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STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
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Mr. Chairman and Members of the Committee:

I am happy appear before you to present the views of the Disabled American Veterans (DAV) on the various bills under consideration today. In accordance with its congressional charter, the DAV legislative mission is focused on benefits and services provided to veterans on account of their service-connected disabilities. We are therefore pleased to support the bills insofar as they fall within that scope. We are also pleased to acknowledge other provisions within these bills that transcend the DAV legislative focus, but are nonetheless beneficial to many veterans.

S. 22

The Post-9/11 Veterans Educational Assistance Act of 2007 would entitle certain members of the Armed Forces who served on active duty on or after September 11, 2001, to enhanced educational assistance. The legislation would require completion of a secondary school diploma, or its equivalent, for eligibility. In most cases the duration of such assistance would be 36 months and assistance amounts would be subject to several criteria such as the frequency of attendance and charges for the program of education. The legislation would allow assistance for the pursuit of: programs on a full or part-time basis; apprenticeship or other on-job training; correspondence courses; flight training; tutorial assistance; and licensure and certification tests. The bill would also allow for the pursuit of an approved program of education while the member served on active duty. All programs would be subject to approval by the Department of Veterans Affairs (VA).

S. 22 would provide 9/11 era veterans with educational benefits parallel to those provided to service members at the end of World War II. Following WWII, veterans using the GI Bill became a catalyst which spurred economic growth and expansion for an entire generation of Americans. Today's veterans carry the same potential and we should grant them the highest level of resources possible to reward them for their service. History has clearly illustrated that when our nation invests in veterans' educational opportunities we are ensuring our nation's economic vitality. Because the DAV maintains an acute focus on benefits that are specific to disabled veterans and their families, our legislative agenda does not include resolutions pertaining to the education benefits. However, the DAV acknowledges that S. 22 could have a tremendously positive impact for veterans and future generations of Americans, and we certainly have no

opposition to its passage.

S. 57

The Filipino Veterans Equity Act of 2007 would grant eligibility for VA benefits to members of the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts who performed in active military service before July 1, 1946. The DAV has no opposition to the enactment of this bill.

S. 117

The Lane Evans Veterans' Health and Benefits Improvement Act of 2007 would grant eligibility for a number of health services to veterans who served on active duty during a period of war, without requiring medical evidence that the condition is attributable to such service. Such services would include mental health evaluation and hospital care, medical services, nursing home care, and family and marital counseling for any identified mental health condition. S. 117 would require: post-deployment medical and mental health screenings to be conducted within 30 days after a deployment; provision of an electronic copy of all military records to separating members; and outreach to members of the National Guard and reserves concerning benefits and services available upon discharge or deactivation. The legislation would require VA to establish and maintain a Global War on Terrorism Veterans Information System, and it would require VA, the Department of Labor (DOL), and the Department of Defense (DOD) to submit quarterly reports on how veterans are affected by the Global War on Terrorism. While the DAV does not have resolutions specific to this legislation, it would be beneficial to veterans seeking health care services and benefits. As such, the DAV has no objection to the favorable consideration of this bill.

S. 161

The Veterans' Disability Compensation Automatic COLA Act would require that, whenever there is an increase in benefit amounts payable under title II of the Social Security Act, the VA shall make the same percentage increase to the rates of disability compensation for veterans with service-connected disabilities, additional compensation for dependents, the clothing allowance for certain disabled adult children, and dependency and indemnity compensation for surviving spouses and children.

To maintain the value of veterans' benefits they must be adjusted to keep pace with the rising cost of living. Clearly, disabled veterans warrant automatic COLA increases to ensure their standard of living does not decline. As such the DAV supports S.161. Along with the provisions of S.161, the DAV encourages the Committee to consider a similar measure that would provide an automatic COLA for specially adapted housing and auto grants, which also must be adjusted annually if they are to remain meaningful benefits and keep pace with the cost of living. A provision that would do so is contained within another bill under consideration today. Section 701 of the Comprehensive Veterans Benefits Improvement Act of 2007 would establish an automatic COLA for specially adapted housing and auto grants. As such, the DAV would encourage the Committee to favorably consider this provision along with S. 161.

S. 168

This legislation would require the VA to establish a national veterans' cemetery in the Pikes Peak Region of Colorado, and would require the VA to consult with appropriate state and local officials in site selection, and with the Administrator of General Services or other appropriate officials regarding the availability of Federal lands in that area suitable for those purposes.

