STATEMENT OF
PETER S. GAYTAN, PRINCIPAL DEPUTY DIRECTOR
VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
THE DEPARTMENT OF VETERANS AFFAIRS'
FISCAL YEAR 2004 BUDGET REQUEST

FEBRUARY 11, 2003

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to express the views of the 2.8 million members of The American Legion regarding the Department of Veterans Affairs' (VA) Fiscal Year (FY) 2004 budget request. As veterans' advocates, it is our job to ensure that VA is funded at a level that is adequate to fulfill the mandate "…to care for him who has borne the battle, his widow and his orphan."

With this 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." The American Legion believes there are two ways to achieve this goal:

- rationing of health care by driving veterans away for the health care system designed to meet the health care needs of America's veterans or
- expand the health care system to meet the health care needs of America's veterans without compromising the quality of care.

For over a decade, The American Legion has advocated allowing veterans to spend their health care dollars ~~to~~ 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.

The American Legion believes the level of funding proposed in the FY 2004 budget request may meet the President's goals, but will lead to over 1.2 millions veterans leaving the system. The American Legion also has reservations about the budgetary impact on other aspects of VA operations, to include the Veterans Benefit Administration (VBA).

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. Since the Department of Defense (DoD), TRICARE, and TRICARE for Life require military retirees to make copayments or pay premiums, but does not provide for specialized care (like long-term care), many military retirees also chose to enroll in VHA.

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.

VA essentially entered FY 2003 without a budget. Continuing to operate at an inadequate FY 2002 funding level has presented many challenges. The fallout, in part, has been the Secretary's decision to suspend enrollment of Priority Group 8 veterans for the foreseeable future. Clearly, the current system is fiscally tapped out.

The problems resulting from years of underfunding run even deeper within the VA health care system. In October 2002, National Commander Ronald F. Conley began an initiative to reach out to the hundreds of thousands of veterans who actually make up the VA health care backlog. Through surveys asking veterans for their comments regarding their experience with the local VA Medical Center (VAMC), The "I Am Not A Number" Campaign, as it has been dubbed, has allowed The American Legion to learn first-hand of the problems that exist when seeking health care through VA.

The problems described in these surveys, coupled with the information that has been gathered from Commander Conley's visits to over 25 Veterans Affairs Medical Centers (VAMCs), has been less than encouraging. VAMCs are expressing their concern over the significant increases in their Medical Care Collection Fund (MCCF) goals for FY 2003 and what impact the recent restrictions on enrolling any new Priority Group 8 veterans will have on their ability to meet those goals. Prohibiting the one Priority Group of veterans that, most likely, has an expendable income and has third-party health coverage to help VAMCs meet increased MCCF goals seems, at face value, illogical.

Many VAMCs are using capital improvement funds to pay for the delivery of health care. Facility improvements continue to be delayed due to budgetary shortfalls. Commander Conley is learning first hand of VAMC concerns over the outsourcing of services and the cost effectiveness of this initiative.

The growing shortage of medical specialty personnel, nurses in particular, is continuing to impact the delivery of quality health care. Exacerbating this shortage is the real possibility of National Guard and Reserve units being activated, since several thousand VA personnel are members of the Guard or Reserve and their activation would certainly have a negative impact on the operation of the VAMCs.

The American Legion believes these issues and others will continue to plague VA beyond FY 2003. As we turn to FY 2004, the picture is no brighter. The American Legion believes any budget for VA should be augmented by MCCF and not scored as an offset to a budget, because

these reimbursements are paid for the treatment of nonservice-connected medical conditions. When VA distributes its annual appropriations to each Veterans Integrated Service Network (VISN) it uses a Veterans Equitable Resource Allocation (VERA) formula. There are many components to this formula, to include the patient population of Priority Groups 1-6, but the number of enrolled Priority Group 7 and 8 veterans is not a funding or distribution factor. Therefore, a VISN is not funded to treat Priority Group 7 and 8 veterans, but must seek copayments and third-party reimbursements to cover the cost of care. These collects should be added to the discretionary appropriations, not subtracted from these limited resources.

