115TH CONGRESS – 1ST SESSION
LEGISLATIVE POINT PAPERS

TABLE OF CONTENTS

MAINTAINING STRENGTH OF THE FORCE AND PROTECTING DEFENSE FUNDING

THE FUTURE OF VA HEALTHCARE

VA APPEALS MODERNIZATION

INSTITUTE GENDER-SPECIFIC HEALTH CARE FOR WOMEN

RECLASSIFY CANNABIS FOR MEDICAL RESEARCH

SUPPORT THOSE WHO CARE FOR WOUNDED VETERANS

PROVIDE MANDATORY END-OF-SERVICE EXAMS FOR GUARD AND RESERVE

REPEAL UNFAIR OFFSETS THAT PENALIZE DISABLED VETERANS AND WIDOWS

DEFEND VETERAN EDUCATION BENEFITS

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

CREATE OPPORTUNITIES FOR VETERAN BUSINESS OWNERS

END VETERAN HOMELESSNESS

THE AMERICAN LEGION 100TH ANNIVERSARY COMMEMORATIVE COIN

PROTECT THE AMERICAN FLAG

February 2017

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

MAINTAINING STRENGTH OF THE FORCE AND PROTECTING DEFENSE FUNDING

The American Legion strongly supports strengthening the U.S. military at this time of war, in personnel, support services and equipment. The president, leaders at the Pentagon, and members of Congress must do everything possible to ensure our nation, citizens and allies are protected.

During the presidential campaign, Donald Trump guaranteed he would increase the U.S. Armed Forces and furnish necessary tools to protect this nation. The National Defense Authorization Act of 2017 was signed into law by President Barack Obama on December 23, 2016 supporting an increase in the Active Duty and Army Reserve end strength, bringing an end to the military's troop drawdown. Active-Army increased from 475,000 to 476,000; the Air Force Active Duty increased from 317,000 to 321,000; the U.S. Navy and the Marine Corps increased from 15,500 to 18,500; Army Reserve end strength increased to 199,000; National Guard increased to 343,000.

The global war on terrorism is far from over. Addressing these challenges to defend the nation requires strong national defense funding to directly support a new operational posture in strategic regions, as well as, innovative and enhanced cyber capabilities. 2017 approved appropriations will provide funding stability and protection of vital benefits for military servicemembers and their families and will facilitate ongoing operations at home and abroad.

WHAT CAN CONGRESS DO?

- The No. 1 task for Congress is to pass the 2017 president's budget of $582.7 billion in discretionary funds, which complies with the Bipartisan Budget Act of 2015, to fund the Department of Defense.

KEY POINTS

- The FY17 budget reflects recent strategic threats and changes that have taken place in Asia, the Middle East and Europe.
- Russian Aggression, terrorism by the Islamic State of Iraq and the Levant (ISIL) and China's claims of sovereignty in international waters all necessitate changes in our strategic outlooks and operational commitments.
- Threats and actions originating in Iran and North Korea negatively affect our interests and our allies.
- These challenges have sharpened the focus of planning and budgeting in Department of Defense.

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

THE FUTURE OF VA HEALTHCARE

The American Legion supported passage of the *Veterans Access, Choice and Accountability Act of 2014* as a temporary fix to help veterans get the health care they need, regardless of distance from VA facilities or appointment scheduling pressure. The Veterans Choice Program was authorized by this emergency legislation for three years and expires in August of this year, so critical policy choices must be made.

A community care option is now a basic expectation for enrollees in VA's health care system. Over the last two years, care delivered in the community has grown from 21 percent to 31 percent today. The American Legion supports moving care into the community where it makes sense. However, the Choice program is clearly not the future veterans need or want.

In fact, an internal watchdog at the VA released findings in January confirming what many veterans and lawmakers already knew: the $10 billion Choice Program created to give veterans access to private health care has been "cumbersome" and "confusing" to use. Veterans continually tell us that even with the ability to seek care in the community, they want VA services. Also, of the more than 1 million veterans who have taken advantage of the Choice program, only about 5,000 have sought care solely in the community. The rest used both VA and community services. Additionally, excessive outsourcing would render the Veterans Health Administration too small to function economically or preserve quality of care and essentially dismantle it.

Building a 21st century health care system for veterans requires consolidating all of VA's authorities for outside care, including Choice, PC3, Project ARCH and others, under one authority to help veterans only when and where VA cannot meet demand. The American Legion supports a strong VA that is an integrated system of care that would strengthen services within VA that are essential for veteran well-being, and would use services in the community that can serve veterans with better outcomes and greater value to the taxpayer.

WHAT CAN CONGRESS DO?

- Congress should pass legislation to unify VA's multiple non-VA care programs with VA as the coordinator and guarantor of care.
- Ensure that non-VA providers are compensated fairly in regions where costs exceed standard federal payment guidelines.
- Ensure VA's non-VA claims and reimbursement system is automated and using the latest technology.
- Ensure that medical records flow seamlessly within the integrated network of VA and non-VA providers.

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

VA APPEALS MODERNIZATION

Modernizing VA's archaic appeals process is a top priority for The American Legion. The current VA appeals process is broken and is providing a frustrating veterans experience. The status quo isn't acceptable! Congress must pass appeals modernization legislation that would provide veterans with a simple, fair, and transparent appeals process in which the vast majority would receive a final appeals decision within one year of filing an appeal by 2022. If the current process remains in place, VA estimates that by 2027 veterans will wait an average of 10 years to hear a decision on their appeals. We can't let that happen.

The American Legion currently holds power of attorney on about three quarters of a million veteran claimants. We spend more than two million dollars a year on veteran claims and appeals processing and assistance. Our success rate at the BVA hovers at around 80 percent, either outright grants of benefits or remands to properly process a claim that VA had failed to properly process at the lower level of the Regional Office.

