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STATEMENT OF
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BEFORE THE

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

WITH RESPECT TO

S. 1990, VETERANS OUTREACH IMPROVEMENT ACT OF 2005
S. 2121, VETERANS HOUSING FAIRNESS ACT OF 2005
S. 2416, VETERANS EMPLOYMENT AND TRAINING ACT OF 2006
S. 2562, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2006
S. 2659, NATIVE AMERICANS VETERANS CEMETERY ACT OF 2006
S. 2694, VETERANS' CHOICE OF REPRESENTATION ACT OF 2006

WASHINGTON, D.C. MAY 25, 2006

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the 2.4 million men and women of the Veterans of Foreign Wars of the U.S. (VFW) and our Auxiliaries, thank you for including us in today's discussion on the veterans' benefits bills under consideration.

S. 1990, the ?Veterans Outreach Improvement Act of 2005,? establishes a $25 million program to provide grants for state veterans' outreach programs. The grants would be weighted based on the veterans' population by state. Because it would be funded from the VA, the VFW cannot support this bill.

The VFW recognizes the need for increased local outreach and supports the goals of this legislation. However, as structured, this program would redirect funds used for Veterans Benefits Administration (VBA) use for VA outreach and claims processing unless Congress allocates funding from a separate appropriations account, in addition to current VBA funding. The VBA faces a mounting challenge of the 808,000 plus claims that await processing and a dismal error rate on the claims they do process. While we are aware that VBA asserts that their resources are adequate, it appears to us that there is considerable evidence that this is not the case. Removing VBA resources to do outreach weighted toward the largest, most populous states, will exacerbate VBA's claims processing problems. While we do not doubt that there exists a need to reach out to America's underserved veterans, we do not see further deterioration in service as a viable tradeoff for this initiative.
The VFW supports S. 2121, the ?Veterans Housing Fairness Act of 2005,? which would extend

housing loan benefits to purchase residential cooperative apartment units. Many other government agencies, including the Federal Housing Administration (FHA) already have programs in place, which provide loans for cooperative residential units, and we believe that VA would also be able to address any legal issues by regulation, as well. This bill would favorably impact veterans living in densely populated urban areas and create options for veterans facing expensive housing markets.

S. 2416, the ?Veterans Employment and Training Act of 2006,? aims to expand licensure based lump-sum payments to areas of industry that are experiencing critical shortages of employees or that are deemed high growth industries, as determined by the Secretary of Labor.

The VFW has long called for the expansion of licensure and certification programs to expedite the transition period from military to civilian employment for servicemembers. We have also supported expanding the GI Bill to make it more flexible and adaptable to the real needs of today's veterans. Despite this, we have several concerns about this legislation.

We are wary that the definition of the industries this bill covers is overly broad; and in some cases, it could lead to careers, which do not provide adequate skills to sustain long-term goals. The Department of Labor's definition currently includes such broad industries as ?hospitality? and ?retail.? While rewarding careers can be found within these industries, we believe the definition of which types of programs are eligible needs careful monitoring, making it easier for veterans to find truly rewarding careers in high-paying jobs.

Our second concern is oversight. With the expansion of the program, comes opportunity for ? start-up? companies and businesses claiming to provide educational training opportunities for veterans as a way to make easy profits. While the vast majority of companies are sure to provide legitimate service, there will likely be opportunity for fraud and abuse. Congress must see to it that there is vigorous oversight built into the program to include significant evaluation and accreditation so that unscrupulous companies cannot take advantage of veterans.

S. 2562, the ?Veterans' Compensation Cost-of-Living Adjustment Act of 2006,? seeks to adjust compensation rates to reflect the rising cost of living. We appreciate the Committee's commitment to maintaining the integrity of the buying power of the veterans' compensation program by providing periodic cost-of-living increases (COLAs). We fully support this goal. However, we note that this bill once again contains a provision for rounding down any fraction of a dollar in the COLA calculation. This works against the spirit of this bill.

Over time rounding down the dollar, when combined with other adjustments to meet budgetary goals, has caused erosion in fractional compensation rates, especially for severely disabled veterans. This has lead to significant problems for America's veterans. We think this is the underlying cause of some compensation policy problems recognized by this Committee. Accordingly, we support this action to adjust the buying power of this program, which is of critical importance to America's veterans who have sacrificed life and limb for our country; but we urge you to refrain from this process of rounding down the last dollar. While we realize that restoring the compensation rates to linearity with the percentage of disability would require a significant budgetary commitment, we urge you to at least begin the process by enacting a ? rounding up? provision this year. This would serve as a show of good faith with America's

veterans.
S. 2659, the ?Native American Veterans Cemetery Act of 2006,? would allow tribal organizations to apply for grants to establish and maintain veterans' cemeteries on tribal lands. We fully support S. 2659. We believe that this is a logical extension of the veterans' cemetery grant program and will serve the needs of Native American veterans and their families that are not fully addressed by the National and State veterans' cemeteries.

S. 2694, the ?Veterans' Choice of Representation Act of 2006,? is generally consistent with the proposals that the Veterans of Foreign Wars has opposed over many years. It would provide for claimants the opportunity to be represented by for-profit lawyers from the point of first filing a claim at a VBA regional office, instead of from the point at which administrative remedies have been exhausted, the decision of the Board of Veterans' Appeals (BVA). This is a radical departure from current law.

The current administrative process, despite its shortcomings in execution, is designed to be a non-adversarial process, with multiple opportunities for review, and no restrictions on the submission of evidence. By design, it also offers the opportunity for self-representation, or representation by Veterans Service Organizations (VSO) representatives at no cost to the claimant. This is the administrative process of filing a claim, and many claims are granted at this level. If not granted, then from the Notice of Disagreement to the BVA decision, many claims, which were initially denied, are reversed on reconsideration, or on account of submission of new evidence. These claimants, if represented by lawyers under the provisions of this bill, would pay a substantial amount of their benefits as a fee for services that either would require only nominal effort, or would have been provided at no cost by a VSO representative.

