108TH CONGRESS – 1ST SESSION

LEGISLATIVE POINT PAPERS

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August 2003

POINT PAPER
ON
FLAG PROTECTION AMENDMENT

Thanks to the continued grassroots efforts of members of The American Legion Family, a constitutional amendment to protect the American Flag from acts of physical desecration, H.J. Res. 4, easily passed in the United States House of Representatives for the fifth time on June 3, by a vote of 300 to 125. The amendment reads, "***The Congress shall have power to prohibit the physical desecration of the flag of the United States.***"

After further analysis of the House vote, one former opponent, Representative Kolbe (AZ) voted in favor of H.J. Res. 4, as did three freshman who had not previously declared a position: Representatives Bell (TX), Meek (FL) and Bishop (NY). Unfortunately, two former supporters, Representatives Rush (IL) and Cummings (MD) voted against H.J. Res. 4. Representative Schiff (CA) had pledged to support during his 2000 campaign and had not voted previously, but voted in opposition. Eight Members of Congress did not vote, of which 6 were listed as supporters: Representatives Carson (OK), Herger (CA), Larson (CT), Ryan (WI), Gephardt (MO) and Smith (WA). Opponents not voting were Representatives Wexler (FL) and Conyers (MI).

Nine freshman Congressmen, who were listed as unknown, ended up voting in opposition: Representatives Miller (NC), Van Hollen (MD), Davis (AL), Ballance (NC), Grijalva (AZ), Linda Sanchez (CA), Emmanuel (IL), and Ryan (OH). These freshman Congressmen were repeatedly contacted during the campaign regarding their positions and refused to respond. It is unfortunate that they would vote in opposition to a bill supported by 80 percent of the American voters, and not take the time to let their constituency know of their opposition. It is important for members of The American Legion Family living in these congressional districts to contact their freshman Representatives and express concern over this vote. It would be extremely helpful to understand why they opposed H.R. Res. 4.

During the 107th Congress, a flag protection amendment passed the House of Representatives by a vote of 298-125. However, the Senate failed to act on the companion measure, S.J. Res. 7, primarily due to the opposition of then Judiciary Committee Chairman, Senator Leahy (VT). No Committee hearings were held to discuss the bill.

"President Lincoln once remarked that if the policy of the government on vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court the people will have ceased to be their own rulers," said Maj. Gen. Patrick Brady,

Chairman of the Board of the Citizens Flag Alliance (CFA) and Medal of Honor Recipient. "The Court's 1989 decision in Texas v. Johnson, that took from the American people the right to protect their flag was an egregious error. The courts have interfered with the Constitution by calling flag burning speech and we the people must exercise our right to rule by insuring that the Court's decision, as Mr. Lincoln warned, is not irrevocably fixed in the Constitution."

In 1989, the U.S. Supreme Court, in Texas v. Johnson, invalidated flag protection laws in 48 states and the District of Columbia. All 50 state legislatures have passed memorializing resolutions asking Congress to pass an amendment and send it back to the states for ratification. It is imperative that members of The American Legion Family contact ALL Members of Congress and thank those who support this measure, while urging those in opposition to rethink their position.

POINT PAPER
ON
FY 2004 VA APPROPRIATIONS

On July 25, just before the Congress left for its summer district work period, the House passed the VA-HUD appropriations bill for FY 2004, H.R. 2861, by a vote of 316 to 109. The House version provides a total $27.8 billion in discretionary funding for the VA. Absent from H.R. 2861 is a $1.8 billion increase that was agreed to by both chambers in H. Con. Res. 95, the Budget Resolution for FY 2004 for VA medical care. When Congress adopted the budget resolution for FY 2004 (the non-binding budget blueprint), it increased the President's original budget request to bring the VA medical care funding level to about $27.1 billion.

Representative Goode (VA) offered and passed an amendment that removed the President's legislative initiatives concerning the $250 annual enrollment and increases in co-payments for outpatient visits and prescriptions for Priority Groups 7 and 8 veterans; however, no additional funding was provided to offset the cost. This amendment was agreed to by a voice vote. Representative Edwards (TX) offered two additional amendments to increase VA's discretionary spending; however, both amendments were defeated along party line votes.

The American Legion, along with other VSOs, continues to voice strong opposition to the current funding for VA medical care in H.R. 2861. All veterans and their families are encouraged to contact their local lawmakers and express deep concern over inadequate funding. House Members are being encouraged to vote against the Conference Report, if VA medical care funding is not increased.

The Senate has not yet considered its version of the VA-HUD appropriations, but is expected to take up this legislation in the early part of September. Grassroots lobbying efforts at the local, state, and national level will be needed throughout the appropriations process to restore the $1.8 billion either in the Senate's bill, during the Conference Committee negotiations, or when the Conference Report comes to the floor in each chamber for final passage.

February 3, the Administration released its FY 2004 budget request for VA. President Bush's recommended total budget for veterans' benefits and other services is $60.7 billion, $32.9 billion for mandatory funding (compensation and pensions) and $27.8 billion for discretionary spending (medical care, construction, and burial services programs).

The current budget supports a continued focus on health care needs of VA's "core group of veterans" – those with service-connected disabilities, the indigent, and those with special health care needs. To achieve this goal, VA believes that targeted increased costs to certain enrolled Priority Group 7 and 8 veterans will drive 1.2 million veterans away from the system, while continuing the current prohibition against any new Priority Group 8 veterans from enrolling.

