

**Statement of
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Under Secretary for Benefits
Before the
Subcommittee on Benefits
House Committee on Veterans' Affairs
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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on several legislative items of interest to veterans.

H.R. 3173

Section 2 of H.R. 3173, the "Servicemembers and Military Families Financial Protection Act of 2001," would prohibit eviction or distress of a servicemember's spouse, children, and other dependents during the member's military service if rent for the premises does not exceed \$1950 per month, which is an increase from the current \$1200. The Department of Veterans Affairs (VA) defers to the views of the Department of Defense on this provision.

Section 3 of H.R. 3173 would permit a servicemember to elect within 30 days after becoming eligible for Servicemembers' Group Life Insurance (SGLI) additional SGLI coverage in increments of \$250,000, with total coverage,

including basic SGLI, aggregating up to \$1 million. An insured servicemember would be able to elect additional SGLI coverage after this 30-day period if proof of good health is provided. VA opposes section 3 of H.R. 3173. The Secretary is charged with preserving the actuarial soundness and financial well being of the SGLI program and for that reason offers the following comments.

The amount of optional SGLI that would be provided by section 3(a)(2) would be inconsistent with sound actuarial principles. One of the primary purposes of insurance is to compensate for an untimely loss. Accordingly, the amount of insurance available is normally commensurate to the expected amount of loss. Commercial insurers generally determine the maximum amount of insurance that an insured can purchase based on multiples of income. Typically, insureds who are 25 years of age and younger are able to purchase insurance at 18 times their current income. Persons 65 years of age and older are usually able to buy insurance at 4 times their current income.

The amounts that would be offered by section 3 of H.R. 3173 far exceed these industry norms. For example, the current annual pay for a 22-year old enlisted member grade E-3 is approximately \$17,000. If an enlisted member grade E-3 were insured for the current maximum amount of SGLI, \$250,000, and purchased \$500,000 of optional SGLI coverage, the member would be insured at 44 times his or her annual income, which is more than twice as much as suggested by commercial underwriting principles. If a 48-year old officer

grade 0-4 with 10 years of service and earning \$53,000 purchased \$500,000 of optional SGLI coverage, the officer would be insured at 14 times his or her annual income, rather than 10 times as recommended by commercial underwriting guidelines.

In addition, for several reasons, we believe that the availability of the optional coverage may well result in premium costs to the insured servicemembers so high as to be prohibitive. As noted above, those with higher incomes can be expected to have higher insurance coverage. Because higher incomes also tend to be correlated with higher age, we would expect those purchasing optional SGLI coverage to be older. They would also therefore experience higher mortality rates. Accordingly, it would not be financially viable to charge a flat premium for this coverage; premiums would have to be age based.

Moreover, it must be recognized that the 30-day open season, by permitting servicemembers to obtain optional coverage without evidence of good health, would undoubtedly lead servicemembers with adverse medical conditions to purchase the optional coverage. Similarly, servicemembers assigned to hazardous duty also would be likely to opt for this coverage. Under these circumstances, VA would have two options to meet the expected substantial financial losses that could result in the program. First, VA could raise premiums on basic coverage. We believe, however, aside from the inequity involved, that

this might result in basic SGLI premiums becoming so high that servicemembers would look elsewhere for insurance. Alternatively, VA could set premiums for the optional SGLI based on experience. If this option were selected, the cost of the optional coverage might be so high that only those in ill health or hazardous duty locations might opt for coverage. Such adverse selection would have a spiral effect and might eventually force the elimination of optional coverage. Such an outcome, however, would obviously eviscerate the intent of H.R. 3713.

Another concern we have is that the optional SGLI that would become available upon enactment of H.R. 3173 might require amendment of 38 U.S.C. § 1969(b), which requires the service departments to reimburse the SGLI program for amounts traceable to the extra hazard of duty in the uniformed services. The cost of SGLI that is traceable to the extra hazard of duty is currently determined by the Secretary on the basis of excess mortality of SGLI insureds. Now extra hazard of duty costs are triggered when the mortality of servicemembers exceed what their mortality would have been under peacetime conditions. SGLI coverage is nearly universal, and virtually all members carry the maximum coverage. The fact that many members involved in hazardous duty or who have adverse medical conditions may opt for maximum optional coverage may warrant a change in the way the extra hazard of duty is measured from measuring on the basis of the number of deaths to measuring on the basis of the monetary amounts paid as claims. The most significant application of section 1969(b) occurred during the Vietnam War. At that time, military

appropriations reimbursed the SGLI program \$508 million, at a time when SGLI coverage levels were considerably lower than now. Reimbursement costs today would be considerably higher.

