

**STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON
THE DEPARTMENT OF VETERANS AFFAIRS
FY 2005 BUDGET REQUEST**

FEBRUARY 10, 2004

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present the views of the 2.8 million members of The American Legion regarding the Department of Veterans Affairs' (VA) Fiscal Year (FY) 2005 budget request. The American Legion continues to advocate adequate funding levels to ensure America's veterans receive the health care and benefits they have earned through their honorable service to this country. As America's soldiers, sailors, airmen, and Marines continue to fight in more than 130 countries worldwide, this nation must fulfill its obligation "...to care for him who has borne the battle, and for his widow and his orphan."

In the FY 2005 VA budget request, there is a continued emphasis on focusing resources for medical treatment of the *core-mission veteran population*. The term *core-mission veteran population* does not appear in Title 38, United States Code. In 1996, Congress passed VA eligibility reform legislation. It was not until 1998 that VA finally established the rules to enforce the statute. Eligibility reform ensured all eligible veterans could seek health care through VA, not simply those designated as the *core-mission veteran population*. Tailoring the veteran population to meet the budget was not the intent of Congress when it reformed access eligibility. The American Legion believes VA must be funded at a level that will ensure all eligible veterans have access to the VA health care system. The VA budget must reflect the true demand for care.

Once again, the Administration attempts to place the burden of financing VA health care on the backs of veterans. The FY 2005 budget request contains provisions that would increase prescription co-payments and create an annual enrollment fee. These legislative initiatives target those Priority Group 7 and 8 veterans who are currently enrolled in the system. At the same time, VA continues to deny enrollment of any future Priority Group 8 veterans who could help shoulder this burden. These are the very veterans required to pay VA's co-payments and make third-party reimbursements for their health care. Rationing health care to America's veterans is not the solution to VA's accessibility crisis. The American Legion supports repealing the suspension of enrollment of Priority Group 8 veterans.

We applaud the Administration efforts to alleviate co-payments for veterans receiving hospice care and former prisoners of war. The American Legion supports provisions within the budget request that would increase the income threshold from the Pensions level of \$9,894 to the aid and attendance level of \$16,509 for certain Priority Group 2-5 veterans. This would help reduce the pharmacy co-payment for those veterans struggling to meet the sky-rocketing cost of health care.

In addition, The American Legion supports provisions to allow VA to pay for emergency room care at non-VA facilities for enrolled veterans. This will prevent any delays in treating life threatening injuries or illnesses for enrolled veterans not in close proximity to a VA facility. During visits to VA facilities under The American Legion’s “System Worth Saving” initiative, Past National Commander, Ronald Conley discovered many VA facilities operated under a “divert” policy that imperiled veterans by denying them immediate access to health care.

The American Legion is equally concerned with VA’s continued efforts to create the new “VA Advantage” Medicare plan that would offer limited health care services to Priority Group 8 veterans 65 or older with Medicare Part B. Keep in mind that only nonservice-connected veterans who fall above the geographical means test and are Medicare-eligible will be considered under this proposal. Priority Group 8 veterans who are not Medicare-eligible will simply continue to be denied access to VA medical care.

Indian Health Services and TRICARE for Life are classic examples of effective Medicare and Medicaid Federal partners. Since over half of VA’s enrolled patient population are Medicare-eligible veterans, The American Legion strongly believes Congress should consider passing legislation to ensure VA is reimbursed for treatment of Medicare-eligible veterans for allowable, nonservice-connected medical conditions.

The FY 2005 budget request must provide an adequate level of funding to eliminate the backlog of veterans waiting to receive care, to meet the needs of returning servicemembers who must now receive health care from VA, and to once again allow Priority Group 8 veterans to receive timely access to quality VA medical care through the very system created to meet their unique health care needs.

**THE AMERICAN LEGION’S BUDGET REQUEST FOR SELECTED
DISCRETIONARY PROGRAMS FOR VA IN FY 2005**

The American Legion strongly recommends Congress provide VA with the following specified funding in FY 2005:

Accounts	Budget Request
Medical Care	\$30 billion*
Medical & Prosthetics Research	\$445 million
Construction	
• Major	\$325 million

• Minor	\$255 million
State Grants for Extended Care Facilities	\$120 million
State Grants for Veterans' Cemeteries	\$40 million
National Cemetery Administration	\$160 million
General Administration	\$1.8 billion

* Third-party reimbursements should supplement rather than offset discretionary funding

VETERANS HEALTH ADMINISTRATION

MEDICAL CARE

Over the past 20 years, VA has dramatically transformed its medical care delivery system from a struggling collection of hospitals and homes to an integrated health care system of excellence that leads private and other government health care providers in almost every measure. The quality of care that is provided through the VA health care system is exemplary. However, the quality of care is irrelevant when access to that care is impeded.

Today, there are over 25 million veterans. As more veterans choose to use VA as their primary health care provider (over 8 million veterans enrolled or waiting to enroll), the strain on the system continues to grow. The American Legion fully supported the enactment of Public Law 104-262, the Veteran's Health Care Eligibility Reform Act that opened enrollment in the VA health care system. Many veterans who, until this time, were restricted from VA health care in the 1980s were once again able to gain access. Veterans recognize that the Veterans Health Administration provides affordable, quality care that they cannot receive anywhere else.

