ADDENDUM TO THE
STATEMENT OF
ALEC S. PETKOFF, ASSISTANT DIRECTOR,
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON NUMEROUS VETERANS' LEGISLATION MADE ON MAY 9,2007
ON
S. 698, "VETERANS SURVIVORS EDUCATION ENHANCEMENT ACT OF 2007"
S. 1289, "THE VETEANS JUSTICE ASSURANCE ACT OF 2007"
S. 1326, "COMPREHENSIVE VETERANS BENEFITS IMPROVEMENT ACT OF 2007"
AND "VETERANS MENTAL HEALTH CARE ADVOCACY ACT OF 2007"

MAY 23, 2007

S. 698, the "Veterans Survivors Education Enhancement Act of 2007"

S. 698 would expand the current benefit of survivors and dependents educational assistance to an amount greater than the current value of the Montgomery GI Bill (MGIB) education benefit. The aggregate amount would become $80,000 compared to the current full time rate MGIB benefit of $38,700.

The American Legion supports legislation in which the dollar amount of the MGIB entitlement would be indexed to the average cost of college education including tuition, fees, textbooks and other supplies for a commuter student at an accredited university, college or trade school for which they qualify and that the educational cost index be reviewed and adjusted annually.

S. 1289, "The Veterans Justice Assurance Act of 2007"

S. 1289 addresses concerns regarding The United States Court of Appeals for Veterans Claims. The American Legion has the following positions on this bill:

- **Section 2. Repeal of Term Limits for Judges of the United States Court of Appeals for Veterans Claims.**

The American Legion does not have an official position on this provision.

- **Section 3. Increased Salary for Chief Judge of United States Court of Appeals for Veterans Claims.**

The American Legion does not have an official position on this provision.

- **Section 4. Provisions Relating to Recall of Retired Judges of the United States Court of Appeals for Veterans Claims.**

The American Legion supports the recalling of retired judges and we agree with changes to this procedure as stipulated in this provision.

- **Section 5. Additional Discretion in Imposition of Practice and Registration Fees.**

The American Legion does not have an official position on this provision.

- **Section 6. Annual Reports on Workload of United States Court of Appeals for Veterans Claims.**

The American Legion supports this provision, which would require the chief judge of the United States Court of Appeals for Veterans Claims to submit annual workload reports to Congress. The information provided in this report would be extremely beneficial in ensuring the Court has adequate resources, including funding and personnel, as well as ensure proper Congressional oversight of its activities.

- **Section 7. Report on Expansion of Facilities for United States Court of Appeals for Veterans Claims.**

The American Legion does not have an official position on this provision.

S. 1326, "Comprehensive Veterans Benefits Improvement Act of 2007"

TITLE I. HEALTH CARE MATTERS

- **Section 101. Remove Government ban on enrollment of Priority 8 veterans in the VA**
  - Background: In January of 2003 VA announced that it would not allow Priority Group 8 veterans to enroll into the VA health care system. Priority Group 8 veterans are those with no service-connected disabilities or service-connected disabled veterans rate zero percent (non-compensable) and with incomes higher than a geographically adjusted threshold. The Administration justified this move on the grounds that these are "higher income" veterans. The truth, however, is that these veterans can make as little as $27,000 a year. VA estimates that more than 1.5 million Priority Group 8 veterans will have been denied enrollment in the VA health-care system by FY 2008, not based on their military service, but simply on their geographical residence.
  - *This section would remove the government ban on enrollment of Priority Group 8 veterans in the VA. This section is similar to S. 1147, introduced by Senator Murray.*

The American Legion supports this provision.

- **Section 102. Addressing the misclassifications of Priority Group 4 veterans, exempts them from copayments**
  - Background from the IB: "Reports of catastrophically disabled veterans being denied care still persist. VA has acknowledged Public Law 104-262, which specifies that veterans who are receiving an increased pension based on a need for regular aid and attendance or by reason of being permanently housebound and other veterans who are catastrophically disabled will be classified as enrollment Priority Group 4. However, after nine years, the Veterans' Health Administration (VHA) has not developed a consistent and effective mechanism for identifying eligible veterans and properly classifying them."
  - *(b) This section requires the VA to properly reclassify as Priority Group 4's those misclassified veterans and provide them access to related Priority Group 4 benefits.*
  - *(c) This section prohibits the collection of copayments and other fees for hospital or nursing home care for veterans who are catastrophically disabled.*

The American Legion has no official position on this provision.

