

Statement of
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Department of Veterans Affairs
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Subcommittee on Benefits
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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on several legislative items of interest to veterans. Accompanying me today is John H. Thompson, Deputy General Counsel.

H.R. 886

H.R. 886 would amend section 1318(b)(3) of title 38, United States Code, to eliminate the September 30, 1999, date limitation on benefit eligibility for surviving spouses and children of former prisoners-of-war (POWs) who died of nonservice-connected causes and were totally disabled for a continuous period of one year prior to death. Under current law, the Department of Veterans Affairs

(VA) pays dependency and indemnity compensation (DIC) benefits under chapter 13 of title 38, United States Code, to the surviving spouse, dependent children, and dependent parents of service members who died during active duty or who died after service as a result of a service-connected condition. In addition, VA provides benefits in the same manner to the surviving spouse and children of veterans who died after service from a nonservice-connected cause if the veteran was totally disabled due to a service-connected cause: (1) for a continuous period of ten or more years immediately preceding death; (2) for a continuous period of at least five years after the veteran's release from service; or (3) in the case of a former POW who died after September 30, 1999, for a continuous period of at least one year immediately preceding death. The amendment to section 1318(b)(3) would eliminate the date limitation governing benefit eligibility for POWs' survivors, thereby authorizing such payments regardless of the date of the veteran's death.

We estimate that enactment of the proposed amendment to 38 U.S.C. § 1318(b)(3) would result in additional mandatory benefit costs of \$8 million in fiscal year (FY) 2004 and \$210 million for the 10-year period FY 2004 through FY 2013. Additional discretionary costs would total \$187,000 for five years. This proposal was not in the President's Budget for FY 2004, and so we cannot support it without an offset.

H.R. 1167

H.R. 1167 would allow a veteran's surviving spouse who marries a non-veteran after the veteran's death to be eligible for burial in a VA national cemetery based on his or her marriage to the veteran. This proposal is similar to a VA proposal sent to Congress on April 25, 2003.

Over the last several years, the National Cemetery Administration has seen an increase in the number of requests for burial of a veteran's widow or widower who married a non-veteran after the veteran died. These cases usually involve spouses of veterans who were married for many years and raised a family with the veteran. Typically, the veteran's children and grandchildren, and often the current spouse, support the burial of the decedent with the original veteran-spouse in a VA national cemetery. However, current law does not permit it if the remarriage remained in effect when the veteran's survivor predeceased the new spouse.

Public Law 103-446 revised eligibility criteria for burial in a national cemetery to reinstate burial eligibility for a surviving spouse of an eligible veteran whose subsequent remarriage to a non-veteran was terminated by death or dissolved by divorce. The current proposal would be consistent with that amendment in further acknowledging the importance of that marriage to the veteran's family. This proposal would allow the deceased veteran to be buried

with a spouse with whom he or she always expected to be buried. It would also allow the veteran's children to visit a single gravesite to pay their respects to their parents.

We estimate that the cost associated with this proposal would be minimal. The average number of requests for burials for individuals previously married to an eligible veteran who subsequently married a non-veteran is estimated to be 200 per year; the majority of these burials would be second interments. The cost of a second interment (including a headstone or marker) in a VA national cemetery averages approximately \$550. For FY 2004, we anticipate the mandatory cost of the proposal to be \$20,000 for the provision of headstones or markers and the discretionary costs to be \$90,000 for operational activities. Our ten-year estimate (FY 2004-2013) is \$200,000 in mandatory costs and \$900,000 in discretionary costs.

This bill makes the eligibility for burial of remarried surviving spouses of veterans retroactive to January 1, 2000. We estimate that the costs associated with the retroactivity of this bill would be negligible. While it is difficult to determine how many families of already deceased, and presumably interred, remarried surviving spouses of veterans would want to disinter their loved one and then re-inter them with the veteran in a national cemetery, we do not believe this number would be significant.

H.R. 1500

Under current law, VA is required to select the appraiser, on a rotating basis, from a list of qualified appraisers VA maintains. The current rotational appraisal system provides an important check against potential fraud and collusion between sellers, real estate brokers, lenders, and appraisers to artificially inflate value estimates. The VA computer system that makes appraisal assignments in a rotational manner and VA's internal reporting procedures provide significant safeguards that could be circumvented if H.R. 1500 were enacted.