MEDICAL CARE

The VA health care delivery system is not only the largest health care provider in the nation, but it has established itself as a formidable leader in the health care industry. Veterans receive quality health care and are choosing VA as their health care provider in record numbers. VA is currently struggling to meet their needs and, with VA's proposed FY 2004 budget, it will continue to struggle.

The FY 2004 budget request introduces several proposals to generate increased revenues from the pockets of veterans through an enrollment fee, copayments and third-party reimbursements. According to VA, these proposals will reduce the resource demand by $1.3 billion collectively and hopefully encourage 1.2 million veterans to leave the system. The budget request also seeks management savings of over $1.1 billion. This adds up to a $2.4 billion offset to the requested $25.4 billion budget for medical care.

The American Legion is concerned with several of the budget proposals:

- Limit enrollment – VA proposes to continue the suspension of enrollment of new Priority 8 veterans. These veterans have incomes above $24,644 for a single veteran and above the Housing and Urban Development (HUD) geographic means test level, to include noncompensable, 0 percent service-connected veterans. Although these service-connected veterans may seek health care for their service-connected disability, they are prohibited from enrolling for treatment of or prescriptions for any nonservice-connected medical conditions.

The American Legion continues to disagree with this recent decision. We believe denying veterans access to VA health care, particularly while we prepare to go to war, is unacceptable. Many recently separated veterans would fall into this Priority Group. By denying health care to Priority Group 8 veterans, VA is sending the message that these veterans are not welcomed, even if they have the expendable income or private health insurance coverage that VA can bill for the cost of their nonservice-connected medical treatment. Clearly, there are potential Priority Group 8 veterans with no health care coverage because they are self-employed or unable to afford premiums.

In order for more veterans to access VA health care, additional revenue streams must be generated to supplement the discretionary funding. The American Legion strongly advocates Congress authorize VA to bill, collect, and retain third-party reimbursements from CMS for treatment of Medicare-allowable, nonservice-connected medical conditions of Medicare-eligible veterans. Since Medicare is a Federally mandated, pre-paid health insurance program, The

American Legion believes Medicare-eligible veterans should be allowed to choose their health care provider.

To qualify for Medicare, most veterans make automatic monthly payroll deductions to CMS and cannot use the benefit until reaching age 65. Access to VHA health care is based on honorable military service not age; therefore, a veteran earns the right to enroll in VA, but is forced, by law, to participate in Medicare. There is a clear difference here: VA is a health care provider, while Medicare is a health insurer. If VA is a Medicare-eligible veteran's health care provider of choice, then VA should be reimbursed for providing quality health care services.

● Assess an annual enrollment fee - VA proposes a $250 annual enrollment fee for non-service-connected (NSC) Priority 7 veterans and all Priority 8 veterans. Priority 7 veterans have incomes above $24,644 for a single veteran and below the HUD geographic means test level, to include noncompensable, 0 percent service-connected disabled veterans. This annual enrollment fee would apply even if the veteran has third-party health insurance that reimburses VA for the treatment of nonservice-connected medical conditions. This annual enrollment fee would apply even if the veteran was willing to make copayments for treatment of nonservice-connected medical conditions, pharmacy, and specialized care (like long-term care). However, this annual enrollment fee does not guarantee timely access to quality health care. According to President Bush and Secretary Principi, these veterans are not their primary focus.

The American Legion cannot support this proposal because it is designed to discourage the enrollment of veterans based solely on their income and not their honorable military service. There are Priority Group 7 and 8 veterans with military awards and decorations for wartime service that, for the grace of God, were not seriously wounded. Many members of "The Greatest Generation" fall into these Priority Groups. Many veterans of the "Forgotten War" fall into these Priority Groups. This cannot be the intent of a grateful nation – to nickel and dime veterans out of their heath care system.