- **Section 103: Change in rules regarding access to non-VA emergency services**
  - Background from the IB: "The non-VA emergency medical care benefit was established as a safety net for veterans who have no other health-care insurance coverage and experience a medical emergency. Under this benefit, VA will pay for services rendered to a veteran who is found eligible and files a claim for payment for emergency treatment received from a private facility. However, some veterans' claims are denied payment due to the restrictive nature of the eligibility criteria."
  - *This section eliminates the provision requiring veterans to be seen by a VA health-care professional at least once every 24 months to be eligible for non-VA emergency care service. The bill requires only that the veteran be enrolled in VA health care to be eligible.*

The American Legion has no official position on this provision.

- **Section 104: Lung cancer screening pilot program**
  - Background from the IB: "The Department of Defense (DOD) routinely distributed free cigarettes and included cigarette packages in K-rations until 1976. The 1997 Harris report to the Department of Veterans Affairs (VA) documented the higher prevalence of smoking and exposure to carcinogenic materials among the military and estimated costs to VA and TRICARE in the billions of dollars per year. For example, the percentage of Vietnam veterans who "ever smoked" is more than 70 percent, double the civilian "ever smoked" rate of 35 percent."
  - *This section requires that the Secretary of the VA carry out a pilot program for screening of lung cancer in veterans and then report to Congress on this pilot program and what actions Congress should take to establish a permanent program. VA will work with the International Early Lung Cancer Action Program and other public and private entities to develop this pilot program.*

The American Legion supports this provision.

TITLE II. COMPENSATION AND PENSION MATTERS

- **Section 201: Full concurrent receipt**
  - Background: The Concurrent Receipt or Disabled Veterans' Tax issue exists because of a 19th century law that required a dollar-for-dollar offset of earned military retired pay by the amount of awarded disability compensation received from VA. The American Legion strongly believes retired pay is earned for a career of uniformed service and VA disability compensation is recompense for pain, suffering and lost future earning power due to service-connected disabilities. For that reason veterans should receive both payments and not have one offset the other.
  - This legislation would allow veterans to receive both compensation/pension benefits and retired or retirement pay. This section is similar to S. 439, introduced by Senator Reid.

The American Legion supports the complete repeal of the Disabled Veterans' Tax for all service-connected disabled military retirees awarded a VA disability rating regardless of their total service time on active-duty or degree of disability.

- **Section 202**: **Increase in Special Monthly Compensation**
  - Background from the IB: "The Department of Veterans Affairs, under the provisions of title 38, United States Code, section 1114(k) through (s), provides additional special compensation to select categories of veterans with very severe, debilitating disabilities, such as the loss of a limb, loss of certain senses, and to those who require the assistance of an aide for the activities of daily living, such as dressing, toileting, bathing, and eating…. The payment of special monthly compensation, while minimally adjusted for inflation each year, is now no longer sufficient to compensate for the special needs of these veterans."
  - *This section increases the special monthly compensation under title 38, United States code, section 1114(l) through (s) by an immediate 20 percent above the current base amount and additionally, increases by 50 percent the current base amount of special monthly compensation under title 38, United States Code, Section 1114(k).*

The American Legion supports this provision.

- **Section 203: Presumption of service connected disability for combat and military-work related hearing loss and tinnitus and minimum hearing loss disability rating of 10%**
  - (a) Background from the IB: "The VA Schedule for Rating Disabilities does not provide a compensable rating for hearing loss at certain levels severe enough to require hearing aids. The minimum disability rating for any hearing loss warranting use of hearing aids should be 10 percent, and the schedule should be changed accordingly."
  - *This section amends the Schedule for Rating Disabilities to provide a minimum 10 percent disability rating for any hearing loss for which the wearing of a hearing aid or aids is medically indicated.*
  - (b) Background from the IB: "Many combat veterans and veterans that had military duties involving high levels of noise exposure who now suffer from hearing loss or

tinnitus likely related to noise exposure or acoustic trauma during service are unable to prove service connection because of inadequate testing procedures, lax examination practices, or poor record-keeping."
    - *This provision enacts a presumption of service-connected disability for combat veterans and veterans who performed military duties typically involving high levels of noise exposure and who subsequently suffer from tinnitus or hearing loss of a type typically related to noise exposure or acoustic trauma.*

The American Legion supports this provision.

