BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION

STATEMENT OF
BRADLEY G. MAYES,
DIRECTOR, COMPENSATION AND PENSION SERVICE,
VETERANS BENEFITS ADMINISTRATION,
BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
APRIL 29, 2009

Mr. Chairman and members of the Committee, I am pleased to be here today to provide the Department of Veterans Affairs' (VA) views on pending benefits legislation. I will not be able to address a few of the bills on today's agenda because VA received them in insufficient time to coordinate the Administration's position and develop cost estimates, but we will provide that information in writing for the record. Those bills are S. 315, section 203 of S. 728, S. 847, the draft "Clarification of Characteristics of Combat Service Act of 2009," and a draft bill to modify the commencement of the period of payment of original awards of compensation for veterans who are retired or separated from the uniformed services for disability.

S. 263

S. 263, the "Servicemembers Access to Justice Act of 2009," would make several revisions to the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. Because that Act is administered by the Department of Labor, VA defers to the Department of Labor concerning the Administration's position on S. 263.

S. 315

Because this bill required extensive coordination among several VA components, we did not have sufficient time before this hearing to finalize a position. However, we will provide our position to the Committee in writing for the record.

S. 347

The Servicemembers' Group Life Insurance program includes protection for covered servicemembers from certain qualifying losses directly resulting from traumatic injury in service (known as Traumatic Servicemembers' Group Life Insurance or "TSGLI"). Current law requires that the qualifying losses prescribed by VA by regulation include "[l]oss of a hand . . . at or above the wrist." Section 1(a) of S. 347 would authorize VA, in specifying the amount of the payment to be made under the TSGLI program for each qualifying loss, to distinguish between the severity of a qualifying loss of a dominant hand and a qualifying loss of a non-dominant hand. Section 1(b) would require VA to issue regulations providing mechanisms for payments for such losses incurred before the date of enactment of this bill.

VA does not support enactment of this bill because it is unnecessary. VA already has the authority to adjust the schedule of payments under the TSGLI program as needed. Furthermore, VA has previously considered, as part of its "Year-One Review" of the TSGLI program, whether the payment for a qualifying loss of a dominant hand should be higher than the payment for a qualifying loss

of a non-dominant hand and concluded that it should not, for the reasons discussed below.

The TSGLI program is modeled after the accidental death and dismemberment programs in the commercial sector. In the commercial sector, there is no precedent for paying a higher benefit for a “dominant” hand. Furthermore, medical professionals we consulted on the issue of dominance of one hand or arm in the course of the Year-One Review commented that some individuals use the "non-dominant" arm as the primary arm for a few activities, i.e., there is some degree of variability with respect to which arm is dominant for different activities. They also pointed out that some individuals are ambidextrous. These factors would complicate the adjudication of such claims.

The purpose of the TSGLI program is to provide short-term financial assistance to service members and their families because the families often suffer financial hardship to be with the injured members during their treatment and recovery periods. The amount of a payment depends on the nature of the injury and the expected time needed for recovery. There is no evidence to date that loss of a dominant hand requires a longer recovery and rehabilitation period than loss of a non-dominant hand does.

We are also concerned about the impact of this proposal on our ability to maintain a peacetime premium of $1.00 per month, as Congress intended. Although the relatively low incidence of amputation of the dominant hand alone would not likely affect the premium, it would open the door to requests for disparate treatment of other injuries, such as loss of a dominant foot or leg, the

dominant eye, burns on the dominant side of the body, etc. The establishment of higher payments for other dominant-side losses could result in the need to charge a higher premium for coverage.

The law provides that covered members are covered against inability to carry out the activities of daily living resulting from traumatic brain injury and defines the term “inability to carry out the activities of daily living” as inability to independently perform 2 or more of 6 specified functions, such as bathing, dressing, and eating. We are also concerned that enactment of S. 347 could result in requests for disparate treatment if it were alleged that traumatic brain injuries had a greater impact on the dominant side of the body than the non-dominant side.

Finally, VA’s compensation program, not TSGLI, is designed to compensate for the long-term effects of injuries incurred in service. The compensation program does pay a greater benefit for loss of a dominant hand.

VA estimates that enactment of S. 347 would result in costs of $1.1 million over five years and $2.3 million over ten years.