The American Legion would urge Congress to reject this proposal just as it did the Administration's plan last year to charge Priority Group 7 veterans a $1,500 deductible.

The American Legion will continue to work with Members of Congress to pass long-term funding solutions. We will continue to fight for Medicare reimbursement legislation that will allow Medicare to pay VA for the cost of health care it provides to all Medicare-eligible veterans. Further, we will continue to advocate mandatory funding legislation for the President's and Secretary Principi's core constituents.

Access to quality health care is a continuing struggle for veterans seeking care through VA. Continued budgetary shortfalls, combined with rising medical care costs and increased demand for care have resulted in unprecedented waiting times.

● Change the veteran's share of outpatient and pharmacy co-payments – This proposal entails reducing the pharmacy co-payment burden for Priority 2-5 veterans, while increasing Priority 7 and 8 pharmacy co-payments from $7 to $15. It also increases outpatient primary care co-payments from $15 to $20 for all Priority 7 and 8 veterans.

While The American Legion applauds the reduction of the pharmacy co-payment for veterans in Priority Groups 2-5, the recent increase in copayments from $2 to $7 was accompanied by a decrease in the outpatient copayment from $50 to $15. Obviously, this means the President and Secretary of VA miscalculated the reasonable charge for medications and treatment. The American Legion would rather VA seek reimbursements for CMS for all enrolled Medicare-eligible veterans being treated for nonservice-connected medical conditions, before trying to balance the budget on the backs of Priority Groups 7 and 8 veterans.

● Require reimbursement for services provided to health maintenance organization and preferred provider organization members - This proposal seeks to establish VA as a preferred provider for members of Health Maintenance Organizations (HMOs) and Preferred Provider Organizations (PPOs) would obligate these organizations to reimburse VA for health care provided to their members.

The American Legion believes this change would help VA increase third-party reimbursements. The fact that VA currently cannot bill HMOs and PPOs is unfair considering VA treats many veterans who belong to these organizations. The American Legion would welcome this change; however, it seems odd to mandate private sector insurance plans to recognize VA as a preferred provider and not mandate CMS to recognize VA as a Medicare provider, especially since VA meets or exceeds most of CMS' own quality performance standards. If CMS' goal is to provide its beneficiaries with the best quality health care, VA should be a recognized Medicare provider. In fact, CMS Director Scully claimed before the Presidential Task Force To Improve Health Care Delivery for Our Nation's Veterans (PTF) that he encourages veterans to go to VA rather than private health care providers.

● Change the institutional long-term care services provided to veterans – This proposal would allow non-institutional, as well as, institutional workload in community and State Home Nursing programs along with VA Nursing to count toward the 1998 capacity level. VA would supposedly expand their total long-term care capacity by increasing non-institutional long-term care.

The American Legion believes the proposal will further stagnate long-term care services. The passage of the Veterans Millennium Health Care and Benefits Act (Public Law 106-117) on November 30, 1999, was the first step toward ensuring a comprehensive long-term care plan for veterans. The American Legion fully supported this insightful decision by Congress, especially with the aging veterans' population. It required the VA to bring the census back to 1998 levels. So far they have failed to do that. VA has the authority to establish copayments for nonservice-connected veterans in need of long-term care – a time in their lives when they and their families desperately need help from VA. The President and the Secretary want to reduce the number of long-term care beds without any recommendations from the PTF or the Capital Assets Realignment for Enhanced Services (CARES). In fact, the CARES process is currently not addressing either long-term care or mental health inpatient needs. The "market plans" currently being developed by each VISN will not be including institutionalized care involving long-term care or mental health. The American Legion cannot accept this recommendation.

The American Legion is committed to developing permanent solutions to preserve and improve the VA health care system. This goal includes providing a coordinated continuum of long-term cares to meet the needs of the individual veteran. With the ever-growing aging population of veterans, it is critical that VA positions itself to adequately care for all the needs of these veterans, to include long-term care.