- **Section 204: Repeal the offset between dependency and indemnity compensation and the Survivor Benefit**
    - Background: Under current law, the survivors of veterans who die as a result of service-connected causes are entitled to compensation known as dependency and indemnity compensation (DIC). In addition, military retires can have money deducted from their retiree pay to purchase a survivors annuity. This is called the Survivor Benefit Plan (SBP). However, if the military retiree dies from service-connected causes his or her survivors will receive a SBP payment offset dollar for dollar by the amount of the DIC payment they receive. Like the offset between military retiree pay and VA disability payments, this SBP/DIC offset unfairly denies beneficiaries the full amount of two programs that are meant to compensate for different loses.
    - *This section repeals the offset between dependency and indemnity compensation and the Survivor Benefit Plan. This section is similar to S. 935, introduced by Senator Bill Nelson.*

The American Legion supports this provision.

- **Section 205: Authorize dependency and indemnity compensation (DIC) eligibility at increased rates to survivors of deceased military personnel on the same basis as that for the survivors of totally disabled service-connected veterans**
    - Background from the IB: "Current law authorizes the Department of Veterans Affairs to pay additional, enhanced amounts of dependency and indemnity compensation, in addition to the basic rate, to the surviving spouses of veterans who die from service-connected disabilities, after at least an eight-year period of the veteran's total disability rating prior to death. However, surviving spouses of military service members who die on active duty receive only the basic rate of DIC."
    - *This section sets DIC eligibility at increased rates to survivors of deceased military personnel on the same basis as that for the survivors of totally disabled service-connected veterans.*

The American Legion has no official position on this provision.

- **Section 206: Lower the existing eligibility age for reinstatement of DIC to remarried survivors of service-connected veterans, from 57 years of age to 55 years of age**

- Background from the IB: "Current law permits remarried survivors of veterans who die from service-connected disabilities to requalify for DIC benefits if the remarriage occurs at age 57 or older, or if already remarried, they apply for reinstatement of DIC at age 57. While The Independent Budget veterans' service organizations appreciate the action Congress took to allow this restoration of rightful benefits, the current age threshold of 57 years is based on no objective data related to this population or its needs. Remarried survivors of retirees in other federal programs obtain a similar benefit at age 55."
- *This section lowers the existing eligibility age for reinstatement of DIC to remarried survivors of service-connected veterans, from 57 years of age to 55 years of age.*

The American Legion supports this provision.

- **Section 207: Effective date change for temporary total compensation awards**
  - Background from the IB: "An inequity exists in current law controlling the beginning date for payment of increased compensation based on periods of incapacity due to hospitalization or convalescence. Hospitalization in excess of 21 days for a service-connected disability entitles the veteran to a temporary total disability rating of 100 percent. This rating is effective the first day of hospitalization and continues to the last day of the month of discharge from hospital. Similarly, where surgery for a service-connected disability necessitates at least one month's convalescence or causes complications, or where immobilization of a major joint by cast is necessary, a temporary 100 percent disability rating is awarded effective the date of hospital admission or outpatient visit. Although the effective date of the temporary total disability rating corresponds to the beginning date of hospitalization or treatment, the provisions of 38 U.S.C. § 5111 delay the effective date for payment purposes until the first day of the month following the effective date of the increased rating."
  - *This section amends the law to authorize increased compensation on the basis of a temporary total rating for hospitalization or convalescence to be effective, for payment purposes, on the date of admission to the hospital or the date of treatment, surgery, or other circumstances necessitating convalescence.*

The American Legion supports this provision.

- **Section 208: Review of dependency and indemnity compensation (DIC) program by GAO**
  - Background from the IB: "The VA Dependency and Indemnity Compensation program provides monthly financial support to the widow or widower of a veteran who dies from a service-connected disability (including the survivor of an active duty service member who dies while still in military service). Historically, DIC was intended to enable a survivor of a veteran to maintain a standard of living above the poverty level that might have ensued because of the loss of a spouse's life income and earning power. Current payment rates for DIC are set in law, and generally the maximum monthly payment is limited to $1,033 – about 41 percent of the level of maximum service-connected disability payment to a totally disabled veteran – and considerably less than pensions paid to a survivor of a federal retiree, which is set in

law at 55 percent of that federal annuity. Because of inflation and other economic factors, many widows (and some widowers) are in fact now living in poverty due to lack of income other than DIC."

- *This section requires the Government Accountability Office (GAO) to examine the VA's DIC program to ensure that current policy adequately provides for the survivors of veterans (at a standard of living above the poverty level) who died as a result of service-connected disabilities and make legislative recommendations to Congress to correct any inequities observed from such examination.*

The American Legion supports this provision.

