STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ON
NUMEROUS VETERANS' LEGISLATION

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Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present The American Legion's views on the bills being considered by the Committee today. The American Legion commends the Committee for holding a hearing to discuss these important and timely issues.

S. 1718: "Veterans Education Tuition Support Act"

The purpose of this bill is to identify the current plight that returning college-bound service members have been unjustly enduring from some institutions of higher learning. S. 1718 recognizes the complete transformation of the Reserve Components into an operational force. Activations and intermittent duty such as training or duty in support of operations are now an obligation of service.

The American Legion supports the proposed bill to amend the Servicemembers Civil Relief Act (Public Law 108-189) that will prohibit unfair penalties on members who are called to active-duty service while enrolled in institutions of higher education. A refund of tuition and fees pre-paid by a service member to a university for classes not taken due to performance of military obligations is long overdue. The American Legion is concerned that activations during the middle of a course is extremely disruptive and while this legislation aims to correct injustices financially, in most cases the veteran must restart the course and has lost valuable time due to deployment.

This legislation also aims to allow a service member the opportunity to reenroll with the same educational and academic status that they had when activated. In a sense, it will be as if the service member never left college and therefore with not be penalized.

The American Legion supports S.1718.

S. 2090

The purpose of this bill is to protect privacy and security concerns in court records.

The American Legion supports this bill. Given the rise in identity theft during the last several years, proper information security has become extremely important. This bill is both appropriate and timely.

S. 2091

The purpose of this bill is to increase the number of active judges for the United States Court of Appeals for Veterans Claims.

The American Legion supports this bill. Given the large number of cases appealed to the Court and the Court's recent need to recall retired judges to help with the caseload, it is reasonable to increase the number of active judges from seven to nine as proposed in this legislation.

S. 2138: "Department of Veterans Affairs Reorganization Act of 2007"

The purpose of this bill is to amend title 38, United States Code, to establish within the Department of Veterans Affairs the position of Assistant Secretary for Acquisition, Logistics, and Construction, and for other purposes.

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

S. 2139: "National Guard and Reserve Educational Benefits Fairness Act of 2007"

The purpose of this bill is to provide educational assistance under the Montgomery GI Bill for members of the National Guard and Reserve who serve extended period of continuous active duty that include a prolonged period of service in certain theaters of operation. Although this bill is a step in the right direction by providing benefits for time served, The American Legion is concerned that it fails to recognize those veterans that complete their tours honorably, but not serve an aggregate of 20 months, and do not meet the other requirements of eligibility. These veterans have served their country honorably yet are excluded from earned benefits.

Furthermore, The American Legion also believes that a servicemember or veteran should have the authority to transfer their educational benefits to family members, such as their spouse and children. This is an earned benefit that should be used at their discretion and based on family need. This transferability option would show the thanks of a grateful nation to the servicemember or veteran. Transferability also recognizes the importance of family support to the servicemember or veteran because, although the nation recruits the servicemember, it re-enlists the family for continued service by the servicemember in the armed forces.

The American Legion supports the primary concept of this bill and supports benefits for time spent on Federal activation at the full time active duty rate.

S. 2309: "Compensation for Combat Veterans Act"

The purpose of this bill is to amend title 38, United States Code, to clarify the service treatable as service engaged in combat with the enemy for the utilization of non-official evidence for proof of service-connection in a combat-related disease or injury.

The American Legion supports the intent of this bill. Given the evolving nature of modern warfare, as reflected in the enemy's unconventional tactics in Iraq and Afghanistan, the very term "engaged in combat with enemy" takes on a whole new meaning. On today's battlefield there is no longer a safe or rear area. Personnel in traditional support roles are subject to the same attacks and dangers, such as rocket and mortar attacks, sniper fire and improvised explosive devices, as are their combat arms counterparts. It makes sense to clarify the definition of "engaged in combat with the enemy" under 38 U.S.C. section 1154(b) to recognize this fact.

S. 2471: "USERRA Enforcement Improvement Act of 2007"

The purpose of this bill is to amend title 38, U.S.C., to improve the enforcement of the Uniformed Services Employment and Reemployment Rights Act of 1994, and for other purposes.

The American Legion is deeply concerned with the protection of recently separated military veterans employment and reemployment rights. Furthermore, the American Legion believes the Federal government must demonstrate zero-tolerance of illegal and egregious hiring practices that ignore USERRA provisions. Currently, veterans are filing claims after the non-compliance employment or employment events occur, but due to delayed resolution of the claims, many veterans are experiencing unnecessary financial hardships from the time of grievance to final determination. This bill will impose timely, realistic deadline on Federal agencies responsible to process USERRA claims.

The American Legion supports this bill which will strengthen veterans' employment and reemployment rights.

S. 2550: "Combat Veterans Debt Elimination Act of 2008"

The purpose of this bill is to amend title 38, U.S.C., to prohibit the Secretary of Veterans Affairs from collecting certain debts owed to the United States by members of the Armed Forces and veterans who die as a result of an injury incurred or aggravated on active duty in a combat zone, and for other purposes.

