These changes have affected the skills needed to perform work and the settings in which work occurs. For example, advancements in computers and automated equipment have reduced the need for physical labor. However, the percentage ratings used in VA's Schedule for Rating Disabilities are primarily based on physicians' and lawyers' estimates made in 1945 about the effects that service-connected impairments have on the average individual's ability to perform jobs requiring manual or physical labor. VA's use of a disability schedule that has not been modernized to account for labor market changes raises questions about the equity of VA's benefit entitlement decisions; VA could be overcompensating some veterans, while under-compensating or denying compensation entirely to others.

In January 1997, we suggested that the Congress consider directing VA to determine whether the ratings for conditions in the schedule correspond to veterans' average loss in earnings due to these conditions and adjust disability ratings accordingly. Our work demonstrated that there were generally accepted and widely used approaches to statistically estimate the effect of specific service-connected conditions on potential earnings. These estimates could be used to set disability ratings in the schedule that are appropriate in today's socioeconomic environment.

In August 2002, we recommended that VA use its annual performance plan to delineate strategies for and progress in periodically updating labor market data used in its disability determination process. We also recommended that VA study and report to the Congress on the effects that a comprehensive consideration of medical treatment and assistive technologies would have on its disability programs' eligibility criteria and benefit package. This study would include estimates of the effects on the size, cost, and management of VA's disability programs and other relevant VA programs and would identify any legislative actions needed to initiate and fund such changes.

SOME VETERANS ARE COMPENSATED FOR DISABILITIES NOT RELATED TO MILITARY SERVICE

A disease or injury resulting in disability is considered service-connected if it was incurred or aggravated during military service. No causal connection between the disability and actual military service is required. In 1989, we reported on the U.S. practice of compensating veterans for conditions that were probably neither caused nor aggravated by military service. These conditions included diabetes unrelated to exposure to Agent Orange, chronic obstructive pulmonary disease, arteriosclerotic heart disease, and multiple sclerosis. A review of case files for veterans receiving compensation found that 51 percent of compensation beneficiaries had disabilities due to injury; of these, 36 percent were injured in combat, or otherwise performing a military task. The remaining 49 percent were disabled due to disease; of these, 17 percent had disabilities probably caused or aggravated by military service; 19 percent probably did not have disabilities related to service; and for 13 percent, the link between disease and military service was uncertain. We suggested that the Congress might wish to reconsider whether diseases neither caused nor aggravated by military service should be compensated as service-connected disabilities.

In March 2003, the Congressional Budget Office (CBO) reported that, according to VA data, about 290,000 veterans received about $970 million in disability compensation payments in fiscal year 2002 for diseases identified by GAO as neither caused nor aggravated by military service. CBO estimated that VA could save $449 million in fiscal years 2004 through 2008, if disability compensation payments to veterans with several nonservice-connected, disease-related disabilities were eliminated in future cases. In August 2003, we also identified this as an opportunity for budgetary savings if the Congress wished to reconsider program eligibility.

Because of the complexities involved in a potential change in eligibility, the details of how such a change would be implemented and its ramifications are important to the Congress, VA, veterans, and other stakeholders. For example, service connection is linked with eligibility for other VA benefits, such as health care and vocational rehabilitation. Moreover, efforts to change VA disability programs, including eligibility reform, would benefit from consideration in the broader context of fundamental reform of all federal disability programs.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions that you or Members of the Committee might have.

Chairman SPECTER. We now turn to Dr. Dennis Snook, Domestic Social Policy Division, Congressional Research Service. Thank you for joining us, Dr. Snook, and we look forward to your testimony.

STATEMENT OF DENNIS W. SNOOK, PH.D., DOMESTIC SOCIAL POLICY DIVISION, CONGRESSIONAL RESEARCH SERVICE

Mr. SNOOK. Thank you, Mr. Chairman, for the opportunity to provide some observations and conclusions about VA disability compensation and how it is determined.

You mentioned earlier the 1924 date, which was really the culmination of public administration having learned the difficulties in trying to coordinate categorical eligibility with the specifics of individual cases. It was the working out of three principles that arose from the beginning of the Republic.

The first was the patriotic imperative that we have a duty to protect the Republic and an obligation of the citizens to aid those who sacrifice on our behalf.

The second was in the Civil War, the realization that we were moving into a period in which it wasn't simply a professional class of military officers who became disabled in the service of the country and couldn't continue on in their military careers and, therefore, they and their families needed to be supported, but it was a much larger population of people who had lost the capacity to become self-reliant. And so we began to try to provide ways to give them the support they needed for the remainder of their lives.

However, we were a new nation and public administration itself was quite new and practices in the 1870s that were arising in the railroads of trying to regularize a practice of taking up a collection for Joe when Joe was hurt began to be reflected in the way in which the government began to deal with disability cases. It had to, first of all, try to come up with a criteria of eligibility, but it also had to try to find a way to validate or rebut claims.

The problem was that the general presumption upon which the compensation was based, the idea of replacing the capacity to become, or to remain self-reliant, was that the individual is presumed to be of sound mind and body at the point at which they entered military service, and if at some subsequent point afterwards they were no longer of sound mind and body, then there is a prima facie case that the individual somehow or another sustained some disability during the period of military service.

It became especially important in the aftermath of the Spanish-American War, through the period to 1924, when we began to experience the rise in various kinds of disabilities based upon illnesses that were sustained that we couldn't even diagnose. We just knew that, somehow or another, these people had encountered them during their period of military service.

The same was true with injuries sustained during the Civil War, as we began to try to codify a way to provide them benefits. We could look back and say that they—we could look at them now and say that they indeed exhibited the characteristics of a disability, but we had to try to figure out whether or not that disability had actually been sustained during service. So attempts were made to do that, only to discover that it wasn't really possible. It was really necessary to provide them only a connection to their period of military service.

If you try to move away from——

Chairman SPECTER. You are in overtime. Could you sum up, please?

Mr. SNOOK. I will. To provide an alternative to this is to create a system that will die the death of a thousand qualifications in a hurry, because there is really no way to try to take that categorical eligibility and translate it into specific cases without using a broader brush, like service connection at a point in time.

Thank you very much.

Chairman SPECTER. Thank you very much.

We have questions, but we are looking for a series of votes here on the Interior bill, and once they start, we are going to have to move onto the floor, so we are going to move now to the third panel, Mr. Mark Olanoff, Mr. Dennis Cullinan, Mr. Rick Surratt, Mr. Carl Blake, Mr. Richard Jones, Mr. Rick Weidman.

We turn now to our first witness, Mr. Mark Olanoff, Assistant Director of the National Legislative Commission of the American Legion. Mr. Olanoff, thank you for joining us and we look forward to your testimony.

STATEMENT OF MARK H. OLANOFF, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION

Mr. OLANOFF. Thank you, Mr. Chairman. It is a pleasure to see you again. I know we don't have a lot of time.

There are a couple of things that I would like to react to. I have submitted a full statement for the record.

Chairman SPECTER. It will be admitted into the record, without objection.

Mr. OLANOFF. Thank you, Mr. Chairman. The first thing is some of the quick questions here. Military retired pay is an earned benefit for longevity years of service. The VA disability compensation system is based on injuries or diseases that are incurred or aggravated while in service.

None of us sitting here invented these terms, severely disabled and combat related. A veteran is a veteran is a veteran. It doesn't matter whether you served two years or 40 years.

The American Legion has had a resolution for years to provide full concurrent receipt. The last few years, the legislation was changed to be called the restoration of retired pay, because that is what it really is. The Pentagon doesn't pay the money and military retirees are forced to pay for their own disability.

A few examples of—and unfortunately, as I said in my written statement, we don't have the official language of what is being proposed. However, we have seen one version of the language, which I faxed to Mr. Tuerk today, which states that both Title 10 and Title 10XXVIII would be changed to this performance-based system.