The DAV has no resolution to support this issue, but we have no objection to the enactment of this legislation to make more burial space available for veterans.

S. 225

This legislation would amend the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 to remove the requirement that, in order to qualify for retroactive benefits from traumatic injury protection coverage under the Servicemembers' Group Life Insurance program during the period beginning on October 7, 2001, and ending on November 30, 2005, the Secretary of the military department concerned must determine that the loss was a direct result of a traumatic injury incurred in the theater of operations. The DAV supports S. 225.

S. 423

The Veterans' COLA Adjustment Act of 2007 would increase, effective as of December 1, 2007, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans. Within the bill is a provision that "Each dollar amount increased under paragraph (1), if not a whole dollar amount, shall be rounded to the next lower whole dollar amount." While the DAV supports the overall intent of this bill, we have testified for the past several years that rounding down the adjusted rates to the next lower dollar amount will gradually erode the value of benefits and they will not keep pace with the rise in the cost of living. Rounding down veterans' cost-of-living adjustments unfairly targets veterans for convenient cost savings for the government. The DAV supports S. 423, but we urge the Committee to strike the provision regarding the rounding down of the COLA. A provision that would do so is contained within another bill under consideration today. Section 602 of the Comprehensive Veterans Benefits Improvement Act of 2007 would eliminate the rounding down of the annual COLA. As such, the DAV would encourage the Committee to favorably consider this provision along with S. 423.

S. 526

The Veterans' Employment and Training Act of 2007 would expand the scope of programs of education for which accelerated payments of educational assistance under the Montgomery GI Bill (MGIB) may be used. The DAV has no resolutions pertaining to this bill but because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

S. 643

The Disabled Veterans' Insurance Act of 2007 would increase the amount of supplemental insurance available for totally disabled veterans. More specifically, it would amend section 1922A(a) of title 38, United States Code, by striking \$20,000 and inserting \$40,000. The DAV supports S. 643.

Regarding the issue of veterans' insurance benefits, the DAV also encourages the Committee to consider increasing the amount of coverage available under Service-Disabled Veterans Insurance

(SDVI). The \$10,000 maximum coverage under the base SDVI policy has not been increased since it was established in 1917. Additionally, SDVI premiums are much higher than standard commercial rates because they are based on 1941 mortality tables. Because life expectancy has improved since 1941, the program no longer fulfills congressional intent to provide life insurance to service-connected disabled veterans at standard rates.

The DAV supports increasing the face value of SDVI, along with basing SDVI premiums on current mortality tables. A provision that would do so is contained within another bill under consideration today. Section 301 of the Comprehensive Veterans Benefits Improvement Act of 2007 would base SDVI premiums on current mortality table. As such, the DAV would encourage the Committee to favorably consider this provision along with S. 643.

S. 698

The Veterans' Survivors Education Enhancement Act of 2007 would eliminate the 45-month limitation on the use of dependents' educational assistance for eligible veterans' survivors and dependents, and the use of such assistance for special restorative training. It would also make survivors and dependents eligible for educational assistance until their 30th (currently 26th) birthday. The bill would make the aggregate amount of educational assistance \$80,000, and it would make survivors and dependents eligible for tutorial assistance. The DAV has no resolutions pertaining to this bill but because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

S. 847

This legislation would remove the time limit during which multiple sclerosis is to be considered to have been incurred in, or aggravated by, military service.

Normally, to establish eligibility for service connected benefits, a veteran must provide evidence of a correlation between military service and the condition being claimed. Under presumption of service connection, VA presumes the service connected relationship exists based on the other qualifying criteria, such as statistical information indicating a higher than normal affliction rate among veterans. Multiple sclerosis is one of the insidious conditions that may appear years after a veteran leaves active duty. This bill recognizes that manifestation of multiple sclerosis may occur beyond the current seven year presumptive period. S. 847 would ensure that no veteran who contracts multiple sclerosis as a result of service is left without benefits, regardless of when the disease becomes manifest. The DAV supports this bill.

S. 848

The POW Benefits Act of 2007 would eliminate the requirement that a prisoner of war (POW) must have been interned for a minimum of 30 days to be presumed service connected for certain listed diseases. The bill would also add diabetes (type 2) and osteoporosis to the listed presumptive diseases; and it would require VA to expand the list to include diseases that warrant such presumption by reason of having a positive association with the experience of being a prisoner of war.

