

STATEMENT OF
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NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
WITH RESPECT TO
Hearing: Pending Benefits Legislation

WASHINGTON, D.C.

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Chairman Isakson, Ranking Member Blumenthal and members of the Committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

S. 270, Charlie Morgan Military Spouses Equal Treatment Act of 2015

The VFW supports this legislation, which amends title 38, United States Code, to align the definition of marriage with the Supreme Court's ruling of the Defense of Marriage Act. Simply put, if a veteran is legally married in a state that recognizes same-sex marriage, the Department of Veterans Affairs (VA) is obligated to provide survivor benefits to his or her spouse or surviving spouse the same way it does for every other legally married veteran. The VFW believes that a veteran is a veteran and their benefits should be provided fairly across the board.

S. 602, G.I. Bill Fairness Act of 2015

The VFW supports legislation requiring VA to consider time spent by members of the reserve components while receiving medical care for service-connected injuries for purposes of determining eligibility for the Post-9/11 GI Bill. In 2002, the Assistant Secretary of Defense for Reserve Affairs accurately stated, "the current reserve component status system is complex, aligns poorly to current training and operational support requirements, fosters inconsistencies in compensation and complicates rather than supports effective budgeting." There is no better illustration of this statement than the fact that recovering guardsmen and reservists are ineligible for the same GI Bill benefits as their active duty counterparts. We urge Congress to act swiftly to end this unequal treatment by passing S. 602.

Furthermore, we urge Congress to draft legislation that addresses additional GI Bill benefits inequities between war veterans from the reserve component, non-wartime veterans, and dependents. Currently, a Marine reservist could potentially deploy to a combat zone, receive a Purple Heart and still only receive 60 percent of his or her Post-9/11 GI Bill. Similarly, a Guardsman, who deploys twice to a combat zone, may only receive 80 percent of his or her Post-9/11 GI Bill benefit. Meanwhile, a dependent of an active duty veteran who may never have deployed to combat at all, could receive 100 percent of the Post-9/11 GI Bill benefit, regardless of the dependent's affiliation with the military in their adult life. The eligibility requirement for reserve component members is inherently unjust, and we ask Congress to increase Post-9/11 GI Bill benefits for reserve component members who serve in a combat zone, especially for those wounded in action.

S. 627, to require the Secretary of Veterans Affairs to revoke bonuses paid to employees involved in electronic wait list manipulations, and for other purposes.

The VFW supports the intent of this legislation which would require the Secretary to retroactively rescind bonuses paid to VA employees who are later found to have manipulated wait time data by purposefully omitting any veteran's name from the electronic wait list, as identified by an investigation by the Inspector General (IG).

The VFW strongly believes that employee accountability is critical to correcting past problems at VA and restoring the trust of the veterans they serve. Employees must realize that deliberately delaying or withholding care from a veteran is unacceptable and will not be tolerated under any circumstances, much less rewarded. In addition, supervisors who were aware of data manipulation practices by the employees below them must also be held equally accountable, as provided for in this legislation.

With that said, the VFW also recognizes that many front-line employees may have been coerced into these dishonest practices by their superiors. For far too long, whistleblower protections were not properly enforced at VA, and lower level employees were often subjected to intimidation and threats of reprisal by their superiors if they did not comply with business practices that may have been dishonest. The VFW believes that this culture is changing at VA. Still, we believe employees who may have acted out of fear of reprisal were not directly responsible for the data manipulation that took place at some facilities. For this reason, we ask that the IG report also be required to determine which if any employees were coerced into their actions by their superiors, and allow the Secretary to make a decision on whether or not those employees should be spared punishment on that basis.

S. 681, Blue Water Navy Vietnam Veterans Act of 2015

The VFW strongly supports this legislation, which would require VA to include territorial seas as part of the Republic of Vietnam, extending presumptive service connection and health care for Agent Orange-related illnesses to Blue Water Navy veterans. We have long maintained that it is arbitrary and unjust that veterans who served aboard ships in the coastal waters of Vietnam are denied presumptive benefits associated with Agent Orange exposure. We believe that those veterans were potentially exposed to significant levels of toxins, and should be granted the same presumption of service connection as their counterparts who served on the mainland of Vietnam.

