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STATEMENT OF
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BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
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Good morning, Mr. Chairman, Ranking Member Burr, and other Members of the Committee. I am pleased to be here today to provide the Department of Veterans Affairs' (VA) views on several bills that would affect educational assistance benefits for Veterans, Servicemembers, and their dependents -- most notably, S. 3447. I am accompanied today by Mr. John Brizzi of VA's Office of the General Counsel.

Let me start by congratulating you, Mr. Chairman, and your staff, as well as the many other Senators who have worked to put forward legislation to make improvements to the educational programs VA administers on behalf of our Nation's Veterans. The Department appreciates your staff's consultation throughout the entire process. Implementation of the historic Post-9/11 GI Bill was, and is, a top priority for President Obama, Secretary Shinseki, and the entire Department. Secretary Shinseki is committed to making sure that all eligible student Veterans who are interested receive the education benefits they earned in defense of our Nation. Since inception of this historic new program, VA has issued nearly \$4.0 billion in Post-9/11 GI Bill benefit payments to over 295,000 individuals and their educational institutions.

S. 3447

Mr. Chairman, your bill -- S. 3447, the "Post-9/11 Veterans Educational Assistance Improvements Act of 2010" -- would enhance certain provisions of the Post 9/11 GI Bill (chapter 33 of title 38, United States Code), as well as make improvements in other VA educational assistance programs.

Under the Post-9/11 GI Bill, individuals with qualifying periods of active duty of 36 months or more are eligible for payment of tuition and fees up to the highest in-state public school tuition for an undergraduate degree, monthly housing allowances, and books and supplies stipends. Individuals with less than 36 months of service are eligible, in general, for the same benefits. However, their benefits are proportionately lower (ranging from 90 percent to 40 percent) based on their length of service. In addition, as a retention incentive, the Department of Defense (DoD) may permit a member of the Armed Forces to transfer all or a portion of his or her Post-9/11 GI Bill benefits to a spouse and/or children. S. 3447 would amend the Post-9/11 GI Bill by expanding eligibility for certain individuals and by modifying the amount of assistance and types of approved programs.

Section 2 of the bill would amend the eligibility criteria under chapter 33 by modifying the definitions of qualified active service performed by members of the Reserve and Guard. The changes would: (1) clarify that Active Guard Reserve (AGR) members serving under title 10, United States Code, “for the purposes of organizing, administering, recruiting, instructing, or training the reserve components of the Armed Forces,” are covered, and provide that all other active service under title 10 must be in support of a contingency operation (as defined in 10 U.S.C. § 101(a)); (2) extend coverage to include full-time National Guard service under title 32, United States Code, for the purposes of organizing, administering, recruiting, instructing, or training the reserve components of the Armed Forces; and (3) extend coverage to National Guard members serving under section 502(f) of title 32 when ordered to active service by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

This section also would clarify that an honorable discharge would be required to establish eligibility under the Post-9/11 GI Bill in the case of an individual who is released from active duty in the Armed Forces: (1) due to a medical condition that preexisted service and that is not service-connected; (2) for hardship; or (3) for a physical or mental condition that was not characterized as a disability and did not result from an individual’s own willful misconduct, but did interfere with the individual’s performance of duty, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense.

Finally, section 2 would amend 38 U.S.C. § 3311(d)(2) to exclude attendance at the Coast Guard Academy as qualifying service under the Post-9/11 GI Bill and expand the definition of entry-level and skill training for the Army to include “One Station Unit Training.”

Because of their potential impact on military recruitment and retention, VA respectfully defers to DoD and the Coast Guard regarding the merits of the proposed changes to qualifying active-service requirements. However, we note that this section will generate PAYGO costs, which would require an appropriate and acceptable offset.