S. 407

S. 407, the “Veterans’ Compensation Cost-of-Living Adjustment Act of 2009,” would direct the Secretary of Veterans Affairs to increase administratively the rates of disability compensation for veterans with service-connected disabilities, including the additional amounts authorized for dependents and the clothing allowance, and of dependency and indemnity compensation for the survivors of veterans whose deaths are service related, effective December 1,

2009. The rates of increase would be the same as the cost-of-living adjustment that will be provided under current law to Social Security recipients. The bill would also authorize VA to adjust the rates of disability compensation payable under prior laws to persons who have not received compensation under chapter 11 of title 38, United States Code.

VA supports a cost-of-living adjustment of this nature. We believe this legislation is necessary to ensure the affected benefits against any eroding effects of inflation. The worthy beneficiaries of

these benefits deserve no less.

S. 475

S. 475, the "Military Spouses Residency Relief Act," would make revisions to the Servicemembers Civil Relief Act concerning the spouses of servicemembers. Because S. 475 would primarily affect servicemembers and their spouses, VA defers to the Department of Defense (DoD) concerning the Administration's position on the bill.

S. 514

S. 514, the "Veterans Rehabilitation and Training Improvements Act of 2009," would provide for an increase in the amount of subsistence allowance payable by VA to veterans participating in vocational rehabilitation programs under chapter 31 of title 38, United States Code, allow reimbursement of certain costs to those veterans, and remove the limitation on the number of veterans who may be provided programs of independent living.

Specifically, section 2 of S. 514 would increase the rates of subsistence allowance provided veterans under section 3108(b) of title 38, United States

Code. The amount of monthly subsistence allowance payable would be equal to the national average of the amount of basic allowance for housing payable under section 403 of title 37, United States Code, for a member of the uniformed services in pay grade E-5. The revision would increase the amount of subsistence allowance provided to veterans participating in training and employment services under chapter 31 to be roughly equivalent to the housing allowance veterans will receive under the chapter 33 Post-9/11 GI Bill.

Section 3 of the bill would authorize reimbursement of costs incurred by a veteran as a direct consequence of participation in a rehabilitation program under chapter 31. Such cost would include child-care expenses and clothing for employment interviews, as well as other costs VA would prescribe in regulations. Reimbursement of these costs could serve as an incentive for veterans to complete their rehabilitation programs.

Section 4 of the bill would remove section 3120(e) from chapter 31, thereby removing the limitation on the number of veterans who may enter independent living programs each fiscal year.

We support, in principle, efforts to facilitate successful completion of vocational rehabilitation programs under chapter 31, and we recognize that increasing the subsistence allowance and reimbursements provided to veterans participating in training and employment services will encourage more veterans to continue their rehabilitation programs. Increased rates of subsistence allowance would allow veterans to pursue rehabilitation on a full-time basis,

leading to entry into employment in a shorter period of time. However, we are unable to support sections 2 and 3 of S. 514 at this time.

Recent changes to VA education benefits, including the new Post-9/11 GI Bill, may affect chapter 31 participation and completion rates. In addition, as recommended by the Dole-Shalala Commission on Wounded Warriors, VA is currently completing a review of its compensation program and proposed transition payments, which may have implications for the vocational rehabilitation program. Complete review of comprehensive benefits, including possible transition benefits and current subsistence allowance, is necessary before VA can fully evaluate the subsistence allowance and reimbursement increases proposed in S. 514. The Department plans to evaluate its total benefit package and recommend necessary improvements. For these reasons, and due to the bill's large increase in direct costs without an identified offset, VA cannot support

this bill. VA estimates that the costs for sections 2 and 3 of S. 514 if enacted would be $361.4 million during the first year, $2.2 billion over 5 years, and $4.4 billion over 10 years.
Subject to the availability of offsets for additional costs associated with the expansion, VA does not object to the removal of the limitation on the number of veterans who may enter programs of independent living so that all veterans who need independent living services now and in the future may receive them. In 2007, in connection with a similar provision, VA estimated that costs would be $2.9 million in the first year and $104 million over ten years. We will provide for the record an updated cost estimate for section 4 of S. 514.

S. 663
S. 663, the "Belated Thank You to the Merchant Mariners of World War II Act of 2009," would establish in the general fund of the Treasury a "Merchant Mariner Equity Compensation Fund," from which VA would pay $1,000 per month to eligible individuals. An eligible individual would be one who: (1) before October 1, 2009, submits to VA an application containing such information and assurances as VA may require; (2) has not received benefits under the Servicemen's Readjustment Act of 1944; and (3) engaged in qualified service. Qualified service would be essentially oceangoing Merchant Marine service between December 7, 1941, and December 31, 1946.
The bill would also authorize for fiscal years 2010 through 2014 appropriations, which would remain available until expended. It would require VA to include in its budget submissions for each fiscal year detailed information on the operation of the compensation fund, including the number of applicants, the number of eligible individuals receiving benefits, the amounts paid out, the administration of the fund, and an estimate of the amounts necessary to fully fund the compensation fund for that and each of the three subsequent fiscal years. Finally, the bill would require VA to prescribe, not later than 180 days after enactment, regulations to carry out the program.
VA does not support enactment of this bill for several reasons. First, to the extent that S. 663 is intended to offer belated compensation to Merchant Mariners for their service during World War II, many Merchant Mariners and their survivors are already eligible for veterans' benefits based on such service.