S. 848 would ensure that no former POW who contracts certain diseases as a result of internment is left without benefits, regardless of the amount of time he or she was held captive. The DAV supports this bill.

S. 961

The Belated Thank You to the Merchant Mariners of WW II Act of 2007 would require the VA to pay a monthly benefit of \$1000 to certain Merchant Mariners who served between December 7, 1941, and December 31, 1946, and who received honorable-service certificates. The surviving spouse of an eligible Merchant Mariner would be eligible to receive the same monthly payment provided that he or she had been married to the Merchant Mariner for at least one year prior to the Merchant Mariner's death.

This legislation would provide a non service-connected benefit, to certain Merchant Mariners or their surviving spouses, that exceeds the amount of compensation the VA pays to a 60 percent service connected disabled veteran. Along with the disparity illustrated by this comparison, the DAV is concerned about the cost of this provision. In its April 18, 2007 testimony before the House Veterans' Affairs Committee regarding H.R. 23, the companion bill to S. 961, the VA estimated that enactment of the legislation would cost approximately \$234.1 million in the first fiscal year and an additional benefit cost of \$1.4 billion over ten years.

The DAV statement of policy specifies that we will not oppose legislation unless it is evident that it will jeopardize benefits for service-connected disabled veterans. As such, we would strongly oppose offsetting the costs associated with S. 961 against other VA programs. While the DAV acknowledges the bravery, sacrifice, and contributions of the Merchant Mariners of WWII, we cannot support S. 961.

S. 1096

The Veterans' Housing Benefits Enhancement Act of 2007 would provide home improvements and structural alterations to totally disabled members of the Armed Forces prior to their discharge or release from active service. The bill would also expand the number of veterans eligible for such benefits to include disabled veterans with severe burns. It would require VA to submit to Congress a report that contains an assessment of the adequacy of the authorities available to the VA to assist disabled veterans in acquiring: suitable housing units with special fixtures or movable facilities required for their disabilities; adaptations to their residences that are reasonably necessary because of their disabilities; or, residences already adapted with special features determined by the VA to be reasonably necessary as a result of their disabilities. S. 1096 would provide assistance for automobiles and adaptive equipment to disabled veterans with severe burns. It would provide partial housing grants for those veterans residing with a family member to include service members still on active duty and awaiting their final VA disability rating. This legislation will also require the VA to report on the need for a permanent housing grant for wounded veterans who reside with family members.

S. 1096 would provide immediate, meaningful assistance to disabled veterans and their families by strengthening and expanding current laws. The DAV fully supports this commendable bill.

S. 1163

The Blinded Veterans' Paired Organ Act of 2007 would grant eligibility for compensation and specially adapted housing to certain veterans with impairment of vision involving both eyes. The VA disburses home adaptation grants of up to \$10,000 to veterans with a service-connected blindness in both eyes. Current law requires that such veterans have a visual acuity of 5/200 or less in order to be eligible for these grants. This legislation would ease this standard to include

veterans who have a visual acuity of 20/200 or less. It would also make specially adapted housing grants available to veterans with a visual acuity of 20/200 or less, or a peripheral field of vision of 20 degrees or less. The bill would also provide for the use of the National Directory of New Hires for income verification purposes.

This commendable legislation takes into consideration the high number of injuries related to improvised explosive devices (IEDs). Along with traumatic brain injuries, IEDs frequently cause damage to service members' vision. This bill will allow those who have suffered severe vision impairment to speed their readjustment by adapting their homes to accommodate the disability. Additionally, those who have suffered blindness in one eye will be assured that they are provided for in the event that they lose sight in the other eye. The DAV appreciates and strongly supports this provision of S. 1163, but we have no resolution pertaining to the use of the National Directory of New Hires for income verification purposes.

S. 1215

This legislation would raise the cap on funds for State Approving Agencies and extend authority for a pilot program for on-the-job claim adjudicators' training. It would also: update various reporting requirements; authorize case-by-case waiver of residency requirement for a Director for Veterans' Employment and Training; modify an unemployment study to cover veterans of the Global War on Terror; extend an increase in benefit for individuals pursuing apprenticeship or on-job-training. The DAV has no opposition to the enactment of this bill.