The astronomical growth of Priority Groups 7 and 8 veterans seeking health care at their local VA medical facility resulted in over 300,000 veterans being placed on waiting lists regardless of their assigned Priority Group. As mentioned earlier, FY 2003 saw the suspension of enrollment of new Priority Group 8 veterans due to this growth in enrollees. The American Legion does not agree with the decision to deny health care to veterans simply to ease the backlog. Denying earned benefits to eligible veterans does not solve the problems resulting from an inadequate budget.

The simple fact is VHA does not have the funding needed to treat all veterans seeking care from VA. VHA operates under a constant cloud of fiscal uncertainty. The FY 2004 VA appropriations battle delayed much-needed funds until more than five months into the fiscal year. Future spending projections, staffing levels, equipment purchases, and structural improvements are all stalled if the funding is not a certainty. Delayed funding means delayed services for deserving veterans who rely on VA for their care.

In an effort to provide a stable and adequate funding process, The American Legion supports mandatory funding for veterans' medical care, as well as Medicare reimbursement for VA.

MANDATORY FUNDING FOR VETERANS MEDICAL CARE

The American Legion believes that health care rationing for veterans must end. It is time to guarantee health care funding for all veterans. The American Legion has called for the current discretionary funding process, in which VA must compete with other agencies for scarce budget dollars, to be replaced by a mandatory funding formula for VA medical care. VA must be adequately funded to meet its own growth and end intolerable waiting periods.

For over a decade, The American Legion has advocated allowing veterans to spend their health care dollars on the health care system of their choice. The American Legion believes the VHA can efficiently expand to meet the health care needs of the men and women who have honorably served this nation in its armed forces – in war and in peace.

When Congress opened access to the VA health care system, many veterans believed VA was their best health care option and newly eligible veterans began seeking care at VA. Since the Centers for Medicare and Medicaid Services (CMS), the nation's largest public health insurance program, does not offer its beneficiaries the full continuum of care or a substantive prescription benefit program, many Medicare-eligible veterans chose to enroll in VHA specifically to receive quality health care and access to an affordable prescription program. Although the Department of Defense's TRICARE and TRICARE for Life require military retirees to make co-payments or pay premiums, they do not provide for specialized care (like long-term care) many military retirees may need; therefore, many military retirees chose to also enroll for VA care to meet their unfulfilled medical needs.

Veterans continue to suffer as a result of a system that has been routinely under funded and is now ill-equipped to handle the large influx of veterans waiting to use their services. Veterans continue to endure extensive waiting times for medical appointments, as well as unacceptably long waiting times for claims adjudication.

Funding for VA health care currently falls under discretionary spending within the Federal budget. The VA health care budget competes with other agencies and programs for limited Federal dollars each year. The funding requirements of health care for service-disabled veterans are not guaranteed under discretionary spending. VA's ability to treat veterans with service-connected injuries is dependent upon discretionary funding approval from Congress each year.

However, under mandatory spending, VA health care would be funded by law for all enrollees who meet the eligibility requirements, guaranteeing annual appropriations for the earned health care benefits of veterans.

The American Legion believes it is disingenuous for the government to promise health care to veterans and then make it unattainable because of inadequate funding. Rationed health care is no way to honor America's obligation to the brave men and women who unselfishly put our

nation's priorities in front of their own needs. Mandatory funding for VA health care will help ensure timely access to quality health care for America's veterans.

Mandatory funding of VA medical care would not prohibit the use of other revenue streams to meet fiscal obligations, such as co-payments and third-party reimbursements from all health care insurers, both public and private.

THIRD PARTY REIMBURSEMENT AND MEDICAL CARE COLLECTION FUNDS

Public Law 105-33, the Balanced Budget Act of 1997, established the VA Medical Care Collections Fund (MCCF) and requires that amounts collected or recovered after June 30, 1997, be deposited into this fund. The MCCF is a depository for collections from third party insurance, outpatient prescription copayments and other medical charges and user fees. The funds collected may only be used for providing VA medical care and services and for VA expenses for identification, billing, auditing and collection of amounts owed the Government.

Technically, the MCCF is not considered a Treasury offset because the funds collected do not actually go back to the Treasury account, but remain within VHA and are used as operating funds. Instead, in developing a budget proposal, the total appropriation request is reduced by the estimate for MCCF for the fiscal year in question. We fail to see the difference in the net effect to the VISNs and VAMCs. Offsetting estimated MCCF funds largely defeats the purpose of realigning VHA's financial model to more closely approximate the private sector. The American Legion adamantly opposes offsetting annual VA discretionary funding by the MCCF recovery.

Implementation by VHA of the Revenue Cycle Enhancement Plan has a dramatic effect on the amount of revenue collected. Resuming in early FY 2002 it has resulted in significantly higher receipts than projected. VHA doubled the amount expected in FY 2004 from \$1.3 billion to 2.1 billion. However, any system can stand improving and agency models are available that clearly illustrate the efficiencies that can be gained through practical application. Considering that VA is prohibited from collecting third-party reimbursements from the nation's largest health care insurer – CMS - and the vast majority of VA enrolled patient population are Medicare-eligible, VA's MCCF program has the potential of becoming even more effective in the recovery of third-party reimbursements.