TITLE III. INSURANCE MATTERS

- **Section 301: Lower premiums for Service-Disabled Veterans Insurance (SDVI) due to changed mortality rates**
  - Background from the IB: "Because of service-connected disabilities, disabled veterans have difficulty getting or are charged higher premiums for life insurance on the commercial market. Congress therefore created the SDVI program to furnish disabled veterans life insurance at standard rates. When this program began in 1951, its rates, based on mortality tables then in use, were competitive with commercial insurance. Commercial rates have since been lowered to reflect improved life expectancy shown by current mortality tables. VA continues to base its rates on mortality tables from 1941 however. Consequently, SDVI premiums are no longer competitive with commercial insurance and therefore no longer provide the intended benefit for eligible veterans."
  - *This section revises the premium schedule for SDVI to reflect current mortality tables and increase the maximum protection under base SDVI policies to at least $50,000 while allowing options for the level of insurance veterans can choose from.*

Sec. 301, S. 1326 looks to be the best of the several recent legislative proposals for finally updating and enhancing the Service-Disabled Veterans Insurance (SDVI) program. It takes the present SDVI program and just raises the maximum coverage limit from the current $10,000 to $50,000. It leaves the provision for a disability waiver of premiums in place for those veterans unable to follow substantially gainful employment due to their disabilities (for most these are service-connected disabilities). It changes the long outdated mortality table, upon which premiums are based, from the current 1941 table to the 2001 table, which will lower premiums on average quite a bit (in the 30-40% range) for all SDVI policyholders not on premium waiver, and it permits veterans the option to have a mix of permanent plans as well as Term coverage. (Permanent plans, while more expensive, build loan and cash values.)

The bill would cap SDVI at $50,000 under any combination of SDVI or Supplemental SDVI coverage. In fact, it effectively eliminates Supplemental SDVI for new policyholders who qualify for disability waiver of premiums since they would naturally go for the maximum for free. However, the Supplemental SDVI program is of course still needed since many would probably take out a lesser amount of coverage due to premium costs (even with a new rate table being used). Should these insured veterans become TD and qualify for a premium waiver at a

later date prior to age 65, when they may very well no longer be eligible for new SDVI coverage, they may very much need and want Supplemental coverage at that time.

The overly strict qualifying criteria are still maintained. That is, a veteran must apply within two years of his or her last NEW service-connected rating, and must be in good health except for service-connected disabilities. While the good health criteria isn't really arguable for this type of insurance, by definition, the two year period should be increased to at least five years (a large portion of denials are because of a veteran being outside of the two year period, which is an arbitrarily derived one, of course). Also, increases in service-connection ratings – the natural progression of such disabilities – should be permitted as well for purposes of the eligibility period. This is often when such veterans realize they need coverage the most and, as in Compensation, recognition should be given to this factor. Again, the NEW disability rule is an arbitrary one designed to keep eligibility down for budget purposes. There is also no provision for an open period of one or two years for those existing SDVI insured veterans, who no longer would meet the eligibility criteria for new SDVI coverage, to come in and apply for more coverage should this initiative be passed.

The American Legion is concerned with a possible deletion of the long-standing provision for Gratuitous SDVI in Title 38, Sec. 1922(b)(1). Due to the wording of S. 1326 (a) (1) and (2), there is confusion as to whether this may delete Title 38 (b)(1) due to the wording of the bill.

The American Legion certainly wishes the provision for Gratuitous SDVI to remain, at least as it has been ($10,000) if it should not be possible for it also to be included in the proposed $50,000 increase. This provision entails relatively few cases annually (perhaps several hundreds), but is very needful for those beneficiaries falling under it. Gratuitous insurance is to permit an insurance settlement in cases where a veteran is mentally incompetent from a service-connected disability, and would qualify for SDVI, but died before being able to make an application for it. The requirements, listed in Title 38, 1922(b)(1), are quite restrictive, so this does not impact much on the overall budget. However, we feel this should remain as a matter of equity and fairness for this class of service-connected veterans. The provision has stood the test of time in this regard, has endured for generations, and The American Legion should be most opposed to its removal. We should bring it up only as a concern. Actually, as a matter of equity, should the main intent of S. 1326 become law, the increase to $50,000 should also apply to Gratuitous SDVI, as well as regular SDVI, since in these cases it is virtually always that the veteran has died from service-connected disabilities that also rendered him or her mentally incompetent, and so unable to make decisions for benefits such as insurance, plus the families involved are usually in the worst of financial straits.