VA doubts that the vast majority of veterans purchasing homes know any practicing appraisers. Consequently, if H.R. 1500 were enacted, the real estate broker or loan originator concerned would most likely influence the selection of an appraiser. In such a case, objectivity could be compromised in favor of reaching a valuation that facilitates the transaction rather than obtaining a fair and unbiased estimate of property value. The lack of an independent, objective appraisal in this context would tend to lead to a distorted value estimate, whether intended or not. The independence of the VA appraisal process is a fundamental principle that assures participants in a mortgage transaction that the value of a home held as collateral reflects market value. H.R. 1500 would inhibit the ability of the Department to maintain an independent appraisal process.

In addition, under the present system of rotational assignments, VA managers have the ability to regulate and influence the timeliness of appraisals performed. If the proposed changes were made, there would be no way for VA management to control the number of assignments received by various appraisers. This could negatively impact the timeliness of VA appraisals.

Finally, we wish to note that under section 3731(e)(2) of title 38, United States Code, the veteran has the option of having a second appraisal done by a VA-approved appraiser of the veteran's choice and submit this additional valuation to VA. VA must consider both appraisal reports. Therefore, veterans currently have the ability to select another appraiser if they are not satisfied with the valuation performed by the VA-selected appraiser. This provides veterans the ability to have the appraiser of their choice value the property while still preserving the integrity of the VA valuation process.

VA estimates that if H.R. 1500 were enacted, VA would need to modify its appraisal data processing system to accommodate the new procedures.

H.R. 1516

H.R. 1516 would direct the Secretary of Veterans Affairs to establish within four years a national cemetery to serve veterans and their families in southeastern Pennsylvania. It would also direct the Secretary to consult with

appropriate Federal, State, and local officials and representatives of veterans service organizations before selecting the site for the cemetery and would allow the Governor of Pennsylvania to establish a panel to make a recommendation to the Secretary concerning the selection of the site. In addition, it would direct the Secretary to submit a report to Congress setting forth a schedule and cost estimate for the establishment of the national cemetery.

VA is aware that not all of America's veterans and their families have easy and convenient access to a national cemetery. In the Veterans Millennium Health Care and Benefits Act, Congress directed VA to identify areas of the country with the greatest concentration of veterans who do not have reasonable access to a burial option in a national or state veterans cemetery. Substantial documentation exists to demonstrate that 80 percent of burials in national cemeteries involve individuals who resided within 75 miles of the cemetery. VA has determined that a veteran population of 170,000 within a 75-mile service radius would be an appropriate threshold for the establishment of a new national cemetery.

VA notes that the New Jersey state veterans cemetery is not available to Pennsylvania veterans and that, under current conditions, the Beverly National Cemetery in New Jersey will become unavailable for new burials much sooner than we had expected. We also determined that Monroe County, Pennsylvania should be included in the Philadelphia area service area. These circumstances,

coupled with updated data on veteran demographics, lead to a conclusion that there are 170,000 or more veterans living in southeast Pennsylvania, including Philadelphia, who do not have adequate access to a burial option within 75 miles that would provide appropriate honor for their service as veterans of the Armed Forces of the United States.

Consequently, VA supports the concept of H.R. 1516 and will prioritize the construction of a Philadelphia area cemetery within 2005 budgetary resources.

Based on our experience, there are several steps involved in establishing a new national cemetery. Depending on the size of the project, the cost of these steps can range from \$100,000 to \$250,000 for environmental compliance; \$3 million to \$6 million for land acquisition, if required; \$1 million to \$2 million for master planning and design; and \$15 million to \$25 million for construction. Even with an aggressive schedule, it generally takes 4½ to 5 years to open a cemetery to initial burials. The average annual operational costs of a new national cemetery range between \$1 million and \$2 million, without consideration of headstones and grave liners, which are purchased through mandatory funding.