The American Legion recommends $24.5 million for direct medical care in FY 2004; however, strongly recommend to add, rather than offset, MCCF and authorize VA to bill, collect, and retain third-party reimbursements from the nation's largest health insurance program – Medicare – for the treatment of nonservice-connected medical conditions on a fee-for-service basis.

MEDICAL AND PROSTHETIC RESEARCH

VA's Medical and Prosthetic Research Program (R&D) is the premier research initiative leading the nation's efforts to promote the health and care of veterans. The mission of R&D is to "discover knowledge and create innovations that advance the health and care of veterans and the nation." R&D has been instrumental in advancing treatments for conditions such as prostate cancer, diabetes, heart diseases, mental illnesses, spinal cord injury (SCI) and aging related diseases, conditions directly related to veterans.

The Quality Enhancement Research Initiative (QUERI) continues to be a top priority issue for R&D. QUERI is a multidisciplinary, data-driven national quality improvement program. There are eight QUERI groups that work to promote "putting research results to work" and to measure the impact of that research at all levels. These groups are chronic heart failure, diabetes, HIV/AIDS, ischemic heart disease (IHD), mental health, SCI, stroke and substance abuse. Additionally, The National Cancer Institute is funding a new Cancer QUERI. These initiatives focus on veterans' health issues and have already had a profound effect on improving the care and rehabilitation of the nation's veterans.

Two of the biggest challenges facing R&D are facility infrastructure and recruitment and retention. Like the rest of VHA's buildings, research facilities are in desperate need of repair. They have been neglected over the years due to budgetary constraints. Currently, R&D has nearly 30 facilities in varying states of disrepair. The condition of these facilities directly impacts the recruitment and retention of qualified researchers. The ability to maintain a state-of-the-art facility is vital to retaining talented and motivated researchers.

In the wake of the September 11th terrorist attacks and their aftermath, there has been a renewed focus on bioterrorism research and VHA's fourth mission, which is to support DoD during a national emergency.

The accomplishments of the VA research program cannot be overstated. The program has been recognized both nationally and internationally for its efforts toward the betterment of veterans' lives and advances in their health care. Without proper funding the program cannot possibly maintain its current level of success. The American Legion believes VA's budget request for $408 million is inadequate.

The American Legion recommends $445 million for medical and prosthetic research in Fiscal Year 2004.

MEDICAL CONSTRUCTION AND INFRASTRUCTURE SUPPORT

MAJOR & MINOR CONSTRUCTION

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

Year after year, needed projects are not funded, because the money is just not there. A 1998 study conducted by Price-Waterhouse recommended that VA fund 2 percent to 4 percent of Plant Replacement Value (PRV) per year and to reinvest in new facilities to replace aging facilities. The conclusion of this analysis was that VA's reinvestment rate of .84 percent was significantly lower than the benchmark of 2 percent. That equates to hundreds of millions of dollars that conceivably could be used for major construction projects. Private consultants have been warning for years that dozens of VA patient buildings were at the highest level of risk for earthquake damage or collapse, yet funding continues to be woefully short of what is actually needed to correct this problem. The President's budget request of $422 million falls well short of funds needed to ensure the safety of the nation's veterans.

The American Legion recommends $320 million for major construction and $240 million for minor construction to make a combined total of $560 million.

GRANTS FOR THE CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

The State Veterans Home Program is an important adjunct to VA's own nursing, hospital and domiciliary programs. The American Legion believes it must continue, and even expand, its role as an extremely vital asset to VA. This program has proven to be a cost-effective provider of quality care to many of the nation's veterans.

As many VA facilities reduce long-term care beds and VA has no plans to construct new nursing homes, state veterans' homes must absorb a greater share of the needs of an aging population. Title 38, United States Code (USC) authorizes VA to pay 65 percent of the total cost of building new veterans' homes.

The American Legion recognizes the growing long-term health care needs of older veterans and would like to reemphasize the essential service that the State Veterans' Home Program provides to these veterans. The program is a viable and important alternative health care provider to the VA system.