MEDICARE REIMBURSEMENT TO MCCF

As do all working citizens, veterans pay into the Medicare system without choice. A portion of each earned dollar is allocated to the Medicare Trust Fund. Although veterans must pay into the Medicare system, they cannot use their Medicare benefits at any VA health care facility. VA cannot bill Medicare for the treatment of Medicare-eligible veterans. The American Legion does not agree with this policy and supports Medicare reimbursement for VHA for the treatment of allowable, nonservice-connected medical conditions of enrolled Medicare-eligible veterans. As a Medicare provider, VHA should be authorized to bill and collect allowable third-party reimbursements from the Medicare Trust Fund for the treatment of nonservice-connected medical conditions of enrolled Medicare-eligible veterans.

Since VA is working with CMS contractors for the purpose of providing VA with a Medicare-equivalent remittance advice (MRA) for veterans who are using VA services and are covered by Medicare, The American Legion recommends including all Medicare-eligible veterans assigned to Priority Groups 7 and 8. Under the Veterans Equitable Resource Allocation (VERA) formula, enrolled Priority Group 7 and 8 veterans are not included in the current VERA formula that ultimately results in an inequitable distribution in resources.

The FY 2005 budget optimistically projects a \$2.4 billion revenue stream attributed to third-party collections, but still supports the suspension of Priority Group 8 veterans from enrolling in VA.

As The American Legion continues to visit VA facilities nationwide as part of the "System Worth Saving" initiative, we are hearing first-hand from facility leadership of the problems that exist with increased third-party collection rates. During a recent visit to a VAMC, the facility staff stated that their FY 2004 MCCF collection goal was "not realistic". They added that the goal is probably "not attainable as long as Category 7 & 8 veterans who bring in the MCCF dollars are excluded from using the system".

The American Legion recommends \$30 billion for Medical Care in FY 2005 in addition to MCCF collections, as well as eliminating the MCCF offset and authorizing VA to collect third-party reimbursements from Medicare for the treatment of allowable, nonservice-connected medical conditions.

MEDICAL AND PROSTHETICS RESEARCH

VA Medical and Prosthetic Research has a history of productivity in advancing medical knowledge and improving health care, not only for veterans, but all Americans. VA research has led to the creation of the cardiac pacemaker, nicotine patch, and the Computerized Axial Tomography (CAT) scan, as well as other medical breakthroughs. Over 3800 VA physicians and scientists conduct more than 9,000 research projects each year involving more than 150,000 research subjects.

The VA Medical and Prosthetic Research budget has not kept pace with inflation during the past 15 years. It is essential that Congress and the Administration support strong medical and prosthetic research programs within VA so that veterans and all citizens continue to benefit from the exceptional research capability of the Department.

The American Legion supports adequate funding for VA biomedical research activities. Congress and the Administration should encourage acceleration in the development and initiation of needed research on conditions that significantly affect veterans - such as prostate cancer, addictive disorders, trauma and wound healing, post-traumatic stress disorder, rehabilitation, and others - jointly with the Department of Defense (DoD), the National Institutes of Health (NIH), other Federal agencies, and academic institutions.

The American Legion recommends \$445 million for Medical & Prosthetics Research in FY 2005.

MEDICAL CONSTRUCTION AND INFRASTRUCTURE SUPPORT

MAJOR CONSTRUCTION

Over the past several years, The American Legion has testified on the inadequacy of funding for VA's major and minor construction programs. Buildings continue to be neglected and the persistent deterioration results in unsafe environments similar to unsanitary conditions discovered at the VAMC in Kansas City, Missouri. Of course, those that pay the price of this neglect are the veterans who are receiving care at these facilities.

A 1998 study recommended that VA fund two to four percent of Plant Replacement Value (PRV) per year to reinvest in new facilities to replace aging facilities. The conclusion of this analysis was that VA's reinvestment rate of .84 percent was significantly lower than the benchmark of two percent. This equates to hundreds of millions of dollars that conceivably could be used for major construction projects. Private consultants have been warning for years that dozens of VA patient buildings were at the highest level of risk for earthquake damage or collapse yet funding continues to be woefully short of what is actually needed to correct this problem.

The American Legion supports legislation that would provide \$1.8 billion over the next three fiscal years to improve, replace, update, renovate or establish facilities within the existing VA infrastructure. These funds would be exempt from 38 USC § 8103 (a) (2) which requires enabling legislation for construction procurements in excess of \$4 million or leases in excess of \$600,000 per year. This money would be available at the discretion of VA for:

- Seismic protection
- Life safety upgrades
- Utility improvements
- Accommodations for disabled persons

Facilities eligible for improvements include:

- Blind rehabilitation centers
- Inpatient and residential programs for seriously mentally ill veterans and veterans with substance abuse disorders
- Physical medicine and rehabilitation activities
- Long term care including adult day care, nursing facilities and geriatric research and education facilities
- Amputation care facilities including prosthetics and orthotics and sensory aids
- Spinal cord and traumatic brain injury centers
- Women's veterans' health programs
- Hospice and palliative care facilities

The American Legion is concerned that veterans are needlessly being placed in harm way within existing VA facilities. There are over 60 patient care and other related use buildings in danger of

collapse or heavy damage in the event of an earthquake. The sorely needed seismic corrections, along with the necessary ambulatory care and patient safety projects, will require a significant increase in funding to address VHA's current major construction requirements. This legislation will go a long way toward correcting these deficiencies.