H.R. 2163

Section 1 of H.R. 2163 would amend section 1503(a) of title 38, United States Code, to add lump-sum proceeds of life insurance policies on a veteran to

the list of payments that do not count as income for purposes of determining eligibility for death pension benefits administered by VA under chapter 15 of title 38, United States Code. Section 2 of this bill would amend section 5110(d) of title 38, United States Code, to make an award of death pension effective the first day of the month in which the death occurred if the claim is received within one year from the date of death. These provisions were proposed by VA in draft legislation submitted to Congress on April 25, 2003.

Under 38 U.S.C. § 5110(a), an award based on a death pension claim received more than 45 days after the veteran's death can be effective no earlier than the date of the claim. Pursuant to current 38 U.S.C. § 5110(d)(2), however, if VA receives an application for death pension within 45 days of the veteran's death, then the effective date of a death pension award is the first day of the month in which the death occurred. Section 5110(d)(2)'s original one-year period was reduced to the current 45 days by the Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494, 854-901, as a cost-saving measure. Unfortunately, the "45-day rule" created a situation that has led to unfair and unequal treatment of applicants for VA death pension.

The practical effect of the "45-day rule" in many cases has been to exclude lump-sum life insurance proceeds received within 45 days of the veteran's death from countable income for pension claimants who file their claims more than 45 days after the date of the veteran's death. In contrast, claimants

who both receive insurance proceeds and file pension claims within 45 days of the veteran's death have insurance proceeds counted as annual income, often reducing or precluding pension benefits during their first year of potential eligibility. In other words, claimants who receive insurance proceeds within 45 days of death, but who wait 45 days or longer to file pension claims, can receive pension effective from the date of claim without regard to recently-received insurance proceeds. In essence, claimants receiving lump-sum insurance proceeds under the current law are encouraged to forego entitlement from the date of death in exchange for the exclusion of the insurance payment in determining countable income for the following 12 months.

While many veterans' advocates are aware of this situation and advise claimants who receive life insurance proceeds within 45 days of death to postpone filing their claims, the current law unfairly penalizes claimants who are not well versed in such technical details. Fairness dictates that VA rules and procedures be straightforward, particularly for claimants who are coping with the loss of loved ones. Consequently, we believe the "45-day rule" should be eliminated in favor of a rule making death pension benefits effective from the first day of the month of the veteran's death if the claim is received within one year of that date.

We also believe that this change must go hand in hand with an amendment excluding lump-sum life insurance proceeds from the computation of

income for death pension purposes. Lump-sum life insurance proceeds of genuine consequence are more appropriately addressed in terms of net worth, as provided in 38 U.S.C. § 1543, than in terms of income. Pursuant to section 1543, a claimant is ineligible to receive death pension benefits if his or her net worth is such that it is reasonable that some portion of it should be consumed for his or her maintenance. In our view, a surviving spouse whose income, excluding lump-sum life insurance proceeds, and net worth do not constitute a bar to pension deserves help from VA.

We believe these proposed amendments are necessary and appropriate to eliminate unequal treatment of death pension applicants and to uphold one of the fundamental principles of the pension program, which is to ensure that those with the greatest need receive the greatest benefit.

We estimate that the net effect of enactment of both sections of this draft bill would cost \$649,000 for FY 2004 and \$12.8 million for the ten-year period FY 2004 through FY 2013.

H.R. 2164

H.R. 2164 would amend 38 U.S.C. § 3512, effective September 1, 2001, to provide that individuals who qualify for benefits under chapter 35 (survivors' and dependents' educational assistance) and are involuntarily ordered to full-time National Guard duty under 32 U.S.C. § 502(f) after September 11, 2001, would

have their individual delimiting dates extended by an amount of time equal to that period of active duty plus 4 months. Public Law 107-103 restored entitlement to National Guard personnel who qualified for chapter 35 benefits who had to discontinue course pursuit as a result of being called to active duty under specific sections of title 10, United States Code. This bill would provide the same delimiting date extension to National Guard members who are activated under title 32. The proposal is nearly identical to a VA proposal transmitted to Congress on April 25, 2003. Thus, VA strongly supports the bill.

We estimate the cost associated with the enactment of H.R. 2164 would be \$150,000 for FY 2004 and approximately \$5 million in mandatory funding for the ten-year period from FY 2004 through FY 2013.