TITLE IV. BURIAL AND MEMORIAL MATTERS

- **Section 401**: **Increase in burial benefits**
  - Background from the IB: “There has been serious erosion in the value of burial allowance benefits over the years. While these benefits were never intended to cover the full costs of burial, they now pay for only a small fraction of what they covered in 1973, when the federal government first started paying burial benefits for our veterans.”

- *This section increases the plot allowance from $300 to $745 and expands the eligibility for the plot allowance for all veterans who would be eligible for burial in a national cemetery, not just those who served during wartime. This section also contains a provision to adjust these payments annually.*

The American Legion supports this provision.

- **Section 402: Increase in Funeral and Burial Expenses**
  - Background from the IB: "The nonservice-connected benefit was last adjusted in 1978, and today it covers just 6 percent of funeral costs…. In the 108th Congress, the allowance for service-connected deaths was increased from $500 to $2,000. Prior to this adjustment, the allowance had been untouched since 1988. Clearly, it is time this allowance was raised to make a more meaningful contribution to the costs of burial for our veterans."
  - *The section increases the nonservice-connected benefit from $300 to $1,270. This section then increases the service-connected benefit from $2,000 to $4,100. This section also contains a provision to adjust these payments annually.*

The American Legion supports this provision.

- **Section 403: Authorize $37 million for State Cemetery Grants Program**
  - Background from the IB: "The State Cemetery Grants Program (SCGP) complements the NCA [National Cemetery Administration] mission to establish gravesites for veterans in those areas where the NCA cannot fully respond to the burial needs of veterans. Several incentives are in place to assist states in this effort. For example, the NCA can provide up to 100 percent of the development cost for an approved cemetery project, including design, construction, and administration. In addition, new equipment, such as mowers and backhoes, can be provided for new cemeteries. Since 1978, the Department of Veterans Affairs has more than doubled acreage available and accommodated more than a 100 percent increase in burials."
  - *This section authorizes $37 million for the State Cemetery Grants Program a $5 million increase over the FY07 level.*

The National Cemetery Administration's request for $32 million dollars for the current fiscal year is to be used to establish six new cemeteries (Abilene, TX; Des Moines, IA; Glennville, GA; Fort Stanton, NM; Missoula, MT; Williamstown, KY) and to expand four others (Cheltenham, MD; Crownsville, MD; Jacksonville, NC; Kona Coast, HI). Determining an "average cost" to build a new state cemetery or to expand an existing one is very difficult. Many factors influence cost, such as location, size and the availability of public utilities. Two new state cemeteries planned for obligation in FY 2007 are Abilene, Texas ($7.1 million) and Des Moines, Iowa ($7.5 million). While these awards may be delayed in being granted due to the states not being ready to proceed with the construction of a new cemetery, The American Legion would suggest that it is unwise to grant money on the hopes that a state will not be able to accept the grant in a timely fashion. Therefore, for the purpose of budgeting, the VA should assume that grants will be awarded in a timely fashion.

	President's budget request for FY 07	*The American Legion's FY 08 Recommended*
State Grants for Veterans' Cemeteries	***$32 million***	***$42 million***
Abilene, Texas	***$7.1 million***	***$7.1 million***
Des Moines, Iowa	***$7.5 million***	***$7.5 million***
Glennville, GA	***$17.4 million (average dollars left per project is $2.175 million)***	***$27.4 million (average dollars left per project is $3.425 million.)***
Fort Stanton, NM		
Missoula, MT		
Williamstown, KY		
Cheltenham, MD		
Crownsville, MD		
Jacksonville, NC		
Kona Coast, HI		

By only budgeting for $4 million per project, The American Legion predicts serious shortfalls in State Grant funding. After the Texas and Des Moines' cemeteries are granted, an average of only $2.175 million will be left for each of the eight other projects remaining. The only way to avoid this funding shortage will be to hope that states are: not ready to receive the money; take the money from other construction needs in VA; or to delay the construction of these highly needed cemeteries.

The American Legion recommends $42 million for the State Cemetery Grants Program in FY 2008.