S. 1203, 21st Century Veterans Benefits Delivery Act

This legislation would revise or add many provisions regarding the way in which the Department of Veterans Affairs administers veterans' claims for benefits, and the VFW worked closely with Senators Heller and Casey during its drafting. While the VFW supports this bill, we need to ensure its language is perfectly clear. Therefore, we recommend the Committee amend two sections of the bill to ensure veterans are fully aware of their rights and that the proposed Comptroller General audit is effective:

Section 103 allows the Board of Veterans Appeals to use video conferencing (VTC) as the default method for hearings. While conducting hearings through VTC will expedite the adjudication of claims and eliminate substantial travel costs to veterans and the Administration, we feel that veterans should be made aware of the option to attend hearings in person. Therefore, we recommend the Committee amend the bill to indicate that the VA "shall" notify the veteran of their right to an in-person hearing and "shall" grant such a request.

Section 201 requires the U.S. Comptroller General to audit all Veterans Benefits Administration Regional Offices (VARO) to assess the consistency of rating decisions. A thorough study would require the collection of a representative sample of decisions by disability to review them for similarities and note different outcomes. The VFW does not oppose the provision, but we worry that the Comptroller cannot hire sufficient subject matter experts to conduct the review in the time allotted. The Committee should consider whether another option may be more feasible, such as narrowing the scope of the study or extending the amount of time the Comptroller has to conduct the review.

Draft Bill, Veterans' Compensation Cost-of-Living Adjustment Act of 2015

The VFW strongly supports this legislation which will increase VA compensation for veterans and survivors, and adjust other benefits, by providing a cost-of-living adjustment (COLA) beginning December 1, 2015.

Disabled veterans, along with their surviving spouses and children, depend on their disability and dependency and indemnity compensation to bridge the gap of lost earnings and savings caused by the veteran's disability. Each year, veterans wait anxiously to find out if they will receive a cost-of-living adjustment. There is no automatic trigger that increases these forms of compensation for veterans and their dependents. Annually, veterans wait for a separate Act of Congress to provide the same adjustment that is automatically granted to Social Security beneficiaries.

The VFW is pleased that this legislation does not contain the "rounding down" of the COLA increase. This is nothing more than a money-saving device that comes at the expense of veterans and their survivors.

Military Compensation and Retirement Modernization Commission Legislative Proposals

Recommendation 11

The Commission recommended that the VA consolidate all education benefits into a single program, extend the time commitment required to obtain the transferability benefit and eliminate

the Basic Housing Allowance for dependents. The VFW played an integral role in passing the Post-9/11 G.I. Bill and we have a vested interest in ensuring that the veterans who utilize this robust benefit receive quality educational and vocational training outcomes. Military and veterans' education benefits provide a critical tool to ensure that those who have defended our nation can compete for the best jobs when they leave service. We believe the country has a vested interest in ensuring that federal education dollars for our military men and women are not abused.

The Commission takes issue with a prioritization of veterans' needs and the Defense Department's incentive to allow service members to transfer their GI Bill benefits to their dependents. The G.I. Bill's primary use should be to help veterans reintegrate into civilian life by providing the education and skills necessary to gain meaningful employment, but providing transferability of one's G.I. Bill benefit has been a critical tool in retaining mid-career service members. The G.I. Bill must be a transition benefit first, and the transition aspect should never provide a greater benefit to dependents than it does to veterans.

The Commission recommended "duplicative education assistance programs should sunset to reduce administrative costs and to simplify the education benefits system." To do so, Congress would have to choose between two options. First, extend full Post-9/11 G.I. Bill benefits to all service members and veterans, including all reserve component members. The second option would be to create a scaled system in which certain categories of veterans will receive different percentages of the G.I. Bill depending on whether they served on active duty, reserve status or during a time of war, similar to how VA awards a certain percentage of the Post-9/11 G.I. Bill to reserve component service members today. If these programs are set to expire, Congress needs to ensure that war veterans, including guardsmen and reservists, should not receive less of a benefit than dependents or other veterans.