H.R. 2285

HR 2285 would amend title 38, United States Code, to require the Secretary of Labor to provide staffing at military installations overseas to carry out Transition Assistance Program (TAP) counseling within 90 days after the date of enactment of the Act. While VA strongly supports initiatives that would further enhance TAP, we respectfully defer to the views of the Department of Labor regarding the merits of this bill.

H.R. 2297

H.R. 2297 would amend title 38, United States Code, to expand MGIB benefits to certain self-employment training, to extend the Veterans' Advisory Committee on Education until 2009, to repeal the VA education loan program, to provide permanent authority for state cemetery grants, to provide for forfeiture of VA benefits for certain subversive activities, and to extend VA's authority to maintain a regional office in the Philippines through 2005. H.R. 2297 incorporates with some changes certain provisions of VA draft bills sent to Congress on April 25, 2003, and May 12, 2003.

Section 1 of the bill would expand the Montgomery GI Bill (chapter 30) program by authorizing educational assistance benefits for veterans under that program for on-job training in certain self-employment training programs. Such training might, for example, include that necessary for operation of a franchise. The Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. No. 106-50) requires that all Federal agencies aggressively support self employment for veterans and service-disabled veterans, directly and through public or private partnerships. This amendment would provide veterans considering self employment with improved access to capital for training. Thus, more veterans would be encouraged to initiate steps toward self employment. The proposal is nearly identical to a VA proposal transmitted to Congress on April 25, 2003. Accordingly, we strongly support its enactment.

We estimate the costs associated with the enactment of this section would be \$357,000 for FY 2004 and approximately \$3.9 million in mandatory funding for the 10-year period from FY 2004 through FY 2013.

Section 2 of the bill would extend to the year 2009 the Veterans' Advisory Committee on Education and amend pertinent law requiring the inclusion of veterans from World War II, the Korean Conflict era and the post-Korean conflict era as members of the Committee. The Committee is useful in keeping the Secretary in touch with the education community as well as the veterans' service organizations. During the last several years, the Committee has made a number of recommendations that have, in turn, become legislative proposals. The Committee's discussions and recommendations are an invaluable aid to our efforts in administering VA's education programs. The proposal is nearly identical to a VA proposal transmitted to Congress on April 25, 2003; however, we favor extending the authority for the Committee until 2013.

We estimate the costs associated with the extension of the Committee would be \$25,400 for FY 2004 and \$200,000 in discretionary funding for the 10-year period from FY 2004 through FY 2013.

Section 3 of the bill would repeal the VA education loan program and waive any existing repayment obligations, to include overpayments due to default

on such loans. The program, in effect since January 1, 1975, currently is available to issue loans up to a maximum of \$2,500 per academic year to spouses and surviving spouses of veterans who are past their delimiting dates with remaining entitlement to chapter 35 benefits. The population for this program is very limited, and, with other options in the public and private sectors, there is no longer a demand for these loans. In fact, VA has not issued a loan under this program in several years, but the Government has paid an estimated \$70,000 a year to administer it. VA's October 2002 monthly loans statistics show 20 current education loans in the amount of \$14,987.08 and 116 defaulted education loans totaling \$105,908.10. As is apparent, it costs VA more to administer the loan program than to forgive the debts currently outstanding. VA recommended the repeal of this program in a letter to Congress on April 25th of this year.

We estimate the cost associated with the repeal of the education loan program to be approximately \$121,000 in FY 2004 in mandatory funding.

Section 4 of the bill would amend 38 U.S.C. § 2408(a)(2) to permanently authorize appropriations for VA to make grants to states to assist them in establishing, expanding, or improving state veterans' cemeteries. Section 2408(a)(2) currently authorizes appropriations for making these grants through fiscal year 2004.

VA's State Cemetery Grants Program is an important component in meeting the burial needs of our Nation's veterans. State veterans' cemeteries supplement VA's national cemetery system in providing burial options to veterans throughout the Nation. VA's State Cemetery Grants Program has already helped to fund 51 operational state veterans' cemeteries, and six more are under construction. VA has received over 30 additional pre-applications from states requesting grants. There is a tremendous, on-going demand for grants to improve or expand existing state veterans' cemeteries, and permanently authorizing appropriations would assist long-term planning for this important program.

