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STATEMENT

of the

MILITARY OFFICERS ASSOCIATION OF AMERICA
LEGISLATIVE PRIORITIES

for

VETERANS' HEALTH CARE and BENEFITS

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before the

SENATE and HOUSE VETERANS' AFFAIRS COMMITTEES

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Presented by

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EXECUTIVE SUMMARY

- Two-Year Advance Appropriations. MOAA's top legislative priority for the VA health care system is passage of H.R.1016 and S.423 to establish 2-year advance appropriations for veterans' health care. (pp. 2-3)
- Oppose Fee Hikes. Congress has steadfastly opposed fee hikes in the VA system for 6 years. MOAA urges the Committees to continue to oppose any initiatives that would reduce critical funding and resources, or levy higher usage and drug co-payment fees for VA services. (pp. 3-4)
- Permanent Joint VA-DoD Transition Office for Wounded Warriors. Establish a permanent joint VA-DoD Seamless Transition or Special Oversight Committee office to coordinate, plan, execute, manage, and evaluate all seamless transition functions between and across the departments, including standardization of policies, procedures, processes, protocols, programs, and services supporting the needs of our wounded warriors and their families. (pp. 4-5)
- Psychological Health and Traumatic Brain Injuries. Implement the recommendations in the RAND Corporation report (2008) that would increase the capacity to deliver evidenced-based mental health and TBI care in the VA and among outside providers, and expand research in this area (pp. 5-6)
- Caregiver and Family Support Services. Authorize consistent VA-DoD compensation, training, certification, respite care, and health insurance for full-time caregivers of veterans with severe disabilities. (p. 6)
- Research. Expand collaborative VA-DoD medical and rehabilitation research (p. 6)

- VA Disability Claims System. Increase investment in technology, improve training and compensation for claims workers, and oversee progress in reducing the number of backlogged claims while improving initial decision quality. (p. 7)
- Post-9/11 GI Bill. Ensure effective implementation of the new program on 1 August. Implement a short- mid- and longer term strategy to integrate GI Bill programs in a 21st century architecture, repeal duplicative programs, and ensure effective recruitment, retention and readjustment outcomes. (pp. 7-9)
- Vocational Rehabilitation and Employment (VRE) Program. Upgrade the VRE program and increase subsistence benefits by using a locality-based metric now authorized for the Post-9/11 GI Bill. (p. 9-10)
- Survivor Benefits. Raise DIC rates to 55% of the compensation rate for a 100% service-connected veteran; upgrade educational benefits program for survivors and their dependents in light of the Post-9/11 GI Bill; and, allow remarried widow(er)s to retain DIC at age 55 (vice 57). (p. 10-11)
- Employment and Reemployment Rights (USERRA). Strengthen the USERRA to reflect operational reserve realities (support S. 263) and require the Office of Special Counsel to enforce the law for reservists employed in Federal agencies (support H.R. 1089). (p. 11)
- Servicemembers Civil Relief Act (SCRA) Protections. Enact H.R. 1182 /S.475 to amend the SCRA allowing spouses of servicemembers to determine their residence for tax, voting and other purposes. Create a "right of private action" in the SCRA to remove any ambiguity in the statute that servicemembers may pursue their legal rights under the law. (p. 12)

CHAIRMAN AKAKA, CHAIRMAN FILNER AND DISTINGUISHED MEMBERS OF THE COMMITTEES, on behalf of the 375,000 members of the Military Officers Association of America (MOAA), I am grateful for the opportunity to present testimony on MOAA's major legislative priorities for veterans' health care and benefits this year.

MOAA does not receive any grants or contracts from the federal government.

VETERANS' HEALTH CARE

MOAA extends our sincere thanks to both the Committees for your leadership and steadfast commitment to our nation's veterans and their families. We are grateful to you for the significant resources you have championed in recent years.

Your critical support not only allows our veterans and their families to realize more fully the health care and benefits they've earned, but will also help the Department of Veterans Affairs to strengthen its reputation as a national leader in delivering high quality health care and advance medical technology and research.