The American Legion recommends funding of $115 million for this program.

NATIONAL CEMETERY ADMINISTRATION (NCA)

The National Cemetery Administration (NCA) honors veterans with a final resting-place and lasting memorials that commemorate their service to the nation. More than two million Americans, including veterans of every war and conflict - from the Revolutionary War to the Gulf War - are honored by burial in VA's national cemeteries. Nearly 14,000 acres of land are devoted to this formidable mission.

As a result of the continuing increase in veterans' deaths, NCA is constantly seeking burial space. Total interments for NCA are projected to significantly increase over the next five years, peaking at 107,000 in FY 2008. NCA continues to strive to meet its accessibility goal of 90 percent of all veterans living within 75 miles of open national or state veterans' cemetery.

The Veterans' Millennium Health Care and Benefits Act (P.L. 106-117) required NCA to establish six new National Cemeteries. Fort Sill opened in 2001 under the fast-track program, while the remaining five, Atlanta, Detroit, South Florida, Pittsburgh, and Sacramento are in various stages of completion.

Maintaining cemeteries as national shrines is one of NCA's top priorities. This commitment involves renovating gravesites by raising, realigning and cleaning headstones and markers. The work that has been done so far has been outstanding, however, adequate funding is key to maintaining this very important commitment.

The American Legion recommends $150 million for the National Cemetery Administration in Fiscal Year 2004.

STATE CEMETERY GRANTS PROGRAM

The State Veterans Cemetery Grant Program continues to be a very popular and much needed program administered by VA. This program was designed to assist states in providing gravesites for veterans where NCA is unable to do so. This program is not intended to replace National Cemeteries, but to complement them. Grants for state-owned and operated cemeteries can be used to establish, expand and improve on existing cemeteries.

Under this program cemeteries must conform to the standards and guidelines prescribed by VA with regards to site selection, planning and construction. Like the NCA, these state cemeteries must be operated solely for the burial of service members who die on active duty, veterans, and their eligible spouses and dependent children.

The State Cemeteries accommodated over 15,000 burials in FY 2001. In light of the aging veteran population and with deaths expected to peak at 687,000 in 2006, it is necessary that this program remain viable. Now is the time to ensure that funding is commensurate with the mission of the program.

The American Legion recommends $37 million for the State Cemetery Grants Program in Fiscal Year 2004.

VETERANS BENEFITS ADMINISTRATION

The American Legion is gravely concerned by the proposed straight line staffing request for the Veterans Benefits Administration's (VBA) Compensation and Pension Service and for the Board of Veterans Appeals. There are long-term workload demands associated with the current backlog of pending claims that will extend well into FY 2004. VBA acknowledges there will also be a continued influx of new and reopened claims, based on the enactment of expanded benefit entitlements by the 107th Congress, including the Combat Related Special Compensation Pay Program, an expectation of additional presumptive diseases, and recent precedent decisions of the courts. Despite the fact that the present military build-up has been underway for a number of months, the budget request does not take into account the involvement of thousands of additional active duty personnel. VA must be able to provide these men and women timely, quality service upon their return to civilian life as veterans, in addition to its ongoing responsibility to current veterans.

Despite assertions of improved quality decision making, the number of appeals being filed continues to increase as does the number of appeals requiring further development either by the regional offices or the Board of Veterans Appeals. The American Legion believes these organizations will require additional personnel, if they are to achieve the ambitious service improvement goals promised the nation's veterans and their families in this budget request.

VETERANS BENEFITS ADMINISTRATION LEGISLATIVE INITIATIVES

VBA's net mandatory funding request reflects the enactment of several legislative proposals. These include:

- A two-percent COLA in compensation benefits. The American Legion supports an annual cost-of-living adjustment in disability compensation and DIC benefits.