Appropriations for VA's State Home Grants Program (authorized by subchapter III of chapter 81, title 38, United States Code) are permanently authorized under 38 U.S.C. § 8133(a). The amendment made by section 4 of H.R. 2297 would improve the consistency in the operation of the two programs. We support this proposal.

The costs associated with this proposal would be those included in VA's annual budget request for use in providing grants to states. The President's budget submission to Congress for FY 2004 includes a request for \$32 million for the State Cemetery Grants Program.

Section 5 of the bill would amend section 6105 of title 38, United States Code, to supplement the list of offenses conviction of which would result in a bar to all gratuitous VA benefits. Section 6105 provides that an individual convicted after September 1, 1959, of any of several specified offenses involving subversive activities shall have no right to gratuitous benefits, including national cemetery burial, under laws administered by the Secretary of Veterans Affairs, and that no other person shall be entitled to such benefits on account of such individual. Congress' primary concern in enacting this provision was to prevent VA benefits from being provided based on military service of persons found guilty of offenses involving national security. This proposal would amend section 6105 to supplement the list of offenses conviction of which would result in a bar to all gratuitous VA benefits to include additional offenses that have come into being since enactment of section 6105.

This proposal would extend the current prohibition on payments of gratuitous benefits to persons convicted of subversive activities to include six additional classes of activities. The following offenses from title 18, United States Code, would be added: sections 175 (Prohibitions with respect to biological weapons); 229 (Prohibited activities with respect to chemical weapons); 831 (Prohibited transactions involving nuclear materials); 1091 (Genocide); 2332a (Use of certain weapons of mass destruction); and 2332b (Acts of terrorism transcending national boundaries). All of these offenses, which involve serious

threats to national security, were added to title 18, United States Code, after the enactment of section 6105. We support this proposal.

There is no cost associated with this proposal. Cost savings would be insignificant.

Section 6 of the bill would extend until December 31, 2005, the authority of the Secretary of Veterans Affairs under 38 U.S.C. § 315(b) to operate a regional office in the Republic of the Philippines. Under current law, that authority will expire on December 31, 2003. Congress has periodically extended this authority, most recently in Public Law 106-117.

Were VA to close the Manila regional office, veterans' assistance activities would still be needed in the Philippines. A Federal Benefits Unit would have to be attached to the Department of State. Under such an arrangement, VA's control of costs and quality of service would be limited. Because a Federal Benefits Unit would assume responsibility only for disseminating information and assistance, but not processing benefits, there could be no assurance that the extensive fraud-prevention activities currently performed by the Manila regional office would continue.

We support extension of the Secretary's authority to operate a regional office in the Philippines. However, we recommend that this authority be extended through December 31, 2008.

An extension of the Secretary's authority to operate a regional office in the Philippines is included in the President's FY 2004 Budget.

We note that, while legislation under consideration at this hearing reflects several proposals recommended by VA in draft legislation submitted to Congress on April 25, 2003, and May 12, 2003, a number of other provisions of our draft bills of importance to VA and veterans were not included. In particular, our *Allen*-case legislation, forwarded to the Congress in April, if enacted, would put an end to a state of the law we consider unconscionable and an affront to most veterans. The same program that so fittingly compensates veterans for their service-related disabilities should not be a source of payments to veterans *because* they are substance abusers. Congress established the appropriate policy when it provided in 1990 that "no compensation shall be paid if [a] disability is a result of [a] veteran's own . . . abuse of alcohol or drugs." VA is a recognized leader in the treatment of substance disorders, and that is an altogether appropriate role for the Government to assume. But paying veterans for the disabling effects of their own alcohol or drug abuse obviously can be a disincentive to their treatment and recovery. As currently interpreted by the courts, the law in this regard

reflects a public policy inconsistent with VA's mission. We urge your prompt enactment of our legislation.

In addition, we urge the Committee to review our draft legislative proposals dealing with alternative beneficiaries for Government life insurance, time limitations for submission of claim information, expansion of the burial plot allowance, provision of Government markers for privately marked graves, and expansion of benefits for Filipino veterans residing in the United States and incorporate these worthy initiatives into pending legislation.