The American Legion further supports legislation that would authorize the following major medical construction projects at the amounts specified:

- Construction of two bed towers to consolidate inpatient sites in inner-city Chicago at the West Side Division in an amount not to exceed \$98.5 million.
- Construction in Clarke County, Nevada of a multi-specialty outpatient clinic to replace the leased Las Vegas ambulatory care center and a satellite office for the Veterans Benefits Administration in an amount not to exceed \$97.3 million.
- Seismic corrections to strengthen Medical Center Building 1 at VA health Care System at San Diego, California not to exceed \$48.6 million.
- Renovation of all inpatient care wards at the VA West Haven, Connecticut healthcare facility at a cost not to exceed \$50 million.

The American Legion recommends \$325 Million for Major Construction in FY 2005.

MINOR CONSTRUCTION

Similar to VA's major construction program, VA's minor construction program has likewise suffered significant neglect over the past several years. The requirement to maintain the infrastructure of VA's buildings is no small task. When combined with the added cost of the CARES program recommendations and the request for minor infrastructure upgrades in several research facilities, it is easy to see that a major increase is crucial.

The American Legion recommends \$255 Million for Minor Construction in FY 2005.

STATE EXTENDED CARE FACILITY GRANTS PROGRAM

State Veterans Homes were founded for indigent and disabled Civil War veterans beginning in the late 1800s and have continued to serve subsequent generations of veterans for over one hundred years. Under the provisions of 38 USC, VA is authorized to make payments to states to assist in the construction and maintenance of State Veterans Homes. Today, there are 109 State Veterans Homes facilities in 47 states with over 23,000 beds providing nursing home, hospital, and domiciliary care. The State Veterans Home Program has proven to be a cost-effective provider of quality care to many of the nation's veterans and this program is an important adjunct to VA's own nursing, hospital, and domiciliary programs. The Grants for Construction of State Veterans Home Program provides funding for 65 percent of the total cost of building new veterans homes. VA has not been able to keep pace with the number of grant applications; and currently there is over \$120 million in unfunded new construction projects pending.

Recognizing the growing long-term health care needs of older veterans, it is essential that the State Veterans Home Program be maintained as a viable and important alternative health care

provider to the VA system. The American Legion supports increasing the amount of authorized per diem payments (40 percent) for nursing home and domiciliary care provided to veterans in State Veterans Homes. The American Legion also supports the provision of prescription drugs and over-the-counter medications to State Homes Aid & Attendance patients, along with the payment of authorized per diem to State Veterans Homes. Additionally, VA should allow for full reimbursement of nursing home care to 70 percent service-connected veterans or higher, if the veteran resides in a State Veterans Home. The National Association of State Veterans Homes and VA should develop mutual planning efforts, enhanced medical sharing agreements, and enhanced-use construction contracts with qualified providers.

The American Legion recommends \$120 Million for the State Extended Care Facility Grants Program in FY 2005.

NURSING HOME CARE

Except for the occasional congressional initiative to build nursing homes in individual states or congressional districts and some CARES planning initiatives, VA has no plans to expand its own nursing home capacity.

VA has failed to fulfill the promise of its landmark mid-1980's study, *Caring for the Older Veteran*. That study recommended large increases in both inpatient and alternative programs, such as respite, hospice, adult-day and home-based care, so that VA could approach the needs of World War II veterans with meaningful, health and end-of-life care programs, on both institutional and non-institutional bases. This has not been achieved.

The Millennium Act required VA to maintain its in-house NHU bed capacity at the 1998 level of 13,391. This capacity has significantly eroded rather than been maintained. In 1999, there were 12,653 VA NHU beds, 11,812 in 2000, 11,672 in 2001 and 11,969 in 2002. VA estimates it will have only 9,900 beds in 2003 and 8,500 in 2004. VA has claimed that it cannot maintain both the mandated bed capacity and implement all the non-institutional programs required by the Millennium Act.

VA should be required to maintain its nursing home capacity as intended by Congress. VA must create incentives and receive appropriate funding to maintain its NHCUs rather than abandon them to alternative sources. These beds are a vital component of the VA Long Term Care (LTC) continuum of care, and they are essential in addressing the needs of the aging veteran population.

According to VA's FY 2002 Annual Accountability Report Statistical Appendix, in September 2002, there were 93,071 World War II and Korean War era veterans receiving compensation for service-connected disabilities rated seventy percent or higher. The American Legion opposes provisions in the FY 2005 budget request that would reduce funding for VA nursing homes by \$270.5 million and reduce staffing by 2,500 full time employees. VA should comply with the intent of Congress to maintain an adequate LTC nursing home capacity for those disabled veterans who are in the most resource intensive groups; clinically complex, special care,

extensive care and special rehabilitation case mix groups. The nation has a special obligation to these veterans. They are entitled to the best care that the VA has to offer.

CAPITAL ASSET REALIGNMENT FOR ENHANCED SERVICES **(CARES)**

The CARES process was designed to take a comprehensive look at veterans' health care needs and services. However, because of problems with the model in projecting long-term care, domiciliary, and outpatient mental health care needs into the future, specifically to 2012 and 2022, these critical health care services were omitted from the CARES planning. An extensive look, such as that proposed by the CARES initiative, cannot possibly be accomplished when an assessment of need for those services is missing from the process.

The Draft National Plan contains several proposals to realign campuses and consolidate services. These realignments were introduced in the eleventh hour, with no stakeholder input sought by VA. There are 13 such realignments proposed in the plan. The American Legion does not support the closing of a VA facility just for the sake of saving money while veterans are denied care.