The Administration includes an estimated $1.8 billion in reimbursements from first-party and third-party collections through the Medical Care Collection Fund (MCCF). The American Legion believes all MCCF revenue should be considered a supplement to VA discretionary funding, rather than the current practice of scoring MCCF as an offset. The American Legion also believes VA should be authorized to collect third-party reimbursements from the Centers for Medicare and Medicaid Services (CMS) for the treatment of nonservice-connected medical conditions of Medicare-eligible veterans.

The American Legion ***opposes*** several presidential legislative proposals for FY 2004:

- Continued prohibition from enrolling any new Priority Group 8 veterans.
- Assess an annual enrollment fee of $250 for nonservice-connected Priority Group 7 veterans and all Priority Group 8 veterans.
- Increase co-payments for outpatient primary care from $15 - $20 for Priority Group 7 and 8 veterans.
- Increase co-payments for prescription from $7 - $15 per 30-day supply.

The American Legion ***supports*** one of the President's legislative proposal – to reduce the pharmacy co-payment burden for Priority Groups 2-5 veterans that have less ability to incur these costs by raising the income threshold from the Pensions level of $9,690 to the aid and attendance level of $16,169.

Last September, National Commander Conley testified before a joint session of the Veterans' Affairs Committees, presenting The American Legion budget recommendations for VA in FY 2004:

	Current Funding	***President's FY04 Budget Request***	***Legion's FY04 Budget Request***
Medical Care	$23.9 billion	$25.2 billion	$24.5 billion*
Medical Care Collection Fund	$1.4 billion	($1.8 billion) (*offset)*	$1.8 billion* *supplement*

Medical and Prosthetic Res.	$397 million	$408 million	$445 million
Construction			
Major	$99 million	$273 million	$320 million
Minor	$224 million	$252 million	$240 million
State Veterans' Homes Grants	$99 million	$102 million	$115 million
Natl. Cemetery Admin.	$132 million	$144 million	$150 million
State Cemetery Grants Program	$32 million	$32 million	$37 million
VBA's GOE	$1.2 billion	$1.3 billion	$1.3 billion

In the approved budget levels shows a clear desire by the Administration to limit VA's obligations towards nursing home care. Public Law 106-117, the Veterans Millennium Health Care and Benefits Act of 1999, directed VA to provide nursing home care services to any veterans whose service-connected disability necessitates such care and any veteran, rated 70 percent service-connected or more, in need of such long-term care. The President requests a change in regulations to limit mandatory nursing home care to just Priority Group 1 veterans.

The American Legion support the President's plan to increase the number of outpatient care providers by 5,841 from FY 2002 personnel levels, but The American Legion is deeply bothered by the plan to reduce acute hospital care staffing by 320, psychiatric care by providers by 123, nursing home care staffing by 887, and subacute care by 282 providers.

The budget levels also reflect a desire for a change in law to require private-sector health maintenance organizations (HMOs) and preferred provider organizations (PPOs) to recognized VA as preferred providers and reimbursement VA for the treatment of nonservice-connected medical conditions of veterans enrolled in the HMO or PPO. Most HMOs and PPOs have rules governing beneficiaries seeking treatment outside their health care network and clearly defines beneficiaries' and the network's fiscal obligations. The American Legion finds this request particularly interesting, since the nation's largest health

care insurer (Medicare) is a Federally administrated program. VA, unlike Indian Health Services, cannot collect from CMS for the treatment of nonservice-connected medical conditions of enrolled Medicare-eligible veterans. Over half of VA's enrolled patient population identifies Medicare as their primary health insurer.

In addition to all of these concerns, is the sustained strain on the VA health care system. As the conflict in Iraq continues, the number of military personnel deployed will increase as will the number of veterans eligible to access the VA system. The backlog now numbering 250,000 and the anticipated number of new eligible veterans will greatly impact the system and challenge the agency to provide the health care earned by these men and women.

The American Legion has testified before the House and Senate Veterans' Affairs Committees to comment on numerous VA issues, including health care, cost of living adjustment for FY 2004, increase in insurance programs, and increase in educational assistance.

POINT PAPER
ON

MANDATORY FUNDING FOR VA MEDICAL CARE

The American Legion continues to believe VA medical care should be funded at a level to fulfill the mandate "…to care for him who has borne the battle, his widow and his orphan."

In response to VA's inability to provide enrolled veterans with timely access to quality health care due to inadequate congressional funding of VA medical care, Representative Chris Smith (NJ) introduced, H.R. 2475, the Veterans Health Care Full Funding Act, and Representative Lane Evans (IL) introduced H.R. 2318, the Assured Funding for Veterans Health Care Act of 2003.

Following a suggestion contained in the **PRESIDENT'S TASK FORCE TO IMPROVE HEALTH CARE DELIVERY FOR OUR NATION'S VETERANS**' report, H.R. 2475 seeks assured funding through a three person independent board. This special board would use a formula calculation based on OMB estimates; VA budget needs and estimates; and actuarial projections for population and cost. The board would then send the recommendation to the White House for inclusion in the President's annual budget submission to the Congress.

However, The American Legion is concerned that this legislation has serious shortfalls. While the recommended numbers may be an improvement to the current method of budget submission levels, there are no assurances that the board's recommendation would meet the minimal appropriations needs in the annual budget request or be accepted by Congress, since normal budget and appropriations process remain intact. H.R. 2745, has 3 cosponsors and H.R. 2318, has 120 cosponsors, to date.

In the FY 04 budget request, President Bush and Secretary of Veterans Affairs Principi clearly state their objective: "a continued focus on the health care needs of VA's core groups of veterans – those with service-connected disabilities, the indigent, and those with special needs." However, the term "core groups of veterans" does not appear in Title 38, United States Code. The President's budget request proposed to drive 1.2 million veterans in Priority Groups 7 and 8 through a combination of enrollment fees and increase co-payments.