So, therefore, the people that were in the Khobar Towers, which I had the opportunity to visit before that happened, under the new, quote, "definition of performance of duty," if you go by the first version that some of us have seen, if you are sleeping in your bed after duty hours, those heroes who received Purple Hearts, no longer would they receive a Purple Heart. They wouldn't even be considered service connected. Their widows, if they were to die, would receive nothing, and they would be out on the street probably looking for some other Federal program.

So we support concurrent receipt fully, but not in a draconian way to change the whole business of Title 10XXVIII to, as Senator Murray said, have two systems, one system for the people that are currently receiving disability compensation and another system for new people who are going to come back from Iraq, and God forbid that if you are off duty, or some of this language suggests if you are traveling back and forth to work or going to lunch, you would not be considered, like today's criteria that you are covered 24-7.

So we urge you to—there needs to be a deliberative process before this system is changed. Thank you, Mr. Chairman.

Chairman SPECTER. So you favor concurrent receipts, but not with a draconian offset that hasn't been sufficiently studied?

Mr. OLANOFF. Yes, sir.

[The prepared statement of Mr. Olanoff follows:]

THE PREPARED STATEMENT OF MARK H. OLANOFF, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION

Mr. Chairman and Members of the Committee:

Thank you for allowing The American Legion the opportunity to participate in this hearing. Over the last two weeks, The American Legion and other veterans' and military service organizations have been chasing a "ghost" proposal attempting to end the tax placed on disabled military retirees. To date, The American Legion has not been provided a written copy of the proposed legislation for its official comments. Even for this hearing, we are asked to speculate what that proposed legislation might look like.

So here is the short answer: The American Legion adamantly supports full concurrent receipt of military retirement pay and VA disability compensation. Both are earned benefits for two completely different reasons. Military retirement pay is determined and awarded by the Department of Defense for honorable military service. VA disability compensation is determined and awarded by the Department of Veterans Affairs for medical conditions incurred or aggravated while on active-duty.

Of the 26 million American veterans, less than 10 percent are service-connected disabled and only 2 percent are military retirees. Over 2 million service-connected disabled veterans receive their VA disability compensation with no offsets to their salaries or retirement plans, to include Federal and State employees. However, there are 600,000 military retirees that could not receive VA disability compensation until they were discharged from active-duty and retired—even if the disability were as obvious as a missing limb. Once they were awarded their VA disability compensation, their military retirement pay was reduced—dollar-for-dollar. The amount of military retirement pay retained by DoD would amount to literally hundreds of billions of dollars.

In fact, according to Secretary Rumsfeld, DoD plans to withhold an additional $58 billion over the next 10 years from the retirement checks of military retirees with 20 years or more of active military service or Reservists with over 7200 points. If the Secretary included all service-connected disabled military retirees, that amount would be even greater.

The current proposal being floated around would grant full concurrent receipt at what The American Legion would consider an immoral and unethical approach. This proposal calls for "reform" of the VA disability definition. Yet, VA has at least two full congressional committees with jurisdiction and oversight of the VA claims and adjudication process. In addition, VA has judicial review of its disability compensation decisions through the Court of Appeals for Veterans' Claims.

Ill-advised changes in VA's disability definitions would result in numerous examples of injustices resulting in service-connected disabled veterans being denied compensation, treatment, or rehabilitation. The adverse impact of this legislation would continue to reveal unintended consequences. With each unique case new adjustments would be made and eventually, you would be right back where you started with the current rules, regulations, and definitions.

Changes in disability standards in Titles 10 and 38 United States Code (USC) would require that injury or illness that results in disability retirement and separation must have been incurred as a "direct result of the performance of duty" and redefines service connection, respectively, as follows;

1. Injuries resulting from the performance of official military duties.

2. Illness directly resulting from exposure to the causes of the illness while performing military duties or directly resulting from exposure to the causes of the illness at the duty or directly resulting from exposure to the causes of the illness at the duty location to which the member is assigned.

3. Excludes injuries that are sustained while not performing official military duties.

4. Excludes illnesses determined to be related to aging and/or preexisting medical conditions of the member;

"Official military duties" are defined as:

1. Duties performed in an official government capacity directly related to those functions and scope of duties associated with the occupational skill assigned to the member.

2. Other actions or functions in an official government capacity that the member was ordered to execute by a member (or civilian supervisor) of senior grade or rank or in an senior or superior position, or a member, or a member that is designated by such a senior individual to give the member instructions, to include unspecified preparatory or follow-on actions and functions.

3. Includes duties that result in qualified combat-related disabilities as defined in 10 U.S.C. § 1413a.

4. Excludes actions and time periods unrelated to official government business to include travel to and from the members home and permanent duty station, meals and other activities selected and carried out by the member at an official duty location and during hours designated as duty hours for the member.

Mr. Chairman, The American Legion agrees that reform is necessary, but the reform needs to focus on the formula used to compute the annual discretionary appropriations required to supplement the Military Retirement Trust Fund. Current calculations include concurrent receipt windfalls. A 5-year adjustment in this formula would phase-in full concurrent receipt without denying future veterans their service-connected disability claims.

This ill-conceived proposal will stand a century of veterans' law on its head. The unintended consequences can only be imagined and starts at the top. The Congressionally-mandated ideal of a non-adversary, paternalistic VA will vanish in the smoke and mirrors of petty partisan politics. The doctrine of the benefit of the doubt will be rendered moot; the tie will now go to the Federal Government and the veteran will be left twisting in the bureaucratic wind. A paralyzing upheaval in the Veterans Benefits Administration (VBA) will add months if not years to already interminable claims processing times. The Department of Defense (DoD) will spend millions of additional dollars annually retaining tons of records that would normally be disposed of, as will the National Archives storing and retrieving them. The Services must establish hundreds of new "Performance of Official Duty Determination Boards". The Secretary of Veterans Affairs will no longer have the power to add new diseases to the presumptive lists and the existing ones will be called in to question.

The U.S. Courts of Appeals for the Federal Circuit and for Veterans Claims will be swamped with litigation for years to come. DoD recruitment goals will fail to be met as young men and women reconsider whether they will be able to afford to pay for care for treatment of injuries and illnesses incurred in service while "off-duty", because private insurers will not cover pre-existing conditions.

More questions are raised than are answered by this odious language. The Marine Corps veteran is now required to prove that he or she contracted malaria while walking guard duty in some third world nation and not while the member was dining al fresco on MRE's there between shifts? Preposterous. Under the proposed plan, conceivably, a 16-year Air Force avionics technician will be determined unfit for military service as the result of trauma sustained in a car wreck on the way to work and therefore released from service. Ineligible for the Temporary Disability Retired List (TDRL), the veteran and his or her family are now struggling to survive. Outrageous.

Following a barrage of conflicting shouted orders from midshipmen, none of whom are her direct superior, a first-year Naval Academy student tears her medial cruciate ligament running an obstacle course in the dark. The injury is determined to be "not in the performance of official duties". Unacceptable. A former Army graves registration specialist in Vietnam succumbs to refractory hypertension and coronary artery disease induced by a lifetime of chronic, severe post-traumatic stress disorder. In his social withdrawal and fear of institutions, the veteran never filed a service connection claim. This secondary service connection relationship just now being recognized and accepted by VA and the widow is advised to file a claim for Dependency and Indemnity Compensation (DIC). The widow must now prove an additional element of service connection in addition to cause of death, incident in service and medical nexis; "performance of official duty." After three years of waiting

the DIC claim is denied on the new element and the widow and her children continue to live in poverty. Shameful.