Just as we did when we worked in partnership with VA to roll out the Fully Developed Claims process, The American Legion is willing to put in the necessary work to ensure Appeals Modernization is successful. We recognize the increased burden it can place on veterans; we also recognize that our approximately 3,000 accredited representatives have the tools to ensure success for the veterans and claimants we represent. Throughout the process, we will continue to work with our representatives, our members, and most importantly, our veterans to understand the changes in law that would result, and how they will be able to succeed with these changes.

The American Legion urges Congress to pass Appeals Modernization legislation as soon as possible. Appeals reform legislation passed in the House of Representatives in late 2016, only to fail in the Senate. This year, Appeals Modernization should be considered must-pass legislation VA needs in order to put veterans first.

WHAT CAN CONGRESS DO?

The American Legion supports the following veterans' appeals modernization legislative proposals currently under consideration by Congress:

- **H.R. 457**: *VA Appeals Modernization Act of 2017* sponsored by Representative Dina Titus (NV)

Background

The Board of Veterans' Appeals (BVA) was established in 1933 to serve as the Department of Veterans Affairs (VA) appellate body for veterans' claims. In the ensuing decades since BVA's establishment, layers of processes and procedures have been added to VA's appellate system; these layers have resulted in straining the process and adding years to have decisions rendered on veterans' appeals.

The VA's claims backlog peaked in March 2013, and the Department has maintained a focus on eliminating the backlog by the end of 2015. To accomplish this goal, VA regional offices redirected resources from their appeals teams to adjudicate original claims. Meanwhile, VA was adjudicating original claims at higher rates. With increased adjudications, it is expected to have proportionally increased appeals.

According to VA, in 2015, there were 1.4 million claims for veterans' disability claims processed, and the Veterans Benefits Administration (VBA) is on track to surpass that number this year. VA has a static 10-12 percent appeals rate, therefore the workload at the BVA will likely never disappear. VA's swelling 500,000 appeals inventory prompted VA senior leadership to work with Veterans Service Organizations (VSOs) to design a streamlined appeals process. Beginning in March 2015, The American Legion and representatives from other VSOs engaged in numerous meetings with senior leaders of the VBA and BVA.

VA Appeals Modernization framework agreed to in those meetings would provide veterans additional options while maintaining effective date protection back to the initial claim filing date. In the proposed framework veterans can elect to choose one of three lanes to have their appeal reviewed. A primary benefit to the reform initiative is removing a layer of bureaucracy from VA's appellate process. A positive feature is the removal of the Notice of Disagreement (NOD), a process that currently takes 409.8 days according to the August 8, 2016 Monday Morning Workload Report (MMWR).[1]

VA Appeals Modernization would give veterans clear options after receiving an initial decision on their claim by consolidating the current appeals process into three distinct lanes.

- The first lane is the *Local Higher-Level Review Lane* (*Difference of Opinion).* This option will provide the opportunity for a quick early resolution of the issue(s) in dispute at the Agency of Original Jurisdiction (AOJ) level to have an original decision reviewed at the Regional Office (RO) through a Difference of Opinion before appealing to the Board, or submitting new evidence in a supplemental claim. This option would also endure an additional quality check on claims decisions within the VBA.
- The second lane is the *New Evidence (Supplemental Claim) Lane.* This lane will allow veterans, who have received an initial decision on their claim, to submit new evidence. This lane would serve as a good option for veterans who believe

[1] VBA Monday Morning Workload Report:(August 8, 2016)

they can succeed on their claim by providing additional evidence for review by a Regional Office adjudicator. VA's goal would be to consider new evidence and issue a new decision within 125 days of receiving a supplemental claim.

- The third lane is the *Board Review (Appeal) Lane*. This lane provides the opportunity for veterans to appeal directly to the Board while bypassing the layers of appellate review currently found in the RO process. Veterans would have the ability to choose between two options for review at the Board. The first option would be a non-hearing where veterans receive an expedited review with no new evidence submitted. The second option would allow veterans to either have a board hearing and submit evidence or, alternatively, submit evidence without a hearing.

Reforming a process as complex as the disability claims system is not simple, and not every aspect of appeals reform is able to be legislated. Some parts are more nuanced and require the attention of all stakeholders. The American Legion urges VA to address all claims, to include its growing inventory of appeals in an expeditious and accurate manner, and that VA create no program that diminishes a veteran's due process rights.[2] VA has drafted the proposed legislative language required to implement the new framework.

The American Legion through congressional testimony at House Veterans' Affairs Committee (HVAC) and Senate Veterans' Affairs Committee (SVAC) legislative hearings supported VA Appeals Modernization.

The American Legion National Commander, Charles E. Schmidt has stated: *We expect both parties to work together responsibly to pass legislation which includes a simple and fair appeals process that provides veterans and their families their earned benefits in a timely manner*.

[2] American Legion Resolution No. 5: (Sept. 2016): Department of Veterans Affairs Appeals Process

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

INSTITUTE GENDER-SPECIFIC HEALTH CARE FOR WOMEN

Women veterans are the fastest growing demographic population serving in the U.S. military. Since 2000, women veterans receiving VA health care from VA has doubled from 159,000 to 337,000 and these numbers are projected to increase due to the increasing numbers of women veterans in the military that will be eligible for VA health care once they leave the military.

Women veterans face remarkably different experiences than their male counterparts when they transition out of the military. While VA has made significant advancements in women veterans health care throughout the VA health care system, there is still room for improvements. We want every woman veteran who walks through the doors of a VA medical facility to feel the facility was designed with them in mind and no longer has the looks of a "For Male" only facility. As a result of the growth in the number of women veterans in September 2016, The American Legion passed Resolution 14, entitled *Women Veterans*, which calls for the VA to ensure that all women veterans receive gender-specific quality health care.