Pursuant to authority granted by section 401 of the "GI Bill Improvement Act of 1977," Public Law 95-202, the Secretary of Defense in 1988 certified Merchant Mariner service in the oceangoing service between December 7, 1941, and August 15, 1945, as active military service for VA benefit purposes. As a result, these Merchant Mariners are eligible for the same benefits as other veterans of active service. This bill appears to contemplate concurrent eligibility with benefits Merchant Mariners may already be receiving from VA, a special privilege not available to other veterans. Furthermore, to the extent that Merchant Mariners may be distinguished from other veterans due to the belated recognition of their service, there are myriad other groups, listed at 38 C.F.R. § 3.7(x), that could claim to have been similarly disadvantaged. These groups include the Women's Air Force Service Pilots, the Women's Army Auxiliary Corps, the famed Flying Tigers, and many others who also gained their status decades after their courageous service and contribution to victory in 1945.
There can be no doubt that Merchant Mariners were exposed to many of the same rigors and risks of service as those confronted by members of the Navy and the Coast Guard during World War II. However, the universal nature of the benefit that S. 663 would provide for individuals

with qualifying service and the amount of the benefit that would be payable are difficult to reconcile with the benefits VA currently pays to other veterans. S. 663 would create what is essentially a service pension for a particular class of individuals. Additionally, this bill would authorize the inequitable payment of a greater benefit to a Merchant Mariner, simply based on qualifying service, than a veteran currently

receives for a service-connected disability rated as 60-percent disabling. Accordingly, S. 663 would provide to Merchant Mariners significant preferential treatment not provided to other veterans.

VA estimates that enactment of S. 663 would result in a total additional benefit cost of approximately $116 million in the first year and an additional benefit cost of $497 million over ten years.

S. 691 and S. 746

Section 1(a) of S. 691 and section 1(a) of S. 746 would require VA to establish a national cemetery in El Paso County, Colorado, and in the Sarpy County, Nebraska, region, respectively, to serve the needs of veterans and their families in the "southern Colorado region" and the region encompassing eastern Nebraska, western Iowa, and northwest Missouri.

In each bill, section 1(b) would require VA to consult with various Federal, State, and local officials before selecting the site for the cemetery. Section 1(c) would authorize VA to accept, on behalf of the United States, the gift of an appropriate parcel of real property to use in establishing the cemetery and would provide that the property be considered a gift for purposes of Federal income, estate, and gift taxes. Section 1(d) would require VA to report to Congress, as soon as practicable after the date of enactment, on the establishment of the cemetery, including a schedule for establishment and an estimate of costs associated with establishment. Section 1(e) of S. 691 lists the counties in Colorado that the term "southern Colorado region" would comprise. Section 1(e)

of S. 746 lists the counties in Nebraska, Iowa, and Missouri that the term "Sarpy County region" would comprise.

VA does not support S. 691 or S. 746. The criteria VA has adopted and Congress has endorsed for determining the need for new national cemeteries require that there be at least 170,000 veterans not currently served by a burial option in a national or state veterans cemetery residing within 75 miles of the proposed site. Based on these criteria, the need for a new national cemetery is not demonstrated.

S. 691 references 29 counties to be served by a new national cemetery in El Paso County, Colorado. However, the majority of these counties are already served by an open national or state veterans cemetery. The remaining counties do not meet our current population threshold for establishing a new national

cemetery. In fact, the vast majority of veterans who reside in the El Paso County area are currently served by either Fort Logan National Cemetery or Fort Lyon National Cemetery. Fort Logan National Cemetery will have casket and cremation burial space available until approximately 2019. Fort Lyon National Cemetery will have casket and cremation burial space available until approximately 2030. Other areas further west-southwest of El Paso County are served by Veterans Memorial Cemetery of Western Colorado, located in Grand Junction, Colorado, in Mesa County.

