

**STATEMENT OF  
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THE AMERICAN LEGION  
BEFORE THE  
SUBCOMMITTEE ON BENEFITS  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
HR 348, THE PRISONER OF WAR BENEFITS ACT OF 2003; HR 843, THE INJURED  
VETERANS BENEFITS ELIGIBILITY ACT OF 2003; HR 1735, TO AMEND TITLE 38  
UNITED STATES CODE, TO INCREASE THE MAXIMUM AMOUNT OF A HOME  
LOAN GUARANTEE AVAILABLE TO A VETERAN; HR 4065, THE VETERANS  
HOUSING AFFORDABILITY ACT OF 2004; HR 2612, THE VETERANS ADAPTED  
HOUSING EXPANSION ACT OF 2003; THE VETERANS EDUCATIONAL  
OPPORTUNITY ACT OF 2004; AND OTHER PROPOSED BILLS**

**APRIL 29, 2004**

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion's view on the many issues being considered by the Subcommittee today. The American Legion commends the Subcommittee for holding a hearing to discuss these important and timely issues.

**HR 348, "The Prisoner of War Benefits Act of 2003"**

This bill would amend Title 38, United States Codes, to repeal the minimum period of time an individual must have been held or interned – not less than thirty days – for entitlement to the presumption of service connection for certain prisoner-of-war diseases, under Title 38, United States Code, Section 1112(b), and the presumption of service connection for dental care, under Title 38, United States Code, Section 1712(a)(1)(F). This bill would also expand the list of prisoner-of-war diseases presumed to be service connected currently set forth in Title 38, United States Code, Section 1112(b) to include: (16) heart disease, (17) stroke, (18) liver disease, (19) diabetes (type 2), and (20) osteoporosis. In addition, it would authorize the Secretary to issue regulations establishing presumptive service connection for any disease found to have a positive association with veterans' prisoner-of-war experience.

The issue of the welfare and well being of those veterans who have endured the hardship and trauma of being held as a prisoner-of-war has long been one of major concerns of The American Legion. To ensure that the government of the United States fulfills its obligation to these brave men and women, The American Legion has actively supported improvements in benefits provided to these individuals and their survivors and are pleased to support the proposed addition of these five diseases to the list of those currently presumed to be service connected. It is hoped this legislation will provide the impetus for action to further broaden the list of presumptive diseases

and disabilities, which former prisoners-of-war are known to suffer from. Toward this end, we are encouraged that the bill recognizes and emphasizes the important role played by VA's Advisory Committee on Former Prisoners-of-War. This group of esteemed individuals, many of whom are themselves former prisoners-of-war, provide the necessary mechanism and forum to evaluate scientific and medical studies on former prisoners-of-war and make appropriate recommendations to the Secretary regarding needed changes in VA's outreach, benefits, and medical care program for this community of veterans.

However, based on the longstanding mandate of the members of The American Legion, we continue to advocate the inclusion of chronic pulmonary disease, where there was a history of forced labor in mines during internment and generalized osteoarthritis, as differentiated from the currently listed disability of "post-traumatic arthritis".

### **HR 843, "The Injured Veterans Benefits Eligibility Act of 2003"**

This bill would amend Title 38, United States Code, Section 1151, to provide for full service-connected disability benefits and services to veterans disabled as a result of VA treatment or an approved program of vocational rehabilitation or training and death benefits for their survivors.

Currently, Title 38, United States Code, Section 1151, provides that VA disability compensation and Dependency and Indemnity Compensation (DIC) will be payable for a qualifying additional disability or death "as if" it were service-connected. Such qualifying disability or death must be found to have been caused by VA hospital care, medical or surgical treatment or examination, either by a VA employee or in a VA facility, and the proximate cause of the disability or death was carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the VA or the event was not reasonably foreseeable.