Mr. Chairman, before closing, let me relate another scenario to you and the Committee. Two U.S. soldiers are on patrol in a hostile fire area, be it Vietnam, Iraq or the Philippines. An enemy hand grenade detonates between them and both soldiers receive similar shell fragment wounds, are given first aid on the scene, sent to an aid station and evacuated to a U.S. military hospital where they receive medical treatment and rehabilitation. Both recover from their wounds with similar residual scars and go on to complete their enlistment. One soldier decides to make the military a career and re-enlists; the other gets out and goes to work for the U.S. Postal Service. The postal worker files an immediate claim for his scars and is assigned a 10% disability rating, which he begins to collect monthly. The soldier must wait until he retires to file a disability claim. Both complete 20 years of faithful Federal service and retire. Only the career soldier must choose between the 10% disability compensation and his military pension. In the meanwhile, the postal worker has accrued close to $50,000.00 that the career soldier has not. This fundamental unfairness in the law must end, but it must not be at the expense of veterans who served this nation honorably for a short time in their lives and returned to civilian life having left pieces of themselves, whether of body or psyche, behind. It is shameful that the very institution charged with the responsibility to ensure America's veterans are justly treated would employ such a vile bargaining tactic.

Military retirement is an earned benefit through time in service, as is all other Federal career retirement plans. VA disability compensation is just payment for injuries resulting from service. Both are separately earned and fully deserved entitlements. Military retirees are the only ones so treated. There is a correct way to deal with disability compensation reform. Making it more difficult for veterans to be awarded disability, in one fell swoop by a Committee that does not have jurisdiction, is not the way

The government should stop making military retirees pay for their own disability compensation—that is the issue at hand—and should set spending priorities accordingly that demonstrate respect for career military service members. The American Legion will continue to fight to end this travesty and to prevent another from occurring.

Mr. Chairman, thank you for requesting the views of The American Legion on this very important issue affecting our nation's veterans.

Chairman SPECTER. Okay. The second witness is Mr. Dennis Cullinan, Director of the National Legislative Service of the VFW. Thank you for coming, Mr. Cullinan. The floor is yours.

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

Mr. CULLINAN. Thank you very much, Mr. Chairman, members of the committee. On behalf of the men and women of the Veterans of Foreign Wars, I want to thank you for conducting today's most important hearing.

The VFW has long championed the cause of concurrent receipt and we salute you for your efforts in that regard. However, the issue under discussion today, from the perspective of both equity and fairness, is just plain wrong. What this would basically do is eliminate up to 64 percent of those currently receiving VA compensation from that.

What comes to mind immediately is the 200-some-odd servicemen who recently contracted malaria while serving in Liberia. That is an instance where, quite clearly, a number of those may not be service connected for that. How could they prove whether they were bitten by the vector or not while they were on active duty or while resting in their bunks? It also comes to mind that during this time of the global fight on terrorism, our men and women will be serving in many distant venues and probably associated with that will be a variety of diseases and disabilities that would be hard to describe as service connected. They, too, would be denied. And then

such things as arthritis. Unless a paratrooper, who serves four years in the military gets out, suffers arthritis as a consequence of many jumps out of an airplane, he or she, too, would be hard put to prove that this was service connected once he had left active duty military.

One of the things that is most nettlesome, irritating about this to the VFW, it is not for the purpose of conducting a higher-level policy debate or for reforming or refining the compensation system. What it is expressly about is the money, pure and simple, and what it would basically do, it attempts to pit one group of veterans against another. It would attempt to remedy the inequity known as—or the prohibition on concurrent receipt by visiting an injustice on another group of veterans, and, in fact, all veterans. Something like this is just plain wrong.

Also shown today is the fact that it short-circuits the process. This committee is denied full access to the deliberate process that should be gone through when something of this nature is being undertaken. And, of course, the veterans' service community is excluded from the process, as well.

And finally, as already mentioned, the implications for health care for not only the member of the active duty military, but dependents, is involved as well, such things as vocational rehab, and the list goes on and on.

It is just plain wrong and we strongly oppose it. Thank you.

Chairman SPECTER. Well, thank you, Mr. Cullinan. Essentially, you agree with what Mr. Olanoff has said. You like concurrent receipts, but not at the expense of a draconian offset that hasn't been studied.

Mr. CULLINAN. That is exactly right, Senator. Thank you.

Chairman SPECTER. Okay. We next turn to Mr. Rick Surratt, Deputy National Legislative Director of the Disabled American Veterans. Thank you for joining us, Mr. Surratt, and we look forward to your testimony.

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

Mr. SURRATT. Mr. Chairman, on behalf of the DAV, I want to thank you for convening this hearing to address a proposal that would not only attack the very heart of veterans' benefits, but would also be extremely detrimental to members of the armed forces and their families.

This proposal is so extreme that most of us thought no member of the United States Congress or any responsible United States Government official would ever seriously entertain it, certainly not advocate it. Under this scheme advanced by the House leadership, members of the armed forces would themselves bear the risk of being disabled while serving in the military. All disabilities but those incurred under a very narrow set of circumstances would be excluded from coverage under DoD and VA disability benefits programs.

Under this scheme, if a service member were seriously injured from an accidental or any other cause occurring at any time other than when the service member was performing military duties per se on the job, the government would assume no responsibility.

For example, if a service member were paralyzed from the structural collapse of a military mess hall or barracks, the government would wash its hands of the member and send him or her back to the civilian community to be cared for and maintained by relatives or others with no assistance from the government. There would be no disability benefits, no rehabilitation benefits, and without service-connected status, no guarantee of health care ever.

Large numbers of those who defended us in the times of crisis and incurred disabilities during military service will be destitute in civilian life. With no means of subsistence, many of these disabled veterans may likely be forced to live on the streets of our cities. It will become our most embarrassing national disgrace. What are we coming to when our government wants to take no responsibility for soldiers disabled in the line of duty?

I can imagine it now, the government saying to the bereaved widow and children of a soldier killed in a foreign land, "I am sorry, but you do not qualify for government benefits. Although your husband was killed in the line of duty while serving his country, his death was not caused by the performance of military duties."

I am not sure if the proponents of this scheme have any understanding of the consequences it will have for military recruitment or the magnitude of the hardships it will create for disabled veterans and their families. What is clear is that the House leadership seeks to replace a grave injustice against disabled military retirees with a far greater injustice against almost all who are disabled in military service.

I can tell you that disabled veterans see this as an unprecedented and unprincipled attack upon them by the government they defended. I hope we can count on the members of this committee to lead the effort to educate their Senate colleagues about the folly of this plan and stop this ill-advised attack upon disabled veterans.

Mr. Chairman, that concludes my statement.

Chairman SPECTER. Thank you very much. You encapsulated pretty fast. It is a great injustice not to have concurrent receipts, but it is a greater injustice to have an offset as proposed. That is about the size of it, Mr. Surratt?

Mr. SURRATT. Yes, sir.

Chairman SPECTER. Thank you.

[The prepared statement of Mr. Surratt follows:]

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

Mr. Chairman and Members of the Committee:

On behalf of the members of the Disabled American Veterans, their families, and all members of the Armed Forces and their families, I want to thank you for convening this hearing and allowing us to state our deep concerns about a plan by the leadership of the House of Representatives to greatly restrict the terms under which service-incurred disabilities would be given service-connected status. This is an issue of paramount importance to disabled veterans and servicemembers, who will be our future veterans.

This House plan would have our Government renounce all responsibility to compensate and care for members of the Armed Forces disabled in the line of duty, except under extremely restricted circumstances. This move would abandon the fundamental principles of our Nation's relationship between its citizens and the veterans who have made extraordinary sacrifices in their behalf. For a veteran who suffers service-connected disability, our Government has deemed it our moral obligation to

provide the disabled veteran a range of benefits designed to ease the economic and other losses and disadvantages incurred as a consequence of serving his or her country. These benefits include compensation, medical care, and vocational rehabilitation. Other special benefits are provided to the most severely disabled veterans and to the survivors of veterans whose deaths are from service-connected causes. The House plan would bring these benefit programs to an end for the majority of our future disabled veterans and their families and would essentially deny increased compensation for many current disabled veterans when their disabilities worsen.

Under current law, the term "service-connected" means generally, "with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in the line of duty in the active military, naval, or air service." 38 U.S.C.A. § E101(16) (West 2002). An injury or disease incurred "during" military service "will be deemed to have been incurred in the line of duty" unless the disability was caused by the veteran's own misconduct or abuse of alcohol or drugs, or was incurred while absent without permission or while confined by military or civilian authorities for serious crimes." 38 U.S.C.A. § E105 (2002).