Although there is no national or state veterans cemetery option for the veterans of eastern

Nebraska, the 75-mile service area for the proposed Sarpy County location does not meet the veteran population threshold. As of

September 30, 2008, approximately 110,000 Nebraska, Iowa, and Missouri Veterans reside within the Sarpy County service area. In addition, of the 82 Nebraska, Iowa, and Missouri counties listed in the bill and described as the "Sarpy County region," only 27 are located within 75 miles of Sarpy County. Fifty-five counties listed would not be served by a cemetery in the proposed location based on the criteria endorsed by Congress.

Besides objecting to S. 691 and S. 746 based on the lack of demonstrated need for a new cemetery, we note that the cost of establishing a new cemetery in these regions would be considerable. Based on recent experience, the cost for establishing a new national cemetery ranges from $500,000 to $750,000 for environmental compliance requirements; $1 million to $2 million for master planning and design; $1 million to $2 million for construction document preparation; $5 million to $10 million for land acquisition (if required); and $20 million to $30 million for the initial phase of construction. The average annual cost for operating a new national cemetery ranges from $1 million to $2 million.

As required by law, VA is establishing 12 new national cemeteries, 9 of which have been opened for burials. The locations for these cemeteries were determined from demographic studies of the veteran population, which allow VA to focus its efforts on areas that will serve the greatest number of veterans. VA will begin to plan now for a successor cemetery in anticipation of Fort Logan's closure in 2019. VA believes land for the successor cemetery should be acquired closer to the Denver metropolitan area. The new Land Acquisition Line

Item in the Major Construction account will facilitate the purchase of suitable land whenever it becomes available.

As an alternative, the VA State Cemetery Grants program can provide additional burial options for veterans in areas not served by an existing national or state veterans cemetery. Through this program, VA may provide up to 100 percent of the cost to establish, expand, or improve a state veterans cemetery, including the cost of initial equipment to operate the cemetery. VA worked with Colorado officials in providing more than $6 million to establish a state veterans cemetery in Grand Junction and would be pleased to assist Colorado in exploring this option in other areas of the State. Similarly, VA has worked with Nebraska officials to fund a state cemetery that will serve veterans in the Alliance, Nebraska, area. That grant is expected to be awarded in late FY 2009.

S. 728

Title I—Insurance Matters

Section 101 of S. 728, the "Veterans' Insurance and Benefits Enhancement Act of 2009," would create a new life insurance program that would provide up to $50,000 of coverage to veterans who are less than 65 years old and have a service-connected disability. A veteran would be able to elect an amount less than $50,000 that is evenly divisible by $10,000, but the amount of an insured's coverage would decrease by 80 percent at age 70. To obtain coverage, an eligible veteran would have to apply for the insurance not later than 2 years after being notified by VA that he or she has a service-connected disability or 10 years after separation from the Armed Forces, whichever date is

earlier. Premiums would be based on the 2001 Commissioners Standard Ordinary Basic Table of

Mortality and interest at the rate of 4½ percent per year, and they would not increase while the insurance is in force. Premiums would be waived for certain veterans who have a totally disabling service-connected disability or who are 70 years of age or older.
The insurance would be granted on a nonparticipating basis. All premiums would be credited to a revolving fund in the United States Treasury, from which any payments would be directly made. Appropriations to the fund would be authorized. Administrative costs for the program would be paid from premiums. Payments for claims in excess of the amounts credited to the fund would be paid from appropriations. There would be a one-year open season beginning on April 1, 2010, during which a veteran currently insured under Service-Disabled Veterans' Insurance (SDVI) who is under age 65 could exchange his or her SDVI for the new insurance. However, an insured's combined amount of coverage under SDVI, Supplemental SDVI, and the new program could not exceed $50,000.
Currently, SDVI provides up to $10,000 in coverage, as either a permanent or term insurance plan, and premiums are based on an insured's age until the insured reaches age 70, when the premium rates are capped. SDVI insureds who become eligible for a waiver of premiums due to total disability can obtain Supplemental SDVI of up to $20,000, for a total available amount of SDVI coverage of $30,000. Current SDVI premium rates per $1,000 of coverage are