Another troubling aspect of H.R. 3173 is that the SGLI program would not be authorized to investigate the reason why an insured wants to purchase optional SGLI, unlike the commercial insurance industry which may investigate an insured's character and financial standing prior to increasing coverage in order to assure the proper motivation of the purchase. Statistics reviewed while implementing the Veterans' Survivor Benefits Improvements Act of 2001, Pub. L. No. 107-14, § 5, 115 Stat. 25, 30, which made the increase in SGLI coverage to \$250,000 retroactive with regard to servicemembers who died in the performance of duty between October 1, 2000, and March 31, 2001, indicated a high rate of suicide among servicemembers during that period. Based on this data, we believe that the inability of the SGLI program to further inquire as to why a servicemember would purchase the additional SGLI that would be authorized by this legislation could jeopardize the financial stability of the program.

Finally, section 3(b) of H.R. 3173 would provide that the amendments made by section 3(a) would be effective 60 days after enactment of this legislation. However, based on our recent experience implementing section 4 of the Veterans' Benefit Survivors Improvements Act of 2001, providing SGLI coverage for spouses and children of SGLI insureds, we believe that it would

require more than 60 days to implement the optional SGLI coverage provided under H.R. 3173.

For the above reasons, VA opposes section 3 of this bill.

Enactment of this legislation would not result in PAYGO or administrative costs.

H.R. 3735

Section 2 of H.R. 3735, the “Department of Veterans Affairs Overpayment Administration Improvement Act of 2002” would make two substantive amendments to VA’s waiver statute, 38 U.S.C. § 5302. First, subsection 2(a) of the bill would extend the time during which a debtor could request a waiver of recovery of an overpayment of VA benefits, other than under the chapter 37 VA home loan program. Under current law, a debtor may request waiver within 180 days from the date of notification of the overpayment, or such additional time as the Secretary may grant should the debtor provide satisfactory evidence that the notification of overpayment was not received within a reasonable period from the date it was issued. The proposed amendment would give a debtor who timely appeals the debt an additional 180-day period from the date of a final determination on the amount of the overpayment within which to request a waiver. (We assume the drafter intended the final determination to be that of the

Board of Veterans' Appeals upon administrative appeal, and further intended a broad reading of that determination as covering all issues of indebtedness, not merely the amount thereof.)

Significantly, this bill would reverse the direction Congress took when it last amended VA's waiver statute in this regard. Section 407 of the Veterans' Compensation, Education, and Employment Amendments of 1982, Pub. L. No. 97-306, 96 Stat. 1429, reduced the time period to request waiver from two years to the current 180 days. A review of the legislative history of that amendment indicates Congress agreed with VA that the two-year time limit hampered collection efforts and that 180 days was sufficient opportunity to request a waiver.

Arguably, subsection 2(a) of H.R. 3735 does not so much extend the time for a debtor to request a waiver, as it grants the debtor a second opportunity to request a waiver, following appeal of the indebtedness. In any event, it is not clear what ill that subsection seeks to remedy. We are aware of no pattern of preclusion or denial of waiver claims over the past 20 years indicating the current waiver period is inadequate. (As previously mentioned, the Department has the flexibility to grant an extension for filing in those rare instances when a debtor does not receive timely notice of the indebtedness.)

Moreover, the current single 180-day filing period for waiver has several advantages. First, the statutory test for waiver is whether collection of the debt

would be against equity and good conscience (subject to a bar for fraud in connection with the waiver request). 38 U.S.C. § 5302(a) and (c). We would suggest such factors are best considered and determined when the facts and circumstances are fresh. Further, it is most efficient and economical for all concerned to have the question of waiver resolved within reasonably close proximity to the establishment of the debt. Should waiver then be granted, it could altogether obviate the need to initiate or prosecute what could be a lengthy administrative appeal. The instant measure, to the contrary, would remove incentive for prompt resolution of the waiver issue.