In 2013, The American Legion System Worth Saving Task Force turned their attention to women veterans' health care and identified a number of challenges women veterans face when receiving VA health care to include: [1]

- Many women veterans do not identify themselves as veterans.
- Many women veterans do not know or understand what benefits they are entitled to receive.
- VA medical facilities across the system do not have adequate baseline plans to close the gender gaps and improve use of facilities and services for women.
- Additional research is needed to determine the purpose, goals, and effectiveness of three VA women models of care on overall outreach, communication and coordination of women veterans health services.
- Many VA facilities do not offer inpatient/residential mental health care programs for women veterans.
- Many VA facilities do not offer child care services for women veterans seeking health care appointments.
- The time it takes for women veterans to receive results from their mammogram screening.

Today, most of these challenges still exist for our nation's women veterans. On September 29, 2016, the 114th Congress passed Public Law 114-228, *Department of*

[1] American Legion System Worth Saving Report on Women Veterans Health Care (2013)

Veterans Affairs Expiring Authorities Act of 2015. Section 105 extended the pilot program on assistance for child care for certain veterans receiving VA health care through December 2017. Child Care continues to be a significant challenge for younger veterans. The American Legion urges Congress to pass legislation to provide child care services to veterans with children in order for the veteran to receive access to the quality care that they have earned.[2]

[2] American Legion Resolution No. 43 (Sept. 2016): Department of Veterans Affairs Child Care Program

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

DEVELOP ALTERNATIVE HELP FOR VETERANS STRUGGLING WITH MENTAL HEALTH ISSUES AND BRAIN INJURIES TO INCLUDE RECLASSIFY CANNABIS FOR MEDICAL RESEARCH

The American Legion is deeply concerned about the increased numbers of veterans who are returning home, from the wars in Iraq and Afghanistan, suffering from Traumatic Brain Injuries (TBI) and Post Traumatic Stress Disorder (PTSD). These inquiries which have often been referred to as the "signature wounds" of the War on Terrorism if not properly recognized and treated, can detrimentally impact a veteran's ability to readjust back into civilian life. To ensure these veterans were being properly cared for at the Departments of Defense (DOD) and Veterans Affairs (VA) medical facilities, in 2010, The American Legion established a TBI and PTSD Committee for the purpose of investigating the existing science and medical procedures as well as researching alternative methods for treating veterans who suffer from TBI and PTSD.

Studies have shown that medical cannabis is a viable option for treating pain, inflammation, autoimmune diseases, as well as other illnesses. However, The American Legion believes additional research is needed to determine if there are medical benefits from using medical cannabis as an appropriate treatment for veterans who are suffering from a traumatic brain injury or post traumatic stress disorder. However, one barrier that must be overcome is reclassifying medical cannabis, remove cannabis from schedule I and reclassify it in a category that at a minimum will recognize cannabis as a drug with potential medical value. Schedule I drugs include Heroin, Lysergic acid diethylamide (LSD), Marijuana, Mescaline, Ecstasy, Acid, Psilocybin, Methaqualone, Khat, and Bath Salts and are considered to have no medical benefits. By excluding cannabis from schedule I, it would become more readily available to researchers and scientists for the purpose of scientific research for its therapeutic value. Therefore, The American Legion supports increased research into cannabis as treatment and therapy.[1]

Additionally, The American Legion urges Congress to pass legislation that would expand and improve the care provided to veterans and servicemembers who have mental health issues or who are at risk for suicide.[2].

Furthermore, The American Legion urges Congress to increase the budgets of DOD and VA to improve the research, screening, diagnosis, and treatment of TBI/PTSD as well as provide oversight over DOD/VA to develop a joint office for collaboration between DOD/VA research. The American Legion urges Congress to exercise

[1] Resolution No. 11: Medical Marijuana Research
[2] Resolution No. 292: Traumatic Brain Injury and Posttraumatic Stress Disorder Programs

oversight over DOD/VA to ensure servicemembers and veterans are only prescribed evidence-based treatments for TBI/PTSD and not prescribed off-label and non-Federal Drug Administration approved medications or treatments for TBI/PTSD. [3]

Lastly, The American Legion urges Congress to provide oversight and funding to the VA for innovative, evidence-based, complementary and alternative medicine (CAM) in treating various illnesses and disabilities and to pass legislation that would improve the pain management policies of the DOD and VA.

The American Legion believes that all health care possibilities should be considered and explored in an attempt to find treatments, therapies, and cures for TBI and PTSD that are based on individual veteran needs. Healthcare, as well, should include alternative medical treatments and therapies. These treatments need to be accessible to all veterans; and if alternative treatments and therapies are deemed to be effective they should be made available and integrated into veterans current health care models of care.

[3] Ibid

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

SUPPORT THOSE WHO CARE FOR WOUNDED VETERANS

The American Legion is a membership organization founded on the common bond of wartime service during any active U.S. period of war. As such, The American Legion has always advocated on the principle of equal benefits for equal service.

The *Caregivers and Veterans Omnibus Health Services Act of 2010* (Public Law 111-163) amended Title 38, United States Code, to provide assistance to caregivers of veterans and improve the provision of health care to veterans. The law created two distinct caregiver support programs which provided a stipend to caregivers of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) veterans, however; caregivers of veterans from previous eras were excluded.

The American Legion by Resolution 146 passed at the 2016 National Convention supports the Department of Veterans Affairs (VA) expanding caregiver benefits to all eligible enrolled veterans, regardless of when they served. Caregiver benefits should not be limited to only post- 9/11 veterans.

The American Legion believes it is time veterans from all eras receive the same benefits for their service. The family members who have cared for veterans in other eras are no less deserving of caregivers assistance than those of the post- 911 veterans.

Key Points:

- There are 5.5 million caregivers who are caring for veterans, but are not eligible for any assistance from the VA.
- Caregivers suffer higher rates of depression and health problems than others.
- Veterans from different eras and theaters of operations are receiving different levels of VA benefits based solely on their dates and locations of service, rather than their honorable service.

WHAT CAN CONGRESS DO?