We note that the amendments regarding qualifying title 10 service and extending coverage to Guard members under title 32, United States Code, would be consistent with qualifying active service under the Montgomery GI Bill (MGIB) and the Reserve Educational Assistance Program (REAP). In addition, the proposed amendment clarifying that certain service must result in an honorable discharge, described above, is similar to the honorable discharge requirements applicable to other covered individuals. Lastly, the amendment excluding, as qualified active service, attendance at the Coast Guard Academy is also similar to existing provisions that exclude attendance at the other military service academies.

Section 3 would modify the amount of educational assistance payable in the following areas: With regard to tuition and fee payments (which would still be subject to the 40-100 percent payment tiers in 38 U.S.C. § 3313(c)), for those enrolled in a public institution of higher learning, VA would pay tuition-and-fee benefits based on the charges reported. This would include students enrolled in graduate programs and students charged out-of-state tuition rates.

For those enrolled in a private or foreign institution of higher learning, VA would base payment on the lesser of the charged tuition and fees or a maximum tuition-and-fee cap. The maximum cap would be computed based on figures obtained from the Department of Education's National Center for Education Statistics. The figure used would be the average of established charges at all institutions (public and private) in the U.S. for a baccalaureate degree for the most recent academic year.

With regard to housing stipends (which would still be subject to 40-100% payment tiers in 38 U.S.C. § 3313(c)), for individuals enrolled in institutions of higher learning in resident programs, the monthly housing stipend would be prorated based on training time. For example, a student training at the three-quarter-time rate would receive three fourths of the monthly housing stipend rather than the full monthly housing stipend. Students enrolled at foreign institutions would be subjected to the same rule. However, if the housing allowance based on training time is greater than the national average basic housing allowance, VA would pay the lesser amount. For students enrolled in a distance learning program at more than the half-time rate, VA would pay 50 percent of the housing allowance otherwise payable.

Section 3 would also expand benefits to include payment for enrollment in programs offered by vocational schools, correspondence school-training establishments, on-the-job training and apprenticeships, and flight schools. For those individuals pursuing programs offered by vocational schools, VA would pay the lesser of the established charges or a maximum fee cap. That cap would be computed based on figures from the Department of Education's National Center for Education Statistics. The figure used would be the average of established charges at all institutions (public and private) in the U.S. for a baccalaureate degree for the most recent academic year. In addition, VA would pay a monthly housing allowance based on the military's basic allowance for housing (BAH) of an E-5 with dependents based on the Zip Code of the institution.

For those individuals pursuing a program of apprenticeship/on-the-job training, trainees would receive two monthly stipend payments. One would be based on the military's basic allowance for housing (BAH) for an E-5 with dependents. VA would pay the lesser of the BAH rate for the Zip Code of the employer or the national average of BAH rates. The other payment would be based on one twelfth of the average established charges for tuition and fees at all institutions (public and private) in the U.S. for a baccalaureate degree for the most recent academic year. The figure would be obtained from the National Center for Education Statistics. Both payments would decrease over the length of program. During the first six months of training, the trainee would receive 75 percent of the monthly stipends. During the second six months, the trainee would receive 55 percent of the monthly stipends. For the duration of the program, the trainee would receive 35 percent of the monthly stipends.

An individual pursuing a course of flight training would receive assistance in an amount equal to the lesser of the established charges for the program or 60 percent of the average established charges for tuition and fees at all institutions (public and private) in the U.S. for a baccalaureate

degree for the most recent academic year. The figure would be obtained from the National Center for Education Statistics.

An individual pursuing a program of education through correspondence courses would receive educational assistance in an amount equal to the lesser of the established charges for the program or 55 percent of the average established charges for tuition and fees at all institutions (public and private) in the U.S. for a baccalaureate degree for the most recent academic year. The figure would be obtained from the National Center for Education Statistics. VA would charge one month of entitlement for each month of assistance provided.

Finally, section 3 would provide for lump-sum payments for books and supplies to Servicemembers using VA education benefits while on active duty and to spouses using transferred benefits while the servicemember is on active duty. The total amount payable in an academic year would be \$1,000.