S. 1261

The Montgomery GI Bill for Life Act of 2007 would repeal the 10 year limit on the use of veterans' educational benefits. It would extend entitlement that was set to expire to allow a veteran to complete the quarter or semester, and it would repeal the 14 year limit on the use of selected reserve educational assistance benefits. The DAV has no resolutions pertaining to this bill but because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

S. 1265

This legislation would expand eligibility for veterans' mortgage life insurance to include members of the Armed Forces receiving specially adapted housing assistance from the VA. Because this bill would provide additional coverage for severely disabled veterans who have sacrificed so much on behalf of the security of their fellow citizens, the DAV supports this commendable legislation.

S. 1266

The Veterans' Dignified Burial Assistance Act of 2007 would increase plot or interment allowance from \$300 to \$400, and it would repeal the time limit for States filing for reimbursement of interment costs. This bill would also authorize VA to make grants to States for the operation and maintenance of State veterans' cemeteries.

Overall, S.1266 is a bill that is beneficial as it helps to ensure, as its title implies, that veterans have access to a dignified burial that provides the level of honor they deserve. However, a concern arises regarding the provision that allows VA to make grants to States for the operation and maintenance of State veterans' cemeteries. While this provision appears favorable because it would make more burial space available for veterans, the DAV wants to ensure that it would not have the unintended consequence of creating competition between State and National cemetery programs for funding. Should such certainty be made, we would welcome the provision. Lastly, along with the proposed increase for the burial plot allowance, the DAV would encourage the Committee to consider legislation to increase the burial allowance payable in the case of death

due to service-connected disability and to provide for automatic annual adjustments indexed to the rise in the cost of living. During the most recent DAV National Convention, our members voted to again adopt a long standing resolution calling for an increase for burial allowance, which seems worthy of mention considering the objective of this commendable legislation. This bill is consistent with the recommendation of the The Independent Budget (IB) on this issue. The IB is a budget and policy document that sets forth the collective views of the DAV, AMVETS, the Paralyzed Veterans of America (PVA), and the Veterans of Foreign Wars of the United States (VFW). While the DAV supports the favorable consideration of S. 1266, it is noteworthy that another bill under consideration today, the Comprehensive Veterans Benefits Improvement Act of 2007, would increase the plot allowance to \$745. As such, the DAV would encourage the Committee to approve the more favorable plot allowance provision.

The Disabled Veterans' Insurance Improvement Act of 2007

This draft bill would increase the amount of veterans' mortgage life insurance (VMLI) from \$90 thousand to \$200 thousand. It would create a new level-premium life insurance for veterans with service connected disabilities who are less than 65 years of age. The amount of insurance granted would be a maximum of \$50 thousand. Eligible veterans could elect lesser amounts of life insurance, which would be available in \$10 thousand increments. For veterans insured under this program who reached 70 years of age, the amount available would be reduced to equal 20 percent of the amount previously covered. Premiums would be based on the 2001 Commissioners Standard Ordinary Basic Table of Mortality and interest rate of 4.5 per centum per annum. The bill would expand coverage of service members' group life insurance to include members of the individual ready reserve.

Overall, this bill is favorable to both veterans and disabled veterans. The DAV specifically supports the creation of level-premium life insurance for veterans with service connected disabilities. While this provision expands benefits for disabled veterans, the DAV questions the rationale for restricting it to veterans who became entitled to VA service connection within 10-years of separation from the Armed Forces. Such a restriction would preclude eligibility for veterans service connected for latent onset conditions such as certain types of cancer associated with defoliant agents. We hope that the Committee will strike this restriction to prevent the unintended inequity it would create for a significant number of disabled veterans.

The Veterans' Justice Assurance Act of 2007

This draft bill would repeal term limits for judges of the United States Court of Appeals for Veterans' Claims, and it would increase the salary amount for the chief judge of the Court. The bill would establish provisions to recall retired judges of the Court, and it would grant the Court discretion to set reasonable practice and registration fees. It would require the Court to submit an annual report to Congress that summarizes the Court's workload during the previous fiscal

year. Lastly, the bill would produce a report on the feasibility of establishing a Veterans' Courthouse and Justice Center.