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 Veterans Health Administration (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 voted with their feet. Since the Centers for Medicare and Medicaid Services (CMS), the nation's largest public health insurance program, does not offer its beneficiaries a substantive prescription 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 interminable 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. VA health care budget competes with other agencies and programs for 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.

Under mandatory spending, however, VA health care would be provided funding by law for all enrollees who meet the eligibility requirements, guaranteeing yearly appropriations for the earned health care entitlement of veterans.

Rep. Evans (IL), Ranking Member of the House Committee on Veterans' Affairs introduced H.R. 2318, the same bill he cosponsored with Chairman Smith (NJ) in the 107th Congress. Sen. Tim Johnson (SD) introduced companion legislation in the Senate to create a mandatory spending requirement in an attempt to improve funding for VA health care. This legislation would change VA medical care from discretionary spending to mandatory spending by establishing a base funding year and calculating the average cost of a veteran using the VA health care system. Funding would then be provided based on the total number of veterans who participate in the VA health care system. That number would be indexed annually for inflation.

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 have, and continue to 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.

POINT PAPER
ON
FY 2004 NATIONAL DEFENSE AUTHORIZATION ACT

In February, the President's Department of Defense (DoD) budget request proposed $380 billion in FY 2004. In January, The American Legion has submitted its "Views and Estimates" to the Budget Committees in both chambers.

This President's budget request would strengthen America's efforts to win the war on terrorism, defend the nation from further terrorist attacks, improve the quality of life for the men and women in uniform, and accelerate a bold transformation of the U.S. military to counter 21st century threats. The American Legion applauds the President's efforts to strengthen U.S. capabilities for fighting the war on terrorism.

The American Legion continues to adhere to the sound principle that the nation's armed forces must be well-manned and equipped, not to pursue war, but to preserve and protect the hard-earned peace. The American Legion strongly believes the military downsizing of the past decade was budget driven rather than based on current and foreseeable threats to America's national security and its vital interests. Once Army divisions, Navy aircraft carrier battle groups, and Air Force fighter wings are cut from the force structure, they cannot be rapidly reconstituted without the costly expenditures of time, money, and human lives. The American Legion remains committed to maintaining defense spending at 3 to 4 percent of the Gross Domestic Product (GDP).

The American Legion believes the price of a strong national defense includes providing a high quality-of-life for active-duty service personnel, while preserving the earned entitlements of military retirees. The marked decline in quality-of-life features for the active force, Reserve component, and military retirees, coupled with heightened operational tempos, continue to adversely impact recruiting and retention. The service branches continue to struggle to meet recruitment goals. The increased operational tempo and continued long-term deployments must be balanced and prioritized. Military pay must continue to close the gap with comparable civilian wages. Military retirees and their dependents remain among the most effective recruiters. Health care and commissary benefits, adequate pay and quarters -- all of which were taken for granted in the past -- must be funded at adequate rates.

While The American Legion applauds the President's efforts to win the war on terrorism and to address military quality-of-life issues, ending the injustice of concurrent receipt must be elevated as a top priority in both the Administration, as well as Congress. P.L. 107-107 provides authorization for enactment of legislation that would allow disabled military retirees to receive Department of Veterans Affairs (VA) disability compensation and military retired pay without offset. Current law requires military retirement pay to be offset dollar for dollar by the amount of VA disability compensation a retiree receives. In essence, disabled military retirees are paying their own disability compensation. Although some progress has been made with "special compensation" for severely disabled and combat disabled, The American Legion strongly supports the inclusion of funding in the final FY 2004 DoD budget request to enact effective legislation and end this terrible inequity.

The American Legion recommends, as a minimum, that funding in the FY 2004 DoD budget request provide for implementation of the following:

- Continued quality-of-life improvements to include military pay raises, equitable increases in Basic Allowances for Housing and Subsistence, military health care, and improved benefits under the Montgomery G.I. Bill.
- Defense spending, as a percentage of Gross Domestic Product needs to be maintained between 3 and 4 percent annually.
- Force modernization needs to be realistically funded without further delay or American lives will be unnecessarily risked in the years ahead ad.
- The National Guard and Reserves must be realistically manned, structured, equipped, and trained to be fully deployable and to sustain a high degree of readiness.
- Active-duty manpower levels should not be less than 1.6 million.
- The Army should maintain 12 fully manned, equipped, and trained combat divisions.
- The Navy should maintain 12 aircraft carrier battle groups and a viable strategic sealift capability. The Navy is retiring ships faster than they are being built.
- The Air Force should maintain 15 fighter wings, a strategic bombing capability, an Intercontinental Ballistic Missile capability and global strategic air transport capability.
- Funding the continued development and deployment of a national missile defense system.
- Reimbursement rates for TRICARE providers need to be increased.
- The Survivors' Benefits Plan (SBP) for Social Security-eligible military survivors needs to be increased above the 35 percent level.
- Military pay raises and allowances should be fully-funded and not capped.

- The full concurrent receipt of military retirement pay and veterans disability compensation for all disabled military retirees needs to be fully budgeted and funded as authorized by P.L. 107-107.

On April 10, DoD submitted a legislative proposal to Congress, "The Defense Transformation for the 21st Century Act". The House Government Reform, Civil Service Subcommittee held a hearing on April 29 and the House Armed Services Committee conducted their hearing on May 1. If enacted, this proposal would have an enormous impact on the future of DoD including active, reserve and civilian components. The most significant item of discussion is the proposal to create the DoD National Security Personnel System. The Personnel system would be similar to one that was adopted in the last Congress for the Department of Homeland Security.

