

**STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON
BILLS RELATING TO VETERANS' DISABILITY COMPENSATION BENEFITS,
VETERANS' SURVIVOR BENEFITS, SOLDIERS AND SAILORS CIVIL RELIEF ACT
AND OTHER MATTERS**

JULY 10, 2003

Mr. Chairman and members of the Subcommittee:

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

S. 257 – The Veterans Benefits and Pension Protection Act of 2003

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

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

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

S. 517 - The Francis W. Agnes Prisoner of War Benefits Act of 2003

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

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

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

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

S. 1131 - The Veterans' Compensation Cost-of-Living Adjustment Act of 2003

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

S. 1133 - The Veteran's Benefits Improvement Act of 2003

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

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

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

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

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

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

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

Clearly, the intent of this proposal is to overturn the 2001 decision of the United States Court of Appeals for the Federal Circuit (the Federal Circuit or the Court) in *Allen v. Principi* 237 F.3d 1368 (Fed. Cir., 2001). The Court held that Congress, in enacting P.L. 96-466, the "Omnibus Budget Reconciliation Act of 1990" (OBRA 90), did not intend to preclude compensation for an alcohol or drug-related disability resulting from or secondary to a non-willful misconduct service-connected disability. Prior to OBRA 90, VA considered alcoholism and drug abuse disabilities unrelated to a service connected psychiatric disorder as willful misconduct. The term "willful misconduct" was defined in VA regulations as a deliberate and intentional act involving conscious wrongdoing or known prohibited action, with knowledge of or wanton and reckless disregard of the probable consequences. However, the definition noted that the mere technical

violation of police regulations and ordinances would not, per se, constitute willful misconduct unless it is the proximate cause of injury, disease, or death. VA's policy was that the misconduct bar to benefits did not apply to those veterans whose alcohol or drug addiction was secondary to a service connection mental or physical disability. OBRA 90 specifically provided in 38 U.S.C. §§ 1110 and 1131, that an injury or disease resulting from the abuse of alcohol or drugs is not considered to have been incurred in the line of duty and VA may not pay compensation for disabilities that are the result of "the veteran's own willful misconduct or alcohol or drug abuse." Under OBRA 90, VA as a matter of policy and practice, would not grant secondary service connection for substance abuse, but would, where appropriate, incorporate the symptoms of alcohol and drug abuse into the overall evaluation of the primary service connected disability. As an example, a veteran may have been rated for "PTSD with alcoholism." In 1998, the United States Court of Appeals for Veterans Claims (CVAC), in *Barela v. West* (11 Vet. App. 280) (1998), held that, while OBRA 90 provided for service connection of alcohol and drug-related disabilities as being secondary to a service connected disability, VA could not pay compensation for such disabilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The American Legion recognizes that there are non-traditional employment opportunities available in today's economy and veterans should be allowed to utilize their earned educational benefits to pursue self-employment options. The Montgomery GI Bill is an important tool in

assisting veteran's transitioning from the military to civilian life and the program must continue to evolve in response to veterans' changing educational needs.

S. 1188

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

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

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

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

S 1213

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

In addition, extends VA's authority to maintain a regional office in the Philippines through December 31, 2005. The American Legion has long supported the continued presence of a VA Regional Office in the Philippines to help assist these veterans and their families. The American Legion continues to advocate for the earned veterans benefits of those Filipino Commonwealth

soldiers who served and were recognized as members of the U.S. Armed Forces during World War II, and fully supports this legislation.

S. 1239

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

The American Legion takes no formal position on this proposal.

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

S. 1281 - The Veterans Information and Benefits Enhancement Act of 2003

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

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

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

As a result of the case of National Association of Radiation Survivors (NARS) v. VA and studies by GAO and others of the US's nuclear weapons test program, the accuracy and reliability of the assumptions underlying DTRA's dose estimate procedures came under public scrutiny. It has

been shown that very often many of the records from nuclear weapons tests including individual film badges had been lost or are incomplete. Also noted, not all participants were issued dosimeter badges or had been worn at all times. Information about an individual's activities during these tests has often been sketchy or completely lacking, which raises further uncertainties about the method by which DTRA developed the reported dose estimates.

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

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

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

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

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

S. 249

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

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

S. 938

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

The American Legion supported the enactment of P.L. 106-419, the “Veterans’ Millennium Benefits Act.” which included a provision expanding entitlement to DIC to former prisoner-of-war rated totally disabled for a period of not less than one year immediately preceding death. However, it only applied in those cases where the veteran’s death occurred after September 30, 1999. This legislation was felt to be a step in the right direction in recognizing the long-term adverse health effects of the prisoner-of-war experience. The American Legion has continued to advocate the removal of this arbitrary date of death restriction on the payment of this benefit and are pleased to support S. 938.

S.1132 - The Veterans Survivors Benefits Enhancement Act

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

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

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

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

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

S. 792 and S. 1136 – Servicemembers Civil Relief Act

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

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

S. 806 –The Deployed Service Members Financial Security and Education Act of 2003

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

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

S. 978 - The Veterans Housing Fairness Act of 2003

This legislation authorizes the use of veterans' housing loan benefits for the purchase of residential cooperative apartment units. Expanding veterans housing benefits to include cooperative dwellings allows veterans who may otherwise be restricted from obtaining

conventional housing to realize the benefits of home ownership. The American Legion fully supports this legislation.

S. 1124 - The Veterans Burial Benefits Improvement Act of 2003

This legislation increases the Burial and Funeral Allowance for a veteran eligible under 38 U.S.C. §§ 2302(a) and 2303(a)(1)(A) from \$ 300 to \$1135. Also under this section, the burial allowance for veterans who die as result of a service-connected condition increases \$2000 to 3712. This legislation increases the burial plot allowance for veterans eligible as described above from \$300 to \$600. The bill also ties these allowances to the Consumer Price Index, requiring the VA to adjust the allowance for inflation annually and eliminating the need for legislative action to bring the allowances in line with the original intent of Congress to pay 22percent of the burial expenses of a veteran.

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

S. 1199 - The Veterans Outreach Improvements Act

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

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

S. 1282

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

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

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

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

S. 1360

Currently, if a claimant is dissatisfied with a decision on their VA claim, the appellate process is initiated by the filing of a Notice of Disagreement (NOD). 38 U.S.C. § 7105(b)(1) states, in part, that "Such notice, and appeals, must be in writing and filed with the activity (agency of original jurisdiction) which entered the determination with which disagreement is expressed." P.L. 87-666 added this provision in 1962. The regulation implementing this provision of the law, 38 CFR 19.118, defined the term notice of disagreement as "written communication expressing dissatisfaction or disagreement with an adjudicative determination in terms that can be reasonably construed as evidencing a desire for a review of that determination." There was no additional or special wording required or specified.

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

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

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

Conclusion:

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

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

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