Based on equitable considerations, several named "chronic" diseases may be presumed service connected because of their sometimes insidious onset and clinical manifestation within relatively short periods of time following service. Others may be presumed service connected based on the likelihood of a causal connection between the specified disabilities and certain circumstances of military service or exposure to certain hazards during service. These include tropical diseases for veterans who had service in areas where such diseases were endemic; diseases suffered by former prisoners of war from malnutrition, unsanitary conditions, physical hardships or abuse, and mental hardships or abuse; radiation-related disabilities for veterans who were exposed to radiation during service; diseases associated with exposure to herbicides used during the war in Vietnam; and disabilities peculiar to veterans who had service in the Persian Gulf War. 38 U.S.C.A. §§ 1112, 1116, 1117, 1118 (West 2002). In addition, the Secretary of Veterans Affairs presumes certain diseases are service connected when suffered by veterans who, during service, were exposed to mustard gas and Lewisite. 38 C.F.R. § E3.316 (2002).

Thus, disabilities are service connected under current law when incurred, aggravated, or presumed incurred or aggravated during or by military service. While service connection may be established based on a demonstrated or presumed cause-and-effect relationship, service-related causation is not required where there is evidence of a condition during service or a presumptive period. Under current law, disabilities of onset coincident with military service may be service connected without necessity to establish and prove a causal link between the performance of military duties, per se, and the disability. If the disability is of service origin, it is deemed attributable to service-related factors. "Service connection connotes many factors, but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein." 38 C.F.R. § E3.303(a) (2002) (emphasis added).

Clearly, Congress fully understood and intended this equitable and practical basis to compensate veterans for a wide range of disabilities for which the extraordinary rigors and hardships of military service can fairly be assumed to have played a precipitating or aggravating role, although the very nature of the circumstances of military service coupled with imperfect science make proof of causation extremely difficult or impossible in many instances. "Congress has designed and fully intends to maintain a beneficial non-adversarial system of veterans' benefits. This is particularly true of service-connected disability compensation where the element of cause and effect has been totally by-passed in favor of a simple temporal relationship between the incurrence of the disability and the period of active duty." H.R. Rep. No. 100-963, at 13 (1988).

Under the draft proposal of the House leadership, service connection would be granted only where the disability is from: (1) "[i]njuries directly resulting from the performance of official military duties," and (2) "[i]llnesses directly resulting from exposure to the causes of the illness while performing official military duties or directly resulting from exposure to the causes of the illness at the duty location to which the member is assigned." (Emphasis added.) Excluded from the scope of service connection under this restricted standard would be (1) "injuries that are sustained while not performing official military duties," and (2) "illnesses determined to be relating to aging and/or preexisting medical conditions of the member." The proposed scheme narrowly defines "official military duties" as including: (1) "[d]uties performed in an official government capacity directly related to those functions and scope of duties associated with the occupational skill assigned to the member," (2)

"[o]ther actions or functions in an official government capacity that the member was ordered to execute by a member (or civilian supervisor) of senior grade or rank or in a senior or superior position, or a member that is designated by such as senior individual to give the member instructions, to include unspecified preparatory or follow-on actions and functions," and (3) "duties that result in qualified combat-related disabilities as defined in section 1413a of Title 10, [United States Code]." Essentially all other activities of military service fall under a broad exclusion from the definition of "official military duties," even events that occur during duty hours. Excluded are "actions and time periods unrelated to official government business to include travel to and from the member's home and permanent duty station, meals, and other activities selected and carried out by the member at an official duty location and during hours designated as duty hours for the member."

Disability may arise in the course of military service, but not be susceptible to strict proof that it was the proximate result of performing activities of the member's specific military occupation, as opposed to engaging in the wide range of activities typical of service in the Armed Forces. The current terms for service connection provide both an equitable and sensible approach because it is often impossible to disassociate the disability from service-related factors, even while the veteran is unable to establish a definite causation. It is generally recognized that the cause of disease may be multifactorial. Therefore, disability incurred in the line of duty is sometimes not directly due to a job injury or traceable to known causes, but certainly may be due to subtle or less obvious factors inherent in the Armed Forces environment.

Mental illnesses present a good example of disabilities that can properly be service connected under current law, but would not qualify for service connection in many cases under the proposed new standards. Under the proposed change, how will it be fairly determined whether a mental illness that begins during military service is attributable to the performance of duties only, as opposed to (1) the stresses of the military environment generally to include the stresses associated with the performance of military duties combined with the stresses of serving in certain generally stressful military environments, (2) the emotional strain of serving away from home and family or in isolated duty stations, or (3) psychological stressors or factors totally unrelated to the military environment? Under the House plan, would service connection for mental illness be in order if it were clearly shown to have been partially caused by the performance of military duties and partially caused by other stresses of the military environment? In addition, it is being recognized more and more that mental stress plays a role in physical health. How will the Department of Veterans Affairs (VA) properly adjudicate complex questions of service connection for physical illnesses that are not directly shown to be related to performance of military duties, but may have been triggered or intensified by the stressors of combat, terrors of a prisoner of war experience, or the anxieties of highly stressful military occupations?

If service connection were currently subject to proof of service causation, Persian Gulf War veterans suffering from very real, but poorly understood, undiagnosed illnesses would be left without compensation or medical treatment. Although a discrete group having the common experience of presence in a geographical region at the same period in time suffers from a syndrome comprising a commonality of symptoms, the link between the syndrome and the common experience is only circumstantial. It follows that there currently is no possibility of ascertaining whether these illnesses are directly due to the performance of military job functions or whether mere presence in the region, both on and off duty, could have caused them. The true nature of disease is unknown, and thus its cause or causes are unknown. With the additional exclusions included in the House plan, it is not at all clear that conditions such as these will be deemed by VA to qualify for service connection within the ambit of 10 U.S.C.A. §E1413a (West Supp. 2003) ("Qualifying combat-related disability").

In a variety of other situations, it will be very difficult for veterans to prove that they were exposed to the causes of their diseases while performing military duties on the job as opposed to having been exposed while off duty. For example, how will a veteran prove that he was exposed to asbestos on a Navy ship only while performing his job functions as opposed to exposure in off duty hours? How will a veteran who contracted malaria in a tropical region prove that the mosquito bit him or her while performing military duties. How will the veteran who develops Lyme disease after field training prove that the tick that transmitted the disease bit him or her while performing military duties rather than while taking a rest break or sleeping in a tent?

Numerous other similar examples can be foreseen, particularly with respect to the question of whether the causes underlying a whole range of infectious or degenerative diseases were solely attributable to the performance of military job functions,

attributable to the overall military environment (including the stresses and rigors of military service generally), attributable to both the environment within the confines of the military facility and off-base living facilities, or attributable to both military occupational functions and off-duty recreational activities.

For many in our Armed Forces who have military occupations that require them to stay in top physical condition, the line between what is performance of duty and recreation is blurred, if not nonexistent. If service connection is to be denied for the soldier who injures his knee playing special services basketball, is it also to be denied for the sailor who, at the encouragement or direction of her superiors, injures her knee participating in authorized recreational or sports activities while stationed on an aircraft carrier in the Persian Gulf? Or is it also to be denied for the Marine who injures his knee while keeping in shape in the exercise room in the foreign embassy where he is stationed?

Consider the circumstances in which servicemembers were killed and disabled from a terrorist attack on their barracks in Beirut, Lebanon. Most were probably not performing military duties at the time. Consider the circumstances in which soldiers were the victims of the terrorist attack on a Berlin nightclub. In a strict sense, that was not performance of duty. On the other hand, unlike a civilian job, those soldiers were at the disposal of the Army 24 hours a day and were placed at risk because of military service. Military life, like civilian living, involves work, recreation, commuting between work and home, but in the Armed Forces these are all the performance of duty in the broader sense, especially when the servicemember is located in a military community or is isolated on a foreign station.