MOAA is encouraged by Secretary Shinseki's commitment to Congress at a hearing before the House Committee on Veterans Affairs last month to be "a forceful advocate for veterans and [be]

forthright and direct with Congress on what it takes to keep veterans at the focal point of VA activities."

We look forward to working with Secretary Shinseki and the Committees to make sure VA continues to lean forward and stay out in front of issues. We have a responsibility as a nation to make sure that the VA never again fall victim to budget cuts that negatively impact health care and benefits delivery to veterans.

FY 2010 Veterans Independent Budget (IB). The IB, authored by the AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars continues to be a valuable resource to Congress, providing an outside perspective of key issues impacting the VA. MOAA remains a strong proponent of the IB, joining the more than 60 veterans, military, medical, and disability organizations that endorse it.

Health Care Funding. MOAA is pleased to see VA's health care budget increase in Fiscal Year 2009 to \$41 billion, a \$4.1 billion over 2008. We are especially appreciative of Congress' timely enactment of the budget, ensuring necessary resources are in place during the transition of leadership in new Administration.

While VA has experienced significant growth in recent years, the process for securing this funding continues to present challenges. In 19 of the last 22 years, Congress has not approved funding for the VA health system until after the start of the fiscal year. As a consequence, veterans are often placed on long waiting lists for care, and approval of new facilities, staff and research programs is put on hold pending the final release of funds.

We contend that the VA health system needs a stable funding mechanism to ensure health care 'supply' is able to meet growing demand. Eight million of the nation's 25 million veterans are enrolled in the VA and another 800,000 Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) veterans are expected to enroll this year. Half of the veterans entering the system are National Guard and Reserve members. Currently 15 percent of veterans enrolled in VA are women, a population that is expected to double by 2020. It is noteworthy that the majority of female veterans enrolling are of child-bearing age. Clearly, VA must expand its capacity to care for a younger and more diverse population entering the system.

Further, the \$375 million Congress appropriated last year to increase enrollment of Priority Group 8 (PG 8), non-disabled means-tested veterans, will bring an additional 265,000 veterans into the health care system beginning this year. The President's proposed FY 2010 budget is expected to expand PG 8 access even more, to 500,000.

MOAA joins with every major military and veterans service organization in strongly supporting passage of H.R. 1016 / S. 423, the Veterans Health Care Budget Reform and Transparency Act of 2009, to establish veterans' health care funding through the advance appropriations process.

We must recognize our veterans' sacrifice and provide them adequate, timely, agile, and properly funded health care. VA also must be sensitive to and adjust care to meet the unique and changing needs of all veterans, including underserved women and minority populations.

MOAA believes VA health care must:

- Ensure the system is made accountable to meet its published access standards. We suggest adopting access standards in law as a means of balancing demand and funding requirements.
- Continue expanding and upgrading polytrauma and other specialty care services for OIF/OEF veterans with multiple trauma injuries, including traumatic brain injury (TBI).
- Ensure consistency of CHAMPVA health benefit package with TRICARE Standard benefits (e.g., enact dental coverage equal to TRICARE retiree dental plan).
- Ensure sufficient funding to sustain the expansion of PG 8 enrollments so that wait-times for all enrolled veterans will not revert to the long lines of the open enrollment period (1999-2003).

Fee Hikes. The Committees have strongly opposed fee hikes for the last six years and MOAA thanks you for your support. The VA could become a target for future budget cuts or be seen as a possible funding source for other priorities because of recent plus-ups. However, we believe such proposals will negatively impact the VA's ability to sustain quality care and access to services.

MOAA urges the Committees to continue to oppose any initiatives that would reduce critical funding and resources, or levy higher usage and drug co-payment fees for VA services.

WOUNDED WARRIOR ISSUES

Since the 2007 Walter Reed Army Medical Center scandal, the problems encountered by wounded warriors and their families have been scrutinized by no fewer than 11 special task forces, commissions, and committees that have collectively offered more than 400 recommendations. Many of these recommendations have been adopted in law, or implemented through VA-DoD collaborative efforts-to improve health care and benefits for our wounded warriors and to help ease their transition from the military into the VA system and civilian community.