The Draft National CARES Plan expects substantial renovations and expansions as consolidations happen. A great deal of money will have to be allocated up front to ensure the new construction and renovations are completed. The American Legion understands that CARES is an ongoing process and when dealing with vacant space and renovations, incremental changes may have to take place. The price tag for all of the construction and renovations proposed is in the billions of dollars. With the proposed consolidations and transferring of services, it is imperative that veterans not experience delays in the delivery of their care. No facilities should be closed, disposed of, or downsized until the proposed movement of services is complete and veterans are being treated in the new locations.

Funding should be provided to ensure that any realignment resulting from the CARES initiative does not lead to the suspension of services for veterans seeking care.

VETERANS BENEFITS ADMINISTRATION

Over the years, Congress has established a system of laws that provide veterans and their survivors a spectrum of the services and benefits earned by virtue of the veteran's service in the Armed Forces of the United States. Since 1938, VA has had the responsibility of implementing these laws in a pro-claimant, informal, ex parte, and nonadversarial manner. The American Legion continues to closely monitor the programs and policies of the Veterans Benefits Administration (VBA) and assess whether or not these are truly meeting the needs of veterans and their families. The American Legion has a number of concerns about the current state of claims adjudication and the level and quality of service being provided by VBA and the Board of Veterans Appeals.

The American Legion emphasizes that it is committed to ensuring that VA carries out its historic and statutory responsibility to provide medical care and benefits to those who have served and

sacrificed in the defense of this nation. Veterans have the right to expect that VA will adjudicate their claims fairly and impartially within a reasonable period of time. We believe there are still too many instances where veterans and other claimants are being arbitrarily denied the benefits to which they are entitled.

Over the course of FY 2002 and FY 2003, VBA has been able to make notable progress towards realizing Secretary Principi's often stated goal of the reducing the number of pending cases down to 250,000 and cutting the average processing time down to 100 days by the end of this month. This has been a major challenge for VBA. In March 2002, at its peak, the regional offices had a backlog of over 423,000 cases that required rating action. Of these, 40 percent were over six months old. There were another 147,000 cases in which some other type of action was pending. In addition, there were approximately 107,000 pending appeals, which included over 22,000 cases that had been remanded by the Board of Veterans Appeals. In human terms, thousands of these sick and disabled veterans or their survivors were waiting a year or more for a regional office to make a decision on their claim. If the claim was denied and they pursued an appeal, their wait could extend another two to three years or more. Such delays caused increased stress as well as serious financial hardship. The American Legion has commended the Secretary for his commitment to improving the regional office claims adjudication process. Recognizing the fact that many of these backlogged claims were from elderly veterans, one of the Secretary's first service improvement initiatives was the establishment of the Tiger Team at the Cleveland VA Regional Office. This unit has been primarily responsible for expedited action on the claims of older veterans, particularly those aged 70 and older, whose cases have been pending for a year or more.

The Tiger Team initiative has been a success and they too should be commended for their efforts and dedication. However, it is regrettable that a sick and disabled veteran has to wait months, if not a year or more for action on their claim for benefits. Because of processing delays and necessity of an appeal to the Board of Veterans Appeals (the Board or BVA) or the Federal courts, many veterans have died before receiving a final decision on their case. In the view of The American Legion, the regional offices should be more concerned with people than process.

It is clear that there has been a dramatic reduction in the claims backlog in the past year and a half. This decline means that regional offices are taking less time to adjudicate claims than in the past. Last year at this time, there were some 358,000 claims awaiting final action. Of these, almost 36 percent were over 6 months old. At the end of August, VBA reported there were about 265,000 pending claims and, of these, about 20 percent are over 6 months old. The average processing time has been reduced from 224 days in June 2002 to about 160 days currently. However, given the complexities of the claims adjudication process and requirements of the law, numbers do not tell the whole story and "faster" is not always "better."

In its annual budget request over the past several years, VBA has reported a steady decrease in claims adjudication error rate. At the end of 1997, the error rate had been 36 percent. In 1998, it was 30 percent. It increased slightly in 1999 to 32 percent. In 2000, there was a dramatic increase to 41 percent. The reported error rate declined to 22 percent in 2001. It was 20 percent in 2002 and, in 2003, it had declined to only 12 percent. The error rate goal for FY 2004 is 10

percent. Over this same period, The American Legion's regional office quality review visits do not confirm a substantial and dramatic improvement in the overall error rate.

There is little doubt that the vast majority of regional office adjudicators are dedicated, hardworking men and women. They continue to operate under tremendous stress to meet the Department's and veterans' expectations. However, The American Legion believes the effectiveness of VBA's quality improvement efforts has been severely compromised by the drive to achieve the Secretary's mandated production quotas. Veterans and other claimants are being short-changed by VBA policies and procedures that tend to promote less than adequate claims development, premature denials, and under-evaluations.

The lack of proper and appropriate action on thousands of claims continues to result in a high level of claimant dissatisfaction and a steady influx of new appeals to the regional offices. There are now over 134,000 pending appeals with some 111,500 requiring adjudicative action. Even though there is a concerted effort to resolve appeals at the regional office through the Decision Review Officer program, most of these cases will eventually go to the Board of Veterans Appeals for a final decision on the merits of the claim.