VA supports streamlining the tuition-and-fee benefits for students attending public institutions and establishing a maximum payment cap for students attending private institutions. The manner in which institutions assess charges varies widely from state to state and from school to school. VA also does not object to expansion of the program to permit payment for vocational, flight, correspondence, and apprenticeship or on-the-job training programs, subject to Congress identifying appropriate and acceptable offsetting PAYGO cost savings. However, we believe several technical corrections to the bill as drafted would be necessary to enable VA to administer this section properly. For example, it would be beneficial to streamline the two monthly stipends payable to an individual pursuing a program of on-the-job training or apprenticeship into a single monthly benefit. In addition, as drafted, the assistance proposed in section 3 for certain types of courses at other than institutions of higher learning would not be subject to the 40-100-percent tier levels that reflect the length of an individual's qualifying active-duty service. As a result, individuals pursuing programs of education under the new provisions apparently would receive higher housing and tuition benefits than students attending degree-granting institutions. We would be pleased to work with the Committee to address identified areas of concern.

Section 4 of S. 3447 would amend 38 U.S.C. § 3315 to permit individuals to take more than one licensure or certification test. Currently, individuals are eligible to receive a reimbursement of up to \$2,000 for a single licensure or certification test, with no charge being made to their Post-9/11 GI Bill entitlement. As part of the amendment to section 3315, an individual's entitlement would be charged based on each reimbursement made. VA would base the entitlement charge on a dollar amount provided by the National Center for Education Statistics (NCES) that represents the average established charges for tuition and fees at all institutions (public and private) in the U.S. for a baccalaureate degree for the most recent academic year. VA would charge one month of entitlement for each reimbursement equal to one twelfth of the annual NCES figure. VA does not oppose this proposed amendment, subject to the identification of appropriate and acceptable PAYGO offsets for any resulting additional costs.

Section 5 of the bill would amend 38 U.S.C. § 3316 to provide that individuals eligible to receive supplemental education assistance (i.e., “reenlistment kickers”) under the Montgomery GI Bill—Active Duty (MGIB-AD) or the Montgomery GI Bill—Selected Reserve (MGIB-SR), would remain eligible for such assistance if the individual elected to receive the Post-9/11 GI Bill instead of the MGIB. The supplemental assistance would be paid as an increase to the monthly housing allowance, and based on the individual’s benefit level. Thus, only individuals eligible for a monthly housing stipend would be eligible to receive such supplemental assistance. The Department of Defense would reimburse VA for any supplemental assistance paid. VA defers to DoD as to the merits of this section.

Section 6 would authorize DoD to permit an individual to transfer his or her entitlement to benefits under the Post-9/11 GI Bill after the individual is no longer a member of the Armed Forces. Under current law, DoD must approve such a transfer while the individual is still a member of the Armed Forces. This section would also extend the transfer-of-entitlement option to members of the Public Health Service and the National Oceanic and Atmospheric Administration. In addition, this amendment would require the Secretaries of Defense, Health and Human Services, and Commerce to reimburse VA for the amounts VA pays family members. Currently, VA is not reimbursed for payments made to family members utilizing transferred benefits. The Administration is still reviewing this section, and we will provide written views once VA completes a cost estimate for the entire bill.

Section 7 of the bill would amend 38 U.S.C. § 3322(a) to prevent individuals eligible for National Call to Service (NCS) incentives and the Post-9/11 GI Bill from receiving payments concurrently. VA supports this provision. However, we have identified other areas of potential duplication of benefits, and would be pleased to work with the Committee to include language that would ensure against duplication of benefits.

Section 8 of the bill would amend 38 U.S.C. § 3676(e) to provide that VA may not approve non-accredited courses of education pursued in whole or in part by distance learning. This change would be similar to the existing rule for courses of education pursued by independent study. This change is not necessary because current definitions of resident training and independent study in VA regulations encompass distance learning. As a result, VA currently does not approve non-accredited distance learning programs of education. Nonetheless, we would not object to this amendment.