MOAA is grateful to Congress for keeping the pressure on VA-DoD to make progress toward seamless transition by improving continuity and quality of care and support to our most vulnerable population of veterans.

A critical issue that continues to stymie progress in achieving seamless transition outcomes for our service-disabled veterans' is the bureaucratic stove-piping in VA and DoD. While both departments are making significant strides in their efforts to cooperate and collaborate, neither is fully "in charge" and veterans suffer as a consequence. There is no permanent joint activity or office whose primary mission is to ensure the two Departments continue to work together in planning and executing the seamless transition strategy and exercising productive oversight over it.

In a June 12, 2008 report titled, "DoD/VA Care in the Transition Process for Service Members Injured in OIF/OEF," the VA-DoD Inspectors General recommended that, "The Under Secretary for Personnel and Readiness should create a DoD Office of Seamless Transition to coordinate the transition process between DoD and VA, and consolidate oversight elements of the transition process under DoD responsibility."

The Pentagon attempted to address GAO's concerns by issuing two directive-type memoranda as stop-gap measures. One directive establishes temporary leadership staff and policy to augment and support the operations of the Senior Oversight Committee's (SOC) -Secretary-level VA-DoD entity established to facilitate cooperation and collaboration between the two agencies. The second interim policy establishes a recovery coordination program aimed at improving care, management and transition services for the wounded. While we commend these initiatives during the transitional period, it is not clear to MOAA what the roles and functions of the SOC and the statutory Joint Executive Council (JEC) will be, in the short- and long-term, or what VA and DoD's collective, or individual plans are for institutionalizing the seamless transition process and policies.

Joint Transition Office. Congress extended the SOC only through Dec. 31, 2009. However, the 2009 NDAA requires the Departments to submit a report in June 2009 providing recommendations for continuing the operations of the SOC beyond this December, including any modifications to its responsibilities, composition, or support.

MOAA believes strongly it is of overriding importance to establish a permanent, single, Joint Seamless Transition or SOC Office, responsible for managing, implementing, monitoring and reporting to senior DoD, VA and congressional leaders on all aspects of the seamless transition process, including, but not limited to:

- Joint, single separation physical;
- Consistent disability evaluation system;
- Bi-directional electronic medical and personnel records transfer;
- Medical centers of excellence and operations/research collaboration; and,
- Coordination of care, treatment, and information, including DoD-VA federal/recovery coordinator clinical and non-clinical services and case management programs.

Establishing a permanent structure would Congress' intent to realize a more efficient and effective top-down planning and execution model that ensures continued progress between the two agencies - that is, an institutional structure that provides stability and continuity for the longer-term, unlike the current statutory JEC function, where the political leadership and focus comes and goes.

MOAA recommends the Committees support establishment of a permanent, single, joint DoD-VA Seamless Transition or SOC Office to coordinate, plan, execute, manage, and evaluate all seamless transition functions between and across the departments, including standardization of policies, procedures, processes, protocols, programs, and services supporting the needs of our wounded warriors and their families.

Psychological Health and Traumatic Brain Injury (TBI). VA and DoD face the daunting challenge of meeting a significant range of health care and rehabilitation needs for severely wounded service men and women. MOAA is especially concerned about the exponentially growing need for mental health, behavioral and cognitive rehabilitation treatment/therapy and support services generated by the current war.

In 2008, RAND's Center for Military Health Policy Research released a report, "Invisible Wounds of War: Psychological and Cognitive Injuries, Their Consequences, and Services to

Assist Recovery."

The study revealed that about one in five OEF/OIF veterans of the approximately 1.64 million troops who deployed suffer from Post-traumatic Stress Disorder (PTSD) or major depression and another 10 percent experience some level of TBI. RAND estimates that PTSD and depression among servicemembers alone will cost the nation up to \$6.2 billion in the first two years after deployment, but concludes that investing in the proper treatment and reducing barriers to prompt delivery of care, could save \$2 billion by improving the capacity of members and families to return to productive work.