The radical House plan will have other far-reaching implications. There will be no presumptive service connection for "chronic diseases" because service connection is based on a presumption that the chronic disease has its onset during military service. Inasmuch as there is no evidence of the disease during service, it follows that the disease cannot be linked to the performance of military duties. As noted, presumptive service connection for illnesses attributed to service in the Persian Gulf is in doubt under this plan. The same difficulty exists in proving that exposure to herbicides—and radiation during the occupation of Hiroshima and Nagasaki—occurred solely in connection with the performance of military duties.

The House's draft plan also expressly excludes from disabilities subject to service connection "illnesses determined to be related to aging and/or preexisting medical conditions of the member." This indicates there will be no service connection by reason of aggravation. An individual could enter service with some minimal defect that did not disqualify the person for military service and have that disability aggravated by superimposed injury during service to an extent that it disqualified the member from further military service and resulted in total disability, but service connection would not be in order. The veteran would be sent home to fend for himself or herself.

Because the House plan would apply to new claims for service connection and evaluations of existing service-connected disabilities, veterans who suffer worsening of their service-connected disabilities could receive no increased ratings unless they could prove their already service-connected disabilities were the direct result of the performance of duty.

A servicemember who was paralyzed, for example, due to medical malpractice by a military physician would be without any remedy or benefits. A disability incurred in connection with military medical treatment would not meet the performance-of-duty requirement, and the member would be barred under *Feres* v. *United States*, 340 U.S. 135 (1950) (the "*Feres* doctrine") from bringing a tort action to recover damages from the Government. Here again, the disabled veteran would be left to his or her own means to survive.

The House plan would plunge servicemembers into an extremely precarious position. Members of the Armed Forces have no real ability to obtain disability insurance from commercial insurers. Even if such insurance were available to them, the price would be prohibitive given the increased risks inherent in military service. Only the Federal Government is in a position to bear this risk—and it should without question.

Another incidental adverse effect would impact disability retirement from military service. Compensation is often elected in lieu of military disability retirement. Servicemembers who become disabled before completion of military careers are now eligible for disability retirement from the Armed Forces. Many of these disability retirees find it advantageous to elect to receive disability compensation. However, neither military retirement nor disability compensation would be available under the proposed plan unless the disability was due to the performance of military duties. Other Federal and private sector disability retirement programs do not require that the disability be job related.

Because entitlement to most benefits for veterans' dependents and survivors is derived from the veterans' service-connected status, the House plan would therefore also have a major adverse impact on veterans' families. It is unclear how it might impact disability and other benefits under chapter 18 of Title 38, United States Code, provided to Vietnam veterans' children who suffer from spina bifida.

Beyond these more readily recognizable adverse effects, this change has the potential to cause myriad unforeseen and unintended consequences for veterans, servicemembers, veterans' and servicemembers' families, and for VA. For VA, numerous adverse consequences are easily foreseeable.

The "line of duty" standard dispenses with many complex issues related to disability causation. It is where the claim for service connection rests on proof of causation that VA now has its most complex and administratively burdensome adjudications. These complex adjudications involve proof of service connection for disabilities not shown during service or any presumptive period, such as, post-traumatic stress disorder, asbestosis, non-presumptive radiogenic diseases, and others. These cases demand a much greater investment of VA time and resources to resolve. To impose a causation requirement upon all new disabilities and claims for increase will complicate VA's work beyond belief. It will generate untold numbers of disputes about causation, and the innumerable factual nuances in questions of causation will make fair and uniform determinations on this element of claims near impossible to achieve.

Because this change would strike at the very foundation of veterans' disability benefits, it would require a virtual rewrite of Title 38, United States Code, and Title 38, Code of Federal Regulations.

The change would likely have similar adverse consequences for the Armed Forces. With the knowledge that military service generally involves far greater risks of injury than civilian careers, that this increased risk of disability is borne by the servicemember personally rather than the Government, and that the Government will have no hesitation in sending the servicemember into perilous situations that expose the servicemember to all manner of known and unforeseen hazards, potential recruits would be wise to consider other alternatives to military service. Although it is not a primary concern of this Committee, it bears noting that this proposed change might cause substantial decline in military enlistments and reenlistments.

This proposal to leave it to this Nation's sons and daughters to serve in our Armed Forces at their own risk is simply indefensible. It is a bad idea for numerous reasons. Its only object seems to be abrogation of the Government's responsibility to its servicemembers and veterans. We urge the members of this Committee to take the lead in opposing this ill-advised scheme.

Chairman SPECTER. Our next witness is Mr. Carl Blake, Associate Legislative Director of the Paralyzed Veterans of America. Mr. Blake.

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

Mr. BLAKE. Mr. Chairman, I would like to thank you for the opportunity to testify today on behalf of the Paralyzed Veterans of America.

I would just like to say up front, I am going to agree with everything that my colleagues have said so far. We have always strongly supported concurrent receipt. However, we would certainly oppose any provision in legislation that would tie the payment of concurrent receipt to an offset against future veterans' disability benefits.

This proposal would fundamentally change the way the VA determines who is service-connected disabled. I would like to tell you a quick story about a PVA member that we have that works in our national office. He was an Air Force colonel. He was out jogging one morning, as all military servicemen and women do. He fully believed in that concept that the military man or woman is a 24-hour-a-day, seven-day-a-week profession, and hence the reason he was conducting his physical fitness on his own time.

While he was out that morning, it was believed he was intentionally hit by a van and that left him paralyzed from the neck down. With this proposed change, that individual and individuals like him would no longer be considered service-connected disabled. I think that speaks for itself.

Military service is unlike any other profession. We expect our men and women to sacrifice and die for this country, if necessary. We ask these men and women to serve this country on the promise that we will give them adequate pay and benefits and a comprehensive disability policy is the insurance policy that we provide these men and women. It is an insult to them for any member of Congress to consider changing the rules in the middle of the game that would deny them the value of this insurance policy.

PVA is also very concerned about how it would affect how the VA provides health care to veterans. Currently, individuals that are presumed to be service-connected for such things as diabetes or post-traumatic stress disorder would be also left out in the cold.

Again, I would just like to reiterate that we have always supported concurrent receipt. However, if it is based on paying for it with the reduction of benefits for future military retirees and veterans on the scale of millions of individuals, we would certainly oppose any provision in legislation which would do so.

I would like to thank you for the opportunity again and I would be happy to answer any questions.

Chairman SPECTER. Thank you very much, Mr. Blake. We have a few seconds left, so I will ask a question. Where is all that South in your voice from?

Mr. BLAKE. I am from Virginia, Senator.

Chairman SPECTER. Okay.

Mr. BLAKE. In the dark still, too, Senator.

[Laughter.]

Chairman SPECTER. Our next witness is Mr. Richard Jones, National Legislative Director of the American Veterans, AMVETS. Thank you for joining us.

STATEMENT OF RICHARD "RICK" JONES, NATIONAL LEGISLATIVE DIRECTOR, AMERICAN VETERANS (AMVETS)

Mr. JONES. Thank you, Chairman Specter. Thank you very much for the opportunity to present our strong objection to a draft plan that would dramatically limit the ability of future generations of veterans to qualify for service-connected benefits from the Department of Veterans Affairs.

AMVETS, of course, would like to see Congress resolve the concurrent receipt issue. For more than a decade, our membership has sought a change in law forcing veterans who collect disability checks to deduct the money from their retirement pay. Military retirees should be able to receive both full benefits, as is the case with retirees from other Federal agencies.

Clear majorities in the House and Senate have cosponsored legislation to correct this century-old policy and we thank you, Mr. Chairman, for your commitment and support of this issue and your support of veterans and their families.