Section 9 of S. 3447 would amend 38 U.S.C. § 3684(c), which provides that VA may pay an annual reporting fee to any educational institution that furnishes education or training and submits reports or certifications to VA. Under current law, the reporting fee is computed each calendar year by multiplying \$7 by the number of individuals enrolled in VA education and Vocational Rehabilitation and Employment programs. In addition, the law also provides for the payment of \$11 for each individual whose educational assistance checks are sent to a school for

temporary custody and delivery at the time of registration. These amounts have not been increased since October 1, 1977. Section 9 proposes to increase the respective amounts for such payments from \$7 to \$12, and from \$11 to \$15.

VA does not object to the proposed increase in the reporting fees, subject to Congress identifying appropriate offsets. In addition, however, VA believes that section 3684(c) should be further amended to include language requiring educational institutions to use the reporting fees to support Veteran programs and VA certifying-official activities.

Section 10 of the bill would amend 38 U.S.C. § 3108(b) to authorize Veterans pursuing a vocational rehabilitation program under Chapter 31 to elect payment of an amount equal to the national average of the monthly amount of basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 in lieu of the subsistence allowance payable under Chapter 31. We will provide written views for the record regarding this section.

Section 11 of the bill would amend 38 U.S.C. § 3680(a) to remove VA's authority to make interval payments (payment between breaks in terms, quarters, or semesters). This amendment would apply to the Post-9/11 GI Bill, the Montgomery GI Bill, the Reserve Educational Assistance Program, the Survivors' and Dependents' Educational Assistance Program, and the Vocational Rehabilitation and Employment program. However, an exception would exist to make interval payments between consecutive terms when a student changes schools and the break does not exceed 30 days. VA does not support this amendment because the interval payments are paid to the individuals to help with their living expenses during breaks between enrollment periods. Currently, a student is not eligible for interval pay if the break is more than 8 weeks. Discontinuing interval payment would mean a student would have to seek employment during the break between fall and spring semester; thus, we do not support this section as drafted. VA would be pleased to work with the Committee to identify changes to interval payment that would not result in a hardship to students.

We note that the amendments proposed in S. 3447 would be effective on the date of enactment of the Act. VA is working aggressively on a new payment system to support the existing Post-9/11 GI Bill provisions. Since we have concerns about changes to the eligibility criteria impacting our current efforts as well as our ability to implement the provisions effective the date of enactment, we strongly recommend the amendments made by this bill take effect no earlier than August 1, 2011.

Mr. Chairman, we will provide the Committee with our estimate of the cost of enactment of S. 3447 for the record.

S. 1785

S. 1785 would amend 38 U.S.C. § 3675(a) to mandate State approving agency (SAA) approval of courses of education that have been accredited and approved by a nationally-recognized accrediting agency or association if the courses also meet other criteria specified in section 3675(b), including maintenance of certain records, and certain other criteria specified in 38

U.S.C. 3676(c). We believe the amendments proposed in S. 1785 would have no practical impact on SAA approval activities; thus, we do not support its enactment. SAAs currently approve accredited courses if they meet all of the criteria set forth in section 3675. SAAs rarely disapprove accredited courses; however, if an accredited course were to be disapproved, the most likely reason would be a failure to meet the requirements of section 3675(b), which already apply to all approvals under section 3675. As such, we believe enactment of this bill would not result in any additional cost.

S. 2769

S. 2769, the “Veterans’ Job Training Act of 2009,” would provide for payment of a monthly benefit to individuals pursuing full-time programs of apprenticeship and on-the-job training (OJT) under the Post-9/11 GI Bill using a graduated structure similar to that under other VA educational assistance programs, including the Montgomery GI Bill – Active Duty (MGIB-AD) and Selected Reserve (MGIB-SR) programs, and the Post-Vietnam Era Veterans Educational Assistance program. The measure also would amend current law to include apprenticeship or other OJT training programs as approved programs of education for purposes of the Post-9/11 GI Bill.