- Legislation to overturn the decision of U.S. Court of Appeals for the Federal Circuit in *Allen v. Principi*, which held that VA must pay compensation for alcohol or drug-abuse disabilities, if they are secondary to a service-connected disability. The American Legion is opposed to any effort to eliminate or restrict a veteran's right to compensation for any disability or disabilities that are determined to be secondary to or a manifestation of the service connected disability. VA is responsible for administering the law not making moral judgment concerning what is or is not misconduct, as it did with the issue of tobacco-related illnesses. Such legislation would be an effort to punish certain disabled veterans for their service-related problems.

- Legislation to pay the full rate of compensation to certain Filipino veterans and their survivors. The American Legion continues to support this change in the law to recognize the military service performed by these veterans during World War II.

- Legislation to extend the operations of the Manila VA Regional Office for an additional five years. The American Legion favors the VA's continued presence in the Philippines, in order to provide timely service to these veterans and their families.

- Amend the law to extend the time limit for education benefits for members of the National Guard. Because the National Guard is now such an integral part of the armed forces, The American Legion believes this will be a much needed change in the law.

- Amendment of the Montgomery GI Bill to provide for on-the-job training for certain self-employment training programs. This will assist veterans in taking advantage of additional training through self-employment training programs.

- Legislation authorizing the extension of the Education Advisory Committee. This committee provides valuable input to VA officials.

- Terminate the Education Loan Program. If this program were, in fact, not being utilized as it was originally intended, The American Legion would not object to its termination.

- Convert the Homeless Veterans Guaranteed Transitional House Loan Program to grant program. The American Legion has been a strong supporter of the Homeless Veteran Transitional Housing Program. The American Legion would have no objection to making it into a grant rather than a loan guaranty program.

- Elimination of the 45-day rule for Death Pension. The American Legion has sought the elimination of this restriction, since enactment of OBRA 90.

- Authorize entitlement to government grave marker or headstone for a veteran's marked or unmarked grave, effective from November 1, 1990. This will enable the families of thousands of deceased veterans to obtain a government marker or headstone to reflect their honorable service to the nation.

- Authorize the payment of the burial plot allowance to state veterans' cemeteries. The American Legion has long favored this additional support for the State Veterans Cemetery Program.

Under the new budget format, the request for VBA provides for a total of $33.7 billion in mandatory funding for compensation, pension, education, vocational rehabilitation, and other benefit entitlements. Within this total, $26.3 billion will be required for the compensation program, $3.3 billion for the pension program, $1.9 billion for education, and $2.4 billion for the other veterans benefit programs. This represents an overall increase of $9.8 billion, over FY 2003. Compensation benefits will increase by $1.8 billion reflecting the proposed two-percent COLA, additional benefit payments as a result of *Allen v. Principi*, an increase in diabetes cases, and increases in the net caseload and benefit payments.

Discretionary funding for VBA's nine business lines totals $1.2 billion. While it provides for an additional 17 FTE for the Education Program, which is much needed, The American Legion is

deeply disturbed by the lack of any increase in staffing for compensation program. We believe this will constrain VBA's ability to address the many internal and external challenges emerging in FY 2003, which will have profound budgetary and operational implications for the FY 2004 budget.

Given the many and varied issues that VBA is faced with, it is imperative that Congress critically evaluate the level of discretionary funding requested and whether this will enable the regional offices to operate efficiently and provide timely, quality service that this nation's veterans expect and deserve. Individuals currently on active duty must also be assured that VA will not only be ready and willing to assist them, but have physical capacity to provide them the timely, quality service they too expect and deserve, without compromising current operations or benefits programs.

VBA is continuing with the implementation of its long-term strategic plan to hire and train a new cadre of adjudicators under its succession plan, continue the computer modernization program, and institute a variety of procedural and programmatic changes intended to improve the claims adjudication process. However, external forces, such as the enactment of legislation providing new benefits and medical care services, and precedent decisions of the courts continue to play a major role in changing VBA's plans, policies, and operations.