higher than quotes for healthy individuals from commercial life insurance companies.
Subject to Congress' enactment of legislation offsetting the increased costs that would be associated with the enactment of this section, VA supports section 101 because it would meet service-disabled veterans' needs by providing more adequate amounts of life insurance than currently available under the SDVI program at more reasonable rates that would be level for the life of the insured.
However, VA does not support paying for administrative costs from premiums because the Administration believes that the cost of entitlements should be separate and distinct from the cost of administering those entitlements. Furthermore, we do not believe that supplementing a discretionary appropriation with mandatory receipts is an appropriate budgeting practice.
VA estimates that enactment of section 101 would result in costs of $83.0 million over 5 years and $326 million over 10 years.
Section 102 would increase the maximum amount of Supplemental SDVI from $20,000 to $30,000.
VA supports section 102, provided Congress identifies an offsetting source of funding. By increasing to $30,000 the amount of available supplemental SDVI, this provision would address a major concern of veterans, as reported in the study "Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities." It would increase the financial security of disabled veterans by affording them the opportunity to purchase additional life insurance coverage otherwise not available to them.

VA estimates that enactment would result in costs of $2.1 million over 5 years and $7.3 million over 10 years.
Section 103 would remove the geographic requirement for eligibility for retroactive TSGLI benefits. It would extend eligibility for retroactive benefits for traumatic injury protection coverage under TSGLI to all members of the uniformed services who sustained a qualifying loss from a traumatic injury between October 7, 2001, and November 30, 2005, regardless of geographic location.

Section 1032 of Public Law No. 109-13 authorized the payment of TSGLI to any servicemember insured under Servicemembers' Group Life Insurance (SGLI) who sustains a traumatic injury that results in one of certain losses. Under section 1032(c) of Public Law 109-13, TSGLI also was authorized for members of the uniformed services who experienced a traumatic injury between October 7, 2001, and December 1, 2005, provided the qualifying loss was a direct result of injuries incurred in Operation Enduring Freedom (OEF) or Operation Iraqi Freedom (OIF). Section 501 (b)(1) of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, Public Law 109-233, narrowed eligibility for retroactive TSGLI to apply only to servicemembers who suffered a qualifying loss as a direct result of a traumatic injury incurred in the theater of operations for OEF or OIF during the period beginning on October 7, 2001, and ending at the close of November 30, 2005. Section 103 would eliminate the requirements that a qualifying loss directly result from a traumatic

injury incurred in the theater of operations for OEF or OIF. The amendment would be effective on January 1, 2010.

VA defers to the Department of Defense (DoD) on the merits of this section, because DoD would bear the costs associated with its enactment. VA estimates that enactment of section 103, which would provide retroactive eligibility for the period from October 7, 2001, through November 30, 2005, would result in a cost of $47.7 million for the entire period.

Veterans' Mortgage Life Insurance (VMLI) is available to eligible individuals age 69 or younger with severe service-connected disabilities who receive a specially adapted housing grant. Currently, the maximum amount of VMLI provided is the lesser of $90,000 or the amount of the loan outstanding on the housing unit. Section 104 would increase the $90,000 limitation to $150,000 and then $200,000 after January 1, 2012.

Subject to Congress' enactment of legislation offsetting the increased costs that would be associated with the enactment of this section, VA supports section 104 because the percentage of total mortgage balances covered by the current amount of VMLI available has decreased over the past several years. The maximum VMLI amount was last increased from $40,000 to $90,000 in 1992, but the percentage of total mortgage balances covered by VMLI has declined since then from 91 percent to 64 percent because of the increase in housing costs during that period. Section 104 would bring the program to a level of coverage more in line with today's mortgages.

VA estimates that enactment of section 104 would result in benefit costs of $22.0 million over 5 years and $54.9 million over 10 years.

Before last year, SGLI coverage of a covered servicemember's insurable dependent ended either 120 days after the member elected to end coverage or the earliest of three dates: (1) 120 days after the member died; (2) 120 days after the date the member's coverage ended; or (3) 120 days after the dependent ceased to be an insurable dependent. Section 403(b) of Public Law 110-389, at VA's request, amended the second of the three listed dates to be simply the date the member's coverage ended. The purpose was to provide that an insurable dependent's coverage would end when the member's coverage ended, generally 120 days after separation or release from active service, rather than 120 days after the member's coverage ended, or 240 days after the member's separation or release from active service. That amendment, however, inadvertently allowed certain insurable dependents' coverage to continue long after the members' separation or release from service—insurable dependents of persons on active duty or Ready Reservists who are totally disabled on the date of separation or release from service or assignment. Such insureds on

active duty are potentially eligible for continued coverage for up to 2 years after the date of separation or release from service and such Ready Reservists are potentially eligible for an additional one year of coverage after separation or release from an assignment. Under the recent amendment, the insurable dependents of insureds on active duty are also potentially eligible for continued coverage for up to 2 years after the date of separation or release from service or in the case of an insurable

dependent of a Ready Reservist up to 1 year after the date of separation or release from an assignment.