- Pass legislation that would authorize VA to provide Caregivers benefits to all eligible veterans, regardless of the dates or theaters of operations during their military service and for,
- Congress should review current legislation and public laws to ensure that veterans benefits are provided equitably and consistently for all veterans.[1]

[1] American Legion Resolution No.146 (Sept. 1, 2016): Veterans Receive Same Level of Benefits

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

PROVIDE MANDATORY END-OF-SERVICE EXAMS FOR GUARD AND RESERVE

National Security Resolution No. 85, entitled *Support for Military Quality of Life Standards* mandated, in part, asks that The American Legion urge Congress and the Department of Defense to support and fund quality of life features including "requiring the Services perform mandatory physical examinations, without waivers, for all separating and retiring servicemembers within 90 days of separation from service".

Last Congress, Representative Mike Coffman (CO) introduced **H.R. 4251**, the *Guard and Reserve Equal Access to Health Act*, to amend title 10, United States Code, to ensure that the Secretary of Defense affords each member of a reserve component of the Armed Forces with the opportunity for a physical examination before the member separates from the Armed Forces. Specifically, that bill directed the Secretary of the military department concerned to provide a physical examination to each member of a reserve component who: (1) will not otherwise receive one through that department, and (2) elects to receive such examination. Further, it required the Secretary to: (1) provide such examination during the 90-day period before such member's scheduled date of separation, and (2) provide such member with a record of the examination.

However, while active component servicemembers must undergo a separation physical examination (it may be waived if an examination had been undergone within the last year of service, but servicemembers **retiring** from active service are **required** to have an examination), this same right to an end-of-service physical examination is not mandated for reserve component servicemembers. This policy of unfair treatment must be corrected. A reserve component servicemember must have an initial physical examination to show they are fit for duty. Thus, it is only right that when they return to civilian life they undergo an end-of-service physical examination to have an assessment of their health condition, determine if any existing medical condition arose during their time of service, and have the documentation of the state of their health provided to them at the end of their military career.

Legislation to allow end-of-service exams is important for many reasons. It is a Military Quality of Life Standards matter and the current double standard of health care end-of-service physical examinations between active and reserve component service members must end. Reserve component servicemembers face the same risks and make the same sacrifices as those on active duty. They should have the right to an end-of-service physical examination that documents the state of their health at the end of their military career and have the medical documentation, if needed, for their VA earned benefits.

WHAT CAN CONGRESS DO?

- Congress can reintroduce legislation that was from the 114th Congress entitled the *Guard and Reserve Equal Access to Health Act.*

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

REPEAL UNFAIR OFFSETS THAT PENALIZE DISABLED VETERANS AND WIDOWS

DISABLED VETERANS TAX

Background:

The Disabled Veterans' Tax (also known as **concurrent receipt**) references the practice which bars certain retired veterans from receiving both their full military retired pay and their full service-connected disability compensation benefit pay. Prior to the *National Defense Authorization Act (NDAA) of 2004*, all veterans who received disability compensation from the Department of Veterans Affairs (VA) would have their military retired pay reduced by an "offset", preventing these retired warriors from receiving their full retired pay as earned by their military service. With the passage of that law, a phased progression was put in place to work downwards from 100 percent service-disabled veterans to 50 percent service-disabled veterans to allow the more severely disabled veterans to receive both their earned benefits in full. This phase-in provides for the addition of levels of disabilities at a rate of approximately 10 percent per year and was fully implemented in 2014.

Retirement pay and disability compensation are two entirely different benefits created for two distinct and different reasons.

The American Legion worked hard for this law. However, The American Legion will not rest until all of our retired, service-disabled warriors receive both of the benefits they earned due to their selfless sacrifice and duty to our nation. Today, our federal government still takes money away from veterans receiving 40 percent or lower rates of service-connected disability compensation (VA service-connected disability compensation is divided into rates at 10 percent intervals: 0 percent, 10 percent, 20 percent, etc.) and the financial discrimination against these retired warriors of 'offsetting' their military retired pay against their service-connected disability compensation dollar-for-dollar must end!

The American Legion calls this unfair practice by our federal government the "**Disabled Veterans' Tax",** and we adamantly oppose this unfair 'tax' on our wounded, injured, and ill retired veterans who suffered their disabilities because of their military service to this country.

In addition, those servicemembers medically retired without 20 years of service (Chapter 61 retirees) have never been included in relief from this offset, as the phased offset is intended only for 20-year military retirees.

Let us be clear. Military retired pay is compensation for longevity of honorable military service. VA service-connected disability compensation is payment for medical conditions incurred or aggravated while on active duty. These two earned benefits to a retired veteran are thus made for two very distinct and very different reasons.

Disabled Veterans Tax bills in the 115th Congress:

On January 5, 2017, Representative Gus Bilirakis (FL) introduced **H.R. 303**, the *Retired Pay Restoration Act*, to amend title 10, United States Code, to permit additional retired members of the Armed Forces who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their service-connected disability and their retired pay by reason of their years of military service or Combat-Related Special Compensation. His bill currently has fourteen cosponsors.

On January 5, 2017, Representative Sanford Bishop (GA) introduced **H. R. 333**, the *Disabled Veterans Tax Termination Act*, which amends federal military retired pay provisions to: (1) permit veterans with a service-connected disability of less than 50 percent to receive concurrent payment of both retired pay and veterans' disability compensation and (2) extend eligibility for concurrent receipt to chapter 61 disability retirees with less than 20 years of retirement-creditable service. His bill currently has six cosponsors.

On January 9, 2017, Senator Dean Heller (NV) introduced **S. 66**, the *Retired Pay Restoration Act,* to permit certain retired members of the uniformed services who have a service-connected disability to receive compensation from the Department of Veterans Affairs and either retired pay by reason of their years of military service or Combat-Related Special Compensation. His bill currently has two cosponsors.

All bills are assigned to their respective Armed Services Committees for action.

Legion Position:

The American Legion's support for full Concurrent Receipt is based upon **Resolution No. 224** and support also comes from **Resolution 85**, which supports our mandate for Military Quality of Life Standards. It is essential The American Legion continue to make the case for fairness and equity for our nation's warriors. In this case, retired pay and disability compensation are two entirely different types of earned benefit payments and our federal government must not discriminate against these retired warriors by taking their money away from them.