Over the course of FY 2002 and FY 2003, VBA has been able to make substantial progress toward realizing Secretary Principi's goal of a pending case backlog of 250,000 cases with an average processing time of 100 days by the end of September 2003. In March 2002, the regional office backlog peaked with over 423,000 pending cases requiring rating action. Some 40 percent of these cases were over six months old. There were also 147,000 case requiring some other type of action. Only 12 percent were six months or older. In addition, there were approximately 107,000 cases in appellate status. Of these, over 20 percent were cases that had been remanded by the Board of Veterans Appeals for further required development and readjudication. In human terms, there were over 670,000 claimants waiting and waiting for action on their case. Those with remanded appeals would have been waiting two to three years or longer.

According to VA data, by January 2003, the number of cases awaiting rating action had been reduced to 330,300 with only 32 percent older than six months and the number of cases requiring some other type of action was down to 81,500 but over 28 percent were older than six months. However, the number of cases in appellate status had grown to over 122,000. These statistics give a false impression of improvement. The drop in the claims backlog has been achieved largely at the expense of those whose claims were on appeal at the regional offices. VBA's efforts and resources were focused almost exclusively on pending claims, while appeals, including remands, were virtually ignored, since there was no work credit toward the station's production goals. In response to The American Legion's criticism concerning the lack of action on appeals and the hardship this imposed on disabled veterans, regional offices have, within the last several months, begun to address their appellate workload and pending remands, in particular.

The backlog of claims and appeals are, in our view, a symptom of unresolved systemic problems that have for years adversely affected the claims adjudication and appeals process. These

problems include frequent decision-making errors, lack of compliance with the VCAA's notice and development requirements, the absence of personal accountability, ineffective quality control and quality assurance, and inadequate training. The current work measurement system does not provide reliable, accurate data upon which to assess VBA's real resource needs. VBA is faced with a serious dilemma. While endeavoring to address these thorny quality-related issues, the regional offices are, at the same time, aggressively trying to process claims faster. From the results, it appears they still have not found a way to successfully balance these competing priorities. The American Legion remains concerned by the effects of VBA's emphasis on production rather than quality decision making, i.e., ensuring full and complete development with a decision that is fair and proper - the first time. This results in cases continuing to churn through the system, for the sake of an artificial goal.

The straight line staffing level requested for FY 2004 is based on the assumption that, with the realization of the Secretary's backlog reduction goal, VBA would be able to more effectively address the many quality-related problems as well other long-outstanding issues. Given past performance, The American Legion believes this is an unrealistic strategy and will not afford VBA the flexibility to cope with current workload demands, let alone some unanticipated contingency. As an example, a December 2002 decision by the United States Court of Appeals for the Federal Circuit determined that VA had used the wrong effective date for grants of service connection in Agent Orange-related diabetes claims. To date, action has been completed on over 88,000 Agent Orange-related diabetes claims. Some 17,000 are still pending. Data is not available on he number of cases that will have to be reworked, as a result of this decision. Considering the number of cases involved, this additional workload will be substantial and could significantly alter regional office production timelines and resource requirements. Another example of future workload demand will be VA's role in the Combat Related Special Compensation Pay program.

The American Legion believes that an increase in staffing in the compensation and pension programs for FY 2004 is both prudent and necessary. This reflects the increasingly complex nature of the claims and appeals process, the volume of additional work anticipated in FY 2003-2004, and the ongoing need to rebuild the core adjudication staff to replace the increasing number of experienced decision makers who are retiring within the next one to two years.

APPEALS

Staffing at the Board of Veterans Appeals in FY 2004 will decrease by 3 FTE from the FY 2003 level to 184 FTE. The proposed reduction in personnel is predicated on the expected lower volume of incoming new appeals and returning remands. However, given the number of appeals currently in the system and regional offices' continuing quality problems, The American Legion is concerned that the Board's new Development Program will require additional support both from the Board and from the C&P Service.