TITLE V. HOUSING MATTERS

- **Section 501: Increases housing grants and allowing subsequent specialty adapted housing grants**
  - Background from the IB: "VA provides specially adapted housing grants of up to $50,000 to veterans with service-connected disabilities consisting of certain combinations of loss or loss of use of extremities and blindness or other organic diseases or injuries. Veterans with service-connected blindness alone or with loss or loss of use of both upper extremities may receive a home adaptation grant of up to $10,000…Increases in housing and home adaptation grants have been infrequent, although real estate and construction costs rise continually."
  - *This section increases the housing grant from $50,000 to $60,000 and increases the amount of the home adaptation grant for veterans with service-connected blindness or with loss or loss of use of both upper extremities from $10,000 to $12,000. This section also establishes a mechanism for periodic increases in this grant pegged to a housing price index. This section also establishes a grant to cover the costs of home adaptations for veterans who replace their specially adapted homes with new housing.*

The American Legion supports this provision.

- **Section 502: Increase the maximum coverage under Veterans Mortgage Life Insurance (VMLI) from $90,000 to $150,000**
  - Background from the IB: "The maximum VMLI coverage was last increased in 1992. Since then, housing costs have risen substantially. Because of the great geographic differentials in the costs associated with accessible housing, many veterans have mortgages that exceed the maximum face value of VMLI. Thus, the current maximum coverage amount does not cover many catastrophically disabled veterans' outstanding mortgages. Moreover, severely disabled veterans may not have the option of purchasing extra life insurance coverage from commercial insurers at affordable premiums."
  - *This section increases the maximum coverage under VMLI from $90,000 to $150,000.*

Title IV, Sec. 502 proposes raising the Veterans Mortgage Life Insurance limit to $150,000 from the current $90,000. This is too low. VA has looked for a $200,000 limit here for years, and the $200,000 limit (as a start) in Senator Akaka's bill (S. 1315, Sec. 2) is much better. This would allow some 93% of outstanding mortgage balances to be covered (presently it is 64 percent). We all know how housing costs have gone in the past decade or so. The coverage limit should actually start at $200,000 and be linked to some appropriate economic market indicator.

- **Section 503: Full eligibility for VA Home loan guaranty program for Selected Reserve forces**
  - Background from the IB: "Various incentive, service, and benefit programs designed a half century ago for a far different Guard and Reserve philosophy are no longer adequate to address demands on today's Guard and Reserve forces. Accordingly, steps must be taken by Congress to upgrade National Guard and Reserve benefits and support programs to a level commensurate with the sacrifices being made by these patriotic volunteers. Such enhancements should provide Guard and Reserve personnel a level of benefits comparable to their active duty counterparts and provide one means to ease the tremendous stresses now being imposed on Guard and Reserve members and their families, and to bring the relevance of these benefits into 21st century application… With concern about the current missions of the Guard and Reserve forces, Congress must take necessary action to upgrade and modernize Guard and Reserve benefits, to include more comprehensive health care, equivalent Montgomery GI bill educational benefits, and full eligibility for the VA Home Loan guaranty program."
  - *This section gives Selected Reserve forces who have served at least a year full eligibility to the VA Home loan guaranty program.*

The American Legion does not have an official position on this resolution

"Until the Gulf Era is ended by law or Presidential Proclamation, persons on active duty are eligible for a home loan after serving on continuous active duty for 90 days'

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- **Section 504: No increase in and return of funding fees for home loan funding to the levels agreed before the 108th Congress**

- Background from the IB: "Congress initially imposed funding fees upon VA guaranteed home loans under budget reconciliation provisions as a temporary deficit reduction measure. Now, loan fees are a regular feature of all VA home loans except those exempted. During its first session, the 108th Congress increased these loan fees. The purpose of the increases was to generate additional revenues to cover the costs of improvements and cost-of-living adjustments in other veterans' programs. In effect, this legislation requires one group of veterans (and especially our young active duty military), those subject to loan fees, to pay for the benefits of another group of veterans, those benefiting from the programs improved or adjusted for increases in the cost of living."
- *This section returns the home loan funding fees to the levels before the Veterans Benefit Act of 2003 (108th Congress).*

The American Legion supports reducing or eliminating the funding fee.