Specific RAND recommendations include:

- Increase and improve capacity of the mental health care system to deliver evidence-based care.
- Change policies to encourage more servicemembers and veterans to seek needed care.
- Deliver evidenced-based care in all settings.
- Invest in research to close knowledge gaps and plan effectively.

MOAA urges Congress to encourage VA and DoD jointly to:

- Implement the RAND recommendations and direct a follow-on longitudinal study to expand data collection and to measure the scope and associated costs of these issues
- Promote a national multi-media education, de-stigmatization and outreach campaign to:
 - o Provide a better understanding of mental health/combat stress;
 - o Expand delivery of information, training and resources to veterans, families, and providers, including confidential options like virtual counseling or online treatment options;
 - o Reduce stigma associated with seeking care;
 - o Implement special outreach efforts to veterans in rural areas and Guard and Reserve members who don't live near a military facility; and,
 - o Increase capacity and attract more civilian providers to enter mental health professions and counseling fields.
- Increase funding for alternative/recreational therapies and respite care programs
- Expand mental health care and counseling services for families of severely injured or disabled veterans in order to mitigate the secondary effects of combat stress, PTSD and TBI-include specialized programs for children, teenagers and family member caregivers.
- Increase availability, resources and outreach for substance abuse programs.
- Pursue an aggressive medication reconciliation and management programs to protect against inadvertent overmedication and adverse reactions.

Caregiver and Family Support Services. There has been much emphasis on trauma care, acute rehabilitation, and basic or short-term rehabilitation during the transformation of VA-DoD health care systems. It is now time to develop a long-range strategy to ensure severely-disabled veterans' caregivers are adequately supported and compensated for their work.

Congress passed a number of provisions in the last two years to address the myriad of issues facing wounded warriors. Many are aimed at helping members and their families navigate the complex military and veterans' health care and benefit systems. While many members and families are satisfied with the care and support they receive in the military system, they are less than confident of support after leaving the military and transitioning to VA care and civilian life. While still in the military system, caregivers receive per diem compensation and support, but lose such support when the severely disabled service member is medically separated or retired. Many parents, spouses, siblings and even friends have quit their jobs, lost homes, savings and

personal health insurance to become full-time caregivers as a result of government-caused injuries.

Troops and their families have higher expectations and want better options; institutionalizing severely disabled veterans or restricting care to a home or facility setting or less-stimulating environment may not be an option.

Like other Americans, veterans want a high quality of life and these heroes have shown a great willingness to adapt to a "new normal." But they need and expect VA to continue to meet their needs for high-quality, lifetime care.

MOAA recommends the Committees take action to:

- Authorize consistent VA-DoD compensation, training, certification, and respite care for full-time family/caregivers.
- Authorize health care coverage for full-time caregivers and their families.
- Improve information outreach for referral and direct services for child care, legal and financial assistance, and counseling for full-time caregivers (DoD's 'Military OneSource' and Military Family Life Consultants tools could be modeled in the VA).
- Require VA-DoD to conduct research and submit a joint report on the impact of combat stress and TBI on full-time caregivers and family members, including especially children.

Joint Research. The Iraq and Afghanistan conflicts present challenges and opportunities for VA-DoD health care systems. An investment in medical research, particularly during time of war is a lost opportunity if we don't leverage VA and DoD research capabilities. Since many of the issues discussed above are shared, joint research makes sense, enabling dollars to go further and helping to improve health care delivery between the military and veteran health care systems.

MOAA recommends that the Committees work with the Armed Services Committees to expand and improve joint medical and rehabilitation research between the VA and military Services.

VETERANS BENEFITS

Disability Claims: Emphasize Quality, Training Standards, and Technology Upgrades

In his recent appearances before the Committees, Secretary Shinseki also emphasized his commitment to improving the VA claims system.

As of October 3, 2008, there were 847,285 total claims in the VA system. This figure includes initial claims, claims on appeal, and educational benefits claims. The VA Budget request for the current fiscal year -- FY2009 --projected 872,000 claims working in the system this year.