Recommendation 12

The VFW supports the Commission's recommendations for Congress to reevaluate the current Transition Goals, Plans, Success (GPS) curriculum, encourage state collaboration in coordinating the Jobs for Veterans State Grants (JVSG) program, encourage employees to attend Transition GPS classes and require a joint report from Department of Defense (DOD), VA, and Department of Labor (DOL) on the challenges employers face when seeking to hire veterans. Over the past few years, this committee's work has produced a significant evolution in the way the military prepares transitioning service members for civilian life. Positive changes include mandatory Transition Assistance Program (TAP) for all service members, the creation of the Off-Base Transition Training (OBTT) pilot program, and a complete redesign of a TAP curriculum. The Commission's recommendations will build on the good work the Committee and agencies have already accomplished.

The VFW supports ensuring that transitioning service members have access to the full suite of transitional training, should they so choose, because transitioning service members have no reasonable way to anticipate the specific challenges they will face after leaving the military. However, the VFW understands the operational limitations in mandating such participation across the military. That is why the VFW supports supplementing the mandatory portion of TAP with access to all the track curricula through online resources. DOD recently took a major step

by allowing transitioning service members to audit the modules through the secure Joint Knowledge Online (JKO) portal. The VFW stands firm on the idea that online resources must be seen as a supplement to in-person TAP, not a replacement.

The VFW believes that DOD must fully implement its information sharing agreement with DOL to ensure that state workforce development agencies would have consistent access to the names of veterans leaving the military and relocating to their areas. When armed with this information, employment counselors could reach out directly to recently transitioned veterans and speak to them face to face to ensure that they fully understand what is available to them locally. Unfortunately, the proposed information sharing agreement was delayed, and only started as a pilot in January of this year. DOL first informed the VFW that it was working to codify the agreement in 2012. It is now 2015. At this point, the VFW believes it is unacceptable that DOD and DOL have yet to implement this concept fully.

Another solution is to continue to bolster the post-service availability of TAP. By facilitating large-scale, community-based TAP classes, OBTT serves veterans who would not have had access to the material, or who could only receive comparable information by meeting one on one with employment counselors at an American Jobs Center. Moreover, the program was very cost effective, costing only \$52,052 to administer the entire pilot. Unfortunately, the OBTT pilot expired in January 2015, and DOL will not have information on employment outcomes for participants for another year. The VFW believes that OBTT should be a permanent program, but until we have final data on the OBTT pilot, Congress should pass an extension of the pilot.

Department of Defense Legislative Proposals – Regarding Education Benefits, Transition Assistance Program and Advisory Board on Dose Reconstruction

Section 114

As previously mentioned, the VFW supports amending Title 38 so that reserve component members who spend time on active duty for the purpose of receiving medical care accrue time for the GI Bill eligibility. We agree with DOD and Senator Wyden that reserve component members, who answer the call to active duty and served under similar conditions as their active counterparts, deserve to have their service equally honored.

Section 522

The VFW supports amending Chapter 1606 of title 10, so service members who are unable to complete their studies due to mobilization do not lose valuable G.I. Bill benefits. Occasionally service members receive mobilization orders in the middle of the semester and have no choice but to immediately drop their classes. Schools or the federal government should never penalize service members for answering the call to service. Therefore, we recommend that the Committee adopt DOD's proposal to amend title 10, United States Code, 12304a and 12304b to ensure a service member's education benefits are not lost when called to active duty.

Section 542

We support amending section 4312 of title 38 to ensure that the time service members spend on involuntary mobilization orders does not count toward the cumulative 5-year service limit under Uniformed Service Employment and Reemployment Rights Act (USERRA). In order to maintain your right for reemployment under USERRA, your cumulative periods of uniformed service, relating to the employer relationship for which you seek reemployment, must not exceed five years. This proposal will ensure that Congress's original intent to exempt all involuntary service from the 5-year limit is consistent with DOD practices under sections 12304a and 12304b of title 10.