Section 105 of the bill would correct the inadvertent omission of those insurable dependents from the scope of the recent amendment. Section 105 would amend the second of the 3 dates listed above to be "120 days after the date of separation or release from the uniformed services." Under that provision, no insurable dependent, not even those of members who remain covered for up to 1 or 2 years after service or assignment, could remain covered under SGLI for more than 120 days after the member's separation or release from service or assignment.

VA supports this provision. It would equitably provide that all insurable spouses of servicemembers, whether those members are disabled or not, would have the same time period in which to convert their SGLI coverage to a privately-obtained policy, consistent with the other conversion time periods specified in section 1 968(a)(5) of title 38 of the United States Code. However, section 105 would specify that a dependent's coverage would terminate within the specified period after the member is separated or released "from the uniformed services." This phrase would not include Ready Reservists who are separated or released from an "assignment" rather than from the "uniformed services."

No costs are associated with this provision.

Title II—Compensation and Pension Matters

Section 201 of S. 728 would require VA to increase the monthly payment of temporary dependency and indemnity compensation (DIC) payable for a

limited period under 38 U.S.C. § 1311(f) to a surviving spouse with one or more dependent children under the age of 18 years, whenever benefit payments under title II of the Social Security Act are increased as a result of an increase in the cost of living. These DIC payments would be increased by the same percentage as Social Security benefits are increased, effective the same date as the Social Security benefit increase is effective.

VA supports enactment of this provision, the benefit costs of which would be insignificant.

Section 202 would clarify that veterans entitled to pension based on advanced age alone rather than on permanent and total disability do not qualify for special monthly pension under subsections (d), (e), or (f)(2)-(4) of section 1521, United States Code. Wartime veterans age 65 or older would continue to be eligible for rates of pension prescribed by subsections (b), (c), (f)(1) and (5), and (g) of section 1521. It would also clarify that pension based on age alone is subject to three limitations also applicable to pension based on permanent and total disability: (1) certain children's income is attributable to a veteran for purposes of determining the veteran's annual income; (2) a veteran is considered to be living with a spouse who resides elsewhere unless they are estranged; and (3) a veteran who is entitled to pension based on his or her own wartime service and based on someone else's service is entitled to receive only the greater benefit. These amendments would apply to pension claims filed on or after the date of enactment.

VA supports enactment of section 202 because it would accomplish the same purpose for which VA proposed legislation to the last Congress. In 2001, Congress made wartime veterans age 65 years or older eligible for pension without regard to the permanent-and-total-disability requirement of the statute authorizing pension to veterans who are permanently and totally disabled. In 2006, the Court of Appeals for Veterans Claims held that veterans age 65 or older are also eligible for the higher rate of pension authorized for veterans who are permanently housebound, without regard to the permanent-and-total-disability requirement. Although the court's holding is arguably a plausible interpretation of the literal terms of the statutes, we believe it is inconsistent with Congress' intent because it results in inconsistent and illogical treatment of veterans' claims and subverts the primary purpose for authorizing the higher rate of pension—to provide additional pension to veterans with additional expenses due to their high degree of disability above and beyond permanent and total disability. Under the court's interpretation, elderly veterans who are not permanently and totally disabled could receive a higher pension rate than elderly veterans who are permanently and totally disabled. Believing that Congress did not intend such an inequitable result, we proposed legislation to overturn the court's interpretation, and we support enactment of section 202.
We estimate cost savings of $3.2 million the first year and $175.5 million over 10 years.
Section 203(a) would increase monthly rates of DIC for disabled surviving spouses. Section 203(b) would increase the maximum and minimum monthly

rates of DIC payable to parents and provide for an increased monthly payment for parents who, by reason of disability, are permanently housebound but do not qualify for parents in need of aid and attendance. Section 203(c) would codify increases already made in the annual income limits applicable to parents' DIC. Section 203(d) would replace the obsolete term "six months' death gratuity" in 38 U.S.C. § 1315(f)(1)(A) because the death gratuity paid by DoD under 10 U.S.C. §§ 1475-1 480 is a fixed amount, rather than the equivalent of six months of a servicemember's pay. Section 203(e) would subject the new rate of DIC for a housebound parent and the minimum monthly amounts of parents' DIC to annual increases indexed to cost-of-living increases in Social Security benefits. The amendments made by section 203 would take effect on October 1, 2009, and would apply to DIC payable for months beginning on or after that date. However, there would be no cost-of-living increase in the minimum monthly DIC rates during fiscal year 2010.
VA is committed to administering DIC payments that meet program goals. The 2001 "Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities"—the same study that provides the basis for our support of the proposed increases to life insurance—found that DIC successfully meets the needs of beneficiaries. While our support for cost-of-living increases as proposed under S. 407 demonstrates our commitment to providing adequate and necessary increases over time, we believe that the increases to DIC proposed under section 203 are not necessary to achieve the goals of the program.