Increased workload, more complex claims, and insufficient and under-trained staff among other factors have caused annual claims receipts to grow by 45% from 2000 to 2007 -- from almost 579,000 to 838,000. MOAA appreciates that the Committees are greatly concerned over the problem and we applaud the increase in resources to address it, including creation of 2000 additional claims-worker positions for the current year.

An expanded workforce will help, but only in the context of a comprehensive, results-driven strategy on claims management, training upgrades, reduced manpower turnover at the entry level, IT support, and quality-control. The strategy should:

- Expedite the hiring and training of the 2000 additional claims workers approved by Congress in the FY 2009 VA appropriation.
- Continue investment in state-of-the-art technology and information management support
- Compensate adjudicators at a level that will reduce chronic staff turnover.
- Establish uniform standards and procedures for rating claims
- Support robust Congressional oversight of the VA claims process

MOAA strongly supports continued investment in technology upgrades for the VA claims system, improved training and compensation for claims workers, and oversight hearings to assess progress in improving the fairness, reliability and responsiveness of the system.

GI BILL PROGRAMS

MOAA is deeply appreciative of the enactment of the greatest GI Bill legislation since WWII, the Post-9/11 Veterans Educational Assistance Act of 2008. The "Webb-Warner GI Bill" incorporates major MOAA and Partnership for Veterans Education recommendations for the GI Bill.

That said, MOAA believes very strongly - as we stated in multiple hearings last year - that we must build a 21st century umbrella architecture for the various GI Bill programs, and repeal statutes that no longer properly support recruiting, reenlistment and readjustment outcomes as Congress intended. MOAA believes that the Committees need to adopt a short-term, mid-term and long-term approach to structuring a 21st century GI Bill

Short-Term: Ensure Implementation of Post-9/11 GI Bill on 1 August 2009

The Economic Subcommittee of the House Committee on Veterans Affairs held an oversight hearing on implementation of the new program on 26 February 2009. The VA appears to be making steady progress in completing the tasks essential to effective implementation of the new program. There are, however, a number of issues that remain to be addressed.

In meetings with representatives of the American Council on Education (ACE) and the VA, MOAA has learned that establishing the highest in-state cost for tuition and fees is a challenging task because college programs vary widely in structure and cost, and there are no standard definitions for "tuition" and "fees." It appears that preliminary estimates for payment caps in each state may not be reliable, though they are needed for program implementation.

MOAA suggests that final regulations for the Post-9/11 GI Bill include an assurance that the government will cover the cost of any public college undergraduate program -- all tuition and fees - , consistent with the statute, in cases where the state payment cap assigned by the VA does not meet a program's cost.

Under the new program, benefits are paid directly to a college on behalf of the enrolled veteran. At the 26 February hearing, a senior VA official stated that when a student-veteran withdraws from college the VA could seek recovery of any overpayment from the veteran. The VA would

first ask the institution to refund the overpayment to the veteran. MOAA questions whether this proposed procedure is workable and fair.

MOAA recommends that the VA arrange to recover unexcused overpayments from a school since, unlike the Montgomery GI Bill (MGIB), payments are made directly to schools on behalf of a veteran.

MOAA also recommends clarifying the rules for the Yellow Ribbon provisions of the Post-9/11 GI Bill to encourage a large number of private colleges / universities to participate.

Finally, MOAA recommends that the Defense Department promptly issue regulations for the transfer provisions of the Post-9/11 GI Bill as we believe "transferability" of GI Bill benefits will have a positive impact on career retention in the active duty and reserve forces.

Mid-Term: Fix Glaring Inequities under GI Bill programs

In multiple hearings last year, MOAA recommended that "the Committees [should] 'de-conflict' the statutory authority for the MGIB in Chapter 30, 38 USC with the proposed new GI Bill for the 21st century," now enacted as the Post-9/11 Veterans Educational Assistance Act of 2008. "We [MOAA] believe desirable features in the MGIB should be incorporated into the proposed new Chapter 33, 38 USC, or vice versa. To maintain two GI Bill program authorities at the same time will undoubtedly cause confusion and be difficult to administer". Some MOAA concerns are outlined below.