TITLE VI. BENEFITS ADMINISTRATION

- **Section 601: Revision of the power of the Court of Appeals for the Federal Circuit and of the Rules of the Court of Appeals for Veterans Claims**
  - (a) Background from the IB: "Under 38 U.S.C. § 502, the Court of Appeals for the Federal Circuit (CAFC) may review directly challenges to VA's rulemaking. Section 502 exempts from judicial review actions relating to the adoption or revision of the VA Schedule for Rating Disabilities, however. Formulation of criteria for evaluating reductions in earning capacity from various injuries and diseases requires expertise not generally available in Congress. Similarly, unlike other matters of law, this is an area outside the expertise of the courts. Unfortunately, without any constraints or oversight whatsoever, VA is free to promulgate rules for rating disabilities that do not have as their basis reduction in earning capacity. The coauthors of The Independent Budget have become alarmed by the arbitrary nature of recent proposals to adopt or revise criteria for evaluating disabilities. If it so desired, VA could issue a rule that a totally paralyzed veteran, for example, would only be compensated as 10 percent disabled. VA should not be empowered to issue rules that are clearly arbitrary and capricious."
  - *This section amends 38 U.S.C. § 502 to authorize the CAFC to review and set aside changes to the Schedule for Rating Disabilities found to be arbitrary and capricious or clearly in violation of statutory provisions.*
  - (b) Background from the IB: "The CAVC upholds Department of Veterans Affairs (VA) factual findings unless they are clearly erroneous. Clearly erroneous is the standard for appellate court reversal of a district court's findings. When there is a "plausible basis" for a factual finding, it is not clearly erroneous under the case law from other courts, which the CAVC has applied to Board of Veterans' Appeals (BVA) findings."
  - *This sections amends 38 U.S.C. § 7261 of title 38 United States Code to provide that the court will hold unlawful and set aside any finding of material fact that is not reasonably supported by a preponderance of the evidence.*

The American Legion has no official position on this provision.

- **Section 602: Elimination of Rounding Down of Certain Cost-of-Living Adjustments**
  - Background from the IB: "Disability compensation and dependency and indemnity compensation (DIC) rates have historically been increased each year to keep these benefits even with the cost of living. However, as a temporary measure to reduce the budget deficit, Congress enacted legislation to require monthly payments, after adjustment for increases in the cost of living, to be rounded down to the nearest whole dollar amount. Finding this a convenient way to meet budget reconciliation targets and fund spending for other purposes, Congress seemingly has become unable to break its recurring habit of extending this round-down provision and has extended it even in the face of prior budget surpluses. Inexplicably, VA budgets have recommended that Congress make the round-down requirement a permanent part of the law. While rounding down compensation rates for one or two years may not seriously degrade its effectiveness, the cumulative effect over several years will substantially erode the value of compensation. Moreover, extended – and certainly permanent – rounding down is entirely unjustified. It robs monies from the benefits of some of our most deserving veterans and their dependents and survivors, who must rely on their modest VA compensation for the necessities of life."
  - *This section removes the round-down provisions for dependency compensation and requires the payments to be made at the full-calculated amounts.*

The American Legion supports this provision.

- **Section 603: Creation of a Department of Veterans Affairs and Department of Defense Joint Data Exchange Bureau to Improve Claims Processing and Clinical Data Sharing**
  - One problem that currently exists between the VA and the DoD is that they do not consistently use the same clinical vocabularies and therefore clinical data exchange, which is so critical for both effective healthcare and disability rating, has created longstanding inefficiencies in both Departments. This exchange is particularly important today because the DoD has begun to amass critical amounts of data on service members because of the deployment of DoD's new electronic health record, as well as surveys that are now tracking individuals' health at regular intervals over their service careers.
  - *This section creates a joint VA-DoD Data Exchange Bureau to establish technology and standards for clinical data recording and sharing between the two agencies to improve healthcare delivery and accuracy and speed of claims processing. This Bureau will establish an ongoing mapping service that will ensure that data produced by clinical software systems are understandable in both Departments. Importantly, this Bureau is envisioned to produce mappings that are completely in the public domain, which will ultimately encourage the commercial sector to use the mappings as well. Ultimately this will speed the adoption of clinical data interoperability nationally, long understood as a major impediment to the adoption of electronic health records and their attendant promise of increased quality and cost savings.*

The American Legion supports this provision.