In addition, the purpose of increasing the minimum monthly payment for parents' DIC from $5 to $100 and indexing that figure for inflation is not clear. Because paying parents an arbitrary minimum monthly amount of DIC that is higher than the payment computed under the need-based formula established in VA's implementing regulations at 38 C.F.R. § 3.25 is a departure from the need-based principles underlying parents' DIC, any increase in the minimum rate would constitute a further departure from need-based principles, and indexing the minimum payment

for inflation would amplify this departure.
VA did not have sufficient time to prepare benefit cost estimates for this provision. No additional administrative costs are anticipated. With the Committee's permission, we will provide a cost estimate for the record.
Section 204(a) would increase from $90 to $100 the maximum monthly pension amounts for spouse-less and childless veterans who are being furnished VA domiciliary or nursing home care or are covered by a Medicaid plan for services furnished by a nursing facility. These limits would be subject to annual cost-of-living increases indexed to such increases to Social Security benefits.
Section 204(b) would subject children in receipt of death pension to the limits currently applicable to institutionalized veterans and surviving spouses. Under section 204(c), these amendments would be effective October 1, 2009, but no cost-of-living adjustment would be made during fiscal year 2010.
VA does not object to these increases in maximum pension payments to affected individuals so long as Congress enacts offsetting savings. Application of the limits to children in receipt of death pension would be reasonable. And

under the annual cost-of-living adjustment, these beneficiaries would receive benefit increases commensurate with those provided for other VA benefits.
We estimate costs of $5.3 million over one year and $10.7 million over 2 years.
Title III—Burial and Memorial Affairs Matters
Sections 301 and 302 would require VA to make supplemental payments in addition to currently required statutory payments for funeral and burial-related expenses, but if and only if funds are specifically appropriated in advance for that purpose. Specifically, those sections would require a supplemental payment of $900 for non-service-connected deaths, $2,100 for service-connected deaths, and $445 for the plot or interment allowance. Each supplemental payment would be subject to the availability of funds specifically provided for the particular type of allowance in advance by an appropriations act. These sections would require an annual adjustment to the supplemental payment amounts in relation to the Consumer Price Index, applicable to deaths occurring in subsequent fiscal years. They would require VA to periodically estimate the funding needed to provide supplemental payments for all eligible recipients for the remainder of the fiscal year in which such an estimate is made and the appropriations needed to provide all eligible recipients supplemental payments in the next fiscal year. VA would have to submit these estimates to the Committees on Appropriations and Veterans' Affairs of the Senate and House of Representatives four times a year. Finally, these sections would authorize appropriations for these purposes. These

changes would be effective October 1, 2009, and apply to deaths occurring on or after that date.
Veterans' advocates have argued for higher payments because the current allowances generally do not cover present-day burial and funeral costs or plot expenses. Advocates have also pushed for annual cost-of-living increases for funeral, burial, and plot benefits. However, VA cannot support the bill as drafted. The supplemental benefits would only be available up to the point at which discretionary funding is exhausted, which could lead to inequities in the level of benefits available to individuals. VA has not supported similar legislation in the past because funding a single benefit from multiple sources (e.g., from the mandatory Compensations, Pensions, and Burial account and a new discretionary account) can create numerous complications in administration and represents an unsound budgeting practice. Finally, the frequent reporting

requirements to Congress would be administratively burdensome and would distract VA from providing Veterans with timely claims adjudication and payment.
We estimate that enactment of section 301 of this bill would result in costs of $106.3 million during the first year, $569.2 million over 5 years, and $1.3 billion over 10 years. We estimate that enactment of section 302 of this bill would result in costs of $30.4 million during the first year, $162.5 million over 5 years, and
$367.7 million over 10 years. No administrative costs are associated with this bill.