The American Legion and other veterans and military service organizations attended a meeting in the Pentagon on April 30 to discuss this proposed legislation with Principal Deputy Undersecretary of Defense for Personnel and Readiness, the Honorable Charles Abell. The American Legion does not support this new proposal due to insufficient safeguards of veterans' preference. Portions of H.R. 1836, Civil Service and National Security Personnel Improvement Act were included in the FY 2004 NDAA (H.R. 1588), which was adopted by the House on May 22 by a vote of 361-68. The Senate version of the NDAA was passed, by a voice vote, on June 4.

The NDAA is now in the Conference Committee to iron out differences between the House and Senate versions and produce a final compromise for final action.

POINT PAPER
ON
CONCURRENT RECEIPT

The American Legion continues to support legislation allowing concurrent receipt of military retired pay and VA disability compensation by military retirees. The concept of concurrent receipt dates back to 1891, when Congress passed a law prohibiting active-duty or retired personnel from also receiving disability pensions.

The current law dealing with concurrent receipt was established in 1944, when Public Law (P.L.) 78-314 allowed retired military personnel to elect to waive an amount of their retirement pay equal to their veterans' disability compensation payments. The advantage to this provision is that while military retirement pay is considered taxable income, veterans' disability compensation is not subject to federal income taxes. As a result, the retiree who receives veterans' compensation and the balance of the retired pay is financially better off than the retiree who receives only taxable retired pay.

Opponents say that granting concurrent receipt to all disabled military retirees would be fiscally irresponsible. In 1986, the U.S. Court of Claims handed down a decision in *Absher v. U.S.* which stated that the U.S. government had the right to enforce the offset of military retired pay with VA compensation to restrain spending. In addition, opponents argue that paying retirement benefits after as few as 20 years of service to individuals still in their early forties, plus veterans' compensation, would amount to dual compensation for the same thing: the rigors of military service.

Military retired pay is compensation for longevity of honorable military service. VA service-connected disability compensation is for medical conditions incurred or aggravated while on active duty. Payment is for two distinct, different reasons.

A veteran may receive other federal and non-federal benefits, in addition to VA service-connected disability compensation, either partly or in full. A veteran can receive disability compensation without any offsets, reductions or limits with: unemployment compensation; Social Security; federal civil service pay; pay from a private sector job; federal civil service retirement (including disability retirement); retirement pension from non-federal jobs; and, federal workers compensation (benefits for work-caused disability or illness provided under

FECA). Since these income sources are not offset, why should military retirement pay be offset?

Proponents have argued that simple, equitable justice is one reason to allow concurrent receipt. Military retirees are the only federal employees who must offset their retired pay with VA disability compensation. Also, proponents claim that the unique nature of military service, given their sacrifices and hardships, should merit these retirees receiving both military retired pay and VA disability compensation. For the past decade, many veterans' programs have been pared to the bone in the name of balancing the budget. Many veterans' advocates feel it is time that retirees receive compensation for these fiscal sacrifices.

VA service-connected disability compensation is awarded for disabilities that cannot be equated with disabilities incurred in civilian life. Military service rendered in defense, and on behalf, of the Nation deserves special consideration when determining policy toward such matters as benefit offsets. It is a moral and ethical responsibility to award preferential treatment to the needs of any veteran, given their sacrifices and hardships incurred during honorable military service.

Language in the National Defense Authorization Act (NDAA) for Fiscal Year 2002 (P.L. 107-107) authorizes concurrent receipt, but **does not** provide the funding needed to actually enact legislation allowing disabled military retirees to receive their earned retirement pay and VA disability compensation concurrently.

Although P.L. 107-107 authorizes concurrent receipt, it would be effective **only after** the President proposes legislation in the annual budget request, and Congress enacts legislation, to expressly offset the costs of this initiative. This language does not fix the problem, but rather discriminates against disabled military retirees. P.L. 107-107 merely shifts the responsibility of enactment of legislation granting full concurrent receipt from Congress to the Administration.

P.L. 106-65 provides for Special Compensation for Severely Disabled Military Retirees effective October 1, 1999. Eligibility includes those retired with 20 years or more of service with a VA disability rating of 70 percent or above within 4 years of retirement date. P.L. 107-107 expanded Special Compensation effective February 1, 2002, to include those with a disability rating of 60 percent within 4 years of retirement date.

President Bush signed P.L. 107-314 on December 2, 2002. Although no provisions for concurrent receipt were included, a new Special Compensation for the Combat Disabled military retirees was adopted. Eligible retirees are those

who have 20 years of service and who have disabilities from combat injuries for which they have been awarded the Purple Heart and are rated by VA at least 10 percent disabling or who are rated at least 60 percent disabled because of armed conflict, hazardous duty, training exercises, or mishaps involving military equipment. Also, diseases resulting from Agent Orange, Gulf War Syndrome, Radiation Exposure, Mustard Gas and Lewisite qualify. Also, Post Traumatic Stress Disorder (PTSD) for combat will qualify.

A DD Form 2860, Application for Combat Related Special Compensation must be filed with the retiree's own branch of service. Application forms and rules were announced by the Department of Defense on May 22, 2003. For more information, visit http://www.defenselink.mil/prhome/crsc.html or Army at 866-281-3254, Navy and Marines at 877-366-2772, Air Force at 866-229-7074 or your local retiree affairs office. Special Compensation payments are effective June 1, 2003 and are considered to be tax exempt pending a review by the Armed Forces Tax Council.