With regard to the repeal of term limits for judges of the Court, the DAV does not believe that appointing judges to longer terms is desirable. Appointments to extended terms during good behavior are generally reserved for judges of Article III courts. Since judges of the Court may be removed by the President by reason of misconduct, 38 U.S.C. § 7253(f), there is no doubt that the Court is part of the Executive Branch. The proposed departure from the present fifteen-year term might raise a question about the status of the Court because there seems to be no precedent for life tenure within the Executive Branch. The DAV has no objection to the Chief Judge of the Court of Appeals for Veterans Claims receiving a higher rate of compensation than the other judges of the Court. Regarding the recall of retired judges, the DAV notes that the proposed provisions for doing so are somewhat complex and may raise issues for judges who have retired far from Washington, DC. The Committee might want to consider simpler staffing solutions, such as increasing the number of judges authorized for the Court. The DAV believes that the proposed annual report to Congress from the Court should be more specific and include, along with the number and type of dispositions, the number of dispositions based on settlements, joint motions for remand, voluntary dismissals, and the number of memorandum decisions made by each judge. The DAV supports the establishment of a dedicated Veterans' Courthouse and Justice Center. During the most recent DAV National Convention, our members voted to again adopt a long standing resolution calling for such a facility. Our resolution envisions an architectural design and location that is reflective of the United States' respect and gratitude for veterans of military service. Rather than designating the office building where the Court currently leases space as the permanent facility, we encourage the Committee to authorize the construction of a new Veterans' Courthouse and Justice Center that features the design and location worthy of its status.

The Veterans' Education and Vocational Benefits Improvement Act of 2007

This draft bill would provide a temporary expansion of courses for which accelerated payment of educational assistance for veterans and their dependents may be made. It would also enhance educational assistance for reserve component members supporting contingency operations and other operations. The DAV has no resolutions pertaining to this bill but because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

Draft Bill

This draft bill would provide additional discretion to VA in contracting with State Approving Agencies. The DAV has no resolutions pertaining to this bill but because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

Comprehensive Veterans Benefits Improvement Act of 2007

This draft bill contains a number of provisions to improve benefits and services for veterans. Many such provisions are reflective of both the DAV Legislative Program resolutions and the recommendations of the IB. Where applicable, this testimony points out the bill's provisions that relate to DAV resolutions or IB recommendations. Mr. Chairman, per your instruction, the portion of the bill pertaining to health care matters is not addressed in this testimony.

Section 201 of the bill would repeal the prohibition on concurrent receipt of VA compensation and military longevity retirement pay. This provision is consistent with both DAV Resolution Number 003 and the IB recommendation on this issue.

Currently, some former service members who are retired from the armed forces on the basis of length of service must forfeit a portion of the retired pay they earned through faithful performance of military service to receive VA compensation for service-connected disabilities. This is inequitable because military retired pay is earned by virtue of a veteran's long service on behalf of the nation. Entitlement to compensation, on the other hand, is because of disability incurred during that military service. Most non-disabled military retirees pursue second careers after serving, in order to supplement their income, thereby justly enjoying a full reward for completion of a military career along with the added reward of full pay in civilian employment. In contrast, military retirees with service-connected disabilities do not enjoy the same full earning potential. Their earning potential is reduced commensurate with the degree of service-connected disability. To put them on equal footing with non-disabled military retirees, disabled retirees should receive full military retired pay and compensation, to account for diminution of their earning capacities.

The DAV supports the provision of this bill that would repeal the offset between military longevity retired pay and VA disability compensation for those service connected less than 50 percent. The DAV has no resolutions pertaining to concurrent receipt for Chapter 61 retirees with less than twenty years of military service, but because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

Section 202 would increase the rates special monthly compensation. This provision is consistent with the recommendation of the IB on this issue. The VA, under the provisions of title 38, United States Code, section 1114(k) through (s), provides additional special compensation to select categories of veterans with very severe, debilitating disabilities, such as the loss of a limb, loss of certain senses, and to those who require the assistance of an aide for the activities of daily living, such as dressing, toileting, bathing, and eating. The payment of special monthly compensation, while minimally adjusted for inflation each year, is now no longer sufficient to compensate for the special needs of these veterans. As such the DAV supports this commendable provision to increase this crucial benefit.