Section 545

The VFW opposes any effort to limit any service member's access to the Transition Assistance Program. Reserve component service members often face unique challenges when bouncing back and forth from active to reserve duty. Many reserve component members do not realize the rights, resources, and benefits that Congress has created for them. Unfortunately, reserve component members already have limited, if any, access to the services provided by the Transition Assistance Program. Before Congress grants DOD the authority to further exempt reserve component members from receiving TAP, we believe that Congress and DOD should collaborate to find new ways to extend TAP to reserve component members. One possible solution would be to create a pilot program where the military services offer a 1-day condensed TAP class that reserve units could provide their members on a drill weekend. A special TAP class would ensure that reserve component members understand the resources available to them for when they mobilize and transition back to reserve status successfully, without interrupting the unit's annual training schedule.

Draft Bill, To amend title 38, United States Code, to modify the treatment under contracting goals and preferences of the Department of Veterans Affairs for small businesses owned by veterans, to carry out a pilot program on the treatment of certain applications for dependency and indemnity compensation as fully developed claims, and for other purposes.

The VFW supports section 101, which would allow the surviving spouse of a deceased veteran business owner to continue operating the business as a service-disabled veteran-owned small business (SDVOSB) for a period of three years following the veteran's death. Current law only allows a surviving spouse to do so if the veteran was 100 percent disabled or died from a service-connected disability. This is a necessary protection that allows for a transition period for the bereaved spouse to restructure the business as necessary. The VFW believes that this protection should be extended to all surviving spouses under the SDVOSB program.

Section 102 would allow the surviving spouse or dependent child of a service member who owns a business and is killed in the line of duty to continue operating the business as though it were owned by a veteran with a service-connected disability. This status would last until the dependent relinquishes at least 51 percent ownership, the spouse remarries, or after a period of ten years. The VFW supports this section.

Section 201 would clarify that VA has a duty to assist by obtaining a medical opinion for veterans making service-connected disability claims related to military sexual trauma (MST), when the medical evidence does not contain a diagnosis or opinion by a mental health professional. The VFW supports this section. In addition, we strongly believe that the evidentiary burden placed on the veteran in MST claims remains unrealistically high for many. For this reason, we continue to support S. 685, the Ruth Moore Act.

Sections 202 and 203 would require VA to submit reports to Congress on disability claims related to MST. The VFW supports these sections.

The VFW supports section 204, which would require VA to carry out a pilot program to assess the feasibility and advisability of expediting certain claims for dependency and indemnity compensation (DIC). We feel this is a common sense step towards more quickly adjudicating DIC claims where the veteran is already receiving disability compensation and the cause of death is clearly listed as having been due to one of his or her disabilities. In such cases, there is no reason to make the veteran's survivors wait any longer than necessary for their benefits.

Section 205 provides for a review of determination of certain service in the Philippines during World War II. The VFW holds no position on this section.

Section 206 would require VA to submit reports on its disability medical exams process and the extent to which it is able to prevent unnecessary medical examinations. The VFW supports this section, as these reports will help improve the disability examinations process, reducing the overall time necessary to decide claims. We would suggest, however, that the reporting requirement also include how many specialty examinations were ordered in cases where the veteran had already submitted a disability benefits questionnaire completed by a non-Department physician. This will help us understand the extent to which the information submitted in those cases is accepted by VA as adequate for deciding claims.

The VFW supports section 301, which would require the Secretary of Veterans Affairs to conduct a study on identifying, claiming and interring unclaimed remains of veterans. The private sector has worked very hard to ensure dignified burials for veterans whose remains have gone unclaimed. This bill will require VA to recommend legislation or administrative actions that could take place to make the process of claiming remains for burial more standardized and timely.

Finally, the VFW supports section 401, which would give the men and women who serve our nation in the reserve component the recognition they deserve. Many who serve in the Guard and Reserve are in positions that support the deployments of their active duty comrades to make sure the unit is fully prepared when called upon. Unfortunately, some of these men and women who serve at least 20 years and are entitled to retirement pay, TRICARE, and other benefits, are not considered veterans according to the letter of the law. This provision would grant Guard and Reserve retirees the proper recognition as veterans.

Chairman Isakson, Ranking Member Blumenthal, this concludes my testimony and I am happy to answer any questions you or any other members of the Committee may have.