Representative Bilirakis (FL) has reintroduced H.R. 303 (Military Retired Pay Restoration Act) in the 108th Congress and has **354** co-sponsors. Senator Reid (NV) reintroduced the Senate companion bill on February 13 as S. 392, which now has **65** co-sponsors. Also, Senator Daschle (SD), Democratic Leader, has introduced a comprehensive bill, S. 19, that includes full concurrent receipt of military retired pay and VA disability compensation.

The Senate version of the FY 2004 Budget Resolution included an amendment by Senator Reid for the phase-in for those with a 60 percent or greater disability; however, this provision was dropped in the Conference with the House and was not included in the final version of the FY 2004 Budget Resolution.

The Senate version of the FY 2004 NDAA includes a provision for full concurrent receipt (Sen. Reid amendment). The House version has no language on concurrent receipt. The bill, H.R. 1588 is now in a conference with the House and Senate Armed Services Committees.

The American Legion testified before the Senate Armed Services, Personnel Subcommittee on March 27. The committee received information on the issue from the Department of Defense, Department of Veterans Affairs, Congressional Budget Office, Congressional Research Service, General Accounting Office and military and veterans' organizations.

On May 22, Rep. Jim Marshall of Georgia (a Vietnam combat veteran with two bronze stars and a Purple Heart) introduced House Resolution (H. Res.) 251 to force a vote on H.R. 303. The procedure known as a "discharge petition" now has 202 signatures. Only 218 House members, a simple majority, must sign the petition to force a vote on H.R. 303.

While The American Legion supports current initiatives seeking to improve VA disability compensation rates for disabled military retirees, we will continue to urge Congress and the Administration to enact legislation allowing full concurrent receipt of military retirement pay and VA disability compensation for all disabled military retirees.

POINT PAPER
ON

SPECIAL COMPENSATION FOR DISABLED MILITARY RETIREES AND COMBAT RELATED SPECIAL COMPENSATION (CRSC)

Although The American Legion continues to support legislation allowing concurrent receipt of military retired pay and VA disability compensation by military retirees, Congress has not passed legislation to fund concurrent receipt.

However, Congress has authorized and funded two types of Special Compensation for disabled military retirees.

- ***Special Compensation for Severely Disabled Military Retirees:*** Public Law (P.L.) 106-65 provides for Special Compensation for Severely Disabled Military Retirees effective October 1, 1999. Eligibility includes those retired with 20 years or more of service with a VA disability rating of 70 percent or above within 4 years of retirement date. Then P.L. 107-107 expanded Special Compensation effective February 1, 2002 to include those with a disability rating of 60 percent within 4 years of retirement date. Current monthly payments are for 100 percent -- $325; 90 percent -- $225; 80 percent -- $125; 70 percent -- $100; and 60 percent -- $50. Effective October 1, 2004, the payments will increase for 100 percent -- $350; 90 percent -- $250; 80 percent -- $150; 70 percent -- $125; and 60 percent -- remains at $50. Many have asked about the 4-year time limit. The reason is simple – FUNDING, no other reason. DoD has determined that retirees of the National Guard or Reserve must have 7200 points (20 years of active duty) to be eligible. The American Legion continues to work with Congress to correct this inequity. Also, those who retired with less than 20 years under The Early Retirement Authority are not eligible. Again, The American Legion is working with the Congress to correct both inequities.
- ***Special Compensation for Combat Related Disabilities:*** P.L. 107-314 provides for Special Compensation for the Combat Disabled military retiree. Eligibility is similar to the Special Compensation for Severely Disabled Military Retirees in regards to years of service and the exclusion of those above mentioned National Guard, Reserve and early retirees. Factors for this special compensation include the requirement to have a Purple Heart with at least a 10 percent VA disability rating or a 60 percent VA disability combined rating from combat related injuries and/or diseases as a result of:

1. A direct result of combat, including a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot or any other action in which servicemembers are engaged with a hostile or belligerent nation, faction, force or terrorists, including POW or detention status;
2. While engaged in hazardous service, including aerial flight, parachute duty, demolition duty, experimental stress duty and diving duty;
3. In the performance of duty under conditions simulating war, including military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live-fire weapons practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses; or
4. Through an instrumentality of war, such as exposure to radiation and Agent Orange, manning a vehicle, vessel or device designed primarily for military service. Wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases or explosion of military ordinance, vehicles or material. Also, Post Traumatic Stress Disorder (PTSD) for combat will be considered. The above list is not all-inclusive, but examples put out by DoD.

The amount of Special Compensation for Combat Disabled is based on the current disability rating. For example, a 60 percent rating currently requires the retiree to waive $801. CRSC would provide a $801 tax-exempt benefit. A 100 percent CRSC disability rating would provide $2,193; however, if the disability amount exceeds the amount of retired pay, the benefit would equal the entire amount of military retired waived and not the higher VA disability amount.

A DoD Form 2860, Application for Combat Related Special Compensation, must be filed with the retiree's own branch of service. DoD announced application forms and rules on May 22.

For more information visit: http://www.defenselink.mil/prhome/crsc.html; your local military retiree affairs office; or American Legion Department Service Officer. In addition to the DD Form 2860, specific documentation is required:

- DD Form 214, 215 or other forms that indicate Report of Separation from military service;
- Retirement order;
- Purple Heart citation and orders;
- VA rating decisions;
- Assignment orders;
- Uniformed Service disability decision documentation;

- Copies of service medical record (SMR) that documents combat disabled disabilities (not the entire SMR); and/or
- Other documents that describe the circumstances in which the disability was incurred, such as buddy statements and newspaper reports.