The straight line staffing level requested for FY 2004 is based on the assumption that, with the accomplishment of the Secretary's backlog reduction goals, VBA would be able to refocus its efforts to more effectively address the quality-related problems and other long-standing issues. Given past performance, The American Legion continues to believe that this is an unrealistic policy and will not afford VBA the flexibility to cope with current workload demands, let alone some unanticipated contingency, such as supporting the Department of Defense new Combat-related Special Compensation Program and the additional resources that will be required to comply with the *Huston* decision. The American Legion recognizes that VBA has made a concerted effort to hire additional staff in the last several years. This policy of continuing growth is both prudent and necessary, given the increasingly complex nature of the claims and appeals process, the heavy volume of new claims, and the ongoing need to build up the core adjudication staff in anticipation of the retirement of the more experienced regional office decision makers.

The American Legion is concerned with support in the budget request for legislation that would reverse the *Allen vs. Principi* court decision. 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.

BOARD OF VETERANS APPEALS

The reduction in the number and the average processing time of pending claims represents only one aspect of VA's overall case backlog, since not all claims can or should be approved. When a veteran or other claimant receives an unfavorable decision either denying the claim in whole or in part, they have the right to appeal. The number of appeals filed each year is a direct reflection of the level of claimant satisfaction with the quality of the regional office adjudication. The action taken by the Board of Veterans Appeals (BVA) is a further reflection and commentary on the quality of regional office decision-making. Of those appeals decided in the first 10 months of FY 2003, the Board affirmed the decisions of the regional office only 38 percent of the time and rejected their decision in about 59 percent of the cases. Such poor performance by the regional office adjudicators is of grave concern to The American Legion, since it represents a tremendous waste of time and taxpayers' money, and a hardship for thousands of veterans and their families. Clearly, VBA's efforts to date have not effectively addressed the persistent systemic problems that adversely affect regional office claims processing and adjudication.

COURT OF APPEALS FOR VETERANS CLAIMS AND THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT

The regulations and procedures of both the VBA and the BVA will be fundamentally changed by several recent court decisions. The courts have held that VA, as a matter of policy, had promulgated regulations that were misleading, basically unfair, and a violation of claimants' right to full due process.

In 2002, there was a combined effort by the Board of Veterans Appeals and VBA to try and improve the timeliness and quality of action on remanded appeals. By alleviating some of the regional offices' appellate workload, this would enable the regional offices to devote more resources to resolving previous remands and further reduce the backlog of pending claims. This initiative was prompted by the fact that remands often sat in a regional office for months or even years with little or no action taken. In many instances, the development that was done would be inadequate or incomplete and the Board had to remand the case two or three times, which meant greater delay and hardship for the appellant. Rather than sending a case back to the regional

office, a unit was established within the Board to undertake the development specified in the remand decision. If the decision included a benefit grant, the unit could initiate the award, so there would be no delay in payment. The American Legion supported the intent of this service improvement effort.

In a decision early last summer, the United States Court of Appeals for the Federal Circuit held that the BVA's Development Unit was unlawful. As a result, there are about 8,000 remands plus new remands that are in the process of being transferred from the BVA Development Unit to VBA's Appeals Management Center (AMC), which is located at the Washington VA Regional Office, for further development and readjudication. While generally supportive of the effort to try and improve the handling of remands, there are problems in handling cases where the Board has awarded benefits. The lack of action by the AMC to expedite payment action has prompted several veterans to contact The American Legion for assistance. We are hopeful that appropriate steps have now been taken by VBA to ensure this type of problem does not recur. The AMC is projected to be fully staffed and operational by December 2003. In the interim, remands are being referred to the Huntington, West Virginia Regional Office and the Tiger Team in Cleveland for action. However, the prior BVA Development Unit initiative and the current AMC leave unaddressed the larger and more difficult issues relating to poor regional office decision-making, incomplete development, inadequate VCAA notices, and premature denials. Furthermore, there does not appear to be any incentive for the regional offices to improve their case development, nor is there any disincentive to keep them from certifying cases, because the AMC have to do what they should have done. VBA must ensure that the AMC does not become a dumping ground for the regional offices.

In a system with tens of thousands of claims to be processed, there is a constant tension between management's need to have cases decided as quickly as possible and the statutory need to protect the claimant's right by ensuring that any decision made is proper and consistent with the law and regulations. For the past two and a half years, VBA management has been emphasizing speed and production volume. Under such pressure, there has been a tendency among some VBA managers and adjudicators to ignore the law and VA's own regulations and put bureaucratic convenience ahead of quality decision making and the welfare and well being of the individual veteran and his or her family.

In the opinion of The American Legion, one of the key impediments to progress on improving the quality of regional office decision making and, thereby, claimant satisfaction, has been VBA's lack of compliance with both the letter and spirit of the "Veterans' Claims Assistance Act of 2000" (PL 106-475) (VCAA). The American Legion was actively involved in the development of this landmark legislation. It was designed to overcome the deficiencies and lack of clarity in the way VBA communicated with claimants and the way in which it developed claims. It made clear the exact nature and extent of VA's obligations and responsibilities to notify and to assist claimants. The idea was that, if claims were better developed, they could be promptly and more accurately adjudicated, thereby improving service to claimants. In the long run, these improvements should also reduce the overall appeals workload for the regional offices and the Board of Veterans Appeals. It was to be a "win/win" situation for all parties. However, as we have seen thus far, VBA has generally given lip service to the requirements of VCAA.