Currently in law, a veteran may receive, in part or in full, other federal and non-federal benefits, in addition to VA service-connected disability compensation. For example, a veteran can receive service-connected disability compensation---without offsets, reductions, or limits---with:

- Unemployment Compensation;
- Social Security;

- Federal Civil Service pay;
- Private sector job pay;
- Federal civil service retirement (including disability retirement);
- Retirement pension from non-federal employment; and,
- Federal workers compensation (benefits for work-caused disability or illness provided under FECA).

Military retirees are the only federal employees who must offset their retired pay with their VA disability compensation.

Thus, in part, The American Legion position is simply that because veterans can earn income from all those other sources listed above without offset, as a matter of law and public policy, as well as fairness, then service-connected disabled retired veterans must be able to earn their military retired pay without it being offset as well.

Equitable economic justice is one reason to end the **Disabled Veterans' Tax**. Military retirees are the **ONLY** federal employees who must offset their retired pay with their VA service-connected disability compensation. Another more important reason to end this discriminatory practice, and The American Legion believes must be argued, is that, in the interests of our national security and given the unique nature of military service with its sacrifices and hardships, our nation must respect those military retirees, who served twenty or more years of their life in uniform and suffered because of that service. These warriors became wounded, ill, or injured during their military service, their disabilities are recognized by our government, and they must receive both benefits because a grateful nation respects their long term, selfless service and sacrifice for this country.

VA service-connected disability compensation is awarded for physical and mental disabilities incurred or aggravated while in military service. These disabilities cannot be equated with disabilities incurred in civilian life. Military service rendered in defense, and on behalf, of the Nation deserves special consideration in determining public policy toward benefit offsets. It is a moral and ethical responsibility to award equitable treatment to these veterans, given their sacrifices and hardships incurred during their honorable military service.

The American Legion urges Congress to complete the repeal of the prohibition on receiving the earned payments from both these programs.

WIDOW'S TAX

Under current federal law, if the surviving spouse of a military retiree is eligible to receive the monthly Survivor Benefit Program (SBP) annuity payment and is also awarded a monthly Dependency and Indemnity Compensation (DIC) benefit by the Department of Veterans Affairs (VA), the SBP annuity is offset, dollar-for-dollar, by the amount of DIC received. This offset is commonly referred to as the "Military Widows' Tax". The American Legion believes this offset is an injustice to surviving spouses of America's heroes. Our support for this legislation is mandated by **Resolution 85**.

Retired servicemembers are eligible to participate in the SBP. SBP is an optional annuity insurance plan designed to pay an eligible surviving spouse a monthly payment to help make up for the loss of military retirement income. Those military retirees who choose to enroll in SBP have deductions made from their military retired pay to purchase their survivor's annuity. Under the plan, upon the military retiree's death, the annuity is paid monthly to eligible beneficiaries.

Among the earned benefits awarded by VA to service-connected disabled veterans and their survivors is the DIC program. DIC is an earned benefit awarded monthly to the eligible surviving spouse of a service-connected disabled veteran by a grateful nation. DIC is a tax-free benefit (like service-connected disability compensation) for the surviving spouse and dependent children. VA also adds a transitional benefit of $250 to the surviving spouse's monthly DIC if there are children under age 18. The amount is based on a family unit, not individual children. It is paid for two years from the date that entitlement to DIC commences, but is discontinued earlier when there is no child under age 18 or no child on the surviving spouse's DIC for any reason.

Clearly, SBP is first a personal financial decision made by a military retiree to provide a degree of financial security for the surviving military spouse; whereas, DIC is an earned benefit awarded for a veteran's death due to a service-connected medical condition. The American Legion believes the VA indemnity compensation should be added to the SBP that the military retiree paid for with personal funds, and not be subject to the dollar-for-dollar offset.

SBP and DIC are two distinct and independent programs with unique eligibility criteria. SBP is optional for military retirees and mandates personal financial contributions from that individual retiree, whereas DIC is awarded only to survivors of service-connected disabled veterans.

Widow's Tax bills in the 115th Congress:

On February 7, 2017, Senator Bill Nelson introduced **S. 339**, a bill to amend title 10, United States Code, to repeal the requirement for reduction of survivor annuities under the Survivor Benefit Plan for military surviving spouses to offset the receipt of veterans dependency and indemnity compensation, and for other purposes. His bill has one cosponsor.

Legion Position:

The American Legion wants to repeal the requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation.

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

DEFEND VETERAN EDUCATION BENEFITS

The American Legion has fought to provide post-service career opportunities for veterans since its formation. The original GI Bill, passed in 1944, provided rights, education benefits and loans for homes, businesses and farms. That investment fueled America's rise to an economic superpower over the last 70 years. The Post-9/11 GI Bill, also championed by The American Legion, updated those benefits for 21st century student-veterans and career seekers. While we continue to work to preserve and improve this important benefit, we must not forget about thousands of young veterans and servicemembers who have had their GI Bill benefits either withheld or wasted at institutions that had sudden shutdowns.

RESTORE ENTITLEMENTS TO RESERVISTS DENIED GI BILL CREDIT

The American Legion was troubled to learn that many reservists and Guard members have been excluded from accruing Post-9/11 GI Bill benefits while on two types of active duty orders, and believes these servicemember should have their benefits retro-actively awarded:

> **12304b** was added at the request of DOD to provide service secretaries with the authority to involuntarily activate state reserve components to support pre-planned missions without requiring POTUS approval. **4,915 reservists** have been activated under 12304b between 2012 and 2016.
>
> **12301(h)** authorizes the Secretary of Defense to order a member of a reserve component to active duty to receive authorized medical care, to be medically evaluated for disability, or complete a required DOD health care study. In 2014 the DOD Reserve Forces Policy Board (RFPB) advised that Congress change the law regarding the definition of active duty to include this order. **19,647 reservists** were placed on 12301(h) orders from 2007 to 2013, with an estimated additional **7,000 to be placed on those orders from 2014 through 2020**.