Special compensation for the combat disabled payments are effective June 1 and are considered to be tax exempt pending a review by the Armed Forces Tax Council. Retiree cannot collect both types of special compensation. For more specific questions, please call your service directly at the following toll-free numbers:

- ✓ Army, 1-866-281-3254;
- ✓ Navy and USMC, 1-877-366-2772;
- ✓ Air Force, 1-866-229-7074; however,
- ✓ A toll free number for the Coast Guard is not yet available.

The American Legion will continue to work with Congress to provide full concurrent receipt for ***all*** disabled military retirees.

POINT PAPER
ON
FY 2004 DOD APPROPRIATIONS

In February, the President submitted his budget request for a $380 billion FY 2004 DoD Budget.

Military Personnel: Funding for this account totals $98.5 billion. Highlights of this category include:

- Support for active duty personnel level of 1.4 million.
- Funding for 863,100 Selected Reserve and National Guard personnel.
- Funding of pay raises between 2 and 6.3 percent targeted by rank and years of service.
- Support for housing allowances for the buydown of servicemembers' out-of-pocket housing expenses from 7.5 percent this year down to 3.5 percent in FY 2004, with the goal of fully offsetting service personnel's housing costs in FY 2005.

Defense Health Care: Funding for this account totals $15.3 billion. The budget request proposes that health care for military retirees not on Medicare become mandatory spending. Funding for Medicare-eligible military retirees became mandatory spending on October 1, 2002. (Known as TRICARE for Life).

Operations and Maintenance: Funding for this account totals $133.2 billion. Highlights of this category include:

- Continued investment for Air Force spare parts.
- Continued investment for maintaining Navy ships.

Procurement: Funding for this account totals $74.4 billion. Highlights of this category include:

- $5.2 billion for 22 F-22 fighter planes.
- $3.7 billion for 11 C-17 airlifters.
- $3.5 billion for F/A 18E/F fighter planes.
- $1.8 billion for 9 MV-22 (Marines) and 2 CV-22 (Air Force) aircraft.

Research, Development, Test and Evaluation: Funding for this account totals $61.8 billion. Highlights of this category include:

- $4.4 billion for development and demonstration phase of Joint Strike Fighter.

- $1.7 billion for development of precision munitions.
- $9.1 billion for Missile Defense Program

The FY 2004 budget resolution, as adopted on April 11 by Congress, would allow $400.5 billion in budget authority. The American Legion submitted its "Views and Estimates" for the FY 2004 Budget on January 29, 2003. Further, The American Legion testified before the Senate Appropriations Subcommittee on Defense on May 15.

On June 17, the House Appropriations Committee marked up the Military Construction Appropriations for FY 2004, H.R. 2559, at $9.2 billion. On June 26, the House voted 428-0 to adopt the H.R. 2559. On June 26, the Senate Appropriations Committee marked up its version, S. 1357, at $9.2 billion. On July 11, the Senate passed S. 1357 by a vote of 91-0.

On June 26, the House Appropriations Committee marked up the Defense Appropriations for FY 2004, H.R. 2658, at $368.7 billion. On July 8, the House voted 399-19 to adopt H.R. 2658. On July 9, the Senate Appropriations Committee marked up its version, S 1382, at $368.6 billion. On July 17, the Senate passed S. 1382 by a vote of 95-0.

Both the Military Construction Appropriations and the Defense Appropriations bills are in Conference Committees to work out differences and produce final bills.

POINT PAPER
ON
FY 2004 VETS APPROPRIATIONS

In July, the House and Senate completed their respective versions of the FY 2004 appropriations for the Department of Health, Labor and Human Resource and Education. The bill is pending conference and primarily is being held up due to the funding issues over Americorp. Senate recommended $219 million for the Veterans' Employment and Training Service (VETS), a $7 million increase from the 2003 funding level; however, it is $111 million short of The American Legion's recommendations.

The recommendation includes $26.6 million in general revenue funding and $193 million to be expended from the `Employment Security Administration' account of the unemployment trust fund. This is $7.2 million more than the 2003 comparable level. For State grants, the bill provides $83.5 million for the Disabled Veterans Outreach Program (DVOP) and $78.9 million for the Local Veterans Employment Representative (LVER) Program. The Committee did not act on the request to consolidate these programs. For Federal administration, the Committee recommends $29 million, the same as the President's budget request. The Committee supports the concept of the Transition Assistance Program administered jointly with the Department of Defense that assists soon-to-be-discharged service members in transitioning into the civilian work force and includes funding to maintain an effective program. The Committee recommendation also includes $2 million, the same as the budget request, for the National Veterans Training Institute (NVTI). This Institute provides training to the Federal and State staff involved in the direct delivery of employment and training related services to veterans.

The Committee matched the President's budget request by recommending $19 million for the Homeless Veterans Program and $7.6 million for the Veterans Workforce Investment Program. The Conference Committee is expected to meet and complete the bill in the early part of September.

The American Legion remains steadfastly supportive of VETS within the Department of Labor (DoL) as administered by the Assistant Secretary of Veterans Employment and Training (ASVET) and the critical role each program continues to have in the lives of America's veterans and their families. The American Legion strongly recommends restoring funding for the ASVET program within DoL's FY 2004 budget at a funding level of $330 million; however, the President's budget request for ASVET's programs is only $220 million.

With the passage of H.R. 4015 (PL 107-288, Jobs for Veterans Act), The American Legion is hopeful that VETS will greatly improve to serve the needs of the veteran community.