- **Section 604: Joint study and report from the DoD and the VA on automating the Veterans Administration Schedule for Rating Disabilities (VASRD)**
  - Background: One of the most critical tools in the disability ratings process is the Veterans Administration Schedule for Rating Disabilities (VASRD). It is used by both the VBA and the military services for rating disability claims. Given the size and complexity of the rulesets inherent in the Schedule, many claims are inaccurate, variable, and subject to appeal by veterans. There would be tremendous value in getting a complete and standardized set of data on each veteran, relevant to his or her particular problems, that can then be linked to the relevant sections of the Schedule for more accurate ratings, the same way, regardless of the skill of the rater.
  - *This section requires the DoD and the VA to produce a joint study on the interoperability of both of their current disability rating systems and the feasibility and advisability of automating the VASRD so as to improve the timeliness and accuracy of claims processing. The report also requires the DoD and VA to produce legislative proposals for achieving this goal and funding requirements.*

The American Legion does not oppose the idea of such a study; however, as the Veterans' Disability Benefits Commission (VDBC) has already commissioned the Institute of Medicine (IOM) to conduct a study of the VASRD that will be addressed in the Commission's report and recommendations to Congress and the President (due October 1, 2007), it would be best to wait for the outcome of that study before mandating a similar study.

TITLE VII. OTHER BENEFITS MATTERS

- **Section 701: Increasing specially adapted car grant/conveyances/adaptive equipment, p. 16/17, IB**
  - Background from the IB: "The Department of Veterans Affairs provides certain severely disabled veterans and service members grants for the purchase of automobiles or other conveyances. This grant also provides for adaptive equipment necessary for safe operation of these vehicles. Veterans suffering from service-connected ankylosis of one or both knees or hips are eligible for only the adaptive equipment. This program also authorizes replacement or repair of adaptive equipment. Because of a lack of adjustments to keep pace with increased costs, the value of the automobile allowance has substantially eroded through the years. In 1946 the $1,600 allowance represented 85 percent of average retail cost and a sufficient amount to pay the full cost of automobiles in the "low-price field." By contrast, in 1997 the allowance was $5,500, and the average retail cost of new automobiles, according to the National Automobile Dealers Association, was $21,750. Currently, the $11,000 automobile allowance represents only about 39 percent of the average cost of a new automobile, which is $28,105."
  - *This section increases the automobile grant, the specially adapted car grant, conveyances, and adaptive equipment grant from $11,000 to $22,484 and adjusts this amount automatically each year using an average retail car cost index established by the Secretary.*

The American Legion supports this provision.

- **Section 702: Refund GI Bill contributions where under general or honorable conditions discharge**
  - Background from the IB: "The Montgomery GI Bill–Active Duty program provides educational assistance to veterans who first entered active duty (including full-time National Guard duty) after June 30, 1985. To be eligible, service members must have elected to participate in the program and made monthly contributions from their military pay. These contributions are not refundable. Eligibility is also subject to an honorable discharge. Discharges characterized as "under honorable conditions" or "general" do not qualify."
  - *This section allows the refund of GI Bill contributions if the Secretary of Defense determines that the discharge, under honorable or general conditions, was due to minor infractions or deficiencies.*

The American Legion has no official position on this provision; however, The American Legion opposes requirement to "contribute" $1,200 to participate in an earned benefit – the Montgomery GI Bill contribution.

- **Section 703: Study by the GAO on whether there is a need for providing assisted living to veterans**
  - Background from the IB: "Assisted living can be a viable alternative to nursing home care for many of America's aging veterans who require assistance with the activities of daily living (ADLs) or the instrumental activities of daily living (IADLs). Assisted living offers a combination of individualized services, which may include meals, personal assistance, and recreation provided in a homelike setting. While assisted living is not currently a benefit that is available to veterans, even though some veterans have eligibility for nursing home care, the authors of The Independent Budget believe Congress should consider providing an assisted living benefit to veterans as an alternative to nursing home care."
  - *This section directs the GAO to study the provision of assisted living and produce a report, including sections looking at possibilities of cost savings for the VA by providing assisted living.*

The American Legion supports this provision.

Draft Legislation, "Veterans Mental Health Care Advocacy Act of 2007" (formerly the "Iraq and Afghanistan Veterans Mental Health and Advocacy Act of 2007")

Section 3 of the legislation, "Pilot Program on provision of Legal Assistance to Assist Members of the Armed Forces Receive Health Care, Benefits and Services From Department of Veterans Affairs and Department of Defense", is well intentioned. However, this provision appears to overlook the fact that these types of services are already provided by Veterans' Service Organizations (VSOs) and State Departments of Veterans' Affairs free of charge, thus making the pilot program addressed in this legislation unnecessary. The American Legion recommends

a change of focus in this section to look at how the current support structure (VSOs, states, etc.) is currently being utilized in order to see where any improvements can be made.

Conclusion

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on these important measures. As always, The American Legion welcomes the opportunity to work closely with you and your colleagues on enactment of legislation in the best interest of America's veterans and their families.