The American Legion supports this legislation.

S. 2573: "Veterans Mental Health Treatment First Act"

The purpose of this bill is to amend title 38, U.S.C., to require a program of mental health care and rehabilitation for veterans for service-related post-traumatic stress disorder (PTSD), depression, anxiety disorder, or a related substance use disorder, and for other purposes.

The American Legion supports S. 2573.

S. 2617: "Veterans' Compensation Cost-of-Living Adjustment Act of 2008"

The purpose of this bill is to increase, effective as of December 1, 2008, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans. The amount of increase shall be the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2008.

The American Legion supports this annual cost-of-living adjustment in compensation benefits, including dependency and indemnity compensation (DIC) recipients. It is imperative that Congress annually considers the economic needs of disabled veterans and their survivors and provide an appropriate cost-of-living adjustment to their benefits, especially should the adjustment need to be higher than that provided to other Federal beneficiaries, such as Social Security recipients.

S. 2674: "America's Wounded Warriors Act"

The purpose of this bill is to amend titles 10 and 38, U.S.C., to improve and enhance procedures for the retirement of members of the Armed Forces for disability and to improve and enhance authorities for the rating and compensation of service-connected disabilities in veterans, and for other purposes.

This legislation proposes sweeping changes of both the Department of Defense (DOD) disability retirement system and the Department of Veterans Affairs (VA) disability compensation system and is comprised of two titles.

Title I-Reform of Military Disability System & Aid to Families

This title seeks to establish a new disability retirement system, paying a lifetime annuity to those determined to be unfit for continued military service as a result of an injury or disease incurred or aggravated in the line of duty. DOD would no longer assign disability ratings for the purpose of determining eligibility to medical retirement or medical severance payments. For those found unfit for military service, the annuity would be based on the member's rank and years of service. There would also be no offset between the annuity payment and future VA compensation payments.

This title also directs the Secretary of Defense to conduct a study to determine lifetime eligibility to medical and dental care under TRICARE under the new system. If Congress subsequently fails to establish legislation governing TRICARE eligibility, the Secretary of Defense would establish eligibility by regulation no later than the effective date of implementation of the new system. The American Legion supports the proposed changes to the military's disability retirement except for the provision regarding eligibility to lifetime medical and dental care under TRICARE. The American Legion supports the provision in the House of Representatives companion bill, H.R. 5509, wherein retired pay under the new system is treated as retired pay for all purposes under the amended title, including for purposes of eligibility for medical and dental care. We urge that this provision be amended to be consistent with the version in H.R. 5509.

Title II-Modernization of VA Disability Compensation System

The specifics of a new VA compensation system, including the amount of compensation payments, quality of life and transition payments, as well as development of a new rating schedule, will be the subject of a series of studies culminating with a report and proposals to Congress. The legislation specifically directs the Secretary of Veterans Affairs to consult with veterans' service organizations (VSO) in conjunction with the studies. VA's report on the studies is due to Congress in 7 months and, within 9 months following submission of the report, VA is required to submit a proposal to Congress detailing the new compensation and transition payment rate structure. Congress, prior to the new system going into effect, would have the ability to review the proposed new payment rates and vote on a privileged measure to formally reject them. However, in the absence of such a formal rejection by Congress, the new rates would go into effect.

This title contains some promising aspects, such as the inclusion of the VSO community in the study process as well as the establishment of quality of life and transition payments. There are, however, some proposals in this legislation which give rise for concern and actual opposition in some instances.

For example, the legislation specifically directs the VA Secretary to address the following in its study:

> The nature of injuries and combination of injuries for which disability compensation is payable under various disability compensation programs of the Federal government, State governments, and other countries.
>
> To the extent applicable, the nature of injuries and combination of injuries for which disability compensation is payable under commercial disability insurance.

Military service is inherently different from any other form of employment and examining other disability compensation and insurance programs for the purpose of drawing comparisons to the disability compensation program administered by the Department of Veterans Affairs is not appropriate. Moreover, The American Legion would strongly oppose any attempt to adjust VA's compensation program so it more closely resembles other compensation programs, as specifically referenced in the legislation, as such an adjustment would most likely result in a reduction or restriction of current VA disability benefits.

In determining the amounts of compensation under the study, the VA Secretary is specifically directed to consider the following:

> The appropriate injuries or combination of injuries to be covered by the new schedule for rating service-connected disabilities.
>
> The appropriate level of compensation, including an age-appropriate level of compensation at time of initial filing of claims, under that schedule for loss of earnings.

The American Legion opposes any attempt to limit the chronic disabilities or illnesses for which a veteran is eligible to establish service connection. The American Legion also opposes the use of age in determining the level or amount of compensation as the amount of compensation should be based on the severity of the condition, regardless of age, as is the current practice.

This legislation also makes the attempt to insert congressional oversight directly into the process by allowing Congress to formally reject VA's proposal detailing the new compensation and transition payment rate structure. While this provision may appear to be promising, the method to reject the proposal, a joint resolution of the House and Senate, is a very involved process and it is likely that the Secretary's proposals will take effect without any congressional action.