While claimants are provided what is termed a “VCAA” letter, little time or effort goes into trying to help the individual veteran understand his or her claim and what evidence is going to be needed and who is responsible for developing it. Such letters usually lack essential information regarding the individual’s claim and the evidence needed to grant the benefit sought in the particular case. These are unnecessarily long, confusing, nonspecific letters, which are filled with bureaucratic jargon. In some of the cases reviewed during The American Legion’s regional office quality review visits, the information in many VCAA letters was found to be incorrect or not even appropriate to the claim. Rather than facilitating the adjudication process, as they were intended, these notice letters set the stage for an appeal to the BVA and the Federal courts.

The American Legion’s concerns regarding the deficiencies in the VCAA letters have been brought to Secretary Principi’s attention as well as discussed in testimony before the Veterans’ Affairs Committees on a number of occasions. Despite these efforts, VBA policy on the use of this type of letter remained unchanged. However, as a result of the July 2003 decision by the United States Court of Appeals for Veterans Claims (CVAC), in *Huston v. Principi*, VBA will now be forced to comply with the duty to notify and duty to assist provisions of title 38, United States Code, sections 5103(a) and 5103A. VA will now be obligated to clearly tell the claimant what evidence to submit in order to obtain the benefits claimed. The American Legion is disappointed that it took a court order to make VBA do what it should have been doing since the enactment of the VCAA. We will be watching very closely how VBA and Board of Veterans Appeals implement the *Huston* decision. Continued strong oversight by the Veterans’ Affairs Committees will also be important in ensuring the VBA is, in fact, meeting its historic and statutory responsibilities to the veterans of this nation.

GI BILL EDUCATIONAL BENEFITS

The American Legion commends the 108th Congress for its actions to improve the current Montgomery GI Bill (MGIB). A stronger MGIB is necessary to provide the nation with the caliber of individuals needed in today’s Armed Forces. The American Legion appreciates the efforts that this Congress has made to address the overall recruitment needs of the Armed Forces and to focus on the current and future educational requirements of the All-Volunteer Force.

Over 96 percent of recruits currently sign up for the MGIB and pay \$1,200 out of their first year’s pay to guarantee eligibility. However, only one-half of these military personnel use any of the current Montgomery GI Bill benefits. This is directly related to the fact that current GI Bill benefits have not kept pace with the increasing cost of education. Costs for attending the average four-year public institution, as a commuter student during the 1999-2000 academic year was nearly \$9,000. PL 106-419 recently raised the basic monthly rate of reimbursement under MGIB to \$650 per month for a successful four-year enlistment and \$528 for an individual whose initial active duty obligation was less than three years. The current educational assistance allowance for persons training full-time under the MGIB – Selected Reserve is \$263 per month.

The Servicemen’s Readjustment Act of 1944, the original GI Bill, provided millions of members of the Armed Forces an opportunity to seek higher education. Many of these individuals may not have been afforded this opportunity without the generous provisions of that act. Consequently, these servicemen and servicewomen made a substantial contribution not only to

their own careers, but also to the economic well being of the country. Of the 15.6 million veterans eligible, 7.8 million took advantage of the educational and training provisions of the original GI Bill. Between 1944 and 1956, when the original GI Bill ended, the total educational cost of the World War II bill was \$14.5 billion. The Department of Labor estimates that the government actually made a profit because veterans who had graduated from college generally earned higher salaries and therefore paid more taxes. Today, a similar concept applies. The educational benefits provided to members of the Armed Forces must be sufficiently generous to have an impact. The individuals who use MGIB educational benefits are not only improving their career potential, but also, making a greater contribution to their community, state, and nation.

The American Legion recommends the following improvements to the current MGIB:

- The dollar amount of the entitlement should be indexed to the average cost of a college education including tuition, fees, textbooks, and other supplies for a commuter student at an accredited university, college, or trade school for which they qualify
- The educational cost index should be reviewed and adjusted annually,
- A monthly tax-free subsistence allowance indexed for inflation must be part of the educational assistance package,
- Enrollment in the MGIB shall be automatic upon enlistment, however; benefits will not be awarded unless eligibility criteria have been met,
- The current military payroll deduction (\$1,200) requirement for enrollment in MGIB must be terminated,
- If a veteran enrolled in the MGIB acquired educational loans prior to enlisting in the Armed Forces, MGIB benefits may be used to repay those loans,
- If a veteran enrolled in MGIB becomes eligible for training and rehabilitation under Chapter 31, of Title 38, United States Code, the veteran shall not receive less educational benefits than otherwise eligible to receive under MGIB,
- A veteran may request an accelerated payment of all monthly educational benefits upon meeting the criteria for eligibility for MGIB financial payments, with the payment provided directly to the educational institution.
- Separating service members and veterans seeking a license, credential, or to start their own business must be able to use MGIB educational benefits to pay for the cost of taking any written or practical test or other measuring device,
- Eligible veterans shall have 10 years after discharge to utilize MGIB educational benefits,
- Eligible members of the Select Reserves, who qualify for MGIB educational benefits shall receive not more than half of the tuition assistance and subsistence allowance payable under the MGIB and have up to 5 years from their date of separation to use MGIB educational benefits.