Beginning in February 2002, the BVA was given the authority to further develop appeal cases rather than remanding them to the regional office. The American Legion understands that 15 FTE were assigned to this unit. By the end of FY 2002, of the 17,231 appeals decided, the Board had remanded 3,328 or 19 percent. This figure is somewhat misleading, since, in addition

to the regular remands, the Board has undertaken development of over 9,000 cases that would have previously required a remand back to the regional office for further needed development and readjudication. Staffing for this unit is 32 FTE. The goal of the program is to ensure greater attention to full due process and quality decision-making, while providing claimants more timely action on the appeal. However, without a substantial improvement in the quality of regional office decisions, the BVA will have to assume more and more of the regional office's development and adjudication workload, which will require additional staffing resources.

The American Legion is concerned that regional office's focus on speed and production versus quality and propriety is directly contributing to the growth of the appellate backlog, which now tops 123,000 appeals. Each of these cases represents a veteran or a veteran's family who, after many months of waiting, is very dissatisfied with the decision they received on their claim for disability or death benefits. They will wait many more months before their case gets before the Board. In 2002, the average appeals resolution time was 731 days. This is projected to improve to 590 days in FY 2003 and to 520 days in FY 2004.

As noted earlier, The American Legion remains concerned by the problems arising from the regional offices' general lack of compliance with the duty to notify and duty to assist provisions of the Veterans Claims Assistance Act of 2001. This legislation was one of the most significant, pro-veteran changes in the VA claims adjudication system in the past decade. However, VBA continues to give only lip service to this law. While claimants receive what is termed a "VCAA" letter, it generally lacks essential information about the claim and what evidence is actually needed to grant the benefit sought in the particular case. Such letters are usually long and confusing, nonspecific, and full of bureaucratic language, which may or may not be accurate or appropriate to the claim. Rather than helping the individual with the development of the claim, these letters frequently generate more questions, phone calls, and correspondence to their representative or the regional office. In the end, the type of VCAA letter currently in use serves to delay rather than to facilitate the claims process. They set the stage for an appeal and, ultimately, additional work for the BVA and frustration and hardship for thousands of veterans and their families.

EDUCATION

The American Legion commends the increased-funding request for educational programs and support staff for the FY 2004 budget. The American Legion deeply appreciates Congress' attempts to provide for a stronger Montgomery GI Bill, (Chapter 30) including an increase in the monthly entitlement rate for active duty members from $900 to $985. However, due to the increased use of Reservists for homeland security and various overseas commitments around the world, there needs to be a significant increase in their monthly entitlement rates that are currently below $300 a month.

The American Legion also acknowledges the proposed increase in benefits to children and spouses of veterans who died of a service-connected disability or whose service-connected total disability is rated permanent, under Chapter 35 of title 38, United States Code. Having a stronger dependent/survivor educational benefit program is necessary to provide the nation with the caliber of individuals needed in today's all volunteer Armed Forces. Without providing

proper incentives, the military of the 21st century will be hard pressed to effectively carry out its mission.

VOCATIONAL REHABILITATION AND EMPLOYMENT

The American Legion is pleased with the funding level requested for the Vocational Rehabilitation and Employment program in FY 2004. The American Legion has always been a strong supporter of the services this program provides eligible service-disabled veterans. The training and education assist disabled veterans in becoming employable and helps them obtain and maintain suitable employment. The American Legion is pleased by the emphasis placed on the new Employment Specialist position as a means of redirecting the program toward the veteran's employment. During this time of economic uncertainty, meaningful employment should never be denied to veterans, especially those with a service-connected disabling condition.

CONCLUSION

Mr. Chairman and Members of the Committee:

The American Legion has outlined many issues in our testimony today. We believe all of these issues are important and we are fully committed to working with each of you to ensure that America's veterans receive the entitlements they have earned. Whether it is improved accessibility to health care, timely adjudication of disability claims, improved educational benefits or employment services, each and every aspect of these programs touches veterans from every generation. Together we can ensure that these programs remain productive, viable options for the men and women who have chosen to answer the nation's call to arms.

Thank you for allowing The American Legion the opportunity to appear before you today.