However, The American Legion has a number of concerns with the implementation of this legislation and encourages VETS to include all of its stakeholders, in developing the regulations to implement key provisions of the law. The American Legion anticipates the regulations to be established by May and will careful analyze these rules to ensure it address fundamental concerns for VETS programs.

Over the past six years, VETS has endeavored to reinvent itself within the confines of continued funding constraints, while faced with major changes to the Employment and Training Service (ETS) made under the Workforce Investment Act. VETS makes up about 15 percent of the system operated in the states by the Employment Training Administration (ETA).

Approximately, 56.2 percent of all unemployed veterans are over the age of 45; therefore, many of these veterans are victims of corporate restructuring, have been overtaken by technology changes, or are victims of age discrimination. These veterans need training to remain in their previous professions or to begin new careers. Section 168 of the Workforce Investment Act (formerly JPTA IV-C) is that portion of the statute, which provides for this type of training for veterans. For at least the past three years, this account received $7.3 million in annual funding, which has allowed the program to continue to operate in only 11 States. ***This is absolutely unacceptable.*** There are thousands of veterans available for work in this new economy, but they lack marketable, technological skills. The problem is clearly a lack of funding. The only participants in this specific program are veterans of the armed forces of the United States. The baseline needs to be at least increased to allow VETS to begin training in ***all*** fifty states.

Employment and Training Service has also undergone major changes. Congress has failed to provide adequate funding to meet the statutory personnel levels for both DVOPs and LVERs as prescribed in title 38, USC. These are the local employment experts that assist recently separated veterans in their transition from active-duty to the civilian work force. DVOPs assist veterans with significant employment barriers to find meaningful jobs. LVERs serve as the official liaison between veterans and federal contractors and private sector employers in local communities. The American Legion recommends full funding in FY 2004 for VETS at $330 million.

POINT PAPER
ON

ARMED FORCES TAX FAIRNESS ACT OF 2003

On March 18, Representative Bill Thomas (CA), Chairman, House Ways and Means Committee introduced HR 1307, Armed Forces Tax Fairness Act of 2003, with the following provisions:

- Improved tax equity for military personnel that extends for ten years instead of five in determining full exclusion of gain from the sale of a principal residence.
- Excludes from gross income the amount of the death gratuity payable (retroactive to September 11, 2001).
- Includes ancestors or lineal descendents of past or present members of the armed forces or of cadets as qualifying members of veterans' organizations problem for purposes of such organizations' tax-exempt status determination (this includes Sons of The American Legion).
- Provides a deduction for unreimbursed overnight travel, meals, and lodging expenses of National Guard and Reserve members who must travel more than 100 miles away from home and stay overnight as part of their official duties.

On March 20, the House voted 422-0 to approve this legislation. On March 27, the Senate considered their version of the bill and voted 97-0 to send the bill back to the House. On April 8, Representative Thomas introduced HR 1664, another version of The Armed Forces Tax Fairness Act of 2003 with very similar provisions. The provision for National Guard and Reserve Overnight Travel Expenses was capped at $1500. On April 9, this bill was considered by the House under suspension of the rules and was approved on a voice vote. The Senate has not yet scheduled this bill for a vote.

POINT PAPER
ON
IMMIGRATION ISSUES

The American Legion has adopted numerous resolutions regarding the state of legal immigration to this country and the preponderance of illegal immigrants coming into the country each year. As the Department of Homeland Security continues to take form and the Immigration and Naturalization Service is reformed to address both the law enforcement side and services to be provided to new citizens, The American Legion will continue to be involved in both aspects. The American Legion is unalterably opposed to illegal immigration, even as it recognizes the benefits made by legal immigrants to the United States.

Some of the Resolutions adopted by The American Legion at the 2002 Convention with regard to immigration include:

- ***Resolution 307: Oppose Amnesty for Illegal Immigrants.*** Currently, two bills in Congress seek to grant amnesty to current resident illegal aliens who would be a part of a new massive guest-worker program. H.R. 2899, introduced by Representative Flake (AZ), and S. 1461, introduced by Senator McCain (AZ), would allow foreign workers to work in the United States for three years and then apply for legal permanent resident status. There would be no limit set regarding how many illegal aliens could take part in this program. **Position**: The American Legion opposes both of these bills. Resolution 307 states in part that "The American Legion opposes all legislation that would result in the granting of amnesty and legal residency…to millions of illegal immigrants currently in the United States."

- ***Resolution 306: Illegal Immigration Compromises National Security.*** In July 2003, Representative Charlie Norwood (GA) introduced HR 2671, the CLEAR Law Enforcement for Criminal Alien Removal Act of 2003. This bill would allow state and local law enforcement officials to enforce immigration laws during the course of their regular duties. If enacted, H.R. 2671 would provide state and local with not only the authority and resources needed to detain criminal and illegal immigrants, but also incentives to do so. There are currently an estimated 400,000 illegal immigrants in the United States with standing deportation orders. Unfortunately the Bureau of Immigration and Customs Enforcement (BICE) has only 2,000 interior enforcement agents. **Position**: The American Legion supports the CLEAR Act. Resolution 306 states in part "The American Legion considers massive illegal immigration to be a serious national security threat and that it calls

upon all law enforcement agencies to work together to apprehend, detain ,and deport those who are in the United States of America illegally."

- ***Resolution 305: Policy on Immigration Reform.*** One of the biggest problems in identifying and deporting illegal immigrants is the ease with which such individuals are able to obtain false identification. A recent focus is on foreign issued consular ID cards accepted in local communities and businesses. These foreign issued ID cards are easily obtained through fraudulent means and used within the United States to obtain more legitimate forms of identification. Representatives Gallegly (CA) and Tancredo (CO) recently introduced similar pieces of legislation (H.R. 687 and H.R. 502) which would prohibit the federal government from accepting these "*Matricula Consular*" forms of identification. **Position**: The American Legion is in favor of using only identification documents which are easily identified by law enforcement officials. Resolution 305 calls for a requirement that "all legal aliens carry identification documents that are made as secure as technology allows and that are verifiable by any employer or benefit agency through an easy-to-access central database."