[VA General Counsel held in a Precedent Opinion of July 3, 1997 that benefits paid under Section 1151 do not extend entitlement to benefits other than monetary compensation for the disability, such as specially adapted housing, automobile and adaptive equipment allowance, or education and medical care.](#) It concluded that the statutes are unambiguous and that Congress intended to limit the entitlement under Section 1151 to disability compensation, clothing allowance, and paired organ compensation, rather than all veterans' monetary benefits and services.

The American Legion believes [Section 1151](#) should be interpreted broadly, rather than narrowly as it relates to entitlement to additional benefits. The intent of the term "as if service-connected" connotes that the additional disability was incurred outside of military service and could not, therefore, be "service connected" under the traditional criteria of Title 38, United States Code, Section 1110. It also codifies the federal government's responsibility to provide compensation to the disabled individual or their survivors in the same manner and, we believe, to the same extent as other veterans who were disabled or died as a result of military service. Since this legislation would eliminate any question regarding Congressional intent as to the extent of entitlement to VA benefits authorized under Title 38, United States Code, Section 1151, The American Legion offers no objection to this bill.

**H.R. 1735: “To amend Title 38, United States Code, to increase the maximum amount of a home loan guarantee available to a veteran.”**

This bill would amend Title 38, United States Code, to increase the maximum home loan guarantee from the current \$60,000 to \$81,000. For reasons discussed below, this would make the VA loan maximum available to veterans \$324,000, a considerable improvement over the current \$240,000.

**H.R. 4065: “The Veterans Housing Affordability Act of 2004”**

This bill would amend Title 38, United States Code, to increase the maximum amount of home loan guarantee, and to provide for annual adjustments for such amounts. H.R. 4065 would set the maximum guarantee at 22.5 percent of the current year Federal Home Loan Mortgage Corporation (Freddie Mac) single-family home loan purchase limit. Effective January 1, 2004, that limit is \$333,700 so the VA guarantee would be \$75,082, thus qualifying, again for reasons discussed below, an eligible veteran for a \$300,328 mortgage. This bill has the added benefit of annual indexing of the maximum amount of home loan guarantee to the current year Freddie Mac loan purchase limit, eliminating the need for periodic legislative increases.

The American Legion has recognized for years that VA home loan guarantee limits have been inadequate and either of these bills would make home ownership a reality for more veterans than ever. Basic entitlement currently is \$36,000 and up to \$60,000 for certain loans over \$144,000. Basic entitlement qualifies a veteran for a mortgage of \$144,000; the current maximum would qualify a veteran for a \$240,000 loan. Only homes in the Midwest, where the median price of a home is \$141,000, easily qualify for VA basic guarantee, according to statistics from the National Association of REALTORS'® *Median Sales Price of Existing Single Family Homes for Metropolitan Areas* (© 2004, National Association of REALTORS). Lenders will generally lend up to 4 times of a veteran's available guarantee entitlement without requiring a down payment, provided income levels and credit qualify and the property appraises for the asking price. There is no “maximum” VA loan, but lenders currently limit VA loans to \$240,000, a factor of 4 on the guarantee amount, because lenders resell VA loans in the VA/FHA Government National Mortgage Association (Ginnie Mae) secondary market, which currently requires a 25 percent down payment or guarantee on loans.

The American Legion believes that higher limits should be established for VA home loans to stay current with increasing housing costs nationwide. For example, in San Francisco, California in the last quarter of 2003, the median price of a home was \$574,300, an increase of 11.2 percent over 2002. For the same period, in Boston, Massachusetts the median price of a home was \$406,000 up 5.3 percent; in the New York City Metro area, \$353,000, up 10.2 percent; and here in Washington D.C. area the median home cost \$292,100, a 12.9 percent increase over 2002. (*Id.*) In these cities, where half of the existing homes sales were for prices ABOVE the median, the difference between many veterans being able to secure financing for a decent home for his or her family and being shut out of the market is due to the currently inadequate levels of VA home loan guarantee. Either of these bills would benefit veterans in the D.C. market; H.R. 4065 would bring the VA guarantee just slightly above the median home price and H.R. 1735 would well exceed it. Not so in the other

three high-priced markets as well as other areas in Southern California and Connecticut. It is noted that Freddie Mac single-family home loan purchase limits may be increased by up to 50% for home loans in Hawaii, Alaska, Guam and the U.S. Virgin Islands and it is presumed that these increases would also apply to H.R. 4065, were it enacted. Similar exceptions should be made for these few high cost metropolitan areas. If VA guarantee is to be used in lieu of down payments, The American Legion believes otherwise credit-worthy veterans should not be shut out of these markets because of inadequate VA home loan guarantee.