This would represent a windfall opportunity for lawyers to earn significant fees with little effort. Moreover, since the fees may also be dependent on the accumulated retroactive benefit, this bill provides incentive for lawyers to slow the administrative process as much as possible, both to wear down resistance to granting the benefit, but also to maximize the past due amount of benefits payable. Since there is no provision in this bill requiring lawyers to accept all clients, they are free to pick those claimants who have claims that are most likely to prevail in the administrative process. This allows lawyers to maximize the fees payable, while minimizing their own efforts.

While the VFW supports veteran claimants, and the struggle that many face to receive the benefits that they deserve as a result of their increasingly often-heroic service, we believe that the interjection of lawyers into a system intended to serve most claimants sympathetically and efficiently is misguided. It would inevitably result in even less timely service, and provide program administrators with a justification to ratchet back still further in service and assistance.

Under current law, claimants have the opportunity for legal representation in the adversarial court process following a denial at the BVA. VFW believes that this is the logical point at which the assistance of a for-profit lawyer is appropriate and necessary. The current system conserves the claimants' resources should it be necessary to hire an attorney at the appellate level. We have seen, even under the current system, claimants left without either resources or representation, in the midst of their appeal, when both run out on them.

The VFW still hopes that the VA leadership will address the very significant deficiencies in claims processing in the regional offices, but our optimism wanes. VBA's claims backlog now exceeds 808,000 claims, and continues to grow, the very significant errors in about 100,000 claims per year remain unaddressed, duty to assist is often not honored, and appeals processing is grinding to a standstill in some offices. Yet, VBA asserts that they are adequately staffed. If this is the growing ?complexity? that justifies for-profit representation at the regional office level, then lawyers will provide relief for selected claimants, at significant additional cost to them, but at substantial cost to the entire system, since attorneys will not tolerate this treatment by the VBA. Unless VBA addresses their own problems instead of ignoring them, any significant number of attorneys practicing at the regional office level may bring this system to the point of collapse. The VBA system is simply not robust enough to absorb the additional labor-intensive burden that effective for-profit representation will impose. Introducing attorneys at the initial stages of claims processing might be the tipping point referenced by the Administrative Conference of the United States, in testimony before the passage of the 1988 Veterans' Judicial Review Act, that any system that permits attorneys, will eventually require them.

The VFW is also concerned that provisions in S.2694, which would apply to both attorneys and veterans' service organizations representatives (VSORs) would negatively affect their ability to assist veterans. This provision, no doubt crafted to address some of the objections raised by the VFW and other organizations, would authorize the VA General Counsel (VAGC) to remove or sanction any veteran representative who fails to respect the ?non-adversarial nature of any proceeding?? or presented ??frivolous claims, issues, or arguments to the Department?? or any other standard that the Secretary sees fit to establish by regulation. It seems to us that these restrictions are both too vague and subjective, and are potentially too vulnerable to abuse by a department seeking to restrict workload, to be in the best interest of veterans.

We frequently hear the complaint from VBA leadership that veterans present claims for too many conditions or that veterans should be restricted from reopening claims when their disabilities become more severe. Our responsibility is to represent the interests of America's veterans. We do this in teamwork with the VBA. However, should the best interest of a veteran diverge from that of the VA, we do our best within the law to assist the veteran. Furthermore, while we as VSORs work toward fair and equitable decisions under the established statutes, policies, and regulations and recognize that the system must work accurately and efficiently for all to benefit, an attorney can and should set about winning the maximum benefits for his/her client. This would necessarily suggest the maximum use of every opportunity to acquire or submit evidence, testify at a hearing, or dispute VA exams or other evidence.

While we believe this is not disrespect for the ??non-adversarial nature of any proceeding?? and it might increase the cost of representation to the veteran, it will inevitably slow down VBA processing. Should VA seek to curtail this as ?adversarial? behavior when faced by the inevitable growing backlogs, there is no obvious line at which veteran's right to the claims process could be fairly limited. One need only look at the history of claims processing before the Veterans' Claims Assistance Act of 2000 and the many claims denied as ?not well grounded? to realize that the balance between protecting veterans' rights and addressing backlogs is a difficult one. We believe that, in the effort to protect the non-adversarial process, veterans' rights might be harmed, or taken away. The possibility of sanctions or removal might tend to intimidate or

discourage claims representatives, or if this bill were to be enacted in full, attorneys. This would not be in the veteran's best interest.

Regarding ?frivolous? claims, we believe that prior to Congressional action, claims from veterans claiming to be harmed by weed killers used in Vietnam, atomic tests, secret mustard gas experiments on ?volunteer? servicemen, and Gulf War illnesses that defy diagnosis, might all meet some definition of ?frivolous.? In at least one example: Agent Orange, veterans who accepted VA's guidance and did not file were penalized as a result. While we realize that the Veterans' Court has established a very limited definition of frivolous claim, we see no legitimate need for this restriction at the initial claim's level. Certainly, any claim that is truly frivolous would be as rare as to have negligible an affect on VBA's workload; and the potential for abuse by restricting legitimate claims would be too great to make this restriction worthwhile. Certainly, an administration that tolerates 100,000+ seriously erroneous claims decisions every year should not be authorized to restrict the claims themselves on the basis that they might be perceived to be frivolous.

It is for these reasons that we must oppose S.2694.

Mr. Chairman and members of the committee, once again on behalf of the men and women of the Veterans of Foreign Wars I thank you for inviting us to present our views here today. I will be happy to respond to any questions you may have.