If we followed the House leadership plan, we would finance concurrent receipt for disabled veterans with monies resulting from

the denial of disability compensation for those brave men and women in future military service. In our eyes, it is not in our nation's best interests to rob Peter to pay Paul. We do not wish to tie VA revision to correction of the concurrent receipt. We are greatly troubled that prior to your call, Mr. Chairman, no hearing had been held and no consultation attempted with the Department of Veterans Affairs about the ramifications of so draconian a limitation of the changes being proposed.

In addition to all this that was mentioned before about this jogger, imagine the unlucky service member who would find difficulty gaining access to VA health care. Depending on means testing and whether the bar against Priority 8 veterans has been lifted or not, this injured veteran may find himself left to his own, crumpled on the street or dropped off at the family porch if he has a family, which we hope he would. Other Americans, we hope in a charitable fashion, would give him relief.

Fortunately, it has been the tradition of the United States, a way of America and a way of our democracy, to care for those who defend freedom far off. And very frankly, if the driver of that car that hit this officer was not found, we really have no way of knowing whether the injuries were accidental or part of a terror target. Was the injury indeed part of his deployment?

In addition, military retirees may suffer from arthritic conditions. You mentioned before about parachute jumps. We have Navy personnel standing on steel decks of aircraft carriers. This is not a condition that is healthy to knees and joints. Arthritic conditions may result from such service.

Future determinations of military service-connected disability should not hang as a bargaining chip in an end game to negotiations on correcting concurrent receipt. One injustice should not replace another, and the issue is too complex to decide behind closed doors.

Mr. Chairman, America is too great a nation for a decision making framework that resolves one injustice only to establish a second one in the next generation of veterans. We thank you for the opportunity to present our strong disagreement with this proposal and we appreciate your support. Thank you very much, Mr. Chairman.

Chairman SPECTER. Thank you very much, Mr. Jones.

[The prepared statement of Mr. Jones follows:]

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

Chairman Specter, Ranking Member Graham, and members of the Committee:

Thank you for the opportunity to present our strong objection to a draft plan that would dramatically limit the ability of future veterans to qualify for service-connected benefits from the Department of Veterans Affairs.

Mr. Chairman, AMVETS (American Veterans) 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.

At this stage of the 108th Congress, the membership of AMVETS is seriously concerned over a House leadership compromise offered in early September to redefine military disability as part of changing current law on concurrent receipt. AMVETS is deeply troubled by this plan.

AMVETS would like to see Congress resolve the concurrent receipt issue. For more than a decade, our membership has sought a change in current law requiring

veterans who collect a disability check to deduct that money from their retirement pay. Military retirees should be able to receive both full benefits, as is the case for retirees from other federal agencies.

We strongly support correction of this injustice. We believe it is a question of whether we as a nation will act responsibly and remember the veteran's sacrifice? Will we honor the brave and dedicated men and women who once wore the military uniform?

We at AMVETS believe it would be unconscionable should we fail in that regard. And, we are pleased to see so many of our elected Representatives and Senators cosponsor legislation to end the wrongful policy of denying servicemembers injured in the line of duty their full retirement pay.

On this date, as it was at the close of the last Congress, the issue of restoration of retired pay is prominent. Clear majorities in the House and Senate have cosponsored legislation to correct this century-old policy that denied veterans a portion of their military retired pay if they received service related disability compensation.

We are pleased that a "beachhead" has been established that provides Purple Heart recipients and a number of veterans with combat-related injuries a chance to receive their military retired pay and disability compensation in full.

More needs to be done, however, and AMVETS calls on this Congress to set the matter right, once and for all—and allow disabled military retirees to receive full military retirement pay and the VA disability compensation to which they are entitled.

The attempt on the part of House leadership to cloud the issue of providing full disability compensation to military retirees is clearly a cop-out. If leadership accurately reflected the priorities of our Congress, we would find the money to allow these dedicated service members to receive their earned retirement without it being reduced, dollar for dollar, by the amount of disability compensation they receive from the Department of Veterans Affairs.

If we followed the House leadership plan, we would finance concurrent receipt for disabled retirees with monies "saved" from the denial of disability compensation to those brave men and women in future military service. In our eyes, the suggestion is both underhanded and detrimental to our nation's best interests. It is total nonsense to rob Peter to pay Paul.

AMVETS is totally opposed to tying any revision in the current eligibility standards under which VA awards disability compensation, to a correction of this matter at hand. Amending these standards would not only be a poor excuse for dealing with the concurrent receipt issue, but worse yet, adversely affect hundreds of thousands of future service-connected disabled veterans and their families.

In addition, we are greatly troubled that prior to your call, Mr. Chairman, no hearing has been held and no consultation has been attempted with the Department of Veterans Affairs about the ramifications of so dramatic a limitation of the changes being proposed.

How would determinations be made about whether an injury or illness met the criteria of "performance-based standards"? Would, for example, the injuries that occurred in the Khobar Towers explosions be classified as compensable. After all, these folks were not on duty, they were asleep in their bunks resting to prepare themselves for their next military duty. Also, what about the individual who after duty is run down by an automobile while jogging "off-the-clock"? The intent of the servicemember may have been maintenance of physical readiness. But under the proposal, regardless of the extent of injury, the injuries would not be compensable because the accident did not occur in the performance of duty. Moreover, the unlucky servicemember may find difficulty gaining access to the VA healthcare system, depending on means testing and whether the bar against Priority 8 veterans is lifted or not. And very frankly, if the driver of the car is not found, we have no way of knowing whether the injuries were accidental or part of a terror target.

In addition, military retirees may suffer from arthritic conditions that may be associated with long-term military duty, but not clearly marked by a specific incident. Such injury may occur as a result of multiple parachute jumps or years of duty on the steel deck of an aircraft carrier or other navy vessel. Also, future incidents of chemical exposures might find no relief for their unfortunate conditions should data not be found to find the nexus of incidence.

The magnitude of changes contemplated by a hasty late-night decision could have far-reaching unintended consequences that no American leader should pursue without appropriate study and considered judgment.

At an earlier time in history, one of our most revered leaders said, "The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive the veterans of earlier wars were treated and appreciated by their nation."

It is interesting today to gauge George Washington's observations against the plan we see linking reconciliation of concurrent receipt with future determinations of disability. While we believe it is critical to implement concurrent receipt, we find it totally demeaning to pit one group of disabled veterans against another.

It occurs to me that our Founding Fathers understood more clearly than some of our current leaders that a grateful nation must keep faith with those who serve in the Armed Forces and its military retirees.

Future determinations of military service-connected disability should not hang as a bargaining chip in an end game to negotiations on correcting concurrent receipt. One injustice should not replace another. And the issue is too complex to decide behind closed doors.

AMVETS believes the proposed redefinition of VA compensation should not occur as an offset for correcting concurrent receipt. If the soundness of VA's methodology is in question, there should be answers to ensure its integrity. We do not believe, however, that the legitimate claims of a future generation of veterans should be cast aside to pay the legitimate claims of a past generation of veterans. America is too great a nation for a decision-making framework that resolves one injustice only to establish a second one on the next generation of veterans.

Mr. Chairman, this concludes AMVETS testimony. Again, thank you for the opportunity to testify on this important matter, and thank you, as well, for your continued support of America's veterans.

Chairman SPECTER. Our final witness is Mr. Rick Weidman, Director of Governmental Relations, Vietnam Veterans of America. Welcome, Mr. Weidman.

STATEMENT OF RICK WEIDMAN, DIRECTOR OF GOVERNMENT RELATIONS, VIETNAM VETERANS OF AMERICA

Mr. WEIDMAN. Thank you very much, Mr. Chairman, and thank you for your bold leadership in stepping forward and holding this hearing on an emergency basis. Good leaders meet dire situations with immediate action and you have done so just by holding this hearing, sir.

Let me state on the behalf of Vietnam Veterans of America that we are adamantly in favor of eliminating this tax on disabled veterans by means of passing concurrent receipt legislation currently being considered by the Congress. We are strenuously opposed to the cynical proposed change to who is a disabled veteran with no public notice, et cetera, and if I may associate myself, not just—I know my written remarks will be included in the record, but with the fine and eloquent statements of my colleagues to my right.