Currently, if VA denies a waiver request, the debtor may appeal that decision together with the validity of the underlying debt. See 38 C.F.R. § 1.911. Thus, unlike the consequences of this bill, which could defer consideration and resolution of waiver for several years until a final appellate decision is made on the amount of the debt, the existing provisions promote economy along with fairness.

In sum, the existing waiver statute provides a reasonable period for a debtor to request waiver and does not require any change.

Next, subsection 2(b) of H.R. 3735 would add a new administrative-convenience waiver to 38 U.S.C. § 5302. The provision would grant the Secretary authority, pursuant to new regulations, to waive any benefit

overpayment if collection would impede the efficient and effective administration of veterans benefits, due to the small amount involved, where the cost to collect would be greater than the amount of the debt. We note, however, that this would merely duplicate authority already available under current VA and government-wide debt collection standards.

The Departments of Treasury and Justice have issued revised Federal Claims Collection Standards (31 C.F.R. pts. 900-904), conforming with statutory changes enacted by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, § 31001, 110 Stat. 1321-358. These standards recognize the need for an efficient debt-collection process, which includes permitting termination of collection efforts when the costs of collection are anticipated to exceed the amount recoverable after pursuing all appropriate means of collection (31 C.F.R. § 903.3). Likewise, VA's regulations permit termination of a collection action if the cost of collection exceeds the amount recoverable from the debtor. As a matter of policy, VA will terminate further collection action on de minimus amounts (e.g., under \$25) after sending one collection letter when the debtor does not respond and benefit offset is not available. This policy is consistent with the Federal Claims Collection Standards.

Thus, while we appreciate the interest in giving VA an efficient means of avoiding cost-ineffective collection action by disposing of certain benefit debt, we believe the existing uniform Federal authority is sufficient for such purpose.

In sum, VA does not support H.R. 3735, because we believe the bill's provisions are unnecessary and would not improve the administrative debt collection process.

We are unable to estimate the costs associated with section 2 of H.R. 3735 due to insufficient data. However, we believe the costs would be insignificant.

H.R. 3771

H.R. 3771 would exclude monetary veterans' benefits paid by States and municipalities to veterans from consideration as income for purposes of VA pension benefits. Prior to 1979, statutes governing VA's pension program included a similar income exclusion provision. However, in 1978, in an attempt to restructure the needs-based pension program to provide greater assistance to those truly in need and create a more equitable program, Congress eliminated this and other exclusions by enacting Public Law 95-588. Reintroduction of this exclusion would authorize the provision of additional monetary benefits to those whose need may be diminished due to the receipt of State monetary benefits. VA wishes to maintain the goal of the current pension program to provide the greatest pension benefit to those with the greatest financial need. Enactment of this bill would be inconsistent with that goal.

The bill would exclude from pension income computation benefits paid by certain states to severely disabled veterans. However, the improved pension program currently takes into account the greater needs of severely disabled veterans by providing a higher pension rate (over \$6,000 in additional annual benefits) to those who are helpless or blind or so nearly helpless or blind as to require the regular aid and attendance of another person. See 38 U.S.C. §§ 1502(b), 1521(d). Thus, because such severely disabled veterans already receive a higher rate of VA pension, excluding from consideration as income veterans' benefits paid to such veterans by States and municipalities is not necessary to provide for the needs of these veterans.

Because this bill is inconsistent with the goal of the improved pension program, VA cannot support this bill.

We will provide at a later date our estimate of the costs associated with this bill.

H.R. 4042

H.R. 4042, entitled the "Veterans Home Loan Prepayment Protection Act of 2002," would prohibit additional daily interest charges following prepayment in full of housing loans guaranteed by VA. It would require that, if a veteran prepaid

his or her VA-guaranteed home loan in full, the prepayment be credited by the loan holder on the calendar date the holder actually receives the payment. The bill explicitly states that any cut-off hour established by the mortgage lender shall not apply.

Currently, VA has provided by regulation that if a veteran prepays a loan in full, the loan holder must credit the debt with such payment “on the date received, and no interest may be charged thereafter.” 38 C.F.R. § 36.4310. It has been the position of the Department that since this regulation does not define the term “date received,” the VA regulations should be interpreted under the legally- or commercially-understood definition of that term. Section 4-108 of the Uniform Commercial Code (UCC), which VA believes has been adopted in some form by every State, permits a bank to establish a cutoff hour. Generally this hour must be 2:00 P.M. or later, although some states permit the cutoff hour to be noon or 1:00 P.M. A bank may treat an item received after its cutoff hour as being received at the opening of business on the next banking day. We understand that the purpose of this UCC provision is to permit financial institutions to reconcile their books at the close of their normal business day.