Additionally, as proposed in the legislation, veterans in the current system will remain in that system (for payment purposes) but can elect to opt into the new system or will automatically be put into the new system upon the filing of a new claim. The American Legion is concerned that there will undoubtedly be a number of veterans for whom it would be more advantageous to remain under the current system but, nonetheless, enter the new system without fully realizing the possible disadvantages. We, therefore, urge the inclusion of language in this legislation that protects the claimant from the reduction of benefits, established under the old system, especially in those cases where the veteran has been so rated for a period of 20 years or more (such a designation currently prohibits the reduction in rating except where the rating was based on fraud). At the very least, VA needs to be ordered to provide clear notice to veterans that entering into the new system does not guarantee an increase in benefits and could actually result in the reduction of benefits. The American Legion also strongly opposes section 207(b)(3) of this bill that amends the current law that generally prohibits the reduction of a disability rating that has been in effect for 20 years or more. We see no need to make such a change that is obviously designed to allow for reduction of benefits and would undoubtedly have an adverse impact on many service -connected disabled veterans under the proposed new system.

S. 2683

The purpose of this bill is to amend title 38, U.S.C., to modify certain authorities relating to educational assistance benefits for veterans, and for other purposes. Historically, The American Legion has encouraged the development of essential benefits to help attract and retain service members into the Armed Services, as well as to assist them in making the best possible transition back to the civilian community. S. 2683 aims to better serve veterans and ultimately assist them in financial stability.

As stated earlier, The American Legion supports providing servicemembers and veterans the authority to transfer their educational benefits to family members, such as their spouse and children. This is an earned benefit that should be used at their discretion and based on family need.

The American Legion proudly supports this bill.

S. 2701

The purpose of this bill is to direct the VA Secretary to establish a national cemetery in the eastern Nebraska region to serve veterans in the eastern Nebraska and western Iowa regions

The American Legion supports the policy of the National Cemetery Administration (NCA). The area defined in this bill seems to meet the (NCA's) criteria for establishing a new veterans' cemetery.

The American Legion supports this bill.

S. 2737: "Veterans' Rating Schedule Review Act"

The purpose of this bill is to amend title 38, U.S.C., to grant jurisdiction to the United States Court of Appeals for Veterans Claims (CAVC or Court) to review the schedule of ratings for disabilities under section 1151 of that title with statutory requirements applicable to entitlement to disability compensation under chapter 11 of that title, and for other purposes.

The American Legion supports the intent of this bill, which is to allow the CAVC to be able to determine whether sections of part 4 of 38 Code of Federal Regulations comply with chapter 11 of title 38, U SC. Permitting the Court to perform such a review is important because a regulation should be consistent with, and never be able to override a Federal statute.

S. 2768

The purpose of this bill is to provide a temporary increase in the maximum loan guaranty amount for certain housing loans guaranteed by the Secretary of Veterans Affairs. Presently, the Veterans Benefits Act of 2004 increased VA home loan eligibility for qualified veterans for a home loan up to $417,000. Qualified veterans purchasing a home in the high cost areas of Alaska, Guam, Hawaii and the U.S. Virgin Islands may obtain a no-down payment home loan of up to $625,500. This increase in the maximum loan guaranty amount offered by S. 2768 should become permanent.

The American Legion supports this bill.

S. 2825: "Veterans' Compensation Equity Act of 2008"

The purpose of this bill is to amend title 38, U.S.C., to provide a minimum disability rating for veterans receiving medical treatment for a service-connected disability.

The American Legion fully supports this legislation. It is reasonable to conclude that service-connected conditions that do not meet the schedular's requirements for a compensable evaluation but, nonetheless, require regular treatment, cause economic impairment and should therefore be afforded a minimum rating of 10 percent.

S. 2864: "Training and Rehabilitation for Disabled Veterans Enhancement Act of 2008"

The purpose of this bill is to amend title 38, U.S.C., to include improvement in quality-of-life in the objectives of training and rehabilitation for veterans with service-connected disabilities, and for other purposes.

The American Legion endorses this bill which will increase the number of service-connected disabled veterans who would benefit directly from the services this program currently provides and ultimately aid in their recovery from the wounds of war.

Conclusion

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on these important measures. We will provide the Committee with additional views on those draft bills we did not have time to thoroughly review. Those draft bills include: the Housing Refinance legislation; the bill directing the Secretary of Veterans Affairs to provide a plot allowance for spouses and children of certain veterans who are buried in State cemeteries; the bill to require reports on the progress of the Secretary of Veterans Affairs in addressing causes for variances in compensation payments for veterans for service-connected disabilities; the bill to make stillborns insurable dependents for purposes of the Servicemembers' Group Life Insurance program; and the bill to require a report on the inclusion of severe and acute Post Traumatic Stress Disorder among the conditions covered by traumatic injury protection coverage under Servicemembers' Group Life Insurance. In addition, we support S. 22; we have no position on S. 961; we do not support S. 2938; and we have no position on sections 3 and 7 regarding S. 2889.

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.