Pursuant to S. 2769, for each of the first 6 months of an individual’s pursuit of an apprenticeship or other OJT program, the individual would be paid 75 percent of the “monthly benefit payment otherwise payable to such individual” under chapter 33. For the second 6 months of such pursuit, the individual would be paid 55 percent of such amount, and for each of the months following, the individual would be paid 35 percent of such amount. In addition, this bill would authorize payment to such individuals of a monthly housing stipend equal to the monthly amount of the basic allowance for housing payable for a servicemember with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which the individual resides. We note that, unlike the monthly housing stipend authorized under 38 U.S.C. § 3313, this section contains no provision requiring payment of reduced amounts of such monthly stipend in cases where individuals’ aggregated active-duty service is less than 36 months in duration. For each month an individual receives a benefit under this bill, VA would charge the individual’s entitlement at a rate that reflects the applicable percentage (i.e., 75, 55, or 35 percent, as appropriate).

The amendments made by S. 2769 would take effect as if included in the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008 (Title V, Public Law 110-252). That is, the effective date would be August 1, 2009.

While VA supports the intent to improve Post-9/11 GI Bill benefits, VA cannot support enactment of this bill as drafted.

The bill would provide a monthly assistance benefit plus a monthly housing stipend amount to trainees. This would be in addition to any wages a trainee may receive. Further, as noted, S. 2769 provides that the monthly benefit would be equal to a percentage “of the monthly benefit payment otherwise payable” to an individual under chapter 33. However, unlike the MGIB-AD, which provides for monthly payments of educational assistance, no “monthly” benefits other than housing stipends are payable to a student or trainee under the Post-9/11 GI Bill. VA’s

payment of educational assistance under 38 U.S.C. § 3313 (for actual charges of an individual's tuition and fees) is made directly to the institution of higher learning on a lump-sum basis for the entire quarter, semester, or term. Thus, it is unclear to what monthly benefit the provision refers in order to determine the amount of any payment to an individual.

If enacted, this bill would take effect as if it had been included in Public Law 110-252, the Post-9/11 Veterans Educational Assistance Act of 2008. VA would have to manually re-work all apprenticeship and OJT cases for individuals wishing to elect to receive assistance under the Post-9/11 GI Bill for training that occurred on or after August 1, 2009. VA is currently programming a new payment system to implement the provisions of the Post-9/11 GI Bill. Adding new payment provisions before full deployment of the payment system would severely hamper deployment efforts. In addition, it would impact service delivery by adding additional rules while VA is manually processing claims augmented by limited automated tools. We recommend postponing significant changes to the Post-9/11 GI Bill until August 2011 so that enhancements to the program do not have a negative impact on service delivery. This will also allow VA to complete the long-term payment system developed to support the Post-9/11 GI Bill program.

We estimate that the enactment of S. 2769 would result in a benefits cost of \$154.5 million during the first year, \$806.6 million over 5 years, and \$1.7 billion over 10 years.

S. 3082

S. 3082 would amend 38 U.S.C. § 3485(a)(4) to authorize individuals who are pursuing programs of rehabilitation, education, or training under chapters 30, 31, 32, 33, or 34 of title 38, United States Code, or chapters 1606 or 1607 of title 10, United States Code, to receive work-study allowances for certain activities conducted at the offices of Members of Congress. These work-study participants would distribute information concerning VA benefits and services, as well as other appropriate governmental and non-governmental programs, to members of the Armed Forces, Veterans, and their dependents. In addition, the work-study participants would prepare and process papers and other documents, including documents to assist in the preparation and presentation of claims for VA benefits.

VA has no objection to the enactment of S. 3082, subject to the identification of appropriate and acceptable PAYGO offsets for the resulting additional costs. We have no objection to work-study participants participating in and promoting the outreach activities and services contemplated by the bill. We also have no objection to work-study participants assisting in the preparation and processing of papers and other documents, "including documents to assist in the preparation and presentation of claims for VA benefits" (emphasis added) under proposed new section 3485(a)(4)(G)(ii). We note that work-study participants would be subject to the 38 U.S.C. chapter 59 limitations on representing claimants for VA benefits.