The reason for the failure:

Section 3301(1)(B) of Title 38 defines the term "active duty" for the purposes of educational benefits, and does not include 12304b or 12301(h):

> *The term "active duty" has the meanings as follows (subject to the limitations specified in sections 3002(6) and 3311(b)): In the case of members of the reserve components of the Armed Forces, service on active duty under a call or*

order to active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10or section 712 of title 14.

Solution:
Amend Section 3301(1)(B) of title 38, United States Code, to include "12304b" and "12301(h)", thereby qualifying these orders as "active duty".

Reference: Resolution No. 349 (Sept. 2016): Support Legislation to Improve the Post-9/11 GI Bill

PROTECT VETERANS AFFECTED BY SCHOOL CLOSURES

Veterans, and military family members are too often singled out and targeted for recruitment by unscrupulous institutions eager to take advantage of their GI Bill. The result of this targeting can have a devastating impact. This past year, ITT Technical Institute abruptly shut down all 130 of its campuses, affecting over 40,000 students expecting to attend the fall semester. Unlike their civilian counterparts using federal student aid, there are no statutory or regulatory provisions that provide relief to **nearly 7,000 veterans** who used GI Bill educational assistance benefits to attend the institution. The American Legion believes these veterans should not be held responsible for institutional malfeasance. Additionally, with uncertainty surrounding the status of the accrediting institution ACICS (American Council on Independent Colleges and Schools) the risk of sudden school closures remains high.

To further protect veterans and military families from attending schools at risk of sudden closure, Congress must oppose weakening the:

Gainful Employment Rule, which enforces the Higher Education Act's requirement that career education programs receiving federal student aid must "prepare students for gainful employment in a recognized occupation for career education programs.

Ban on Incentive Compensation, which was enacted with broad bipartisan support to reduce high-pressure, deceptive sales tactics. Sales commissions incentivize college recruiter to "do anything and say anything" to get veterans to enroll. In 2015, the Education Department's Inspector General called for greater oversight and enforcement of the ban to prevent fraud and abuse.

The Enforcement Unit at the Education Department, which is taking steps to protect all students from any illegal conduct by colleges.

WHAT CAN CONGRESS DO?:

The American Legion urges Congress to reintroduce the provisions of the "Protecting Our Veterans From School Closures Act" (H.R. 6003-114th Congress).

The “Protecting Our Veterans From School Closures Act” restores veterans’ GI Bill educational benefits to any veterans who are using their benefits at an educational institution that closes, preventing them from completing their degree. The bill would apply to all veterans who were enrolled at ITT Tech at the time it closed.

Reference:

Resolution No. 21 (Oct. 2016): Education Benefit Forgiveness and Relief for Displaced Student-Veterans
Resolution No. 327 (Sept. 2016): Support Further Assessment and Evaluation of Institutions of Higher Learning to Enable Veterans to Make Informed Education Choices

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

The *Uniformed Services Employment and Reemployment Rights Act* (USERRA) of 1994, 38 United States Code (U.S.C.) §§ 4301-4334, was signed into law on October 13, 1994. USERRA prohibits discrimination in employment on the basis of an individual's: prior service in the uniformed services; current obligations as a member of the uniformed services; or, intent to join the uniformed services. USERRA also provides reemployment rights with the pre-service employer following qualifying service in the uniformed services. In general, the protected person is to be reemployed with the status, seniority, and rate of pay as if continuously employed during the period of service. USERRA applies to private employers, the Federal Government, and state and local governments. It applies to United States employers operating overseas as well.

Over 14 years of war has caused record high deployment rates of citizen soldiers, who have the responsibility of maintaining civilian employment while waiting for the call to serve their country. Many who already struggle daily to balance their dual military and civilian lives, have returned home from deployment only to find that same contract of balance was not upheld by their employers. Servicemembers should not come home from a military leave of absence to find they have no job or that their seniority has been taken from them. An individual should never be forced to choose between serving in the National Guard or Reserve, and keeping their civilian employment.

A recent case involved a Navy Reservist who claimed that his civilian employer fired him because he was deployed to Afghanistan, which is a violation of USERRA. However, the servicemember lost his case because it was noted that the veteran signed a pre-employment arbitration agreement (contract) which prohibited him from suing his former employer. *The American Legion strongly supports legislation that will strengthen USERRA to alleviate any ambiguities that will strip servicemembers of the ability to sue employers by an arbitration agreement.*

We are deeply concerned with the protection of the servicemember and the prevention of the servicemember not being reemployed by their previous employer after deployment(s). With the rising numbers of USERRA cases across the country, they have become more complex than in the past and frequently involve multiple issues. This is due to longer and more frequent deployments of National Guard and Reserve members. In FY 2014, the Department of Labor's Veterans' Employment and Training Service (VETS) staff closed 1,140 USERRA complaints, and in FY 2015, VETS staff closed 1,223 USERRA complaints, recovering lost wages and benefits from servicemembers who are called to

active-duty to serve and protect their country. In FY 2015, Military Obligation Discrimination complaints were at 39.6 percent. This is extremely concerning.

Section 4311(a) of USERRA states:

"A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation."

Section 4311(c) of USERRA further states:

"An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for in this chapter."

In conclusion, millions of service members depend on USERRA protection while they are called to serve their country. USERRA was created to prohibit discrimination against and eliminate the disadvantages faced by deployed servicemembers. Again, The American Legion recommends strengthening the enforcement of USERRA. There needs to be effective consequences for non-compliance or proactive regulation of this Act to ensure that veterans are not disadvantaged or unable to return to their previous jobs, due to their honorable service to our Nation.