We understand that DoD / Services plan to encourage new recruits to enroll in the MGIB to retain the option of using its wider array of benefits. But after hearing of the \$1200 payroll reduction for the MGIB, many likely will decline it. That decision, though understandable, will deny new enlistees future access to vocational training, OJT or apprenticeship training since these programs are not covered by the Post-9/11 GI Bill. MOAA recommends repeal of the \$1200 MGIB enrollment fee to give new recruits the greatest flexibility in accessing their future benefits. Ultimately, the MGIB itself should be phased out, as discussed below.

A second concern is that basic reserve MGIB rates have been left behind. Congress has not raised the rates under the Selected Reserve MGIB, other than through annual COLAs since 1999. Basic reserve benefits have plummeted to 25% of active duty rates against a historic benchmark of 47-48% with active duty rates. At a 48% rate ratio, MGIB Reserve rates would now be about \$634 per month for full-time Guard-Reserve students instead of the current \$329 per month. MOAA again recommends transferring Chapter 1606 to Title 38 to set the stage for future increases in these benefits to restore the historic relationship and provide better incentives for reserve component recruiting.

A third concern is that the Post-9/11 GI Bill has rendered the Reserve Educational Assistance Program (REAP) for activated reservists largely obsolete. Chapter 1607 should be repealed or phased out.

A fourth concern is that full-time online students - distance learners -- are ineligible for the new housing stipend. (Students who are enrolled in and attend classes full-time may take online

coursework as part of their program and receive Post-9/11 GI Bill benefits, including the housing allowance.) MOAA recommends setting the housing allowance for full-time distance learners under the Post-9/11 GI Bill at the national average housing payment under the new program.

A fifth concern is that certain groups previously eligible for the MGIB and earlier GI Bill programs are locked out of the Post-9/11 GI Bill. US Public Health Service and NOAA Corps commissioned officers are not authorized the Post-9/11 GI Bill program, even though they have been authorized every GI Bill benefits program since World War II. Another group left behind is National Guard AGRs who serve active duty tours of two-years or more to organize, manage, train and equip the Guard under Title 32. These members earn MGIB benefits but are not eligible to convert to the Post-9/11 GI Bill; they should be. MOAA strongly recommends immediate eligibility for the Post-9/11 GI Bill for U.S. Public Health Service, NOAA Corps commissioned officers, and National Guard Title 32 AGRs.

Long-Term: In the 111th Session of Congress, Create a 21st Century GI Bill Architecture

A streamlined architecture for the GI Bill should be simple, transparent and equitable.

MOAA recommendations for a 21st GI Bill architecture:

1. Adopt Chapter 30 (MGIB) program eligibility rules for the Post-9/11 GI Bill. The MGIB and all previous GI Bill programs back to WWII authorized traditional post-secondary education benefits as well as technical, vocational, OJT training and flight training. MGIB program eligibility rules should be grafted into the Post-9/11 GI Bill to provide maximum flexibility for veterans and servicemembers.
2. Repeal the MGIB. When the MGIB was enacted in 1984, Congress authorized Vietnam-era GI Bill participants to convert to the new program if they met certain criteria. Similarly, the MGIB has been supplanted by the Post-9/11 GI Bill and should be repealed or phased out. Current MGIB participants should be grandfathered. This recommendation is bundled with #1: it assumes that program eligibility rules for the MGIB will be authorized for the Post-9/11 GI Bill in Chapter 33.
3. Repeal or phase out Chapter 1607, 10 USC. See pg. 9.
4. Restore basic reserve MGIB (Chapter 1606, 10 USC) rates to their historic ratio with the active duty GI Bill. See pg. 9.