We estimate that the enactment of S. 3082 would result in a benefits cost of at least \$727,000 during the first year, \$3.6 million over a 5-year period, and \$7.3 million over 10 years.

S. 3171

S. 3171, the “Veterans Training Act,” would amend the Post 9/11 GI Bill definition of an approved program of education to include those offered by an institution, which has: (1) postsecondary instruction that leads to an associate or higher degree and the institution is an approved institution of higher learning; or (2) instruction that does not lead to an associate or higher degree and the institution is an approved educational institution.

VA supports the intent to improve the Post-9/11 GI Bill benefits. However, because the provisions in this bill would unduly complicate the current Post-9/11 GI Bill program, we are unable to support it.

S. 3171 does not provide specific payment rules for non-degree granting educational institutions. Under current law, the amount payable under the Post-9/11 GI Bill is limited to an amount equal to the maximum charges for an in-state public undergraduate program. To accommodate various fees and the differences between states, VA established a maximum credit-hour charge for tuition and maximum fee charges per term. This ensured that VA made payments in accordance with the intent of the initial legislation, so an individual eligible for the 100 percent payment at a public undergraduate institution would not have to pay tuition and fees.

Most non-degree programs are offered based on clock-hour measurement with tuition charged for the entire program. However, most degree-granting institutions charge tuition based on enrollment for the term, quarter, or semester. For example, a Veteran enrolled in a specialized computer-training program lasting six months could be charged \$10,000 for the program. The bill does not indicate how VA should determine the maximum amount payable for such a program.

Current law provides that individuals who transfer from other VA educational assistance programs to the Post-9/11 GI Bill may be paid for courses offered by non-degree-granting institutions. However, the payment of assistance thereunder is limited to the monthly educational assistance allowance the individual would have received if he or she remained under the program from which he or she transferred. Thus, this new legislation would create a payment discrepancy between those who were eligible to elect the Post-9/11 GI Bill over a different educational assistance program versus those individuals who are only eligible for Post-9/11 GI Bill benefits.

VA is aggressively working on a new payment system to support the existing Post-9/11 GI Bill benefits. Adding new payment provisions before full deployment of the payment system would severely delay deployment. As stated earlier, VA respectfully recommends making any significant changes to the Post-9/11 GI Bill effective after August 1, 2011, so that enhancements to the program do not have a negative impact on service delivery.

As always, subject to Congress identifying appropriate and acceptable offsetting PAYGO cost savings, we would be pleased to work with the Committee to improve the Post-9/11 GI Bill

while eliminating existing payment complexities after deployment of the Post-9/11 GI Bill payment system.

We estimate that enactment of S. 3171 would result in a benefits cost of \$169.2 million in the first year, \$863.0 million over 5 years, and \$1.8 billion over 10 years.

S. 3389

S. 3389 would amend section 3695 of title 38, which currently limits individuals to 48 months of entitlement under two or more education benefit programs. This measure would exclude individuals who have served at least four years on active duty in the Armed Forces from the current 48-month limitation if they are eligible to receive either the Post-9/11 GI Bill or Montgomery GI Bill–Active Duty, and the Montgomery GI Bill–Selected Reserve or Reserve Educational Assistance Program (REAP) benefits. Individuals eligible for two or more of these programs would be able to receive up to 72 months of education benefits combined. This amendment would apply retroactively and be effective upon the date of enactment.

VA does not support enactment of this legislation because it would allow individuals to use the same period of active-duty service to qualify for and use two education benefit programs. For example, an individual could use active-duty service performed from October 1, 2001, to October 1, 2005, to qualify for REAP and the Post-9/11GI Bill, thus earning up to 72 months of entitlement for the same period of service.

Mr. Chairman, we will provide the Committee with our estimate of the cost of enactment of S. 3389 for the record.

This concludes my statement, Mr. Chairman. I would be happy to respond to any questions you or the other Members of the Committee may have.