Section 203 would establish a minimum VA disability rating of 10 percent for veterans with service connected hearing loss requiring a hearing aid. This provision is consistent with both DAV Resolution Number 122 and the IB recommendation on this issue. Currently, The VA Schedule for Rating Disabilities does not provide a compensable rating for hearing loss at certain levels severe enough to require hearing aids. The minimum disability rating for any hearing loss warranting use of hearing aids should be 10 percent, and the schedule should be changed accordingly. A disability severe enough to require use of a prosthetic device should be compensable. Beyond the functional impairment and disadvantages of artificial restoration of hearing, hearing aids affect the wearer's physical appearance. As such, the DAV supports this provision to provide a minimum 10 percent disability rating for hearing loss for which a hearing aid is required.

Section 204 would increase the rate of dependency indemnity compensation for surviving spouses of members of the Armed Forces who die while on active duty. This provision is

consistent with the recommendation of the IB on this issue, and the DAV supports its favorable consideration.

Section 205 would lower the age threshold for eligibility for restoration of dependency and indemnity compensation to remarriage of survivors of veterans who die from service-connected disabilities. This provision is consistent with the recommendation of the IB on this issue, and the DAV supports its favorable consideration.

Section 206 would eliminate an inequity in current law controlling the beginning date for payment of increased compensation based on periods of incapacity due to hospitalization or convalescence. Hospitalization in excess of 21 days for a service connected disability entitles the veteran to a temporary total disability rating of 100 percent. This rating is effective the first day of hospitalization and continues to the last day of the month of discharge from hospital. Although the effective date of the temporary total disability rating corresponds to the beginning date of hospitalization or treatment, the provisions of 38 U.S.C. § 5111 delay the effective date for payment purposes until the first day of the month following the effective date of the increased rating. This provision deprives veterans of any increase in compensation to offset the total disability during the first month in which temporary total disability occurs. This deprivation and consequent delay in the payment of increased compensation often jeopardizes disabled veterans' financial security and unfairly causes them hardships. Therefore, the DAV supports this measure to authorize increased compensation on the basis of a temporary total rating for hospitalization or convalescence to be effective, for payment purposes, on the date of admission to the hospital or the date of treatment, surgery, or other circumstances necessitating convalescence.

Section 207 would produce a report on the adequacy of dependency and indemnity compensation to ensure the level of VA financial support is adequate to maintain these beneficiaries above the poverty level. This provision is consistent with the recommendation of the IB on this issue, and the DAV supports its favorable consideration.

Section 301 would lower premiums for Service-Disabled Veterans' Insurance (SDVI) policies based on improved life expectancy under current mortality tables. Because of service-connected disabilities, disabled veterans have difficulty getting or are charged higher premiums for life insurance on the commercial market. Congress therefore created the SDVI program to furnish disabled veterans life insurance at standard rates. When this program began in 1951, its rates, based on mortality tables then in use, were competitive with commercial insurance. Commercial rates have since been lowered to reflect improved life expectancy shown by current mortality tables. VA continues to base its rates on mortality tables from 1941 however. Consequently, SDVI premiums are no longer competitive with commercial insurance and therefore no longer provide the intended benefit for eligible veterans. This provision, which would restore SDVI to its intended purpose, is consistent with both DAV Resolution Number 191 and the IB recommendation on this issue. Section 301 would also increase the amount of coverage from \$10 thousand to \$50 thousand. This increase is also reflective of the IB and DAV Resolution Number 022. As such, the DAV supports this provision.

Section 401 would increase plot or interment allowance from \$300 to \$745, and it would provide for an automatic annual COLA for the plot allowance to keep pace with rising costs. This

provision is consistent with the recommendation of the IB on this issue, and the DAV supports its favorable consideration.

Section 402 would increase plot allowance and burial expenses for disabled veterans, from \$300 to \$1,270 and from \$2,000 to \$4,100 respectively. This provision is consistent with both DAV Resolution Number 202 and the IB recommendation on this issue. Therefore the DAV supports this provision.

Section 403 would authorize \$37 million for the State veterans' cemetery grants for fiscal year 2008. This provision is consistent with the recommendation of the IB on this issue, and the DAV supports its favorable consideration.