WOUNDED WARRIOR VOCATIONAL REHABILITATION AND EMPLOYMENT UPGRADES NEEDED

The purpose of the Vocational Rehabilitation and Employment (VR&E) program (Chapter 31, 38 USC) is to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become meaningfully employed. VRE helps to equip disabled veterans to transition back into the workforce. While VRE focuses on employment, it is not designed to forecast the changes in the job market or the changing nature of a veteran's service-connected injuries.

The dynamic nature of OIF and OEF injuries and our nation's economic woes point to the need for restructuring the VRE program to support the employment, education and training needs of disabled veterans.

MOAA recommendations:

- Enact a technical correction of Section 3108(f)(1)(A) in the VRE statute to specifically authorize Chapter 33 benefits for VRE participants who elect to go to college in preparation for employment in the workforce.
- Modify the VRE subsistence allowance along the lines of the locality-based housing allowance in Chapter 33 and ensure that VRE users continue to receive a subsistence ('per diem') allowance.
- Extend the VRE usage period to a minimum of 15 years (from 12 years) and consider the merits of a life-long benefit under the program
- Cover all books, fees, and adaptive equipment deemed necessary to ensure a maximum independence in daily living to the maximum extent feasible.
- Allow all service-connected disabled veterans access to career counseling.
- Focus the goal of the program on career skills and career-long employability.

UPGRADE SURVIVOR BENEFITS

Raise DIC Monthly Rate. All Federal survivor benefits are set at 55% of the covered sponsor's annuity, including the military Survivor Benefit Plan (SBP). The VA Dependency and Indemnity Compensation (DIC) rate for survivors of those who paid the ultimate sacrifice should be set at 55% of the compensation paid to a 100% service-disabled veteran. MOAA supports establishing the annual DIC rate at 55% of the compensation rate for a 100% service-connected veteran.

Survivors and Dependents Educational Assistance (DEA) Program. Survivor and dependents educational benefits (Chapter 35, 38 USC) were not addressed under the Post-9/11 GI Bill legislation. Survivors whose sponsors lost their lives after September 11, 2001 have dearly earned any benefits available to them. DEA benefits should be upgraded with a retroactive effective date to September 11, 2001.

MOAA recommends:

- Increase DEA benefit rates. One approach would be to authorize transferability of the deceased sponsor's Chapter 33 benefits to the surviving spouse and dependent children. Another would be to raise DEA benefits by 20% this year to match the increase in MGIB rates approved by Congress in 2008.
- Establish a housing and annual book stipend for the DEA program modeled on the new Chapter 33 benefits
- Require that the DEA program be adjusted proportionally whenever Congress raises MGIB (Chap. 30) or when the Post-9//11 GI Bill payments are raised to match the cost of the highest in-state public college program

- Ensure that eligibility for DEA benefits is extended to all survivors equitably: active duty servicemembers who are also surviving spouses of military members who died on active duty are denied DEA benefits unless they separate from active service. Fixing this will encourage active duty survivors to continue their service in the armed forces.

Retain DIC on Remarriage at Age 55. Legislation was enacted in 2003 to allow eligible military survivors to retain DIC upon remarriage after age 57. At the time, Congressional staff advised that age-57 was selected only because there were insufficient funds to authorize age-55 retention of DIC upon remarriage. MOAA recommends authorization of age-55 for retention of DIC upon remarriage in order to bring this benefit in line with rules for the military SBP program and all other federal survivor benefit programs.

USERRA AND SCRA UPGRADES NEEDED TO MATCH CHANGING SERVICE CONDITIONS

Uniformed Services Employment and Reemployment Rights Act (USERRA). At a Senate hearing before the Health, Education, Labor and Pensions Committee in November 2007, the Defense Department released data on reservists' reemployment problems. The data demonstrate that tens of thousands of veterans returning home have faced the harsh reality that their service to our country has cost them the salary they deserve, their health care, and other benefits, and even their jobs. Among members of the National Guard and Reserves in late 2007:

- Nearly 11,000 were denied prompt reemployment
- More than 22,000 lost seniority and rightful pay
- Nearly 20,000 saw their pensions cut
- Nearly 11,000 did not get their health insurance back

More recently, a "Sixty Minutes" segment on CBS News, which aired on November 2, 2008, illustrated the rising frustration among some previously supportive employers over multiple call-ups of their employees.