Title IV—Other Matters
Section 401(a) would add to the list of disabilities that qualify a compensation-receiving veteran or an active duty servicemember for assistance in obtaining an automobile or other conveyance or adaptive equipment an additional disability—a severe burn injury, as determined pursuant to VA regulations. Section 401(b) would make various stylistic changes to section 3901 of title 38, United States Code.
Section 402(a) would require VA to make a supplemental payment in addition to the currently required statutory payment for the purchase of an automobile or other conveyance, but only if funds are specifically appropriated in advance for that purpose. Specifically, it would require the supplemental payment to equal the difference between the amount of payment that would be made if the maximum amount were $22,484 and the current $11,000 amount authorized by section 3902(a).
Section 402(a) would also require VA to annually increase a specified adjusted amount ($22,484) to 80 percent of the average retail cost of new automobiles for the preceding calendar year. It would require VA to periodically estimate the funding needed to provide supplemental payments for all eligible recipients for the remainder of the fiscal year in which such an estimate is made and the appropriations needed to provide all eligible recipients supplemental payments in the next fiscal year and to submit these estimates to the Committees on Appropriations and Veterans' Affairs of the Senate and House of Representatives four times a year.

Finally, section 402(c) would authorize appropriations for these purposes, and, under section 402(d), these changes would be effective October 1, 2009, and apply to payments made under section 3902 on or after that date.
We plan to review the scope of our existing authority to determine if there are circumstances under which severe burn victims are not adequately covered. In any event, VA cannot support the bill as drafted. The supplemental benefits would be available only up to the point at which discretionary funding is exhausted, which could lead to inequities in the level of benefits available to individuals. VA has not supported similar legislation in the past because funding a single benefit from multiple sources can create numerous complications in administration and represents an unsound budgeting practice. Finally, the frequent reporting requirements to Congress would be administratively burdensome and would distract VA from providing Veterans with timely claims adjudication and payment. For an estimate of the costs associated with the increase section 402 would provide, please see our comments regarding S. 820.

S. 820
S. 820, the "Veterans Mobility Enhancement Act of 2009," would increase from $11,000 to $22,500 the maximum amount of assistance VA is authorized to provide an eligible person to obtain an automobile or other conveyance. It would also require VA to increase that amount,

effective October 1 of each year
(beginning in 2010), to an amount equal to 80 percent of the average retail cost of new automobiles for the preceding calendar year. It would require VA to establish the method for determining that average retail cost and authorize VA to use data developed in the private sector if VA determines that the data are appropriate.
We understand the importance of providing sufficient resources for vehicles or adaptive equipment to servicemembers and veterans who rely on them, but we cannot support this bill at this time. In order to best support the goals of this program, we will need time to review the appropriate amount to provide for this benefit payment.
We estimate benefit costs of $16.2 million in the first year and $159.9 million over ten years.

S. 842
Section 1 of this bill concerning mortgages and mortgage foreclosures relates to the Servicemembers Civil Relief Act, a law primarily affecting active duty service personnel. Accordingly, VA defers to the views of DoD with regard to that section.

Section 2 of this bill would authorize VA to purchase a VA-guaranteed home loan from the mortgage holder, if the loan is modified by a Bankruptcy Judge under the authority of 11 U.S.C. § 1322(b). Specifically, it would permit VA to pay the mortgage holder the unpaid balance of the loan, plus accrued interest, as of the date a bankruptcy petition is filed. In exchange, the mortgage holder would be required to assign, transfer, and deliver to the Secretary all rights, interest, claims, evidence, and records with respect to the loan.
VA is aware of legislation that, if enacted, would eliminate the apparent incongruity between section 2 of this bill and the current Bankruptcy Code.

Section 103 of H.R. 1106, as passed by the House of Representatives on March 5, would eliminate the prohibition against modifying mortgages on principal residences. Additionally, the section 2 provision appears duplicative of the authority that would be provided to VA in section 121 of H.R. 1106. VA cannot support any additional repurchasing authority until the budgetary impacts of such authority on existing and future cohorts of loans can be reviewed.
Because VA cannot determine the effects of section 2 as a stand-alone provision, VA cannot currently estimate the costs or savings associated with the provision.

S. 847
We did not have sufficient time before this hearing to develop a position on this bill, but will provide our position to the Committee in writing for the record.

Draft Clarification of Characteristics of Combat Service Act of 2009
We did not have sufficient time before this hearing to develop a position on this bill, but will provide our position to the Committee in writing for the record.

A Draft Bill to Modify the Commencement of the Period of Payment of
Original Awards of Compensation for Veterans Who Are
Retired or Separated from the Uniformed Services for Disability

We did not have sufficient time before this hearing to develop a position on this bill, but will provide our position to the Committee in writing for the record.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions you or the other members of the Committee may have.