Either of these bills will achieve the objective stated by National Commander John A. Brieden, III in his testimony on September 16, 2003 to a joint session of the House and Senate Veterans' Affairs Committees that the VA Home Loan Guarantee of \$240,000 should be raised to \$300,000. The American Legion applauds the author and co-sponsors of H.R. 4065 for including a provision that will relieve the Congress of the administrative chore of periodically raising the guarantee limit while keeping VA current and competitive in mortgage markets.

#### **HR 2612: "The Veterans Adapted Housing Expansion Act of 2003"**

This bill would extend entitlement to special adapted housing assistance, under Title 38, United States Code, Section 2101(a)(2)(D), to those veterans whose service connected disabilities are rated permanent and totally disabling due to the anatomical loss or loss of use of both upper extremities such as to preclude the use of the arms at and below the elbows.

Clearly, veterans who have suffered the loss or loss of use of both upper extremities are very seriously disabled. Their type of severe disability is, for all practical purposes, in the same category as those disabilities currently enumerated in Title 38, United States Code, Section 2101. They obviously have a very difficult time performing normal day-to-day activities in and around their place of residence. The American Legion believes the type of assistance that would be made available under this legislation to those veterans so disabled will help improve their overall quality of life and we are pleased to support HR 2612.

#### **HR 3936: "To amend title 38, United States Code, to authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C., metropolitan area"**

This bill would authorize the relocation of the United States Court of Appeals for Veterans Claims to a dedicated Veterans Court House and Justice Center to house the Court at a location in the greater Washington, DC metropolitan area, preferably in the area of the Pentagon. While The American Legion has no formal position on this matter, we would offer no objection to this legislation.

#### **"The Veterans Educational Opportunity Act of 2004"**

Aimed primarily at new military retirees, this legislation would allow the veteran who entered active duty on or before July 1, 1985 served honorably on continuous active duty through at least April, 1, 2004 and meets certain educational prerequisites to make an "irrevocable election" for entitlement to basic educational assistance under Chapter 30 of Title 38, United States Code, The

All-Volunteer Force Educational Assistance Program (Montgomery G.I. Bill or MGIB). The veteran must have been eligible to enroll in the Post-Vietnam Era Veterans Educational Assistance Program (VEAP) and may not have made a previous in-service election to transfer eligibility from VEAP to MGIB. The veteran is required to make a \$3900.00 contribution to MGIB within 24 months of the election, by direct payment to VA or by withholding from retired pay, and any past contributions to VEAP may be refunded to the veteran.

Election to convert eligibility to MGIB from VEAP is a good investment for the veteran. Under VEAP, the service member was required to contribute a minimum of \$2700 that the Department of Defense would match on a \$2 for \$1 basis, plus “kickers”. While the service member could contribute more, the basic contribution would give the veteran \$300.00 per month for as long as the \$11,700 fund lasted; about 39 months. Basic MGIB pays a benefit of \$985 per month for 36 months if the veteran served at least three full years on continuous active duty for a total benefit of \$35,460.

The American Legion is pleased to support this legislation.

**“A bill to direct the Secretary of Veterans Affairs to contract for a report on employment placement, retention and advancement of recently separated veterans”**

The report of this proposed two-year study of veterans released from service since 1990 would determine: whether the employment obtained by recently separated veterans is commensurate with training and education; whether recently separated veterans are receiving VA or DoD/Selected Reserve educational assistance, training or vocational rehabilitation; and whether transition assistance programs helped service members obtain civilian employment. The report would further analyze trends in hiring of veterans in the private sector and identify veterans who have reached senior level management positions. The study is to be funded from the Compensation and Pension account and may not exceed \$490,000 in cost. The report results would be used to establish employment contact networks, for outreach to private sector employers and facilitate communication between recently discharged veterans and potential employers.