Section 501 would increase specially adapted housing grants. The current \$50 thousand grant would be increased to \$60 thousand, and the current \$10 thousand grant would be increased to \$12 thousand. This section would also provide for future automatic annual adjustments indexed to the rise in the cost-of-living. VA currently provides specially adapted housing grants of up to \$50 thousand to veterans with service-connected disabilities consisting of certain combinations of loss or loss of use of extremities and blindness or other organic diseases or injuries. Veterans with service-connected blindness alone or with loss or loss of use of both upper extremities may receive a home adaptation grant of up to \$10 thousand. Increases in housing and home adaptation grants have been infrequent, although real estate and construction costs rise continually. Unless the amounts of the grants are periodically adjusted, inflation erodes the value and effectiveness of these benefits, which are payable to a select few but among the most seriously disabled service-connected veterans. This provision, which would address the need for such increases, is consistent with both DAV Resolution Number 021 and the IB recommendation on this issue; therefore, the DAV supports this provision.

Section 502 would increase the amount of VMLI from \$90 thousand to \$150 thousand. This provision is consistent with the recommendation of the IB on this issue, and the DAV supports its favorable consideration.

Section 503 would make members of the National Guard and Reserves, who serve on active duty for at least one year, eligible for housing loans. The DAV has no resolutions pertaining to this bill but because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

Section 504 would adjust housing loan fees to rates in effect before the enactment of the Veterans' Benefits Act of 2003. The DAV has no resolutions pertaining to this bill but because it would benefit veterans and their family members, the DAV has no objection to its favorable consideration.

Section 601 would authorize the Court of Appeals for the Federal Circuit (CAFC) to review and set aside changes to the VA Schedule for Rating Disabilities found to be arbitrary and capricious or clearly in violation of statutory provisions. Under 38 U.S.C. § 502, CAFC may review challenges to VA's rulemaking. Section 502 exempts from judicial review actions relating to the adoption or revision of the VA Schedule for Rating Disabilities, however. Formulation of criteria for evaluating reductions in earning capacity from various injuries and diseases requires expertise not generally available in Congress. Similarly, unlike other matters of law, this is an area outside the expertise of the courts. Unfortunately, without any constraints or oversight

whatsoever, VA is free to promulgate rules for rating disabilities that may not fall within the broad parameters of 38 U.S.C. § 1155. Therefore, the CAFC should have jurisdiction to review and set aside VA changes or additions to the rating schedule when they are shown to be arbitrary and capricious or clearly violate basic statutory provisions. Section 601 would grant the CAFC such authority; therefore, the DAV supports this provision.

Section 602 would eliminate the rounding down of COLAs for the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans. As mentioned previously in this statement with regard to S. 243, COLA increases normally require that each partial dollar amount increased shall be rounded to the next lower whole dollar amount. The DAV has testified for the past several years that continually rounding down the adjusted rates to the next lower dollar amount will gradually erode the value of benefits and they will not keep pace with the rise in the cost of living. Rounding down veterans' cost-of-living adjustments unfairly targets veterans for convenient cost savings for the government. As such, the DAV supports section 602 and we urge the Committee to eliminate the rounding down of the COLA.

Section 603 would establish a clinical information data exchange bureau that facilitates data between the DOD and VA health systems. Recently, there has been a great deal of effort to develop proposals to promote VA/DOD initiatives within the medical care arena. The IB believes DOD and VA must continue to develop electronic medical records that are interoperable. Better coordination of the two electronic medical record systems will afford the opportunity to see tangible initiatives of VA/DOD programs. It will also expedite the handling of patient information especially in the transition of the patient from the DOD system to the VA system. Section 603 is consistent with the recommendation of the IB on this issue, and the DAV supports its favorable consideration.

Section 604 would require VA and DOD to conduct a joint study regarding the interoperability of their respective disability rating systems. This provision would seek to address a longstanding problem in the military disability evaluation system. Injured service members, are routinely denied benefits to which they are entitled. This occurs primarily because some military services consistently underrate the severity of those disabling conditions found to render the service member unfit for further service. Military services do not adhere to the VA Schedule for Rating Disabilities as required by chapter 61 of title 10 United States. The DAV asserts that this statute and the ruling by the U.S. Court of Claims in *John F. Hordechuck vs. The United States* (U.S.Ct.Cl. 492,1959) make it clear that DOD must use the VA schedule as its standard for rating disabilities. While section 604 of this bill would be a step toward resolving this problem, the DAV encourages the Committee to consider legislative action to eliminate any ambiguity on this issue. Such legislation should make it unmistakably clear that: (1) there is only one rating schedule, the one adopted by the VA, and that DOD does not have authority to modify that schedule; and (2) that decisions of the Court of Appeals for Veterans Claims interpreting the rating schedule must also be followed by DOD.