HOME LOAN GUARANTY PROGRAM

The American Legion believes that the current limit of VA Home Loan Guarantee of \$252,500 should be raised to \$300,000 and that higher limits be established for areas of the country where justified by prevailing real estate market conditions. In San Francisco, California in 2002 the median price of a home was \$482,300, an actual decrease of .3 percent from 2001. In Boston, Massachusetts the median price of a home was \$358,000; in the New York City Metro area,

285,600; and here in Washington D.C. the median home cost \$229,100 in 2002, up 19.8 percent from \$183,700 in 2001. Clearly, in these cities, the difference between many veterans being able to secure financing for a decent home for his or her family and being shut out of the market is due to the inadequate levels of the VA Home Loan Guarantee Program.

The American Legion also supports the recognition of VA Home Loan Guaranty benefits in cases where both members of a married couple are eligible for the benefit. If both members are eligible to receive the benefit, both members should be allowed to use the benefit.

The American Legion is also concerned with a provision in the budget request supporting legislation that would limit the VA Home Loan program to one-time use for military members who separate after the legislation is passed and for all current veterans five years after enactment. Veterans have earned the right to this benefit and it should not be limited to one-time usage.

The VA Home Loan program is one of the core elements of the original Servicemen Readjustment Act of 1944, the GI Bill of Rights. This legislation is often referred to as “one of the most important pieces of social legislation ever enacted.” Successful participation in the VA Home Loan program should be rewarded, not restricted or terminated. Due to the transient nature of our society, many Americans may experience several relocations based on business opportunities or upgrades in their financial situations. Living the American dream of homeownership should be encouraged and promoted as continuous economic stimulus opportunity.

NATIONAL CEMETERY ADMINISTRATION (NCA)

THE NATIONAL CEMETERY SYSTEM

VA's National Cemetery Administration (NCA) is comprised of 120 cemeteries in 39 states and Puerto Rico as well as 33 soldiers' lots and monuments. NCA was established by Congress and approved by President Abraham Lincoln in 1862 to provide for the proper burial and registration of graves of Civil War dead. Since 1973, annual interments in NCA have increased from 36,400 to over 84,800. Annual burials are expected to increase to more than 115,000 in the year 2010 as the veteran population ages. Currently 59 national cemeteries are closed for casket burials. Most of these can accept cremation burials, however, and all of them can inter the spouse or eligible children of a family member already buried. Another 22 national cemeteries are expected to close by the year 2005, but efforts are underway to forestall some of these closures by acquiring adjacent properties.

Maintaining cemeteries as National Shrines is one of NCA's top priorities. This commitment involves raising, realigning and cleaning headstones and markers to renovate gravesites. The work that has been done so far has been outstanding, however, adequate funding is key to maintaining this very important commitment. At the rate that Congress is funding this work, it will take twenty-eight years to complete. The American Legion supports the Under Secretary for Memorial Affairs in his goal of completing the NCA's National Shrine Commitment in five years. This Commitment includes the establishment of standards of appearance for national cemeteries that are equal to the standards of the finest cemeteries in the world. Operations,

maintenance and renovation funding must be increased to reflect the true requirements of the National Cemetery Administration to fulfill this Commitment.

Congress must provide sufficient major construction appropriations to permit NCA to accomplish its stated goal of ensuring that burial in a national or state cemetery is a realistic option by locating cemeteries within 75 miles of 90 percent of eligible veterans.

P.L. 107-117 required NCA to build six new National Cemeteries. Fort Sill opened in 2001 under the fast-track program, while the remaining five (Atlanta, Detroit, South Florida, Pittsburgh and Sacramento) are in various stages of completion. Additional acreage is currently under development in 10 national cemeteries, columbaria are being installed in 4 and additional land for gravesite development has been acquired at national cemeteries in 5 states. 9 national cemeteries are expected to close to new interments between 2005 and 2010. The rate of interments in national cemeteries has increased from 36,400 in 1978 to 84,800 in 2001. This rate is expected to rise to 115,000 in 2015.

The average time to complete construction of a national cemetery is 7 years. The report of a study conducted pursuant to the Millennium Bill concluded that an additional 31 national cemeteries will be required to meet the burial option demand through 2020. Legislation is currently pending in this session that will authorize the establishment of 10 new national cemeteries in areas of the country facing a shortage of burial space. Together with the 6 national cemeteries under development, this will go a long way toward fulfilling this need. NCA will be able to keep pace with current demand for burial space if this legislation is enacted and fully funded this year.

The American Legion urges Congress to 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 our nation's veterans.

The American Legion recommends \$156 Million for the National Cemetery Administration in FY 2005.

STATE CEMETERY GRANTS PROGRAM

The National Cemetery Administration (NCA) administers a program of grants to states to assist them in establishing or improving state-operated veterans cemeteries through VA's State Cemetery Grants Program (SCGP). Established in 1978, the matched-funds program helps to provide additional burial space for veterans in locations where there are no nearby national cemeteries. Through FY 2002, more than \$169 million in grants has been awarded to states and the Territories of Guam and the Northern Marianas, including 5 new state cemeteries and the improvement and/or expansion of 9 existing ones.

Under the Veterans Programs Enhancement Act of 1998, PL 105-261, VA may now provide up to 100 percent of the development cost for an approved project. For establishment of new cemeteries, VA can provide for operating equipment. States are solely responsible for the acquisition of the necessary land.

The American Legion recommends \$40 Million for the State Cemetery Grants Program in FY 2005.

Mr. Chairman, this concludes my testimony. I again thank the Committee for this opportunity to express the views of The American Legion on VA's FY 2005 Budget Request and look forward to working with you and the members of the Committee to ensure VA is funded at a level that will allow all veterans to receive the care they have earned through their service.