VA does not believe that it is appropriate to override accepted State commercial law and practice regarding a cutoff hour solely with regard to VA-guaranteed loans. Such legislation would likely require large commercial loan servicers to give special handling to VA loan payments they receive. That, in turn, would likely increase the costs to these entities in servicing VA loans.

Any increased costs would no doubt be passed along to veterans in the form of higher interest rates or discount points. In contrast, the benefit to veterans of this legislation would be minimal. For example, a veteran with an outstanding balance of \$50,000 on a loan with an interest rate of 7.25 percent per annum whose payoff was credited one day sooner would save less than \$10.00. For this reason, we are unable to support this measure.

VA estimates that enactment of this legislation would have insignificant costs.

Arlington National Cemetery Burial Eligibility Act

The “Arlington National Cemetery Burial Eligibility Act” would specify the classes of persons eligible for burial in Arlington National Cemetery and the classes of persons whose cremated remains may be placed in the columbarium in Arlington National Cemetery. It would also establish parameters for the provision of headstones or markers at private expense to mark gravesites in Arlington National Cemetery in lieu of headstones and markers provided by the Secretary of Veterans Affairs. Finally, it would prescribe the circumstances under which monuments may be placed in Arlington National Cemetery and would authorize the Secretary of the Army to construct and place in Arlington National Cemetery a memorial marker honoring the victims of the acts of

terrorism perpetrated against the United States on September 11, 2001. This bill moves these provisions to title 38, United States Code.

Arlington National Cemetery is under the control of the Department of the Army. Therefore, we defer to the Department of the Army with regard to this bill.

Dependency and Indemnity Compensation to Survivors of Veterans Disabled by
Cold-Weather Injuries

The Committee is considering a bill to amend 38 U.S.C. § 1318(b) to authorize payment of dependency and indemnity compensation (DIC) in the same manner as if a veteran's death were service connected in certain cases where the veteran, at the time of death, was in receipt of or entitled to receive compensation for disability due to cold-weather injury that was continuously rated totally disabling for at least one year immediately preceding death. VA does not support this legislation.

DIC has historically been paid for deaths caused by service-connected disease or injury. In 1978, Congress authorized payment of DIC in cases of non-service-connected death if the veteran, at the time of death, was receiving compensation for a service-connected disability rated totally disabling for a continuous period of at least ten years (or at least five years from service separation) immediately preceding death. This legislation provided a source of

continued income to families that had necessarily come to rely upon VA benefits over a prolonged period of a veteran's total disability.

In 1999, the Veterans Millennium Health Care and Benefits Act authorized payment of DIC to survivors of former prisoners of war who died after September 30, 1999, if the veteran's disability was rated totally disabling for just one year or more immediately preceding death.

In similar fashion, this bill would shorten, from ten years to one year, the period of total disability necessary to support an award of DIC to survivors of veterans totally disabled by cold-weather injuries. This provision would apply only to veterans released from active duty before August 13, 1998.

VA does not support this legislation because it would accord significantly preferential treatment to survivors of veterans who had cold-weather injuries. Except in cases of certain former prisoners of war, VA may not pay DIC to any individual unless the veteran's death was service connected or the veteran's service connected disability was rated totally disabling for at least ten years immediately preceding death. The one-year total disability period in this legislation would accord to survivors of veterans with cold-weather injuries preferential treatment available to no other class of survivors other than survivors of former prisoners of war who died after September 30, 1999.

We are aware of no basis for according such preferential treatment to cold-weather injuries. Although such injuries may cause severe disability, there is no apparent justification for singling them out from other injuries capable of producing total disability, including, for example, gunshot wounds, paralysis, amputations, or cancers. We have no basis for concluding that the impact on veterans and their families of total disability due to cold injuries is substantially different from the impact of total disability due to other types of injuries or diseases. In the absence of any compelling justification for such a distinction, we cannot support legislation that would require disparate treatment of similarly situated claimants.

We will provide at a later date our estimate of the costs associated with this bill.