The American Legion lauds the intent of this bill, but questions the tasking of VA as the agency to contract for it. While The American Legion has no official position, it would seem that the Veterans Employment and Training Service (VETS) of the Department of Labor (DoL) would be a more appropriate agency to carry out this study. VETS is already responsible for a number of programs such as; the Uniformed Services Employment and Reemployment Rights Act, Job Counseling, Training, and Placement Service for Veterans, the Jobs for Veterans Act, Pub. L. 107-288 and a number of other programs. Further, The Bureau of Labor Statistics, cited in the scope of work as a primary source of data for the study, is also a DoL agency.

**“A bill to codify certain additional diseases as establishing a presumption of service connection when occurring in veterans exposed to ionizing radiation during active military, naval or air service, and for other purposes.**

This legislation proposes the amendment of Title 38, United States Code, Section 1112 to add to the list of presumed radiation-related diseases cancers of the bone, brain, colon, lung, and ovary.

The purpose of this change is to eliminate the difference that currently exists between the list of qualifying radiation-related diseases under Title 38, United States Code, Section 1112, and the list of recognized radiation-related diseases applicable to the Department of Justice's "Radiation Compensation Act of 1990" (RECA) as amended, under Title 42, United States Code, Section 7384. In 2000, Pub. L. 106-398 expanded the number of diseases on the RECA list. However, similar legislation to update Title 38 was never developed. Since this difference may adversely affect some atomic veterans or their survivors seeking benefits from VA, legislative action is necessary to ensure these lists of qualifying diseases remain comparable, so that eligible individuals can make a decision which program may be most advantageous.

This legislation also proposes an amendment to the definition of radiation-risk activities for presumptive service connection, as set forth in Title 38, United States Code, Section 1112(c)(3) to include veterans whose military duties would otherwise qualified them for inclusion in the Special Exposure Cohort of the Energy Employees Occupational Illness Program, under title 42, United States Code, Section 7384. The definition of individuals to be included in Special Exposure Cohort and the applicable criteria is detailed and extensive.

The American Legion has long advocated the expansion of the definition of a radiation-risk activity in Title 38, United States Code, Section 1112. The current presumption is less than complete and clearly fails to recognize and include the thousands of veterans whose military duties were performed at various nuclear weapons development, testing, and manufacturing facilities, such as Hanford, Washington. While there, they were at risk of exposure not only to radiation, but also beryllium and silica. However, in claims for VA disability compensation or DIC, since the presumption of exposure does not apply, veterans are faced with the very severe legal hurdle of obtaining official government records to support their claim of exposure to radiation or other hazardous material, which may be difficult if not impossible. This proposed amendment would overcome the inequity that currently exists under Title 38 and make it easier for these atomic veterans or their survivors to obtain the benefits to which they are rightfully entitled.

While The American Legion fully supports the draft bill, we would like to recommend that consideration be given to amending it to specifically add to the list of diseases covered under Title 38, United States Code, Section 1112, chronic beryllium disease and chronic silicosis. These diseases are currently among those covered under RECA. This change is necessary to ensure the statute reflects all of the environmental hazards associated with veterans' participation in the nation's nuclear weapons program.

Finally, the draft bill provides that VA disability or DIC will be offset by the amount of any benefits received under RECA. This offset, however, does not otherwise affect their basic VA entitlement. Such offset provision is similar to that which applies to a settlement under Title 38, United States Code, Section 1151.

Mr. Chairman, thank you again for the opportunity to present the views of the 2.8 million members of The American Legion. We look forward to working with this Subcommittee to ensure that America's veterans receive the entitlements they have earned through their service to this great country.