Under "operational reserve" policies, reservists can expect to be on active duty for one year of every five years they serve in the Guard or Reserve. But the reality is otherwise: more than 194,000 Guard and Reserve members already have served multiple tours of active duty since October 7, 2001. Some are on their third rotation.

MOAA believes it's extremely important to periodically review and, if necessary, upgrade the USERRA to protect the rights of our nation's operational reservists. At the same time, we believe that Congress must balance a stronger USERRA statute with appropriate consideration for the needs of employers.

Senator Robert Casey (D-PA) has introduced S. 263, the Servicemembers Access to Justice Act of 2009, to strengthen USERRA protections for our nation's operational reserve warriors. A similar House bill is expected to be introduced shortly.

MOAA endorses S.263, the Servicemembers Access to Justice Act of 2009, and recommends that the Senate Committee on Veterans Affairs hold a hearing on the bill as soon as possible.

MOAA has long supported strengthening the role of the Office of Special Counsel (OSC) to protect the reemployment rights of Federal workers called to active duty in the armed forces. Accordingly, MOAA supports enactment of H.R. 1089, a bill that would require the OSC to enforce employment and reemployment rights of veterans of the Armed Forces employed by Federal agencies; and to permit covered individuals to file a complaint to the OSC.

MOAA also recommends that employer tax incentives for paying wage differentials for activated reservists be expanded and made permanent.

Servicemembers Civil Relief Act (SCRA) Improvements. Frequent and often unexpected Permanent Change of Station (PCS) moves can have serious consequences for military families' rights and economic well-being. Under current law, servicemembers' domicile rights are protected, but their spouses' are not. That often poses significant cumulative hassles for spouses over the course of multiple PCS moves.

Especially in this stressful time of deployments and economic challenges, MOAA thinks it's wrong to make military spouses get new drivers' licenses, re-register to vote, and contend with new state-tax impacts every time the military orders them to relocate.

MOAA supports passage of H.R. 1182 (Rep. Carter, R-TX) and S. 475 (Senator Richard Burr, R-NC), legislation that would amend the SCRA to allow military spouses the option to choose the same state of residence as their servicemember or retain residency in their previous state of domicile.

Specify a "right of private action" under the SCRA. The continuing activation and deployment of hundreds of thousands of service men and women has given rise to countless personal legal challenges, landlord-tenant, family, property and business matters governed by the SCRA.

In a recent case (*Hurley v. Deutsche Bank Trust Company Americas, et al*), National Guard Sergeant James Hurley's house was foreclosed and his dependents were evicted from the property, and the property was sold to a third party during his deployment to Iraq. Sergeant Hurley sued in federal district court in Michigan seeking damages for violation of his rights under the SCRA. The federal court ruled, however, that there is no "right of private cause of action" to enforce violations of the SCRA. While the Hurley ruling is being appealed, corrective legislation would eliminate the necessity for costly and time-consuming litigation of this issue in SCRA cases.

This issue goes to fundamental access to justice for service men and women and their families, recognizing that SCRA protections in the statute are only as strong as the ability to bring violators to court.

The American Bar Association's Legal Assistance to Military Personnel (LAMP) Committee took up this issue and the ABA has passed a Resolution that recommends unambiguous authority for a Right of Private Action in the SCRA.

MOAA recommends that the Committees amend the SCRA to: authorize civil enforcement actions by the Attorney General of the United States in any Federal District Court; clarify that a Private Right of Action exists within the SCRA authorizing a covered servicemember or dependent to file suit, either independently or in conjunction with a Dept. of Justice action; and, provide that in such a case a plaintiff may recover damages or injunctive relief, and that a prevailing plaintiff may recover reasonable attorney's fees.

Conclusion

MOAA is grateful to the Members of the Committees for your leadership in supporting our veterans and their families who have "borne the battle" in defense of the nation.