Reference:
Resolution No. 315 (Sept. 2016): Support Employment and Reemployment Rights of National Guard and Reservist Returning from Deployment

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

CREATE OPPORTUNITIES FOR VETERAN BUSINESS OWNERS

With the drawdown of our armed forces, more servicemembers are now becoming veterans. Equipped with the skills and mental attitude to enter the civilian workforce, many veterans are opening small businesses, which is not only good for them, but also for other veterans and the American economy. Trends show that veterans are likely to hire other veterans because they know the true value of the skills that veterans receive while serving their country.

The first step to opening a small business is having access to capital. Many aspiring business owners resort to obtaining investors or they risk using their personal funds. However, in the 114th Congress **S.1870: VET Act of 2016** was introduced in Congress, if passed it would create a three year pilot program that would allow veterans and servicemembers to turn their G.I. Bill education benefits into financial capital to start a Veteran-Owned Small Business. The program would allow up to 250 veterans eligible for GI Bill benefits who apply to the program to start a new business or purchase an existing business or franchise. This is a grand idea that very well may allow veterans to determine their future, take control of their benefits, lower the veteran unemployment rate and furnish veterans with a sense of self all while providing for their families and stimulating the economy.

In addition, some veteran-owned small businesses compete for federal contracts, meaning they focus on providing services to the U.S. government. One way The American Legion is serving veterans is by encouraging the reintroduction, passage, and implementation of a piece of legislation from the last Congress (**H.R. 1694: Fairness to Veterans for Infrastructure Investment Act**) that gives our veterans access to transportation and infrastructure contracts. This measure calls for states that receive federal money for transportation projects to include veteran-owned businesses in their contracting processes. Creating parity for veterans in the federal contracting process is vital for veteran-owned small businesses. It assists them in obtaining contracts; which also benefits the U.S. government.

The American Legion supports both of the above measures. Reintroducing, and ultimately passing S. 1870 would create a pilot program that would establish a way for service members and veterans to utilize their education benefits to better suit their business desires. Reintroducing and passing H.R. 1694 would create parity for veterans within the federal contracting process. Both of these measures stand to better our nation's heroes all while benefiting the economy.

Reference: Resolution No 339: (Sept. 2016): Support Reasonable Set-Aside of Federal Procurements and Contracts for Business Owned and Operated by Veterans
Resolution No. 303: (Sept. 2016): Expanding Post-9/11 GI Bill for Entrepreneurship

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

END VETERAN HOMELESSNESS

In 2010, then-VA Secretary Eric Shinseki pledged to devote resources necessary to end veteran homelessness by the end of 2015. Although this robust goal was not met – there has been progress in combating veteran homelessness. Former VA Secretary Robert McDonald stated that eliminating veteran homelessness – functional zero nationwide – was still a top priority for the Department. VA has worked closely with Congress to provide resources in affordable housing and supportive services programs to help more veterans and their families. According to the Department of Housing and Urban Development (HUD) there were fewer than 40,000 homeless veterans (or 9 percent of homeless adults) on a single night in January 2016. Two thirds of homeless veterans (67 percent or 26,404 veterans) were staying in emergency shelters, transitional housing programs, or safe havens, while a third (33 percent or 13,067 veterans) were found in places not suitable to human habitation. Veteran homelessness dropped by 47 percent, or nearly 35,000 people, between 2010 and 2016. Between 2015 and 2016 alone the number of homeless veterans dropped by 8,000 people (or 17 percent).

A full continuum of care — housing, employment training and placement, healthcare, substance abuse treatment, legal aid, and follow-up case management — depends on many organizations working together to provide services and adequate funding. The availability of homeless veteran services, and continued community and government support for them, depends on vigilant advocacy and public education efforts on the local, state, and federal levels. The complexity of issues affecting all homeless veterans (the extreme shortage of affordable housing, livable income, and access to healthcare), as well as the fact that a large number of displaced and at-risk veterans live with the effects of Post-Traumatic Stress Disorder (PTSD), substance abuse, and a lack of family and social support networks mandates VA must, in order to meet its commitments, have additional resources.

As 2017 begins, The American Legion believes programs dedicated to battling veteran homelessness should continue to be funded even beyond the 2015 goal. This is because even if cities and/or states are successful in achieving a “functional zero” of homeless veterans, veteran homelessness is often a temporary circumstance. If a functional zero is achieved, the focus should shift to ensuring that those veterans who *become* homeless are able to be quickly transitioned from homelessness to economic stability, including stable housing and meaningful employment. These programs are a necessary means to ensure that we, as a nation, are able to retain a functional zero in veteran homelessness.

WHAT CAN CONGRESS DO?

The American Legion recommends funding for a broad range of appropriate and effective interventions, including:

- Congress must appropriate funds ($300 million) and permanently re-authorize the Supportive Services for Veteran Families program (SSVF). SSVF funds have been used effectively by community organizations to prevent many veterans from becoming homeless, and to quickly re-house veterans who need nothing more than short-term rental assistance and limited case management in order to get back on their feet. SSVF funds can also be used to pay for employment services, utility assistance, child care costs, and other housing-related expenses.

- Congress must continue support for VA's Grant and Per Diem (GPD) Program. This critical program provides short-term housing help to homeless veterans, allowing them to get connected with jobs, supportive services, more permanent housing, and ultimately to become self-sufficient. Promising new models for using grant and per diem funds, including allowing veterans to remain in their GPD housing unit once support from the program ends and new programs focused on women veterans, are helping to ensure that GPD continues to meet the ever changing needs of returning veterans and their families.

- Congress must increase appropriations for Homeless Veterans Reintegration Program (HVRP) to $50 million, the program's authorized level since 2005, and continue fully funding the program through the foreseeable future.

- Congress must provide funding for dental care and legal services for homeless veterans.

The American Legion continues to lead communities by volunteering, fundraising, and advocating for programs and resources to help homeless veterans. In addition, The American Legion directly provides housing for homeless veterans and their families, including facilities in Connecticut and Pennsylvania. One of the goals of The American Legion is to help bring federal agencies, nonprofit organizations, faith-based institutions and other stakeholders to the table to discuss best practices, along with funding opportunities, so homeless veterans and their families can obtain the necessary care and help to properly transition from the streets and shelters to gainful employment and independent living.