There are a number of other things that haven't been mentioned that I would mention, and that is disabilities that are connected to toxicological exposures, disabilities that are exposure to, say, biological agents, to other things that only years later become known as exposures that caused these kinds of long-term chronic health care problems would all be wiped out and much of the fine work that has happened within this room over the past 25 years in regard to those toxicological exposures would be, in the stroke of a pen, wiped out.

Lastly, and just as important as the ones I mentioned earlier, is sexual trauma. In 1992, Mr. Chairman, you presided over the historic hearings that led to the treatment, care, and benefits for sexual trauma victims in the military. With 24 percent of our active duty military today women, to say that if something happens to them on a ship or a military post in a war zone, but it is not related to their military duties, in this case, sexual trauma, that they would not be justly compensated for it, and that is how this proposal would play out.

Last, but not least, I want to just say that not only are we strongly in favor of concurrent receipt, but strongly against this proposal playing one generation of American veterans off against another. Our founding principle and the very first resolution ever passed by VVA at our founding convention, and reiterated at every convention since, is never again shall one generation of American veterans abandon another. This is just unconscionable to think that somehow you could get the veterans' community divided amongst itself and somehow punish our sons and daughters and our grandchildren and granddaughters who are serving in Iraq today in order to achieve justice for the earlier generations.

One cannot help but have the cynical thought this is an attempt, with 370 to the concurrent receipt legislation in the House and with over 200 folks having signed the discharge petition, that somehow this is a cynical attempt to change the subject. In any case, this ill-advised proposal should be eliminated and a wooden stake driven through the heart forever.

Mr. Chairman, I thank you again for the opportunity to appear here and for your strong leadership, sir.

[The prepared statement of Mr. Weidman follows:]

THE PREPARED STATEMENT OF RICK WEIDMAN, DIRECTOR OF GOVERNMENT RELATIONS, VIETNAM VETERANS OF AMERICA

Mr. Chairman and other distinguished members of the Committee, Vietnam Veterans of America (VVA) is pleased to have this opportunity to present our viewpoint on the proposals to limit eligibility for veterans' compensation benefits to disabilities directly related to "performance of duty" (as narrowly defined) injuries only.

We cannot emphasize this strongly enough: VVA is adamantly opposed to the proposed language in Section 652 of H.R. 1588, "The FY04 Defense Authorization Act." The proposed language would revise Titles 10 and 38 of the United States Code to restrict veterans' eligibility to receive Department of Veterans Affairs' (VA) service-connected disability compensation based upon disease or injury sustained while serving on active duty in the military. Specifically, the proposal would limit payment of compensation to disabilities that are the "direct result of the performance of duty." The effect of this language would have enormous consequences for current and future members of the U.S. Armed Forces and their families, and flies in the face of our Nation's stated objective of "supporting our troops." There is simply no other way to say it: This is an unprecedented and unconscionable breach of America's covenant to care for those who have borne the battle.

Currently and historically, our government provides for the security and well-being of those who defend our country, those who risk life and limb, by affording them with health care and disability compensation when they are physically and/or emotionally diminished as the result of their active military service. Decades of experience have taught us that disease or injury incurred as a direct result of service may not manifest for years after the serviceperson's separation from active duty. Witness the devastating effects of environmental exposures (such as toxic gas, radiation and herbicidal agents), as well as the mandatory administration of pharmaceuticals (such as the anthrax vaccine and pyridostigmine bromide). Delayed onset of disabilities directly incurred as a consequence of military service is responsible for thousands of inappropriately denied claims for disability compensation, even under current law. Under the proposed standard of "direct result of official military duties," it will likely prove impossible for tens of thousands of deserving veterans to be made whole (or as close to whole as one can ever be made).

Should the proposed language become law, service personnel would further lose the military equivalent of a workers' compensation program. The current service-connection standard also protects those individuals who become ill or are injured during active service (except in cases of willful misconduct), regardless of whether such illness or injury is the proximate result of the performance of their official duties or under a superior's lawful direct order. Congress adopted this standard for a reason. Pursuant to the *Feres* doctrine, military personnel have absolutely no recourse to the judicial system for essentially anything that happens to them in the military. As an illustration, under the proposed standard, if a soldier is tasked to

build a brick wall as part his or her occupational duties and the wall collapses and crushes that soldier's leg, that individual would be eligible for VA health care for any resulting disability, and will be able to receive service-connected compensation upon separation from active duty. Now, suppose that same soldier, who is presumed to be on duty 24 hours a day, is walking along a base sidewalk and that same wall falls and injures that same leg, that troop will be eligible for neither post-service health care or disability compensation.

Or consider sexual trauma. In 1992, Senator Specter presided over the historic hearings that led to the treatment, care, and benefits for sexual trauma victims. Women veterans who have been victimized by sexual trauma, assault, and abuse may have no one they feel they can confide in while on active duty. Years after their discharge, many still find it difficult to come forward to deal with the results of this trauma. Under this proposed legislation, sexual trauma would no longer be considered a line of duty disability.

This is patently unjust and will send a clear and resounding signal to our troops and the American public that our government is, at best, indifferent and uncaring when it comes to the support of our troops. How anyone can claim to "Support Our Troops!" and advance such a proposal is beyond our comprehension.

Moreover, given the demonstrated history of the VA to interpret statutes and regulations in a light most detrimental to the veteran, the potential for abuse of the proposed standard is staggering. One can easily envision wave upon wave of denied claims for survivors' benefits predicated upon findings that although there might be a concrete etiological relationship between a veteran's service-connected disability and a secondary condition that caused his or her death (think post-traumatic stress disorder and cardiovascular disease, respectively), the VA will likely conclude that the secondary condition was not caused by the "direct performance of official military duties." Hence, the families of these veterans suffer their own injuries at the hands of their own government.

It is no less important to note that the proposed language does not affect a basic tenet of VA law. Access to VA health care, often the only medical services available to a veteran, is generally predicated upon service-connected disability. Further, once enrolled in the VA health-care system, the availability of such care is determined by how severe such service-connected disability is rated. By limiting eligibility for service-connection, Congress is essentially condemning veterans who will be robbed of the eligibility that they are currently legally, and forever morally, entitled to when it comes to often life-saving medical care.

Congress cannot permit this to happen. With a new generation of men and women doing battle on the front lines of freedom, it is abhorrent to abandon them now. They will join their forebears of America's wars prior to World War II who have been shamefully treated by those whom they are sworn to protect and defend. Passage of the proposed legislation will only resurrect and perpetuate this sorry legacy, which will be recalled by those who are asked to serve in the future. This country cannot afford to abrogate its solemn obligation to protect our troops.

Vietnam Veterans of America thanks this committee for the opportunity to present our views on this important matter and will be more than happy to answer any questions you may have.

Chairman SPECTER. Thank you very much, gentlemen. I cannot recall hearing such unanimity, such forcefulness from six witnesses. One injustice for a greater injustice, draconian, these notes are going to be something to be viewed in a historical perspective. I think you have made an overwhelming case today and I am with you. Thank you.

The hearing is adjourned.

[Whereupon, at 3:29 p.m., the hearing was adjourned.]

A P P E N D I X

THE PREPARED STATEMENT OF HON. BOB GRAHAM,
U.S. SENATOR FROM FLORIDA

I would like to thank Chairman Specter for holding this very important hearing on "Limiting Eligibility for Veterans Disability Compensation to Offset the Cost of Concurrent Receipt."

Mr. Chairman at the outset of my statement, I would like to ask two simple questions. Who authored this proposal? Why isn't the author of this plan testifying before the Committee today?

Clearly, this proposal was thrown together without the review of this committee. The Chairman hasn't seen it, and neither have I. No bill has been introduced. No hearings have been held. This proposal was thrown together at the eleventh hour, with no real scrutiny, but is now being considered as part of the Defense Authorization Conference.