POINT PAPER
ON
HOMELAND SECURITY

Presidential Executive Order #13228 established the Office of Homeland Security and the Homeland Security Council to develop and coordinate a comprehensive national strategy to strengthen protections against terrorist threats or attacks in the United States. This new team will coordinate federal, state, and local counter-terrorism efforts. President Bush appointed Pennsylvania Governor Tom Ridge as Director of the Office of Homeland Security. Governor Ridge is a combat decorated veteran of Vietnam and a 20-year member of the American Legion Post 773 in Mill Creek, Pennsylvania.

On June 6, 2002, President Bush proposed creating a new cabinet-level department with the primary mission of protecting the American people and our homeland. On November 25, 2002, the President signed H.R. 5005, which became Public Law (P.L.) 107-296 creating the Department of Homeland Security. On January 24, 2003, the U.S. Senate confirmed Governor Ridge as the first Secretary of Homeland Security.

The national strategy for Homeland Security is the beginning of what will be a long struggle to protect America from terrorism. The principle objectives of Homeland Security are to prevent terrorist attacks within the United States; reduce America's vulnerability to terrorism; and minimize the damage and recover from attacks that do occur.

Homeland Security will function under six critical mission areas:

I. Intelligence and Warning;
II. Border and Transportation Security;
III. Domestic Counterterrorism;
IV. Protecting Critical Infrastructure and Key Assets;
V. Defending Against Catastrophic Threats; and
VI. Emergency Preparedness and Response.

The four foundations of Homeland Security:

- **Law** – to promote and safeguard security and liberty.
- **Science and Technology** – a key to securing the homeland.
- **Information Sharing and Systems** – link the vast amount of knowledge residing within each government agency.

- **International Cooperation** – terrorist threat pays no respect to traditional boundaries.

The short-range budgetary priorities for FY 2003 support for first responders; defend against bioterrorism; secure America's borders; and use 21st Century technology to secure the homeland.

The budgetary objectives for FY 2004 will include:

- Enhanced the analytic capabilities for the FBI;
- Protection Division of the proposed Department of Homeland Security;
- Create "smart borders";
- Improve the security of international shipping containers;
- Recapitalize the U.S. Coast Guard;
- Prevent terrorist use of nuclear weapons through better sensors and procedures;
- Develop broad spectrum vaccines, antimicrobials, and antidotes; and
- Integrate information sharing across the Federal government.

On February 3, President Bush requested $29.2 billion for the Department of Homeland Security, including:

- $16.7 billion for Border and Transportation Security
- $5.6 billion for the U.S. Coast Guard
- $3.3 billion for Emergency Preparedness and Response
- $803 million for Science and Technology
- $829 million for Information Analysis and Infrastructure Protection

On June 24, the House voted 425-2 to accept the FY 2004 Homeland Security Appropriations Bill. On July 24, the Senate voted 93-1 to accept its version of the bill. Both measures are now in the Conference Committee to develop a final version for consideration in both chambers.

Clearly, The American Legion expects active involvement at every level of government – local, state, and national.

HR 2475, "Veterans Health Care Full Funding Act"
White Paper

Introduced by Rep. Chris Smith (NJ), Chairman House Veterans' Affairs Committee June 16, 2003. The bill amends title 38, USC, to provide an enhanced funding process to ensure an adequate level of funding for veterans' health care programs of VA, and to establish standards of access to care for veterans seeking health care from VA.

The legislation reflects some central recommendation of a two-year presidential task force on veterans' health care, bringing to light an alarming mismatch between demand for services and available resources.

- Changes the way current funding of veterans' health care by creating an independent panel of experts to recommend annual medical care funding levels.
- Based on a funding mechanism similar to DOD's used for military retirees under TRICARE for Life.
- The three-member board is appointed by VA Secretary for staggered 15-year terms and would have independent staff and funding
- The board produces an annual budget request and a two-year budget forecast for veterans' medical care to provide full health care benefits in a timely and cost-efficient fashion for all enrolled veterans in Priority Groups 1-7, primarily those injured or disabled while serving their nation, or with low incomes levels.
- The board will have full access to VA's economic, actuarial and other data relevant to determining medical care funding, as well as the Office of Management and Budget's (OMB) economic and forecasting analysis, but would not be under the control of either VA or OMB.
- The amount calculated by the board for the next fiscal year would become the President's budget request submitted to Congress at that point the congressional budget and appropriations process remain unchanged.
- The legislation requires VA to meet its own timely access standards. If VA is unable to furnish care to veterans who need it within a reasonable timeframe, VA would be obligated to contract for care with non-VA providers.
- The board will also be required to recommend program efficiencies and savings, and also consider guidance from OMB.

The number of veterans treated by VA health care has risen 70 percent from 2.7 million to about 4.6 million this year, while funding increased 49 percent. However, funding increases have not been met to cover medical inflation.

Note: A key distinction with this legislation is there is no element within the language that forces the Congress to abide by the recommended level of the Board. In addition, it mandates the Executive to accept and include budget numbers not generated by his office. While the recommended numbers would prove an improvement to budget submission levels, there are no assurances that the appropriations are automatic and forthcoming by any mechanism in the bill, since normal budget and appropriations process remain intact.