Over the span of seven years, veteran homelessness has fallen 46 percent, with 33,896 fewer homeless veterans in 2016 than in 2009. This decline includes both large decreases in the number of veterans found in unsheltered locations (16,891 fewer veterans), and in veterans experiencing homelessness in shelters and transitional housing projects (17,005 fewer veterans). Still, despite this good news, there remains work to be done in order to ensure that our homeless veterans are cared for.

Reference:

Resolution No. 324 (Sept. 2016): Support Funding for Homeless Veterans

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

THE AMERICAN LEGION 100TH ANNIVERSARY COMMEMORATIVE COIN

To celebrate 100 years of humanitarian and patriotic service, The American Legion is working with the United States Mint and the U.S. Congress to produce limited-edition, exquisitely crafted commemorative coins. Authorized by Congress, commemorative coins celebrate and honor American people, places, events, and institutions. Each coin is crafted to be rich in symbolic history. They represent not only an investment in maintaining our American past, but also in ensuring our nation's future.

Unique among U.S. Mint products, these coins help raise money for important causes as well as commemorating important aspects of American history. These products not only provide beautiful additions to any coin collection, they capture the American culture. Proceeds from the sale of the coins would support the programs and services offered under the four pillars of our organization.

It goes without saying that The American Legion, the nation's largest wartime veterans organization, warrants such recognition.

The American Legion will begin its centennial recognition at the 100th National Convention in Minneapolis, site of the 1st American Legion National Convention, in August 2018. In March 2019, the organization will celebrate its 100th birthday in Paris, and Sept.16, 2019, will mark the 100th anniversary of The American Legion's federal charter.

If authorized by Congress, coins minted would be issued only during the 1-year period beginning on January 1, 2019.

Legislative staff is working with congressional offices on bill language. Please note, commemorative coin bills require cosponsorship by two-thirds of the members in both the House and Senate.

WHAT CAN CONGRESS DO?

Please ask your Members of Congress to sign on as cosponsors when the bills have been introduced.

THE AMERICAN LEGION LEGISLATIVE POINT PAPER

PROTECT THE AMERICAN FLAG

"The Congress shall have power to prohibit the physical desecration of the flag of the United States." A proposed amendment to the United States Constitution; which The American Legion fully supports.

Background

The U.S. Supreme Court's 1989 decision in *Texas v. Johnson* held that the physical desecration of Old Glory was "protected speech." In this case, the Court struck down existing flag desecration laws in 48 states and the District of Columbia. The American Legion believes the Court misinterpreted the Constitution by calling flag desecration "speech" and that this imprudent decision overturned a century of American law and tradition. Acts of physical desecration are conduct, not speech. Accordingly, these acts should not be recognized and protected as "speech" by the First Amendment. President Abraham Lincoln once remarked, "… 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…." The American people intend to return flag protection authority to Congress where it belongs and not allow the Supreme Court to have the final say.

President Abraham Lincoln once remarked, "… 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…."

The American Legion believes the final say should be with the People, as expressed through the Congress and the 50 state legislatures. All 50 state legislatures have passed memorializing resolutions asking Congress to pass this proposed amendment and send it to the states for ratification. The proposed amendment returns the power to protect Old Glory to the People. This is the true essence of the amendment and why it must prevail.

House Actions

In the first session of the 115th Congress, Representative Steve Womack (AR) reintroduced **House Joint Resolution (H.J. Res.) 61**, a proposed constitutional amendment supported by The American Legion and the Citizens Flag Alliance (CFA). The resolution was referred to the Committee on the Judiciary at introduction on February 2, 2017.

The Judiciary Committee chairman is Rep. Bob Goodlatte (VA) and the chairman of the Constitution and Civil Justice Subcommittee is Rep. Trent Franks (AZ). Both are known supporters of the proposed constitutional amendment. Nevertheless, even with supportive committee leadership in the last several Congresses, no hearings were held and the amendment never came up for a vote.

There are currently 23 cosponsors of the bill. Please ask your representative to sign on as a cosponsor, if they have not already done so.

Senate Actions

No companion bill has been introduced yet in the Senate. Legislative staff is actively seeking a Senate sponsor for this measure. If your Senator is interested in being the lead sponsor of this bill, please contact the Legislative staff.

The Judiciary Committee is chaired by Senator Chuck Grassley (IA), and the chairman of the Constitution Subcommittee is Sen. Ted Cruz (TX).

Discussion

The American Legion strongly believes the flag is a symbol of our nation's freedom and all that we hold in common as Americans, secured by the servicemen and women who sacrificed so much for all citizens. That is why The American Legion continues to urge Congress to approve an amendment to the U.S. Constitution that would allow the Congress to prohibit the physical desecration of the American flag, our nation's enduring symbol of unity and freedom.

The civic purpose of our constitutional freedom of speech in a democratic republic is to enable the political discussion necessary for a self-governing citizenry to remain free and united. The political deliberative purpose of our freedom of speech is why it must include the freedom to criticize current officials but not necessarily the right to attack a symbol of national unity. The nature of a republic's deliberations presupposes the existence of a "common good" -- a metaphorical table around which to discuss. We are supposed to be deliberating how to achieve that good, but that we are constituted to achieve that good is a settled question and is not up for debate apart from revolution or constitutional amendment. Our nation's flag is a symbol of that common good. To burn that flag is like overturning the common table.

Our belief is not to silence those who protest perceived injustices. Americans have every right to voice their views in respectful ways. Rather than fearing such a constitutional amendment, Members of Congress concerned about supporting the amendment should embrace it. The proposed flag protection amendment is no infringement on the Bill of Rights; instead, it restores the traditional meaning of the First Amendment and is a wonderful exercise in the popular sovereignty the Bill of Rights was designed to protect.