Setting the lack of procedure aside, we must discuss the merits of this proposal, given the fact that some apparently want to see it become public law. For starters, this proposal is a radical departure from the current compensation system, and it would fundamentally alter its basic elements. How would it do so? By severely curtailing what constitutes a "service-related injury," effectively cutting off almost two-thirds of future veterans from being eligible for disability compensation. While this plan would allow full concurrent receipt for some retirees who are receiving benefits today, the cost would be incurred by those who may need disability benefits in the future.

The proposal should be more aptly called a "scheme" resulting from the Administration's inertia in providing full concurrent receipt. In 2001 and 2002, the Senate included full concurrent receipt in the Defense Authorization Bill, despite the Administration's vocal objection to the policy and threats of veto. This year, the Administration has once again threatened to veto the bill if full concurrent receipt is included in the final bill. In fact, Secretary Rumsfeld, in his July 8 letter to Chairman Warner, opposed authorizing concurrent receipt saying "these unfunded entitlements would drain resources from important programs benefiting our military." This demonstrates how the Administration has repeatedly turned a blind eye to our nation's veterans. To circumvent this veto threat, this unworkable compromise, the one that is the subject of today's hearing, was apparently proposed to get the Administration out of a mess. In reality, it is a cure that is probably worse than the disease itself.

Trying to limit service connection to job related injuries is highly problematic when you consider that serving in the military is unlike any other job. Our service members are on the job twenty-four hours a day, conducting a wide range of activities to ensure that our nation is safe. By changing the definition of service-related injury, only men and women who are injured under the limited new criteria of "military duty" would be eligible for disability compensation—this could exclude Marines such as those who were recently diagnosed with malaria or even those that discover ailments many years later that may have been a result of their military service, like those who served in the first Gulf War. And this is frankly, unfair. We are asking these men and women to make daily sacrifices and even to risk their lives in support of our nation. Serving in our armed forces is not just a job, it is a profession—a way of life, and we must treat our service members accordingly.

The proposal being discussed today would also impose a significant barrier to VA's ability to decide veterans' claims in a timely and accurate manner. VA would be forced to implement two systems simultaneously, the one being discussed today and another under the old rules. This would come at a time when VA is just beginning to recover from a staggering backlog of claims, where veterans still wait as long as 184 days for an initial decision, which is already far too long.

Moreover, this change in law would have a true ripple effect, potentially affecting veterans' ability to receive benefits that are based upon service-connected status, such as VA health care. This injustice is not limited to veterans. The families of cer-

tain troops who die while serving on active duty would be barred from receiving compensation, education and health care benefits from either VA or DoD. Ultimately, this proposal would have the disastrous effect of denying compensation to veterans injured while in service and their survivors.

Hundreds of men and women will be returning from operations in Iraq and Afghanistan with disabilities, many that may not be directly attributable to the conflict. Under today's proposal, they likely would be ineligible for disability compensation. What kind of message does this send to our troops who are risking their lives everyday? Before we rush to change long-standing eligibility requirements, we must consider the ramifications of this proposal and recognize that this is the wrong solution to a very complex challenge.

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

Thank you, Mr. Chairman. I'd like to take this opportunity to express my appreciation and welcome the witnesses who are here for this afternoon's hearing. I am a strong supporter of full concurrent receipt and appreciate the efforts to repeal the prohibition against concurrent receipt led by my friend and colleague, Senator Harry Reid.

I appreciate that the VA has difficult and unpopular decisions to make due to the fiscal limitations imposed on the agency. However, I remain firm in my belief that we must utilize our resources to maintain our commitment to the men and women who have fought to defend our great nation.

As a member of the Senate Committees on Armed Services, which is considering this issue in conference, and the Veterans' Affairs Committee, services and benefits to military members and veterans are of significant concern to me. As the Ranking Member of the Senate Armed Services Readiness and Management Support Subcommittee, it is my responsibility to ensure that our military members are provided with the appropriate training and equipment to successfully accomplish their mission.

In addition to the current emphasis on recruitment and retention in our military, I continuously tell our military leaders that we must add another "R," which is retirement. In order to recruit and retain quality soldiers, sailors, airmen and Marines, we must pay attention not only to the present, but also to the future. For many of our veterans that future is now, and our current military members are watching closely to see if we maintain our commitment to those who have sacrificed so much to defend the United States. Our actions today will certainly impact our Armed Forces in the future.

I look forward to our discussion this afternoon and to working with my colleagues to make full concurrent receipt a reality for our veterans.

THE PREPARED STATEMENT OF HON. ZELL MILLER,
U.S. SENATOR FROM GEORGIA

Thank you, Mr. Chairman, and I commend you for convening a hearing to examine this very important subject.

One of the most pressing matters facing Congress today is the inequity experienced by military retirees who collect disability compensation. As I'm sure everyone here is aware, veterans across the country have now nicknamed concurrent receipt "the disabled veterans' tax." And that's just what it is—a tax on those who defend our nation and become injured in the line of duty.

For me, concurrent receipt is simply an equity issue. VA disability payments and military retirement pay are two separate payments for two separate situations. When a service-member retires from the military, we provide a pension. When a service-member is disabled while serving our country, we support that individual with disability compensation.

Retirement pay is earned for a career of service and sacrifice in uniform. The other is compensation for the impact of a service-connected disability on future life and earning power. For those who made a career in the military and suffered injury as a result of their service, they should collect both payments in full. There should be no deduction from the combined amount of their disability compensation and military retirement pay.

Of 1.4 million military retirees nationwide, approximately 670,000 have been categorized as disabled by the Veterans Administration. These disabled military retirees receive $2.2 billion a year from the VA in disability compensation and they must pay for it out of their earned military retirement pay. Many of these disabled retir-

ees, particularly Noncommissioned Officers and Warrant Officers, are forced to forfeit their entire military retired pay and have nothing to show for a career of service to their nation except a disability and its small compensation.

This issue has never been more important than right now when American service members risk their lives and physical well-being each day fighting for our country in Iraq and Afghanistan. Our support for them must continue when they return home. I strongly believe that we must provide full concurrent receipt benefits, and ensure that our veterans and military retirees have a standard of living they deserve.

As I conclude my statement, I'm reminded of a speech by General Douglas McArthur in which he said, "Old soldiers never die, they just fade away." But disabled veterans are dying at a rate of 1,000 per day. They die waiting for a 100-year-old injustice to be corrected, an injustice that prohibits them from collecting both the retirement pay they earned for their years of military service and the VA disability compensation for injuries or illnesses during their service to this country.

Who will fight our wars in the future if we don't prove we will take care of the veterans today? This issue has gone on long enough without resolution.

Thank you, Mr. Chairman.

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

Thank you, Mr. Chairman.

I appreciate you holding this hearing today. Concurrent receipt is an important issue that has been before Congress for many years now. Last year we enacted a very limited concurrent receipt proposal to provide increased benefits to our most severely injured war veterans. This year even larger proposals are on the table.

Mr. Chairman, I share your concerns about proposals reportedly being considered for enactment this year. Any concurrent receipt proposal that increases benefits to one group of veterans while decreasing benefits to another is unfair. We should not be placed in a position to pick and choose between veterans.

I am anxious to hear from the panels here today. A public discussion on veterans' benefits will be healthy for this Committee and for the entire debate on concurrent receipt. We must be informed and move deliberately when considering proposals that could impact millions of our veterans and change the benefit structure in place for so many years.

After witnessing implementation of last year's limited concurrent receipt benefit, we must be very careful about limiting eligibility for benefits to performance-of-duty or combat-related injuries. Such eligibility may be impossible for a veteran to prove. The Department of Defense and the VA have made great strides in improving information sharing and data collection, but many records never have and never will exist and others have been lost or destroyed.

Again, I am quite concerned about the unintended consequences of concurrent receipt proposals currently being considered. I hope this hearing can address some of those concerns.

Thank you, Mr. Chairman.

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