Section 701 would increase the amount of automobile assistance allowance for disabled veterans. The VA provides certain severely disabled veterans grants for the purchase of automobiles or other conveyances. This grant also provides for adaptive equipment necessary for safe operation of these vehicles. This program also authorizes replacement or repair of adaptive equipment. To restore the comparability between the cost of an automobile and the allowance, the allowance, based on 80 percent of the average new vehicle cost, would be \$22,484. Section 701 would increase the amount to this level, and it would provide for an automatic annual COLA. This

provision is consistent with the recommendation of the IB on this issue, and the DAV supports its favorable consideration.

Section 702 would change the law to permit refund of an individual's MGIB contributions when his or her discharge was characterized as general or under honorable conditions because of minor infractions or inefficiency. This provision is consistent with the recommendation of the IB on this issue, and the DAV supports its favorable consideration.

Draft Bill

This draft bill would make permanent authority for the VA to furnish government markers for graves of veterans buried in private cemeteries. While the DAV has no resolution on this issue, the bill would accomplish a beneficial purpose, and we certainly have no objection to its passage.

The Servicemembers' Cellular Phone Contract Fairness Act of 2007

This draft bill would allow servicemembers who must relocate for military reasons to terminate cellular phone contracts without penalty. While the DAV has no resolution on this issue, the bill would accomplish a beneficial purpose, and we certainly have no objection to its passage.

The Veteran's Outreach Improvement Act of 2007

This legislation would direct the VA to establish procedures for effective coordination of outreach activities between the various offices and administrations within VA. It would also authorize the VA to make grants to state veteran agencies for state and local outreach services. The DAV understands the importance of reaching out to veterans to inform them of benefits to which they may be entitled, and expends considerable resources in this regard. Both the DAV Veterans' Information Seminar program and the DAV Mobile Service Office (MSO) program are designed to educate disabled veterans and their families on veterans' benefits and services. In both programs, highly trained members of DAV National Service Officer Corps provide service deep within veterans' communities across the country to counsel and assist veterans in completing applications for benefits from the VA and other government agencies. While outreach is important, we believe a higher budget priority for VA is to decrease the number of backlogged VA compensation claims. Therefore, the funding that would be authorized by this bill for outreach would be better utilized if it was put toward a program that would help reduce the backlog. For instance, the Benefits Delivery at Discharge (BDD) is a program that assists servicemembers at participating military bases with development of VA disability compensation claims prior to release from active duty. The discharge physical is conducted under VA disability examination protocols either by VA medical staff, contract medical examiners or military personnel. BDD fosters a seamless transition from the military to the VA system and accelerates claims for compensation. In summary, the DAV does not oppose this bill, but we would prefer to see additional funding directed toward the more urgent need for resources within the VA claims processing system.

Draft Bill

This draft bill would make veterans diagnosed with Post Traumatic Stress Disorder eligible for hospital care, medical services, and nursing home care, despite insufficient medical evidence to conclude that such disability may be associated with military service. It would also assess the feasibility of making grants available to legal service organizations to assist servicemembers and veterans in obtaining pro bono legal representation to ensure they receive health care, benefits and services. The DAV supports these provisions. While we do not recognize a widespread need for legal representation for veterans seeking health care, we do acknowledge that pro bono legal representation could be beneficial to a large number of veterans seeking benefits. Accordingly, the DAV has recently entered into an agreement with LeBoeuf, Lamb, Greene & MacRae LLP, under which DAV and the firm will coordinate to provide pro bono legal services to servicemembers going before formal physical evaluation boards in Washington, DC. The DAV hopes to conclude a similar agreement with another large firm in the near future. The goal of this effort is to ensure that every servicemember who desires the assistance of an attorney while the servicemember is proceeding through the military disability evaluation system in Washington, DC, is provided that assistance at no cost. The DAV believes that similar efforts can, and should, be organized in other cities without the need to expend public funds. There are many veterans' service organizations, and attorneys have an obligation to perform pro bono service. DAV believes that large numbers of attorneys will welcome the opportunity to complete that obligation by serving veterans.

Closing

Mr. Chairman and members of the Committee, the DAV appreciates the opportunity to present our views on these bills. We look forward to our continued work with the Committee to serve our nation's disabled veterans and their families.